



July 28, 2020

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On behalf of the Conservation Congress, I am filing this Objection per 36 CFR 218, to the Draft DN & FONSI for the Oak Knoll Grazing Project on the Klamath National Forest, which is unsigned pending Objections. There is a signature line for Jeremy Sullens, District Ranger, Happy Camp/Oak Knoll Ranger District. Our draft EA comments are below to demonstrate previous comments on the issues raised in this objection. 36 FR 218.8(d).

Reading the draft EA for this project was frustrating to say the least. CC raised one issue: concerns about Coho salmon and their designated critical habitat. The draft EA states in numerous places there will not be impacts to Coho salmon or their critical habitat, until one reads the "Intensity Factors" for determining whether an EA is the appropriate document for environmental analysis. Number Nine states the FS determined a May Affect, Likely to Adversely Affect Coho salmon AND its designated critical habitat.

Is this malfeasance or incompetence or both? None of them are flattering to the FS but it is there all the same. Quite frankly, the CC is not used to working on a NF where the FS blatantly misleads the public in the manner it has done so in this draft EA.

The Fisheries BA/BE was withheld from the public, as well as the NMFS alleged concurrence, cutting the public entirely out of the opportunity to review these documents and agree or dissent with them.

Description of project: Based upon my review of the Oak Knoll Range Project Environmental Assessment (EA), and supporting documentation, review of public comments, and other agency input, I have decided to implement the proposed action (selected alternative). The selected alternative will authorize cattle grazing on 49,117 acres of National Forest System lands within

the East Beaver, Hornbrook, and Ash Creek Allotments within the Oak Knoll Ranger District of the Klamath National Forest (Forest).draft DN p. 1

Conservation Congress' comments:

This comment is on the proposed Oak Knoll Grazing Project. Cattle on the East Beaver Allotment have been documented degrading Coho Critical Habitat both directly by trampling streambanks and indirectly by removing shade cover over streams upstream. The FS has the authority to close allotments when they are degrading resources. It also has the authority to lower the number of livestock and require the rancher to do certain mitigation. And it has the authority to change seasonal use. This allotment should not be reauthorized and if it is, the FS must conduct an EIS because the damage is already well documented. Please close the Allotment in order to end these impacts and to help restore Klamath River Coho. (2.21.20 by Conservation Congress)

The KNF Response to this comment is below:

Table 2: Comment Analysis & Response ISSUE/CONCERN (PARTY/IES ACRONYM)

"RECOMMENDATION/ SUGGESTED REMEDY

RESPONSE REMARKS AND/OR PROJECT RECORD CITATIONS Aquatic Species Cattle degrade Coho salmon critical habitat by increasing upland erosion, disturbing stream banks, and reducing riparian vegetation cover. (DB, EH, FM, FP, GW, JF, Karuk, KD, KFA, KS Wild, SN, WWP) Choose the no action alternative or reduce the grazing period and cattle numbers or fence all areas where cattle have accessed Coho critical habitat. Conduct summer and fall water quality monitoring in headwater stream reaches within high elevation meadows and below those areas most actively grazed in the East Beaver Watershed. The monitoring strategy should include adaptive management triggers. Eliminate spring grazing from the East Beaver Allotment and adjust its boundaries to exclude Coho critical habitat. Analysis supplemented, improved or modified. The environmental assessment (EA) has been modified to include impacts to Coho salmon critical habitat as Relevant Issue 2. See the Environmental Impacts section within the EA p. 2"

We note that since the EA was "modified" to include impacts to Coho salmon and its critical habitat, it appears the FS never intended to analyze this species prior to public comment. It is telling the FS would not include a threatened species with designated critical habitat that it knows exists within the project area, unless pressured by the public.

"Relevant Issue 2: Grazing impacts to Coho salmon critical habitat within the project area. Although cattle grazing may affect Southern Oregon/Northern California Coasts Coho salmon designated critical habitat, these effects are not likely to be adverse. Any effects to Coho salmon critical habitat would be minor and very localized, and any sediment input into the stream channel would be very localized and would disperse quickly downstream. The selected

alternative includes installation of a cattle enclosure and water development on Cow Creek (see Appendix A: Selected Alternative Map). This will reduce cattle effects to Coho salmon critical habitat in this location. The Klamath National Forest is engaged in consultation with NMFS pursuant to Section 7 of the Endangered Species Act. Consultation will be completed prior to implementation.” draft DN p. 2

The above paragraph appears to be someone’s opinion. There is no empirical data to back it up. Perhaps more glaring is the fact that Coho salmon are threatened and they didn’t become that way through good land management. The FS offers no explanation for why Coho salmon are threatened and/or require critical habitat, or how the Oak Knoll Grazing Allotment will maintain or improve their habitat. The FS must demonstrate that a species with designated critical habitat will not be impaired. They are impaired and this project will not improve conditions. Continuing the status quo (impaired) is a violation of the ESA. The EA also fails to explain why if these effects are not likely to be adverse, why the KNF determined a MALAA Coho salmon and its designated critical habitat?

FINDING OF NO SIGNIFICANT IMPACT “The significance of environmental impacts must be considered in terms of context and intensity. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human and national), the affected region, the affected interests, and the locality. Significance usually depends upon the effects in the locale rather than in the world as a whole. Intensity refers to the severity or degree of impact (40 CFR 1508.27). The finding of no significant impact, including a discussing of context and intensity, can be found in the EA, incorporated herein by reference. My decision is consistent with the Klamath Forest Plan and complies with the laws, policies and executive orders described in the EA under intensity factor number 10. The selected alternative will be located entirely on National Forest System lands and is not in conflict with planning objectives for Siskiyou County, California or Jackson County, Oregon. The Oak Knoll Range Project was prepared in accordance with applicable laws and regulations as described in the EA. After considering context and intensity of effects as disclosed in the EA and supporting documents, I find that these actions will not have a significant effect on the quality of the human environment. Therefore, an environmental impact statement will not be prepared.” draft DN p. 3

The KNF finding of a FONSI is arbitrary and capricious because it was made without concurrence from the NMFS on impacts to Coho salmon or their critical habitat. How does the KNF know what NMFS is going to say in advance? The KNF did not make available to the public the fish BA/BE or the alleged concurrence so it is impossible for the public to know what NMFS concluded. Considering the way the KNF attempted to manipulate the draft EA, we don’t trust it to tell the public the truth.

Intensity Factor 10: “Whether the Action Threatens a Violation of Federal, State, or Local Law or Requirements Imposed for the Protection of the Environment The proposed action would comply with all federal, state, and local laws, as well as all requirements imposed for the protection of the environment. In addition to the National Historic

Oak Knoll Range Klamath National Forest Environmental Assessment Happy Camp/Oak Knoll Ranger District Preservation Act and the Endangered Species Act, discussed previously in Intensity Factors 8 and 9 respectively, the following federal laws, regulations, and executive orders are relevant to the proposed action and are discussed further below:" draft EA p. 51 & 52

Conservation Congress note numerous laws are listed except the ESA.

Again, Intensity Factor 10 can't be assured without NMFS concurrence. Unless the process is rigged, the KNF does not know what NMFS will say regarding the Oak Knoll Grazing Project.

"Analysis Measures The following measurement indicators were selected to capture the potential impacts most likely to affect anadromous fish and their habitat and river/stream MIS and their habitat. • Direct trampling and alteration of streambanks by cattle. • Overall reduction in riparian vegetation quantity and diversity. • Reduction of riparian vegetation ground cover, increased stream temperature and decreased stream channel shade due to removal of shading vegetation and channel widening. • Reduced channel stability and subsequent increase in width/depth ratio. • Reduced residual pool depth and pool frequency." EA p. 31

"Analysis Assumptions Visual estimates of the analysis indicators in the most sensitive riparian areas and stream channels are adequate to determine if cattle drift from the East Beaver Allotment is consistent with the objectives of Section 7 of the Endangered Species Act and the objectives of FSM 2600 (FSM 2670.22 [USDA 2005b]). Visual estimates of the analysis indicators in the most sensitive riparian areas and stream channels are adequate to determine if cattle drift from the East Beaver Allotment has landscape and project-level impacts to habitat conditions associated with the Riparian Species Association and related River/Stream." MIS. EA p. 32

Visual estimates means someone "eye-balled" the damage. That is not empirical data. Livestock have been damaging this area for decades and the KNF has done nothing about it. All of the indicators listed are impaired and Coho salmon and their designated critical habitat continue to be impaired. The ESA requires a much higher bar for compliance. The draft EA fails to even mention the KNFs responsibilities under the ESA.

Direct and Indirect Effects "The only federally listed fish in the analysis area is the federally listed as threatened Southern Oregon/Northern California Coast (SONCC) Coho salmon evolutionarily significant unit (Oncorhynchus kisutch), including designated critical habitat (Figure 2). Forest Service Sensitive fish species for this analysis include the Upper Klamath-Trinity Rivers Chinook salmon (*O. tshawytscha*), Klamath Mountains Province steelhead (*O. mykiss*), Klamath River lamprey (*Entosphenus similis*), and Pacific lamprey (*E. tridentatus*). Livestock grazing has the potential to adversely affect SONCC Coho salmon designated critical habitat located, as per the latest National Marine Fisheries Service (NMFS) Recovery Plan maps (NMFS 2014), in Janes Canyon, Cow Creek Glade and Dead Cow Creek (Beaver Creek tributaries). However, based on field observations of stream channel conditions within the area of potential drift (Figure 3), no direct or indirect adverse effects to any of the analysis indicators were observed.

Then why did the KNF determine a MALAA for Coho and its critical habitat?

“Because the nearest proximity of Coho salmon critical habitat to the project area is approximately 3.25 miles downstream in Yale Creek, and no suitable habitat would be removed, downgraded, or degraded from incidental cattle drift, any drift resulting from the proposed action would have no effect on Southern Oregon/Northern California Coasts Coho salmon, including critical habitat. Additionally, because the nearest proximity of anadromous fish habitat to the project area is approximately 3.25 miles downstream in Yale Creek, and no suitable habitat would be removed, downgraded or degraded from incidental cattle drift, any drift resulting from the proposed action would not affect individuals and would not result in a trend toward federal listing or a loss of population viability for Upper Klamath-Trinity Rivers Chinook, Klamath Mountains Province steelhead, Klamath River lamprey, and Pacific lamprey.” EA p. 32 &33

These claims do not comport with a MALAA determination. Perhaps the KNF can attempt to explain it all away in a court room. The KNF either has incompetent staff, or it lies to the public. There really is no other alternative for the grossly misleading statements in the draft EA.

Cumulative Impacts – “The current condition described in the Relevant Issue 1 Affected Environment section of this EA represents the cumulative effects of all prior human actions and natural events that have occurred in the analysis area. Because no direct or indirect adverse effects to any of the analysis indicators were observed and due to the fact that the nearest proximity of River/Stream MIS habitat, Coho salmon critical habitat, and anadromous fish habitat in general, to the project area is approximately 3.25 miles downstream in Yale Creek, potential cattle drift would result in no adverse cumulative effects. EA p. 33

Then why did the KNF find a MALAA determination for Coho salmon and its critical habitat?

Intensity Factor 9: “Adverse Effects to Federally Endangered or Threatened Species or Their Designated Critical Habitat. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973. Section 7 of the Endangered Species Act requires federal agencies to consult with the USFWS and/or NMFS when their actions may affect federally threatened or endangered species or their designated critical habitat.”

“There would be no effect to any of the remainder of federally listed species or their designated or proposed critical habitat (Table 15). The BE provides further details as to the analysis and determinations for these species.”

“The Ash Creek and Hornbrook Allotments do not provide habitat for any federally listed fish species; the East Beaver Allotment provides suitable habitat for the federally listed as threatened SONCC Coho salmon. Livestock grazing has resulted in ongoing effects to SONCC designated critical habitat in the Lower Cow Creek watershed area (Figure 2), when cattle descend into this watershed from their summer range in the upper elevations of the East Beaver Creek Allotment. Therefore, the proposed action may affect, and is likely to adversely affect SONCC Coho

Salmon and their critical habitat. The Klamath National Forest will initiate consultation with NMFS pursuant to Section 7 of the Endangered Species Act. Consultation will be completed prior to decision.” draft EA p. 51

So after reading 50 pages of the draft EA claiming no impacts to Coho salmon or its designated critical habitat, we read the KNF made a MALAA determination for this species and its critical habitat, and states it will consult with the NMFS. Why did the KNF attempt to deceive the public with dishonest information in the draft EA, with the one exception in Intensity Factor 9 where it not only concedes impacts, but of the most serious kind requiring NMFS consultation? The FS owes the public an explanation for this deception. We emphasize the only place the MALAA determination is found is within Intensity Factor 9; the rest of the EA claims there will be no impacts to this species or its critical habitat.

A MALAA determination requires an EIS; especially for a threatened species the KNF has repeatedly ignored for decades. The KNF has not demonstrated or documented how conditions for Coho salmon are improving or how their critical habitat is being maintained – at least not in any of the documents provided to the public during the objection period. The KNF is violating the ESA for Coho salmon and its designated critical habitat.

“The following are potential livestock actions within the project area that may affect Klamath River Lamprey, Pacific Lamprey, Klamath Mountains Province Steelhead, and Upper Klamath Trinity Rivers Chinook salmon individuals but would not lead to a trend towards federal listing. • Cattle may trample or erode streambanks. Field observations have identified cattle hoof action in a 250-foot section of Cow Creek. The cattle hoof action has resulted in streambank erosion and sediment input into this section of Cow Creek, which has led to a reduction in available spawning and rearing habitat at this location. This is the only area identified where effects to anadromous fish and their habitat have occurred. The project proposes to exclude this area from livestock access. Monitoring and management as described in the proposed action would ensure that future effects to anadromous fish and their habitat that may be related to trampling and erosion would be minimized. • Livestock grazing can result in the reduction of riparian vegetation cover. Any effects to stream temperature would be very localized and no increase in stream temperature downstream is expected due to increase in flow volumes resulting from tributaries entering the stream channel. Monitoring of key herbaceous species and browse of hardwoods with appropriate utilization standards (as identified in the Proposed Action section) would ensure that cover and diversity of riparian vegetation would be maintained or improved. In addition, monitoring would ensure that stream temperature and water quality would be maintained. Cattle trails leading down to the stream channels in Cow Creek, Grouse Creek and Beaver Creek may affect fish habitat due to sediment input into the stream channel during storm events. Any effects to fish habitat would be minor and very localized and any sediment input into the stream channel would quickly disperse downstream due to flow volumes. Livestock Corrals o Four corrals are existing within riparian reserves (see Rangeland Conditions Affected Environment section). No issues have been identified regarding these corrals that would affect anadromous fish habitat.” draft EA p. 55 & 56

The EA does not explain why all of these impacts to these four sensitive fish species, would also not impact the Threatened Coho salmon or its critical habitat. In fact, it repeatedly claims there will be no impacts to Coho and its critical habitat, until it says it does in Intensity Factor 9. The KNF has made a complete mockery of this EA and frankly it is an embarrassment to the FS.

1) NEPA Violations

The Fisheries Biological Assessment/Biological Evaluation was never made available to the public prior to the Objection period. Conservation Congress ran into this issue on another NF in N CA and contacted the Regional Office. The Regional Office Environmental Coordinator told the FS the public was entitled to review all specialist documents during the EA comment period.

On 6/18/20 Conservation Congress had the following email exchange with the Klamath NF:

Ms. Maze

There is not a specialist report for TES fish species or any other fish species. Did the KNF conduct one? If so would you please send it to me? I also noticed the FS is intending to consult with NMFS and will do so before a final decision is made. So why is the objection period running prior to NMFS determination? That is cutting the public out of knowing what NMFS's determination will be, and our ability to agree with or disagree with that consultation. I'd appreciate a response. Thank you.

Denise Boggs,
Conservation Congress
6/18/2020

Good afternoon,

Thanks for your response. The fisheries biological evaluation (BE) for sensitive species will be combined with the fisheries biological assessment (BA) for threatened and endangered species. This document has not been finalized yet as we are engaged in discussions with NMFS. Once the BE/BA for this project has been agreed upon with NMFS and is finalized, we will post this document on the project website. Environmental impacts to TES fish species are discussed within the EA under relevant issues 2 and 3, as well as in the finding of no significant impact section. Consultation under the Endangered Species Act is a separate process from NEPA. While the processes typically run concurrently, the timelines do not always align perfectly. Consultation will be completed prior to implementation.

Respectfully,



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Conservation Congress - (6.18.20) Well I do not understand how the KNF expects the public to include fishery arguments in any objection - and that could lead to a lawsuit for violations of the APA as well as NEPA. You don't announce a FONSI when you don't know if that is true. NMFS will have a say in that. Unless of course the whole thing is rigged. I read the EA already and there is little info, and some of it is contradictory. NMFS is the authority which is why the FS has to consult. The public has the right to know the results of that consultation prior to a final decision, and prior to the deadline for objections. I am a real stickler about NEPA and APA violations.

Denise Boggs
 Conservation Congress

Below is language from a successful lawsuit in 2014 regarding this very issue. It is pertinent to our objection in the Oak Knoll Project.

Plaintiffs contend that the Forest Service was required to include certain Wildlife Specialist Reports in the appendices to its draft EIS and final EIS, yet failed to do so and also failed to disclose these reports during the comment period.

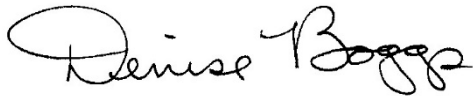
Defendants respond that the Forest Service permissibly incorporated the Specialist Reports by reference and that deliberative privilege permitted it not to disclose them during the comment period.

The Court finds that the Forest Service violated NEPA by failing to make the Specialist Reports accessible to the public. The Forest Service's failure to include the Specialist Reports in the appendices of the draft EIS accompanied by its refusal to disclose during the comment period material on which it relied in the draft EIS is contrary to the spirit of NEPA and the letter of the CEQ regulations.

Conclusion

This draft EA is illegal and a final decision must not be made until such a time as the Fisheries BA/BE and NMFS Biological Opinion is made available to the public for review. The draft EA should be abandoned in light of the fact that a FONSI can't be sustained for this project. Since the KNF determined on its own a May Affect, Likely to Adversely Affect for Coho salmon and its designated critical habitat, it must conduct an EIS. Taxpayers have paid multi-millions of dollars in an attempt to achieve recovery for this threatened species. A MALAA determination is a significant impact on the human environment. KNF actions are impairing the public's financial ability to recover this species.

Sincerely,

A handwritten signature in black ink that reads "Denise Boggs". The signature is written in a cursive, flowing style.

Denise Boggs, Director

Cc: Felice Pace