

From: Dick Artley <[REDACTED]>
Sent: Monday, August 6, 2018 6:21 AM
To: FS-objections-pnw-siuslaw
Subject: Objection to the Indian Creek Project
Attachments: _____Scanned signature for Dick Artley.doc

August 6, 2018

ATTN: objection reviewing officer

Below you will find my objection to the EA and draft DN for the Indian Ck. Project.

Required 36 CFR § 218.8(d) Objection Information

Proposed Project Name: Indian Ck. project

Name and Title of the Responsible Official: Michelle Jones, District Ranger

Proposed Project will be Implemented on: Central Coast Ranger District and Oregon Dunes National Recreation Area, Siuslaw National Forest

[REDACTED]

Objection Introduction

This objector submitted his comments on the pre-decisional EA for the proposed project on January 8, 2018

Please direct Ranger Jones 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.



Objection Point #1---This objector asked the Responsible Official to analyze an alternative in detail that does not constructed any new roads (system or temporary).

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:

"Roads often cause serious ecological impacts. There are few more irreparable marks we can leave on the land than to build a road."

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

In spite of this information, the Responsible Official did not act on the objector's request.

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.



Objection Point #2---The Responsible Official does not acknowledge that the research conclusions of scores of independent scientists' indicate that even casual exposure to glyphosate may cause significant health problems ... even cancer.

The objector requested the Responsible Official to assure the Proposed Action specifically states "herbicides that contain the chemical glyphosate will not be applied."

None of this was done. The EA still does not indicate glyphosate will NOT be applied. Incredibly, Ranger Jones does not care if she applies a chemical that research shows can cause cancer, autism, birth defects, miscarriages, neurological disorders and liver/kidney disease. Most public servants would avoid the risk since there are at least a dozen alternatives.

What type of person would take action if there were even a small chance it would cause a child to die painfully from cancer later in life ... just because her employer says it's OK? Normal people play it safe when there is doubt about the wisdom of taking action, especially if the action might cause a human death. There were alternatives to accomplish the same goal. The Responsible Official chose not to use them.

Therefore, the final EA violates 40 CFR 1501.2 (b), 40 CFR 1502.16(a) and (b), and 40 CFR 1508.8(b) because Chapter 3 omits important environmental effect disclosures. Keep in mind 40 CFR 1508.3 defines "Affecting" to mean the action "will or may (emphasis added) have an effect on" the human environment. An adverse effect need not be certain to qualify for Chapter 3 disclosures. Also 40 CFR 1508.8(b) defines effects as being ecological and "aesthetic, historic, cultural, economic, social, or health." Since herbicides containing glyphosate clearly will or may , adversely affect health, these possible effects on health must be discussed in Chapter 3. Unfortunately, the Responsible Official chose to omit this discussion.

The final EA also violates the Apr. 21, 1997 Executive Order No. 13045 because the Responsible Official does not ensure that this project will not disproportionately expose children to environmental health risks and safety risks.

The draft FONSI violates 40 CFR §1508.27(b)(2) because the intensity discussion fails to discuss the degree to which the proposed action affects public health or safety. The selected alternative will apply herbicides containing glyphosate. Recent research conclusions by many independent scientists link glyphosate exposure to the following health issues. Some are potentially lethal.

- birth defects,
- non-Hodgkin's lymphoma (a form of cancer),
- mitochondrial damage,
- cell asphyxia,
- miscarriages,
- attention deficit disorder,
- endocrine disruption,

- DNA damage,
- skin tumors,
- thyroid damage,
- hairy cell leukemia (another cancer),
- Parkinson disease,
- premature births,
- decrease in the sperm count,
- harm to the immune system in fish
- death of liver cells,
- severe reproductive system disruptions
- and chromosomal damage.

The intensity disclosures in the FONSI do not acknowledge this information, thus the draft FONSI is illegal. Thus, any judge would rule that the NEPA analysis for the Indian Ck. project should be an EIS and the decision documented in a ROD.

The final EA violates the NEPA at section 101(b)(2) because it does not “assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;”

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



Objection Point #3---The Responsible Official allowed the need to accumulate volume (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 EA 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:

“Science and the scientific process must inform and guide decisions of my Administration on a wide range of issues, including improvement of public health, protection of the environment, increased efficiency in the use of energy and other resources, mitigation of the threat of climate change, and protection of national security.”

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

“General Principles of Regulation. (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science.”

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

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Objection Point #4---This objector submitted scores of independent science papers authored by PhD scientists indicating wildfires that burn into a logged-over area do not slow down and the fire intensity is not reduced. In spite of this science the IDT members all indicated in Chapter 3 that if No Action were selected their resource would burn up if the project is not logged.

The independent science submitted by this objector was submitted by this objector with his comments on the draft NEPA document as this attachment Logging does not affect Fire Attachment. Please see the attachment below.

This objector asked the 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 EA 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 EA 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.



Objection Point #5--- Increases in logging do not stabilize or enhance the economy of small communities located near national forests.

The objector asked the Responsible Official to either 1) eliminate the goal to “sell timber generated from commercial thinning to help fund actions designed to enhance or restore ecosystem function, as well as to benefit local economies” shown in the Purpose and Need, or 2) include the text of the 3 papers in an appendix to the final NEPA document that are referenced in the objector's comments about how small, local community economic stability near national forests is not dependent on the level of timber harvest.

This wasn't done.

The final EA violates 40 CFR 1500.1(b) because environmental information is not available to citizens before decisions are made. The American people own the Siuslaw National Forest, therefore decisions made by the Responsible Official that will effect the forest (either positively or negatively)

could affect these American citizens. Any judge will agree that in order for a person to fully appreciate and understand the possible outcome of a decision (both positive and negative) they must be aware of the facts that relate to the decision. This is especially true of an agency mandated to serve these American citizens. The 3 papers provided by the objector indicate community economic stability can be adversely affected as harvest volume increases. The public residing in these small communities are not aware that their overall economic stability could suffer because the Responsible Official has chosen to withhold this information from the public.

Also, the NEPA document violates 18 USC § 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy, because the Responsible Official has consciously falsified the Indian Ck. NEPA document with the intent to influence the proper administration of the Siuslaw National Forest.

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



Objection Point #6---The range of alternatives in the NEPA document is inadequate. Only 1 action alternative is analyzed.

This objector requested the Responsible Official to analyze at least 1 citizen-generated alternative to the Proposed Action in detail.

This wasn't done. Instead the Responsible Official displayed short descriptions of the citizen-generated alternatives in the "Alternative Considered but Eliminated from Detailed Study" section.

Therefore, the final NEPA document clearly violates:

40 CFR §1506.1 (a)(2) Limitations on actions during NEPA process because not analyzing a "Reasonable" alternative in detail makes it impossible to choose that alternative, therefore analyzing only 1 action alternative in detail "limits the choice of reasonable alternatives."

40 CFR §1506.2 (e) --- Policy

"(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment."

36 CFR 220.7(b)(2)(i) and 40 CFR 1501.2(c)

"When there are no unresolved conflicts concerning alternative uses of available resources (NEPA, section 102(2)(E)), the EA need only analyze the proposed action and proceed without consideration of additional alternatives."

NEPA Section 102(2)(E)

"study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources."

This EA is also inconsistent with court precedent. The Responsible Official's failure to address a reasonable alternative to the Proposed Action does not differ from the cases summarized

below. When this NEPA document is challenged in Federal District Court the judge will cite the following cases in his/her opinion in favor of the plaintiff. There are alternative ways to achieve any goal or need ... including the need described in the Purpose and Need that the Responsible Official concludes will be satisfied in only 1 way ... by applying the treatments described in the Proposed Action that's unchanged from the Proposed Action described in the scoping package.

Methow Valley Citizens Council v. Regional Forester, 833 F.2d 810, 815, rev'd in part, 490 U.S. 332 (1989) (internal citations omitted) the Court determined that the EIS was inadequate because it failed to examine all reasonable alternatives. The Court held that "the range of alternatives considered must be sufficient to permit a reasoned choice." Here, beyond the statutorily required "no action alternative," only one type of logging alternative – in two versions differing only by extent and focus of acres logged, but not in methods or economic objectives employed - was considered in this case. The FS did not consider other reasonable activities in violation of NEPA. As this proposed project may not be legally authorized under a CE as the notice improperly indicates, an EA or EIS is necessary, including a legally compliant, scientific, ecologically-sound purpose and need, and the development of a full range of ecologically viable alternatives.

Protect Key West, Inc. v. Cheney, 795 F. Supp. 1552 (S.D. Fla. 1992).

Opinion excerpt:

"Carefully comparing the procedure followed by the Navy in preparing the EA on Peary Court with what is required by law, see *id.* at 682, leads to the inescapable conclusion that the September 1988 EA was wholly inadequate. Far from the requisite 'hard look,' the Navy barely took any look at the environmental consequences of the project in the EA. Because the EA does not evince a good faith effort to 'study and identify' relevant problems and alternatives, any analysis of whether the Navy 'convincingly' established the insignificance or planned mitigation of environmental harms would be pointless."

Cabinet Mountains Wilderness v. Peterson, 685 F. 2d 678, 682 (D.C. Cir. 1982) established four useful criteria, which virtually all federal courts use, for reviewing an agency decision to forego preparation of an EIS: (1) whether the agency took a "hard look" at the problem; (2) whether the agency identified the relevant areas of environmental concern; (3) as to the problems studied and identified, whether the agency made a convincing case that the impact was insignificant; and (4) if there was impact of true significance, whether the agency convincingly established that the changes in the project sufficiently reduced it to a minimum."

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 109 S.Ct. 1835, 1846, 104 L.Ed.2d 351 (1989); ***Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council***, 435 U.S. 519, 558, 98 S.Ct. 1197, 1219, 55 L.Ed.2d 460 (1978) (mandate to agencies under NEPA is "essentially procedural"). The procedural requirements derive from 42 U.S.C. 4332(2)(C)(i-iv), which directs all agencies of the federal government to prepare for "major Federal actions" a detailed statement on (1) the environmental impact of the proposed action; (ii) any unavoidable adverse environmental effects if a project is implemented; (iii) alternatives to the proposed action; (iv) the relationship between short-term uses of the environment and maintenance of long-term productivity; and (v) any irreversible and irretrievable commitments of resources involved in the project's implementation.

Resources Limited v. Robertson, 8 F. 3d 1394 (9th Cir. 1993);

Opinion excerpt:

"The 'existence of a viable but unexamined alternative renders an environmental impact statement inadequate.' **Mumma**, 956 F. 2d at 1519 (citation omitted). An agency's consideration of alternatives is adequate 'if it considers an appropriate range of alternatives, even if it does not consider every available alternative.' **Headwaters, Inc. v. Bureau of Land Management**, 914 F. 2d 1174, 1180-81 (9th Cir. 1990).

In **California v. Block**, 690 F.2d 753 (9th Cir. 1982), the Forest Service considered only those alternatives with basically the same end result, and the court struck down the agency's decision. The Forest Service did not consider a broad range of alternatives with differing results; arguably, the Forest Service did not consider a "range" of alternatives at all. As stated in **Idaho Conservation League v. Mumma**, 956 F. 2d 1508 (9th Cir. 1992), the existence of a viable but unexamined alternative renders an environmental impact analysis inadequate.

Citizens for a Better Henderson v. Hodel, 768 F. 2d 1051, 1057 (9th Cir. 1985).

Opinion excerpt:

"The alternative section is 'the heart of the environmental impact statement,' 40 C.F.R. 1502.14; hence, '[t]he existence of a viable but unexamined alternative renders an environmental impact statement inadequate.' "

Friends of the Bitterroot, Inc. v. U.S. Forest Serv., No. CV-90-76-BU, 25 E.L.R. 21186 (D. Mt. 1994).

The court held:

"In Count II of their complaint, as amended, plaintiffs contend the Trail Creek EIS fails to adequately analyze all reasonable alternatives, including a less environmentally damaging alternative that would exclude logging and road building activity in existing roadless areas within the Beaverhead National Forest. Plaintiffs maintain the EIS should have addressed an alternative exempting the Beaver Lakes roadless area from the project in order to preserve that area's value as secure wildlife habitat. In response, defendants assert the alternative would not have met the management goals, standards, and objectives of the Beaverhead National Forest Plan. Defendants further maintain the development of such an alternative would not have added any new information to the EIS.

"NEPA requires an EIS provide information in detail and consider every reasonable alternative to a proposed action. **Citizens for a Better Henderson, supra**, 768 F.2d at 1057; see 42 U.S.C. 4332(2)(c)(iii). An agency's range of alternatives is reviewed under a 'rule of reason' standard that 'requires an agency to set forth only those alternatives necessary to permit a reasoned choice.' **California v. Block**, 690 F.2d 753, 767 (9th Cir. 1982) ('The touchstone for [a court's] inquiry is whether an EIS' selection and discussion of alternatives fosters informed decision-making and informed public participation.'). Additionally, NEPA does not require a separate analysis of alternatives which are not significantly distinguishable from alternatives actually considered or which have substantially similar consequences. **Northern Plains Resource Council v. Lujan**, 874 F.2d 661, 666 (9th Cir. 1989). As a result, an agency's consideration of alternatives is sufficient if it examines an appropriate range of alternatives, even if it does not consider every available alternative. **Headwaters, Inc. v. Bureau of Land Management**, 914 F.2d 1174, 1181 (9th Cir. 1990).

"Accordingly, the EIS' failure to address an alternative preserving existing roadless lands in the Trail Creek area renders compels this court to REMAND this matter for further administrative proceedings."

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



Objection Point #7 ----- 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 to Waldport Oregon.

This wasn't done.

Therefore, the final EA violates:

40 CFR 1500.2(b) because no evidence is presented for environmental effects conclusions.

40 CFR 1501.2(a) because the environmental effects and values are not identified in detail.

40 CFR 1500.1(b) because there is no substantiating evidence for effects conclusions, thus, the public cannot determine if they are accurate and based on best science.

40 CFR 1506.6 (a) because you did not Make diligent efforts to involve the public in preparing and implementing NEPA for this project.

40 CFR 1506.6 (b) because you did not make environmental documents available so as to inform those persons and agencies who may be interested or affected.

40 CFR 1500.2 (d) because you did not encourage and facilitate public involvement in decisions which affect the quality of the human environment.

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



Objection Point #8--- The Responsible Official did not post her responses to the Opposing Views online.

This objector requested the Responsible Official to post meaningful responses to the opposing view quote contained in the Opposing Views Attachments.

This wasn't done.

Opposing views contained in newspapers, magazines, and other sources are still opposing views and require a response. Please do not conclude an opposing view is not responsible because they are opinions. "Viewpoint" and "opinion" are synonyms.

How this objection point can be resolved: Somehow distribute the draft NEPA document again (or a supplemental NEPA document) that contains opposing Views responses for public inspection before it is finalized.



Objection Point #9 ----- The project does not satisfy the Purpose & Need goal to improve aquatic conditions.

The Responsible Official proposed to inappropriately decommission (gate & waterbar) 28 miles of existing road and construct 41 miles of new temporary road.

This objector requested the Responsible Official to eliminate all planned temporary road construction with the understanding the volume will be reduced a little and obliterate 28 miles of existing unsurfaced road not needed in the future.

This wasn't done.

Therefore, the final EA violates the NEPA at **40 CFR 1502.14** because the action does not contribute to or satisfy the Purpose & Need. Of course nearly every USFS EA and EIS contains citizen-generated alternatives that the Responsible Official refuses to analyze in detail because they do not satisfy or respond to the Purpose & Need. Alternatives that do not satisfy or respond to the Purpose and Need are not reasonable.

The same holds true of agency generated alternatives, including the Proposed Action. The agency must modify all alternatives analyzed in detail until they are "reasonable."

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

Note: I discussed this extraordinarily large number of miles of temporary road that is unprecedented in the USFS with Jim Furnish last week. As you might know Jim was the Siuslaw NF supervisor during the 1990s and was Deputy Chief between 1999 and 2002. He said this would never have happened under his watch.



Sincerely,

Dick Artley's scanned signature is contained in the "signature" attachment.

Dick Artley [retired Nez Perce National Forest forest planner)



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“Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.”

Margaret Mead