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Objections on Plantation Thin and PCL Treatment Project

Forest Supervisor Kovarik:

In accordance with 36 C.F.R. Part 218, WildEarth Guardians (“Guardians”) submits these objections regarding the U.S. Forest Service’s Plantation Thin and PCL Treatment Project (Project) located across the entirety of the Gifford Pinchot National Forest.

Objection 1: Failure to prepare a programmatic environmental impact statement for the Wildfire Crisis Strategy.

In our comments on the Draft EA, Guardians raised the need for programmatic environmental impact statement (PEIS) of the Wildfire Crisis Strategy (WCS).¹ In response, the Forest Service rejected the need for a PEIS stating that the WCS is a “broad, national strategy rather than a planning document requiring tiering or need for project consistency.”² The Forest Service continued that although the WCS “did identify priority wildfire crisis landscapes, none of those occur on this Forest.”³ The Forest Service should reconsider the need for a programmatic analysis.

First, the fact that none of the “priority” landscapes occur on the Gifford Pinchot National Forest is irrelevant because the application of the WCS is not limited to just “priority” landscapes. While the WCS states that initial implementation over the first two years will focus on the “most critical firesheds,” it goes on to state that “the agency will move on in subsequent years to other western firesheds, accelerating treatments over the next 8 years.”⁴ So the Forest Service fully anticipates the WCS to expand well beyond the initial priority landscapes.

¹ See Guardians Draft EA comments at 1-3.

² Final EA at 202.

³ *Id.*

⁴ WCS at 30.

Second, despite the Forest Service’s attempt to distance the Project from the WCS, the fact is that the agency specifically relied on the WCS to inform its environmental analysis. For example, in the Fire and Fuel section of the Final EA, the Forest Service cites the WCS as one of two sources “[t]o compare the current condition and the effects of the proposed action.”⁵ In addition, under the heading “Other Relevant Law, Regulation, and Policy Consistency,” the Fire and Fuels specialist report directly connected the Project to implementation of the WCS:

These proposed actions also relate to the Forest Service’s 2022 wildfire crisis strategy by “identifying the right location and tools for fuels and forest health treatments” and demonstrates partnership with Washington DNR.⁶

Finally, the Forest Service’s description of the WCS as a “broad, national strategy” only reinforces the fact that the WCS is programmatic in nature. Indeed, the Council on Environmental Quality previously stated that a programmatic NEPA analysis is appropriate when an agency decides “to proceed with a group of concerted actions to implement a specific policy or plan,” including a “new agency mission or initiative.”⁷ This precisely describes the WCS.

Moreover, when Congress appropriated funding for the development of the WCS, it specifically directed the Secretary of Agriculture to “determine whether to initiate the preparation of a programmatic environmental impact statement” prior to its implementation.⁸ While no such programmatic EIS was undertaken, that does not mean that determination was correct. Now, without the benefit of a programmatic environmental analysis informed by public comment and the development of alternatives, the WCS is being applied all over the country, including in this project in the Gifford Pinchot National Forest. Before implementing such large-scale projects that have implementation timeframes in the decades, a programmatic review is not only proper, it is required.

Proposed Resolution for Objection 1:

The Forest Service should withdraw the Project until the Forest Service prepares a PEIS for the WCS.

⁵ Final EA at 44. The only other source cited was the Gifford Pinchot forest plan, which undermines the agency’s claim that it is not “tiering” to the WCS like a planning document. *See* Final EA at 202.

⁶ Fuels Report 5.

⁷ Council on Environmental Quality, *Effective Use of Programmatic NEPA Reviews*, 13-14 (2014). Although CEQ has taken steps to rescind its NEPA regulations, this guidance is still instructive for meeting the Forest Service’s statutory mandates under NEPA, including the preparation of programmatic NEPA documents.

⁸ 16 U.S.C. § 6592(i)(3).

Objection 2: Failure to prepare a PEIS or amend the Gifford Pinchot Forest Plan for the development and application of PODs and PCLs.

Guardians also raised in its comments the need for programmatic review of the development and application of potential operational delineations (PODs) and potential control lines (PCLs).⁹ In response, the Forest Service stated that PODs and PCLs do not create new land use allocations that warrant programmatic analysis.¹⁰ The Forest Service should reconsider the need for programmatic review of these new land use allocations that direct the kind of management that will occur in such designated areas.

Even though the Forest Service claims in its response that PODs and PCLs are not “land use allocations,” the agency certainly describes them as such in other documents. For example, a StoryMap published by the Forest Service describes PODs as “spatial management and analysis units” that are “developed by land managers through a series of collaborative workshops integrating local knowledge and fire analytics with the purpose of informing wildfire response and planning.”¹¹ Elsewhere, the Forest Service stated that “PODs are being integrated into current planning projects to highlight where future vegetation management can focus resources.”¹² This is quite similar to the development and implementation of a forest plan.

Indeed, the Forest Service’s planning regulations state that they “guide the collaborative and science-based development, amendment, and revision of land management plans[.]”¹³ However, the planning regulations require public engagement in compliance with NEPA.¹⁴ As with the WCS, that did not happen here.

Even though the public had no opportunity to comment on the development of PODs and PCLs, they are being used “to enhance future control opportunities through timber harvest and vegetation management” across the country, including the Gifford Pinchot National Forest.¹⁵ In the Project, the Forest Service plans extensive thinning for PCLs (56,620 acres), including nearly 3,200 acres in inventoried roadless areas.¹⁶ While the thinning is non-commercial, it still represents a significant incursion into roadless areas, including 176 acres in the Dark Divide Roadless Area, most of which is along the southern boundary with FR 90.

A recent site visit to this part of the Dark Divide Roadless Area revealed mature forests with many large-diameter trees. See images below.

⁹ Draft EA comments at 2-3.

¹⁰ Final EA at 204.

¹¹ U.S. Forest Serv., *Strategic, Cross-Boundary Wildfire Response Planning*, <https://www.arcgis.com/apps/Cascade/index.html?appid=073b66277b6540328f40b772dfab7c6f> (click on “PODs” tab and scroll to “PODs Overview” section).

¹² *Id.* (click on “Why use PODs” tab).

¹³ 36 C.F.R. § 219.1(c).

¹⁴ 36 C.F.R. §§ 219.4 (requirements for public participation) and 219.19 (definitions for “collaboration or collaborative process” and “participation”).

¹⁵ USFS StoryMap (click on “PODs” tab).

¹⁶ Final EA at 25, 29.

46.19836, -12174116



46.19848, -121.74153



46.19863, -121.74165



46.19833, -121.74210



A programmatic analysis subject to public comment could have resulted in more stringent protections incorporated into PCL treatments proposed alongside roadless areas. For instance, the Forest Service could have specific diameter limitations for PCL treatments in roadless areas. But the public was not afforded that opportunity and projects like this are being implemented across the country without accounting for different land use allocations and designations.

Proposed Resolution for Objection 2:

The Forest Service should withdraw the Project until the Forest Service prepares a PEIS for the development and implementation of PODs and PCLs (which could be done in conjunction with a PEIS for the WCS). If the Forest Service moves forward with the Project, it should have enforceable diameter limits for certain special areas, including roadless areas.

Objection 3: The Forest Service's reliance on Executive Order 14225 violates the National Forest Management Act.

In the Draft Decision Notice, the Forest Service cites Executive Order (EO) 14225, which directed the “immediate expansion of American timber production” on federal lands, including National Forest System lands.¹⁷ In an effort to comply with this EO, the Forest Service said it “expedited this project,” which “could hold approximately 30-50 million board feet of raw timber that could be offered annually through commercial sales and harvested over many years.” The EO and the Forest Service’s implementation of it violate the National Forest Management Act (NFMA).

Congress directed the Forest Service to “mak[e] the most judicious use of the land.”¹⁸ Congress further directed that implementation of the “multiple-use” mandate must be done “without impairment of the productivity of the land” and that management of the various renewable surface resources is not to be driven by what “will give the greatest dollar return or the greatest unit output.”¹⁹

When Congress passed NFMA in 1976, it added additional clarity to the Forest Service’s “multiple-use” mandate. Specifically, Congress recognized that “the majority of the Nation’s forests and rangeland is under private, State, and local governmental management.”²⁰ As such, Congress stated that it is those “nonfederally managed renewable resources” that provide the basis for “the Nation’s major capacity to produce goods and services.”²¹ Congress also required the Forest Service to “reduce pressures for timber production from Federal lands.”²²

¹⁷ Draft Decision Notice at 7.

¹⁸ 16 U.S.C. § 531(a).

¹⁹ *Id.* See *Mountain States Legal Foundation v. Glickman*, 92 F.3d 1228, 1238 (D.C. Cir. 1996) (stating that objectives for logging in forest management statutes “does not mean that logging must be maximized at the expense of all other values”).

²⁰ 16 U.S.C. § 1600(5).

²¹ *Id.*

²² 16 U.S.C. § 1600(7).

Instead of seeking ways to *reduce* pressures for timber production from Federal lands, EO 14225 directs the Forest Service to *increase* pressures for timber production from Federal lands. In the Gifford Pinchot National Forest, that order resulted in the Project being “expedited” in order to provide “30-50 million board feet of raw timber” each year for decades. The Forest Service did not consider any alternatives to its proposed action.

The EO and the expediting of the Project to comply with the EO violate NFMA by increasing pressures for timber production from National Forest lands and by being motivated by what “will give the greatest dollar return or the greatest unit output” of timber.²³

Proposed Resolution for Objection 3:

At a minimum, the Forest Service should prepare a supplemental analysis that considers a broader range of alternatives to achieve the purported objectives of the Project.

Sincerely,



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²³ 16 U.S.C. §§ 531(a); 1600(7).