

RACE and Mark Donham

Objections to Shawnee National Forest proposed decision: Vegetation Management Strategy

Oct. 17, 2020

These are the objections of Mark Donham as an individual and as representing the Regional Association of Concerned Environmentalists RACE. RACE has a long history of involvement in Shawnee management activities.

According to the bogus rules of the USFS, a party can only raise in objections to a draft decisions “issues” that they brought before the agency prior in official comments on that project. That's an absurd proposition, because our history goes back multiple decades, and over those decades I have, both as an individual and on behalf of organizations, predominantly RACE, submitted comments and objections, with many many documents to support assertions, many of which have already been covered in previous proceedings.

The purpose of the rule is to make sure that the agency has had a chance to consider concerns and not get hit with them at the last minute. Fine, but when the concerns and supporting information have been in front of the agency for many years, why try to suppress that? Your rules do not comply with many laws – NEPA, NFMA, and the APA, as well as the notice and comment law.

In addition to this attempt to suppress concerns , mysteriously, the planning documents – the EA, draft EA and scoping notice for this project disappeared from the Shawnee's webpage for over 24 hours, in the last week before the deadline to file objections. This is in violation of agency regulations. All of this spells a violation of the objectors constitutional rights to due process. It makes these process a sham.

But on point, for example, in 2013, the Shawnee had a decision they called Invasive Species Management. It had many similarities. The decision had many of the same purposes, same remedies, same chemicals, same out of date justifications, and short shrift to environmental concerns. Objectors filed detailed objections with many attachments supporting their contentions. (Attachment 1) Why shouldn't all of this information be on the record? This artificial separation of issues into discrete components in order to ignore long, ongoing concerns and information provided to the agency is unrealistic and suspect. After a while it just becomes a roadblock – an obstacle – a violation of our constitutional right to due process. We don't believe it would hold up in court.

And to follow up on that. The Shawnee, like other national forests, is under monitoring requirements. Wouldn't it be required to have some follow-up to the implementation and results of the previous invasive species management decision? It was almost identical. Simple logic would dictate that such information be included in the EA, but it isn't.

For my part, for the record, I'm going to include a copy of that appeal. These kind of administrative games played by the agency to thwart public concerns shouldn't have to be played.

But just to play by the FS's rules, at least for some of it, I'm going to just include our comments and elaborate on them if necessary. Then there can be no question as to whether or not I raised the issue in comments.

But this begins the section where I use my own comments on the project as the basis for at least some of the appeal.

COMMENT: These are comments of the signee both as an individual and as representing the Regional Association of Concerned Environmentalists, RACE, a local/regional organization with a long history of involvement in Shawnee issues. We strongly oppose this proposal to poison our public lands with sketchy guesses about benefits, but no long term plan to see them thru.

ELABORATION: This is a key point and the objectors point to the Dean Cemetery project as one example of how the agency doesn't carry thru in the long term on their projects that require long term planning. Just spraying herbicide one time on a patch of exotic plants doesn't guarantee anything. There are no plans to seed any of the areas, or management them for the many years to come.

Anyone who has been around here knows that the microstegium and any number of other exotics, are going to come in and simply trade one exotic species for another if there is no plan to keep that from happening. And even with a plan, there is no certainty that it will work. But we at least deserve a plan. Therefore, it requires years of planning and resources to carry out such a program. Including such a plan would change the cost and the environmental impact.

The Dean Cemetery East project was a showcase project to "restore" a barrens. Not exactly the same thing, but in the same category of projects – vegetative management involving exotic species as well as native. Over the last 20+ years, the Shawnee has neglected the project and thru not having planned for the long term, have severely degraded what they themselves touted as their showcase barrens. This is proof that lack of a long term plan can have a serious deleterious impact on key forest resources. This project is no different.

So where in the planning record is there any kind of long term planning? NEPA requires that this would be considered during the EA/FONSI process, and a FONSI that doesn't consider it, including the costs of maintaining the management, both economically and environmentally is not consistent with NEPA.

COMMENT: "The whole myth of the Shawnee being an "oak hickory" forest is the basis for the many decades of lies and unsuccessful management of the Shawnee. This big lie, not proven out by the literature, needs to be stripped from planning rhetoric,"

ELABORATION: Famed forest researcher Lucy Braun identified in the 1950s the eastern part of the Shawnee as western mixed mesophytic. Her studies were reviewed in 2006 and the maps redrawn in part because of changes in conditions since the 50s. But the classification for the forest as mesophytic hasn't changed. [https://doi.org/10.1641/0006-3568\(2006\)56\[341:RTDFOE\]2.0.CO;2](https://doi.org/10.1641/0006-3568(2006)56[341:RTDFOE]2.0.CO;2)

Yes, the Shawnee has oak stands, but overall it is not an oak hickory forest – it is much more diverse than that. The EA is simply wrong about this. NEPA requires that the current environment be described during the EA process. This kind of rewriting history is not what NEPA requires. If the agency is planning on changing the mesophytic nature of the forest into an oak/hickory forest, that needs to be disclosed and the effects analyzed in both plan and project level document. The Shawnee has never done a complete cumulative impact analysis on the plan or project level of this kind of species shift regime.

And let's be honest here – there is no evidence on the record that what the agency is proposing will actually perpetuate the oak forest, particularly since the agency has not considered climate change thru the planning process.

COMMENT: “and just the fact that the current plan and past plans have relied on this lie, while completely ignoring relevant issues like climate change, water and air quality, recreation, etc, is a sure sign that the LRMP for the Shawnee needs to be revised.”

ELABORATION: The National Forest Management Act requires plans to be revised every 10 -15 years. The last plan revision was grossly late, and it was in 2006. It is again out of date for a number of reasons. The forest plan needs a new, up-to-date hard look thru NEPA and public involvement.

There are a number of reasons for that – failure to consider climate change, the spread of white nosed syndrome, continuing air pollution and new information regarding PM.25, the steep extinction curve worldwide – all subjects for which significant information has been gathered and released since 2006.

COMMENT: “In fact, the current plan is illegal and bogus for a number of reasons, including FACA violations in the course of preparing the plan, inadequate cumulative impacts analysis, failure to properly consult on the white nosed syndrome, failure to consider climate change and other reasons.”

ELABORATION: The 2006 plan is grossly out of date. At the time it was issued, the Shawnee avoided even considering climate change impacts on the forest, nor the impacts of their management on the carbon cycle by stating that considering climate change was beyond the scope of a forest plan and forest plan EIS. This was in spite of the fact that the objectors to this project also sent innumerable studies and pieces of information on climate change showing that it was relevant. And that information has just continued to grow. Here's one example:

<https://www.un.org/esa/forests/wp-content/uploads/2019/03/UNFF14-BkgdStudy-SDG13-March2019.pdf> The FS blew them all off.

But what the Shawnee did was rely on a scientific paper, called the Hoosier/Shawnee Ecological Assessment, prepared by a committee of scientists that was ruled by a federal court in Washington DC, and which the Forest Service did not appeal, to have been a federal advisory committee under the Federal Advisory Committee Act, or FACA. (Attachment 2) That would have required meetings to be made public and the committee to be required to take public comment and to be fairly balanced in terms of membership. To say the least, none of the above occurred.

This makes the entire Shawnee plan arbitrary and capricious in an of itself because the planning process was not in accordance with law!

COMMENT: “As related to the above, the purpose and need of this project is bogus. This forest only has isolated stands that are true oak hickory in drier, ridgeline habitats. But the majority of the native forest is western mixed mesophytic forest

type. <https://images.app.goo.gl/8oWhwyAmPU65Zxyg7> We have brought this fact up repeatedly to the Shawnee, but the Shawnee only listens to itself and not to the public.”

ELABORATION: This is discussed above. If the Shawnee Nat. Forest is going to manage the Shawnee oak hickory forest in general, then it needs to explain why that designation isn't inconsistent with scientific data. If they can't explain it, which they don't, then it is inconsistent with NEPA.

COMMENT: “While the Shawnee acknowledges that climate change is occurring, and could impact the project's implementation and impacts, there is no cumulative impact analysis regarding climate change

in the Shawnee Plan EIS, one of the biggest flaws in the plan EIS, for which the agency can tier their analysis. It's a hollow exercise. Yet the EA, with no cite to anything, makes incredible statements like all these herbicide treatments are going to improve the forest. Based on what? In fact, it's going to degrade the forest."

ELABORATION: There is no forest wide impact analysis of climate change in the Shawnee Forest Plan. Therefore any individual project analysis of climate change must consider the impacts of such management across the forest as provided for in the plan. The agency can't tier to an analysis that doesn't exist, and this EA does not do an a forest wide analysis of such management. Again the project record is inadequate with the requirements of NEPA.

In addition, the assertion that spraying herbicides all the forest is somehow magically going to improve the forest is one more conclusory assertion that the agency keeps making without any evidence to back it up.

Notwithstanding some of the issues raised above, there is no doubt that this decision will degrade water quality, a key component in maintaining forest health. Pesticides are in streams, groundwater, lakes and ponds, all over the country, but particularly bad in the midwest.

https://www.usgs.gov/mission-areas/water-resources/science/pesticides-and-water-quality?qt-science_center_objects=0#qt-science_center_objects Again, a sister federal agency has all kinds of information available about the impact of pesticides in our water systems. Again the agency fails to utilize the best available science.

In regard to cumulative impacts, the plan EIS before the current one was ruled by the judicial branch to be in violation of NEPA due to an inadequate cumulative impact analysis. The current has never been subject to judicial review, but it contains the same flaws, if not worse.

What the courts ruled was that the agency had to give a hard look at the combined, accumulated impact of all the projects they propose on a given area. For example, if logging, pesticide spraying, oil and gas development, mining, mowing, roadbuilding, etc., are going to be authorized all in one area, (management prescription) the combined, accumulated impact of all those activities in the same vicinity must be given a hard look.

The fact is that the cumulative impact analysis in the current plan EIS is worse than the one in the legally rejected plan. It is just a laundry list of conclusory assertions of no impact with nothing to back it up. There is no adequate cumulative impact analysis

And the same is true of the cumulative impact analysis of this project. It is just a laundry list of conclusory assertions of no impact with no data to back it up. A FONSI cannot be based on wishful thinking – conclusory assertions. That is not a hard look. That isn't what NEPA requires.

As far as the risk analysis is concerned, this is one of the most significant flaws in the analysis. And it will be talked about in more detail below. But, the overriding theme of the agency's flawed risk analysis is that it is based on out of date documents from what appears to be a sole source contractor to do these so-called risk assessments. Over and over the same person prepared these risk assessments over a period of nearly a decade and a half. Most of these assessments are more than a decade old. The contractor, Durkin, who did all these risk assessments, is cited 94 times in the EA. 94 times the agency cites to documents that have never been subject to peer review or public review!

Objectors are pointing to two chemical impact analysis/risk assessments as examples of how flawed the EA is. The first is glyphosate.

The Shawnee continues to rely on a sole source contractor's out of date risk assessments. However, there are other governmental and media sources of information about glyphosate that are more current, more comprehensive, and that the objectors have sent to the Forest Service. Here's what the Durkin document, nearly a decade old, and never subject to public review or peer review as far as can be told, has to say about the risks of glyphosate, as stated in the EA: "Glyphosate: (Durkin 2011a) • Non-irritating to slightly irritating with direct contact; no permanent damage reported. • Inhalation is not an important exposure route because of its low volatility. • Poorly absorbed through skin. • Classified as Group E pesticide by US EPA: "Evidence of non-carcinogenicity for humans." • Adverse human reproductive effects have not been noted in the United States. • Highest HQ for accidental exposure of one hour is 0.003."

One document to focus on is the ATSDR, the Agency for Toxic Substance and Disease Registry's (ATSDR) Toxicological Profile of Glyphosate. (Attachment 3) Again, ATSDR is a fellow federal agency. In August of this year the ATSDR published a final version of this document. But, unlike the Durkin documents, underwent a national/international public comment period in 2019. The public comment period on the draft was published in the Fed. Reg. on 4/8/19.

Objectors are sure that the FS has staff that reviews the Fed. Reg. If it doesn't, it is inept. If this report on a product that the agency itself uses and continues to propose to use, to expose the public, to put expend public resources in the purchase and application, isn't worth reviewing and commenting, then the agency is not serious about it's obligations to protect public health and the environment. The FS should have been aware of this early in 2019.

In the final the ATSDR goes into great detail about the risks and health effects of not just technical glyphosate, but the actual herbicide mixtures. And, for certain inhalation paths, conclude that they can't determine a risk because there is not enough data. The ATSDR study indicates potential health impacts, including cancer and non Hodgkin's lymphoma. The Durkin assessment is too old and misses the newer information.

If fact, the information about the link between glyphosate and cancer has been widely reported in the news, for example, <https://usrtk.org/pesticides/> HYPERLINK "https://usrtk.org/pesticides/" nn-health-concerns/ provides information not in the risk assessments, and <https://www.businessinsider.com/glyphosate-cancer-dangers-roundup-epa-2019-5> and has resulted in juries finding for plaintiffs who got cancer after using Roundup.

In addition, the World Health Organization considers Roundup a cancer risk. When dealing with the public being exposed to these totally synthetic poisons, the utmost of care should be taken by the agency to protect the public. Instead, their superficial, out of date analysis shows a calloused disregard for public safety.

The EA, however, blows off any cancer risk, although the objectors raised it in their comments.

The FS's out of date, sole source, never subject to public comment, Durkin documents are not a hard look. It's obvious. They are a joke. Nevertheless, they are relied upon heavily to fulfill certain NEPA and NFMA obligations. The FONSI is built on them. That's a non-sequitur. One of NEPA's purposes is to involve the public. How can you fulfill NEPA's obligations when you don't involve the

public in the heart of the analysis?

And just to bring up one more example – the persistence of Clopyralid. Objectors have provided the Shawnee with information more than once about the problems with the well documented persistence problem of Clopyralid in municipal composting facilities. These facilities were composting leaves and grass clippings. The compost had so much Clopyralid in it that when it applied to trees and shrubs and such in people's yards as a fertilizer it killed them instead. It's pretty much been banned from lawns because of this. <https://en.wikipedia.org/wiki/Clopyralid>

The Shawnee admits this, but claims that this fact doesn't merit consideration because a forest environment is different from a municipal composting facility. But it doesn't provide one cite of evidence to either document the claim or explain how it is different. In fact, it is a very similar environment. Composting is the key to organic materials being made available to trees and other plants in the forest. If the agency is going to admit to an impact but then claim it isn't applicable when it obviously seems as if it is, the agency needs to have some credible scientific data to back up such assertions. Again, conclusory assertions of no impact do not comply with NEPA.

The impact analysis of these chemicals applied all across the forest is way inadequate. This is a major deal. We know so little about the long term impacts of these synthetic molecules in our water, our air and food. Assumptions based on nothing are no longer acceptable. How can the agency issue a FONSI based on this flimsy data, when there is so much data out there that at a bare minimum calls into question conclusory assertions in the EA, and at worst exposes the EA for the sham that it is.

This is a bogus project. It is a major federal action with a significant impact on the environment. The finding of no significant impact is based on either conclusory assertions, or out of date and incomplete risk assessments. Cumulative impacts and climate change are not adequately addressed. It gets in line with a long line of Shawnee projects which the agency purported would save the forest but have been big busts and haven't even been implemented to a great degree, thankfully.

As an individual and on behalf of RACE, which I am authorized to represent for these comments,

Respectfully submitted

Mark Donham

RACE