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Subject: Objection to the Little Boulder Project
Date: Friday, March 22, 2019 4:58:33 PM
Attachments: [Scanned signature for Dick Artley.doc](#)

March 22, 2019

ATTN: objection reviewing officer

Below you will find my objection to the EIS and draft ROD for the Little Boulder Project.

Required 36 CFR § 218.8(d) Objection Information

Proposed Project Name: Little Boulder project

Name and Title of the Responsible Official: Cheryl Probert, forest supervisor

Proposed Project will be Implemented on: Palouse Ranger District, Nez Perce/Clearwater National Forest



Objection Introduction

This objector submitted his comments on the DEIS for the proposed project on February 25, 2015

Please direct Supervisor Probert to modify the final NEPA document to remove or correct the illegal sections and issue a new draft decision document that responds to the modified NEPA document that complies with United States law.

The objector pointed out to the Responsible Official that a no new roads alternative will likely reduce the sale volume some, but it meets the Purpose and Need because the P&N contains no specific acreage that must be harvested. This new alternative stands out among the possible action alternatives that could be analyzed in detail because it reduces the adverse environmental effects of timber harvesting while still meeting the purpose and need for the project. As part of his comments, this objector submitted an attachment with hundreds of statements by Ph.D. independent scientists describing the ecological damage caused by roads. This included a statement by retired USFS chief Dr. Dombeck:

Dr. Mike Dombeck, Chief, US Forest Service
Remarks to Forest Service employees
and retirees at the University of Montana
February 1998

The No Action alternative cannot be equated with a No New road alternative. Unlike the No Action alternative the No New Road alternative would still allow vegetation management to existing roads, wildlife projects, NNIP management, transportation management, riparian improvement, hazardous fuel reduction, and prescribed burning.

The Responsible Official has violated the public trust in the agency. USFS employees work for the American citizens. Their salary comes from tax dollars.

The Responsible Official has also violated:

- **40 CFR §1500.2** Policy because the Responsible Official refused to honor this member of the public's request to analyze what is clearly a reasonable alternative to the Proposed Action in detail. A no new roads alternative is "reasonable" and "avoids or minimizes adverse effects" of road construction "upon the quality of the human environment."
- **40 CFR 1500.2(e) and (f)** because the Responsible Official was unable to avoid or minimize adverse effects of the project upon the quality of the human environment without complete knowledge of all likely adverse effects and Chapter 3 does not disclose these adverse road construction effects.

How this objection point can be resolved: Comply with the objector's request above.

The so-called “Existing Roads” Alternative 3 is not an “Existing Roads” alternative.

At page iii you the Responsible Official describes Alternative 3:

“Existing Roads (Alternative 3)

Alternative 3 was developed in response to comments received during public scoping expressing concern with existing sediment problems created by new road construction. This alternative would use the existing road system to accomplish vegetative treatments (timber harvest and fuels reduction) and watershed improvement activities, and requires no new roads.”

Table S-1.1 at the top of page iv indicates there will be 11.6 miles of “temporary construction” as part of Alternative 3. A temporary road is a road, otherwise it would

trees, dead trees and dying trees.

All healthy populations of living things have dead and dying individuals. This includes trees. There are many wildlife species dependent on dead and dying conifer tree species. Creating areas where most of the trees are vigorous trees will extirpate these species and drive them to acceptable habitat which will exceed the carrying capacity of the habitat.

A wildlife biologist should have been included on the IDT.

The objector requested the Responsible Official to tell the public why spending their tax money to take action to create fast growing, vigorous trees is more important than letting the trees grow at their own rate which provides biodiversity and Identify the flora and fauna in the forest that thrive in decadent slow-growing forest conditions. Also explain why biodiversity is not important in the project area.

This wasn't done.

Therefore, the NEPA document violates

40 CFR 1500.1(c), 40 CFR 1500.1(c) and 40 CFR 1500.2(f) because the proposed logging will not “protect, restore, and enhance the quality of the human environment.”

40 CFR § 1500.1(b) because actions were not taken to protect, restore, and enhance the environment, and

40 CFR 1500.2(f) because actions were not taken to avoid or minimize any possible adverse effects of their actions on the quality of the human environment.

How this objection point can be resolved: Comply with this objector's request shown above.

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The draft NEPA document indicates there will be clearcut silvicultural prescriptions associated with the selected alternative

(merchantable sized fuels removal) to transcend effective action that will 1) reduce the risk that homes located in the WUI will burn, and 2) increase the risk that residents will be injured should a wildfire occur.

The objector requested the Responsible Official to analyze another action alternative that will educate people about Dr. Cohen's methods and help people living in the WUI to implement Dr. Cohen's methods if they are unable to do the work themselves.

This wasn't done.

Therefore, the final EIS violates **40 CFR 1500.2(e)** because the Responsible Official does not identify and assess a Cohen fine fuels removal as a reasonable alternatives to the Proposed Action that will "avoid or minimize adverse effects of upon the quality of the human environment."

It also violates:

- **NEPA Sec. 101(b)(2)** because the Responsible Official does not "assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;"
- **NEPA Sec. 101(c)** because "The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment."
 - **Ex. Ord. No. 13045, Apr. 21, 1997 [section 1-101(a)]** because the Responsible Official does not "make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children."
 - **40 CFR §1508.27(b)(2)** because the Responsible Official will be unable to write a FONSI. The intensity category discusses "The degree to which the proposed action affects public health or safety."
 - Agency policy to use best science. The objector's comments included quotes from and links to many, many scientific papers that clearly shows logging to reduce fuels does not reduce fire intensity or rate of spread ... and sometimes exacerbates fire behavior. In addition this non-scientific behavior violates: A March 9, 2009 White House Memorandum to heads of executive departments and agencies states:

In addition it violates **Executive Order #13563** issued on January 18, 2011 requires federal agencies to use best available science:

How this objection point can be resolved: Comply with the objector's request above.

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This objector asked the Responsible Official to include the information in the **Logging does not affect Fire Attachment** as an Appendix to the NEPA document.

This wasn't done.

Therefore, the final EIS violates:

18 USC § 1519 because you conceal, cover up, falsify a government document with the intent to impede, obstruct, or influence the proper administration of a matter within the jurisdiction of the USDA.

18 USC § 1001(a)(3) because you have written a document knowing it contains materially false, fictitious, or fraudulent statements.

40 CFR § 1500.1(b) because the information in your draft NEPA document is not “high quality” or “accurate” which will lead to a flawed “scientific analysis.”

40 CFR §1500.2 .because withholding information from the public does not encourage and facilitate public involvement in decisions which affect the quality of the human environment.

16 U.S. Code § 1600(4) because omitting the knowledge derived from private research programs does not promote a sound technical and ecological base for effective management, use, and protection of the Nation’s renewable resources;

40 CFR § 1502.24 because your discussion of the need to reduce fuels does not represent a summary of the scientific community's entire collective thinking (good and bad) about a proposed project.

40 CFR § 1507.22 because this draft EIS fails to include the important information that gives the public the details that you will used to make your final

How this objection point can be resolved: Comply with the objector’s request above.





All reasonable action alternatives that don't include commercial logging were eliminated from consideration because the Purpose & Need was too narrow, specific and described an action rather (harvest timber) than a goal. The Purpose & Need was written in such a way as to force and justify selection of the Proposed Action and render other reasonable alternatives to the Proposed Action inapplicable.

The objector requested the Responsible Official to write a new (expanded) Purpose & Need that allows reasonable alternatives to the Proposed Action to be analyzed in detail and assure the project goals stated in the P&N are not mutually exclusive ... that is achieving the goals for one resource will adversely affect another resource mentioned in the P&N as a resource to be enhanced. Then reinitiate the NEPA comment and analysis process to analyze the new reasonable alternatives, especially those suggested by the public during the comment period.

This wasn't done.

Therefore, the final EIS violates **40 CFR 1500.2(d)** because since all alternatives suggested by the public were not analyzed in detail the Responsible Official did not "encourage and facilitate public involvement in decisions which affect the quality of the human environment, **40 CFR 1506.6(a)** because the Responsible Official did not make diligent efforts to involve the public in preparing and implementing their NEPA procedures, and **40 CFR 1500.2(e)** because the Responsible Official did not identify and assess any alternatives to Proposed Action.

Writing a P&N that renders all action alternatives other than the Proposed Action nonresponsive to the P&N is also inconsistent with court precedent:

In ***National Parks & Conservation Association v. Bureau of Land Management***, 606 F.3d 1058 (9th Cir. 2010).

Opinion Excerpt:

"The BLM did not, however, consider these options in any detail because each of these alternatives failed to meet the narrowly drawn project objectives, which required that Kaiser's private needs be met."

“The BLM adopted Kaiser's interests as its own to craft a purpose and need statement so narrowly drawn as to foreordain approval of the land exchange. The BLM may not circumvent this proscription by adopting private interests to draft a narrow purpose and need statement that excludes alternatives that fail to meet specific private objectives, yet that was the result of the process here.”

Friends of Southeast's Future v. Morrison, 153 F.3d 1059, 1066 (9th Cir.1998).

Opinion Excerpt:

Agencies enjoy “considerable discretion” to define the purpose and need of a project.

“An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality.”

Davis v. Mineta, 302 F.3d 1104, 1119 (10th Cir. 2002)

Opinion Excerpt:

“While it is true that defendants could reject alternatives that did not meet the purpose and need of the project, *Boomer Lake*, 4 F.3d at 1550, they could not define the project so narrowly that it foreclosed a reasonable consideration of alternatives. *Colo. Env't. Coalition v. Dombeck*, 185 F.3d 1162, 1174-75 (10th Cir. 1999); *Simmons v. United States Army Corps of Eng'rs*, 120 F.3d 664, 669 (7th Cir. 1997).”

City of Carmel-By-The-Sea v. U.S. Dept. of Transportation, 123 F.3d 1142, 1155 (9th Cir. 1997)

Opinion Excerpt:

“Project alternatives derive from an Environmental Impact Statement's “Purpose and Need” section, which briefly defines “the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 C.F.R. s 1502.13. The stated goal of a project necessarily dictates the range of “reasonable” alternatives and an agency cannot define its objectives in unreasonably narrow terms. See *Citizens Against Burlington*, 938 F.2d at 196.”

“Specifically, Carmel argues that the Federal Highway Administration and Caltrans unjustifiably narrowed its statement of “Purpose and Need” from the Draft Environmental Impact Statement/Report to Final Environmental Impact Statement/Report by including a requirement of Level of Service C.”

Citizens Committee to Save Our Canyons v. U.S. Forest Service, 297 F.3d 1012,

1018 (10th Cir. 2002) (citing **Davis v. Mineta**, 302 F.3d 1104.

Opinion Excerpt:

“courts will not allow an agency to define the objectives so narrowly as to preclude a reasonable consideration of alternatives”

Citizens Against Burlington, Inc., et al v. James B. Busey IV 938 F.2d at 196 (District of Columbia Circuit, 1991)

Opinion Excerpt:

“an agency may not define the objectives of its actions in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action, and the EIS would become a foreordained formality.”

Simmons v. United States Army Corps of Engrs., 120 F.3d 664, 669 (7th Cir. 1997)

Opinion Excerpt:

“One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing “reasonable alternatives” out of consideration (and even out of existence). The federal courts cannot condone an agency’s frustration of Congressional will. “If the agency constricts the definition of the project’s purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act. Nor can the agency satisfy the Act. 42 U.S.C. § 4332(2)(E).”

Sierra Club v. U.S. Dep’t of Transp., 310 F.Supp.2d 1168, 1192 (D. Nev. 2004) (citing **City of Carmel-By-The-Sea v. U.S. Dep’t of Transp.**, 123 F.3d 1142, 1155 (9th Cir. 1997)).

Opinion Excerpt:

“While it is true that defendants could reject alternatives that did not meet the purpose and need of the project, they could not define the project so narrowly that it foreclosed a reasonable consideration of alternatives.”

How this objection point can be resolved: Comply with the objector’s request above.



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The Proposed Action will clearly cause the resource degradation and destruction described in the ATTACHMENTS to these comments.

The vast majority of scientific logging-related effects literature is authored by independent scientists not affiliated with the USDA. These independent scientists describe how logging activities will damage and impair the proper functioning of numerous natural resources. The objector presented multiple opposing views attachments with his comments on the draft NEPA document containing statements by hundreds of Ph.D. scientists describing logging-related natural resource damage. Each scientific statement includes the link to the source document that contains the statement.

Professionals (whether they be scientists or public land administrators) do not selectively choose literature citations that will support their case and systematically exclude those that don't.

The objector requested the Responsible Official to include some source documents from the **Opposing Views Attachments** in the References/Literature Cited section of the final NEPA document and also, cite the specific quotes presented for the source literature in the text of the NEPA document the Responsible Official chose to include in the References/Literature Cited. The objector requested the Responsible Official to include links to each **Opposing Views Attachments** that the chose to include in the References/Literature Cited section and explain why this is best science and trumps the information presented in the **Opposing Views Attachments**.

This wasn't done. Incredibly, the References section contains only (emphasis added) documents that support timber harvest or are neutral in spite of the fact hundreds of scientific documents are available that describe the logging-generated resource damage in detail . Don't you think the pubic deserves to weigh the evidence themselves by reading science that both supports and opposes commercial timber harvest?

Keep in mind **40 CFR 1502.9(b)** allows the Responsible Official to ignore responding to opposing views only if it can be shown to be irresponsible.

"40 CFR 1502.9 (b) Final environmental impact statements shall respond to comments as required in part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft

following items in the final NEPA document.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

This wasn't done.

Therefore, the final EIS violates **NFMA Section 5** and **40 CFR 1500.1(b)** and **40 CFR 1502.16**.

How this objection point can be resolved: Comply with the objector's request above.

Important documents used to generate key information for the NEPA document were not reasonably available to the public.

This objector asked the Responsible Official to make the documents that currently reside as hardcopies in the Project File available as online Appendices to the NEPA document, or clearly indicate the link to the documents where they appears in the References section. This would allow the public to examine the important information contained in Project File hardcopies without driving or flying to Grangeville. Not making this information reasonably available to the public means either 1) the information does not exist, or 2) the quality of the information is so substandard its useless.

The FEIS at page 336 (Appendix B) contains a section called “DEIS Comment Content Analysis and Responses.” Please open the link below and scroll to page 336 and you will see the response text is so small and blurry its impossible to read.
https://www.fs.usda.gov/nfs/11558/www/nepa/99724_FSPLT3_4616635.pdf

How this objection point can be resolved: Redo the FEIS to include the USFS responses to public comments that are readable.

This objector requested the Responsible Official to include a new (expanded) Purpose & Need that allows reasonable alternatives to the Proposed Action that do

