

November 8, 2017

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Elk Creek Watershed Project Scoping Comments

Greetings,

Thank you for considering these scoping comments on behalf of the Klamath Siskiyou Wildlands Center (KS Wild), the Environmental Protection Information Center (EPIC) and the Klamath Forest Alliance (KFA). Contact information for our organizations may be found at the conclusion of this document. Please ensure that we receive hard copies of forthcoming planning and decision documents associated with this project.

Our organizations generally support the proposals of the Klamath National Forest (KNF) to thin previously regenerated plantation forest stands and to engage in watershed restoration projects including sediment reduction from the transportation system. Thank you for proposing needed road decommissioning in this NW Forest Plan Key Watershed in which road densities should be reduced to improve aquatic function. We also support and encourage the utilization of prescribed fire to reduce fuels in the Wildland Urban Interface (WUI) for the community Happy Camp.

We are concerned that commercial logging of native forest stands in the backcountry appears to be a major focus of the project. Please locate commercial logging where it will do the most good: in the previously created plantations and in small diameter stands in the WUI for Happy Camp. Please do not target remote backcountry native stands south of Titus Peak for logging. We are extremely concerned that riparian reserves and spotted owl critical habitat are targeted for commercial logging and canopy cover reduction. Please note that one of the project purposes is to “improve terrestrial habitat for northern spotted owls.” This project objective will not be met if forest stands currently providing much-needed spotted owl Nesting, Roosting and Foraging habitat are downgraded or removed. Please further note that the “Westside” salvage logging project involved a Biological Opinion in which “take” was approved for over 100 spotted owls, primarily in the Happy Camp Ranger District. It is essential that the Elk Creek project not contribute to the significant and extensive harm to spotted owls and their habitat that occurred in the recent wildfires and subsequent salvage logging.

Please do not propose and implement commercial thinning prescriptions that involve removal or reductions of mature forest canopy crown cover. Large overstory trees and

their canopy are known to reduce fire hazard and behavior when compared to young dense tree plantations. Large overstory trees contribute to watershed health and function. Large overstory trees provide critical Northern spotted owl habitat.

CUMULATIVE IMPACTS

The rainy climate, rapid uplift of the mountains, thick soils made from rocks with low resistance to weathering and extensive road system contribute to the relatively high erosion rate in the Elk Creek basin. Intense storm related sediment production is approximately double what it would be if the watershed were undisturbed. Roads are the primary, and most feasible to control, source of the increase in sediment production. Fish, and other aquatic organisms, are sensitive to increased sediment production.

-Elk Creek Ecosystem Analysis. March 1994. Klamath National Forest. Page 72.

We request that the Forest Service provide a thorough cumulative impacts analysis of the proposed logging in combination with the significant impacts from the extensive Westside Salvage logging and wildfire impacts. Please note that the significant cumulative impacts on forest ecosystems and hydrological health from past road construction and federal logging must be disclosed in the timber sale NEPA document. Such disclosure is particularly important in this planning area due to the extreme nature of the past logging and road building activities in the Elk Creek watershed.

Forest Service planners often assert that programmatic land management plans, or their associated EIS, fully analyze project-specific cumulative impacts on the environment. The Ninth Circuit Court has held that a programmatic Forest Plan cannot substitute for the site-specific cumulative impacts analysis required of project-level environmental analyses. *City of Tenakee Springs v. Clough*, 915 F.2d 1308. Indeed, government lawyers have repeatedly argued in court that agencies cannot conduct a meaningful analysis of cumulative effects in the context of a Forest Plan. Counsel for the Federal government have contended that: "any particularized discussion in the ... FEIS concerning the cumulative impacts of future timber harvesting would necessarily be highly speculative at best." *Citizens for Environmental Quality v. US*, 10 Cir. No 89-1362.

Please note that many severe cumulative impacts from timber sale activities, road construction, fire suppression, and grazing that are identified by the Forest Service in the Watershed Analysis for this planning area must meet the requirements of NEPA such that:

A proper consideration of the cumulative impacts of a project requires "some quantified or detailed information; ...general statements about possible effects and some risk do not constitute a hard look absent a justifications regarding why more definitive information could not be provided." Ocean Advocates, 361 F.3d at 1128 (quoting Neighbors of Cuddy Mountain v. US Forest Service, 137 F.3d 1372, 1379-80 (9th Cir. 1998)). The analysis "must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects." Id.

-*KS Wild v. BLM* 387 F 3d. 15269 (9th Cir. 2004).

Further:

One of the specific requirements under NEPA is that an agency must consider the effects of the proposed action in the context of all relevant circumstances, such that where “several actions have a cumulative...environmental effect, this consequence must be considered in an EIS.” Neighbors of Cutty Mountain v. US Forest Service., 137 F3d 1372, 1378 (9th Cir. 1998) quoting City of Tenakee Springs v. Clough, 915 F.2d 1308, 1312 (9th Cir. 1990)). A cumulative effect is “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or persons undertakes such other actions.” 40 CFR § 1508.7.

Our cases firmly establish that a cumulative effects analysis “must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects.” Klamath Siskiyou Wildlands Center v. BLM, 387, F.3d 989, 993 (9th Cir. 2004). To this end, we have recently noted two critical features of a cumulative effects analysis. First, it must not only describe related projects but also enumerate the environmental effects of those projects. See Lands Council v. Powell, 395 F.3d 1019, 1028 (9th Cir. 2005) (holding a cumulative effects analysis violated NEPA because it failed to provide adequate data of the time, place, and scale” and did not explain in detail “how different project plans and harvest methods affects the environment”). Second, it must consider the interaction of multiple activities and cannot focus exclusively on the environmental impacts of an individual project. See Klamath Siskiyou Wildlands Center, 387 F 3d at 996 (finding a cumulative effects analysis inadequate when “it only considers the effects of the very project at issue” and does not “take into account the combined effects that can be expected as a result of undertaking” multiple projects).

-Oregon Natural Resources Council et al. v. Brong. 9th Circuit. July 24, 2007.

Given the repeated acknowledgements in the Elk Creek ecosystem analysis and the regarding the impacts of past Forest Service logging and road construction activities on the hydrological and terrestrial health of the project area, it is vital that the agency analyze and disclose the cumulative impacts of past activities and its plans to exacerbate these impacts through additional logging, yarding and road construction activities proposed in the Elk Creek timber sale NEPA document.

NORTHERN SPOTTED OWLS

We strongly recommend consideration and implementation of an alternative that does not downgrade or remove suitable, or critical, NSO habitat. Should the Forest Service refuse to implement Recovery Action 10 and Recovery Action 32 when implementing the Elk Creek timber sale it is possible that the project will likely adversely affect the recovery of the species.

We believe that it is probable that the timber sale will “likely adversely affect” designated critical habitat for the spotted owl. It appears that there is significant pressure on project

planners to manage spotted owl critical habitat primarily for timber production. Please note that critical habitat in the project area is intended to provide “demographic support” for owl populations as well as to ensure distribution and habitat connectivity. The proposal to remove overstory canopy in existing critical habitat within analysis area in which home ranges are deficit for suitable habitat will not contribute to the recovery management objectives for critical habitat. Please also note that in the Westside Project the Forest Service managed the LSR land use allocation for large-diameter timber extraction. Hence it is essential that existing spotted owl critical habitat in this project area be managed to retain its intended habitat function.

PACIFIC FISHER

The Forest Service must review its proposed actions to determine whether or not sensitive species or use the affected areas or if habitat for such species could be affected. Please do not violate NEPA and NFMA by refusing to analyze or disclose information about how many home ranges exist or the quality or habitat available to individual fishers.

Please respond to the following finding by Zielinski and others (2006):

Although owl fish habitat are moderately correlated on federal lands, we cannot assume that federal lands can play the same relative role (ie contribution to overall population viability) for the fisher as they have been expected to do for the owl (USDA Forest Service and USDI BLM, 1994). Thus, we should not assume that fisher viability in northern California is insured by protections for the spotted owl included in the Northwest Forest Plan.

-Zielinski, WJ, C Carroll and JR Dunk, Using landscape suitability models to reconcile conservation planning for two key forest predators. *Biological Conservation* 133: 409-430. This study is attached to these scoping comments for your convenience.

Please do not contend that fisher populations are “stable” to justify ignoring the need to avoid actions that will contribute to the need to list this species. Please see:

Matthews, S, JM Higley, JS Yeager and TK Fuller. 2011. Density of fishers and the efficacy of relative abundance indices and small-scale occupancy estimation to detect a population decline on the Hoopa Valley Indian Reservation, California. *Wildlife Society Bulletin* 35(2): 69-75.

SOILS AND TRACTOR YARDING

The Elk Creek Watershed Assessment (Elk Creek Ecosystem Analysis, March 1995, Happy Camp Ranger District) indicates:

“Soils on the steep slopes are thin in comparison with the thick soils on the benches. Differences in the origin and hydrology between these two slope classes result in strong contrasts in landslide and erosion processes.”

Elk Creek WA page 14.

[Landslides are common in the Old Landslide Terrane and Metamorphic Terrane which together comprise approximately 60% of the Watershed.]

Elk Creek WA page 16.

“Sediment can affect the fish rearing potential of streams by altering substrate composition and pool/riffle ratios as well as reducing the ability of the bottom substrate to support food organisms important to many aquatic and terrestrial species. Sediment can affect spawning gravels by filling voids and reducing water circulation.”

Elk Creek WA page 20.

“The rainy climate, rapid uplift of the mountains, thick soils made from rocks with low resistance to weathering and the extensive road system contribute to the relatively high erosion rate in Elk Creek basin. Intense storm related sediment production is approximately double what it would be if the watershed were undisturbed.”

Elk Creek WA page 72.

Please address soil chemistry, productivity, hydrology, and biological integrity on a site-specific (*i.e.*, unit-by-unit) basis. Please map soil types and composites using field reconnaissance data and include the maps in the NEPA document. Include a qualified, journey-level soil scientist on the ID Team. Design actions and mitigation *after* you have collected field reconnaissance data on soils at every site proposed for action.

We are extremely concerned about the potential for this project to increase the risk of sedimentation, peak flows, and soil compaction due ground-based disturbance from tractor yarding, especially as a large portion of the area has been compacted in the past. The decision of the KNF to authorize clearcut logging in geological riparian reserves in the Westside Salvage Logging Project has strained the credibility of the agency in our eyes. We are unconvinced that KNF timber planners are committed to avoiding damage to sensitive soil types and subsequent hydrological impacts. We hope to be proved wrong in the Elk Creek Project.

The forthcoming NEPA document must analyze and disclose of the impacts of yarding on pore space, water and gas exchange, or the efficacy of ameliorative mitigation.

NEOTROPICAL MIGRATORY BIRDS

The regional decline of migratory birds is a significant issue for this project. Numerous studies have reported local and regional trends in breeding and migratory bird populations throughout North America.

The forthcoming NEPA document for this project should analyze and disclose the potential impacts of conifer thinning operations and brush removal on neotropical bird population trends.

The cumulative effects analysis on migratory birds should not rely exclusively on Wilderness, Riparian Reserves and LSRs to provide for species viability into the future, because many Forest Service and BLM Districts are actively logging those land use allocations, regardless of the effects on migratory birds, despite their reserve status. Again, the Westside Salvage Logging bonanza provides a startling example of the agency's decision to manage reserves for timber production rather than for habitat retention.

Therefore, concluding that the scale of the Elk Creek project is small, relative to the size of the nation, hence migratory bird populations will not be affected, is not adequate.

Please develop and implement seasonal operational restrictions to avoid project impacts while land birds are nesting in the project area. An example of such restrictions may be found in the recent Highway 89 Safety Enhancement and Forest Ecosystem Restoration Project on the Shasta-Trinity National Forest in which project activities that could impact cavity-nesting and ground-and-shrub-nesting migratory bird species are prohibited during the primary nesting period of April 15 to July 31.

Pursuant to the Migratory Bird Treaty Act (MBTA), it is unlawful "at any time, by any means or in any manner to . . . take [or] kill . . . any migratory birds, [and] any part, nest, or eggs of any such bird." 16 U.S.C. § 703(a). This prohibition applies to federal agencies and their employees and contractors who may not intend to kill migratory birds but nonetheless take actions that result in the death of protected birds or their nests. *Humane Soc'y of the United States v. Glickman*, 217 F. 3d 882 (D.C. Cir. 2000) (holding that federal agencies are required to obtain a take permit from FWS prior to implementing any project that will result in take of migratory birds); see also *Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429, 437–38 (1992) (finding that federal agencies have obligations under the MBTA) and *Center for Biological Diversity v. Pirie* (191 F.Supp.2d 161 (D.D.C. 2002) (allowing injunctive relief against federal agencies for violations of the MBTA).

The prohibition on "take" of migratory birds includes destruction of nests during breeding season. Specifically, "nest destruction that results in the unpermitted take of migratory birds or their eggs, is illegal and fully prosecutable under the MBTA." U.S. Fish and Wildlife Service, Migratory Bird Permit Memorandum, from Director Steve Williams dated April 15, 2003.

Under the MBTA, "any person, association, partnership, or corporation" who violates the MBTA or regulations thereunder are subject to criminal and civil penalties. 16 U.S.C. §707. Violations of the MBTA are prosecuted as a misdemeanor, and upon conviction thereof, are subject to fines of up to \$15,000 or imprisonment of up to six months, or both. *Id.*

The forthcoming NEPA document should evaluate the effects of the Project and alternatives on migratory birds protected under the MBTA. The MBTA prohibits the destruction of nests and eggs of migratory birds. The BLM should evaluate the impacts of project activities on migratory bird nests, should disclose the breeding season for each

migratory bird species found in the project area, and should proposed measures (such as seasonal restrictions) to avoid destruction of nests.

MANAGEMENT INDICATOR SPECIES (MIS)

The Forest Service may not shirk its duty (as per the Klamath National Forest NF LRMP and NFMA) to ensure species viability through population monitoring data analyzed through the NEPA lens for this project.

The Klamath National Forest often relies on outdated habitat and vegetation modeling in order to make determinations regarding MIS and sensitive species. The General Accounting Office (GAO) has found that "At the Klamath National Forest in northern California, the staff rely on informal discussions to prioritize projects, in part because they do not have accurate, recent data to use in assessing vegetation type or condition and scoring projects. According to an agency official, the most recent vegetation data for this Forest were collected during the 1970's." (Page 20. GAO-03-805 Wildland fire management: additional actions required to better identify and prioritize lands needing fuels reduction. August 2003).

Indeed, environmental analysis for timber sales (Elk Thin) in the same watershed have relied upon unsupported and undocumented guesses and personal observations regarding the impacts of logging on MIS Snag Associates.

"The Klamath National Forest does not quantify the density of snags across the landscape..."
-11/16/04 Elk Thin MIS Assessment Page 9.

"Red-breasted sapsuckers are a relatively common species, but little is known about local distribution and abundance."
-Ibid

"Both hairy and downy woodpeckers are considered fairly common species, although little is known about local distribution and abundance."
-11/16/04 Elk Thin MIS Assessment Page 10.

"Pileated woodpeckers have been observed in the analysis area and are considered uncommon but not rare (David Anthon, personal observation). The white-headed woodpecker is generally more closely associated with ponderosa pine habitat, and although they have not been detected in the analysis area, it is within their known range."
-11/16/04 Elk Thin MIS Assessment Page 11.

Surveys must be conducted for MIS species to support the conclusions reached in the NEPA analysis. The Forest Service regulations implementing NFMA require that 'Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.' The Klamath National Forest Land and Resource Management Plan specifically requires monitoring of MIS and sensitive species populations, not simply habitat, to determine effects on population trends and viability.

The LRMP and FEIS include the following standards and guidelines:

- *"Population trends of the management indicator species will be monitored and relationships to habitat changes determined. This monitoring will be done in cooperation with state fish and wildlife agencies, to the extent practicable (219.19(a)(6))." LRMP p5-3*
- *"MIS are animal species or groups of species, communities or special habitats selected for emphasis in planning. They are monitored during Forest Plan implementation to assess the effects of management activities on their populations and the populations of other species with similar habitat associations that they may represent." FEIS p 3-48.*
- *"Monitoring several species, with similar or overlapping habitat needs, will provide a better reflection of the range of responses by all wildlife species associated with a given habitat or habitat element. Monitoring multiple species is not expected to add significantly to the cost because most survey techniques (for example, bird censusing) are designed to detect multiple species." FEIS p3-55.*
- *"Project areas should be surveyed for the presence of Sensitive species before project implementation." LRMP 4-23.*

We hereby bring attention the US District Court Judge William Shubb's holding that:

"The FS has not conducted surveys on sensitive species despite specific instruction to do so in the Forest Management Plan Standards & Guidelines. ("Project areas should be surveyed for the presence of Sensitive species before project implementation. If surveys cannot be conducted, project areas should be assessed for the presence and condition of Sensitive species habitat.") (emphasis added). Plaintiffs have succeeded in raising substantial questions about the significance of uncertain or unknown risks."
EPIC v. Blackwell, No. Civ. S-04-1027 WBS GGH, Memorandum and Order, May 4, 2005.

AQUATIC CONSERVATION

Threatened and sensitive fish species exist in and downstream of the project area. Aquatic conservation is therefore a significant issue for this project. Direct, indirect, and cumulative effects of proposed activities on hydrologic function, sediment regimes, stream temperatures, nutrient cycling, pH, and habitat connectivity should be evaluated in detail. Consider both positive and negative impacts.

Riparian Reserves may buffer streams from water temperature effects of timber harvest *if they are properly functioning* but sediment and turbidity problems can still occur due to timber harvest and road building, even when these activities take place outside of the reserves (USDC 1997a). Sediment travels farther through Riparian Reserves degraded by roads and timber harvest than through undisturbed reserves because roads and ditches form pathways for sediment to travel down slope that do not exist in roadless reserves (Chamberlin et al. 1991). Even in the absence of management activities within a

watershed, “heavy use of existing valley bottom roads by log trucks can substantially increase sediment production” (USDC 1997b p. 14).

As stated in the WA, **riparian reserves in the project area are degraded now.** Without site-specific information about conditions in riparian reserves, the Forest Service can’t rely on them to mitigate sediment delivery. Given the available scientific literature, it’s the agency’s burden to show that the reserves and other project design features would prevent added sediment delivery.

Previous roadside logging efforts in Elk Creek have felled (and sometimes removed) significant numbers of old-growth conifers that provide shade and stability to riparian features, including the main stem of Elk Creek.

Additional overstory canopy removal and reduction in the planning area could increase peak flows and erosion and potentially violate the Clean Water Act. The forthcoming NEPA document must address all direct, indirect or cumulative adverse watershed effects that would result from canopy removal, log skidding and hauling.

LOGGING IN RIPARIAN RESERVES

[The] Elk Creek watershed has many roads in and adjacent to riparian reserves. Course woody material in the reserves is often prevented from reaching the creek because it lands in the road instead of falling into the creek.

-Elk Creek Ecosystem Analysis, KNF. Page 73

We are very concerned by past roadside logging in Elk Creek that has removed shade trees from Riparian Reserves. A showing must be made that logging is “needed” to attain ACS objectives prior to logging trees within the Reserves.

Please also note that the agency has a duty under the Aquatic Conservation Strategy of the Northwest Forest Plan to identify “potentially unstable” lands in the project area and manage those lands as riparian reserves. Site visits to the project area confirm the presence of a significant number of unstable lands in the proposed harvest units.

HOW MANY LARGE TREES WILL BE REMOVED?

In order to disclose and analyze the environmental impacts of the project it is essential that that public and the Decision Maker know via NEPA the number and size of trees to be logged. This is particularly relevant for trees >30” dbh. Please estimate the number mature trees (20-30” dbh) and the number of “old growth” trees >30” dbh that would be logged to facilitate roadside logging, yarding activity and landing establishment. The most informative way of disclosing this data would be to report the pre-logging number of trees in these size classes and the post-logging number and size of trees in these size classes.

FIRE HAZARD AND RISK

Disclose the effect of leaving untreated logging slash in the timber sale units even for a short period of time. Please be explicit about potential wildfire behavior and risk of escape from initial attack prior to slash clean-up.

COHO SALMON

Coho salmon are present in the affected watershed for this project. Recovery of Coho contributes to Forest Service restoration goals and objectives. Significant information from the SONNC coho recovery plan (NMFS 2012) indicates that coho salmon are at a higher risk of extinction than previously assumed in the Klamath National Forest Plan and Watershed Analyses. The National Marine Fisheries Service (2012: 2-15) state that “the SONCC coho salmon ESU is at high risk of extinction and is not viable” and no coho populations were found to be at low risk of extinction (2012 2-18).

Please see:

NMFS (National Marine Fisheries Service) 2012. Public Draft recovery Plan for Southern Oregon/Northern California Coast Coho Salmon (*Oncorhynchus kisutch*). National Marine Fisheries Service, Arcata, CA.
http://swr.nmfs.noaa.gov/recovery/soncc_draft/SONCC_Coho_DRAFT_Recovery_Plan_January_2012.htm

Passive management will not recover coho salmon. Temporary mitigations to reduce sediment from log haul, although necessary, are not sufficient to recover coho salmon. Recovery of threatened coho salmon by statute is a high priority for Forest Service. The proposed action must be informed of possible recovery actions through watershed analyses and the coho recovery plan. We recommend the proposed action consider the following to recover coho salmon:

- 1) Permanently disconnect the most egregious sediment producing roads from the stream network through hydrologic obliteration, outsloping, or construction of drainage features (e.g. rolling dips) or structures (cross drain relief culverts) that direct sediment onto vegetated slideslopes and away from ditches or culverts connected to stream network.

Information from a sediment study in the Applegate watershed confirm other previous studies that have found that sedimentation from logging and road building during the past 60 years is greatly elevated (up to 4 times greater) from any previous natural rates of sedimentation (i.e. sediment is 2-4 times outside the range on natural variability). Colombaroli and Gavin (2010) state that “[a]fter logging in the 1950s, sediment load was increased fourfold compared with that from the most severe pre-settlement fire” and conclude that “sediment loads resulting from logging and road building have no precedent in earlier fire events [from 2,000 years before present].

This is important because elevated sediment from logging and road building has contributed greatly to the declines of coho salmon causing them to be federally listed. The forthcoming NEPA analysis cannot evade sediment disclosure by merely claiming “no change” to existing sediment loads. The Forest Service must disclose the serious nature of sediment loads from logging roads and consider appropriate recovery actions.

CONCLUSION

Our organizations want to support a project that restores, rather than exploits, the forests in the Elk Creek Key Watershed. We believe that plantation thinning, small-diameter thinning in the Wildland Urban Interface, and the use of prescribed fire will best meet project objectives. We steadfastly opposed overstory canopy reduction and removal in native forest stands in the backcountry. Thank you for addressing legacy site impacts. Please work collaboratively with interested parties and stakeholders to develop a proposal that avoids negative terrestrial and aquatic impacts while increasing forest and watershed resilience. Please do not further harm spotted owl critical habitat through the removal of mature overstory trees. Please do not impair riparian reserves through the felling of trees contributing to riparian reserve management objectives.

Thank you for considering our concerns and input in this planning process.

Regards,



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