



Kentucky Resources Council

Post Office Box 1070
Frankfort, Kentucky 40602
502-875-2428
hello@kyrc.org
www.kyrc.org

May 24, 2024

Tim Reed, District Ranger
Stearns Ranger District
Daniel Boone National Forest
320 Hwy 27 North
Whitley City, KY 42653
VIA electronic submission

Re: Jellico Vegetation Management Project

Dear Mr. Reed:

Please accept the following comments concerning the Jellico Vegetation Management Project on behalf of Kentucky Resources Council, Inc., a nonprofit organization dedicated to protecting Kentucky's natural resources, environment, and communities. KRC submits these comments on behalf of the organization and its members and constituents who live, work, drink water from, and recreate in areas potentially impacted by this permit. We are writing to urge the Forest Service to engage in a collaborative process to develop alternatives to manage the project area to promote ecological integrity while supporting all of the goals for the forest including recreation, forest health, conservation of sensitive, threatened, and endangered species, and where consistent with overall goals, responsible logging. A 40-year logging project that would log 10,000 acres of mature and old-growth forest is not responsible logging or forest management. The Proposed Action is irresponsible and unnecessary and we urge the Forest Service to reject the Proposed Action.

I. The Environmental Assessment does not support a Finding of No Significant Impact for the proposed action.

Unless the Forest Service can support a finding of no significant impact, an EIS must be prepared to fully evaluate the potential effects of the project. Because the acres proposed to be logged exceeds the categorical exclusion limit (and the other requirements for that exclusion have not been met) the Forest Service is required to "provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." 40 CFR §1501.5(c). For the reasons set forth below, the Forest Service's evidence and analysis are insufficient and an EIS must be prepared if the Forest Service plans to proceed with the proposed action or alternative 1. This EA is not "fully informed and well-considered" so as to

support an agency finding of no significant impact. *See Anderson v. Evans*, 314 F.3d 1006, 1015-16 (9th Cir. 2002) (court must determine whether agency took a hard look at environmental consequences of proposed action). Given the issues listed below and those raised by Kentucky Heartwood and other commentators, a finding of no significant impact of the proposed action would be arbitrary, capricious, and contrary to law.

II. The Forest Service should reconsider its proposed plan and the alternatives considered.

The EA is inconsistent with the agency's current directives. *See generally* 36 CFR Part 219. It is arbitrary and capricious and inconsistent with law for the Forest Service to defend a 40-year plan of logging that purports to implement a Forest Plan developed in 2004, under regulations promulgated in 1982. The 2012 planning regulations codify a science-based approach involving meaningful public participation. *See generally* 36 CFR Part 219. The Forest Service describes its current planning directives this way:

This final planning rule requires that land management plans provide for ecological sustainability and contribute to social and economic sustainability, using public input and the best available scientific information to inform plan decisions. The rule contains a strong emphasis on protecting and enhancing water resources, restoring land and water ecosystems, and providing ecological conditions to support the diversity of plant and animal communities, while providing for ecosystem services and multiple uses. 77 FR 21162, 4/09/2012.

However, the Jellico EA does not fulfill the promise of a scientific review of ecological sustainability and the promotion of ecological integrity. It has failed to take the requisite "hard look" at the proposed action.

- The EA does not allow for the "development, amendment [or] revision of land management plans that **promote the ecological integrity** of national forests..." as envisioned by 36 CFR 219.1(c). **By endorsing logging 40 years into the future**, the proposed action would not only fail to accomplish this goal, but **would frustrate the regulation's purpose by prejudicing future forest plans**.
- The proposed action is inconsistent with President Biden's Executive order promoting conservation of old growth forests. Protecting older trees is a critical, cost-effective solution to address both the climate and biodiversity crises.
- **The EA is not adequately science-based** as directed by 36 CFR 219.1(c) and by 36 CFR 219.3, requiring the use of the best available scientific information. *See* Scoping Comments of Heartwood re. Jellico Vegetation Management Project, dated December 5, 2022 (describing the ecology and history of the ecological communities related to the Jellico forest area). The Forest Service's neglect of the area's natural history and emphasis on clearcutting, shelterwood, and deferment cuts is inconsistent with its mandate to maintain and restore ecological integrity, as demonstrated in the Heartwood comment letter.

- Further, the EA is inconsistent with the Forest Service’s regulation that requires consideration of “conditions in the broader landscape that may influence the sustainability of resources and ecosystems with the plan area.” 36 CFR 219.8(iii). **The EA does not consider the early seral habitat (ESH) due to forest disturbances created by extensive logging and mining in the area to the south of the Jellico forest area discussed in the EA.**
- The 40-year implementation period is too long to fully consider the impacts to Indiana bats (*Myotis sodalis*), northern long-eared bats (*Myotis septentrionalis*), Cumberland arrow darter (*Etheostoma sagitta*), blackside dace (*Chrosomus cumberlandensis*), and other species listed as threatened or endangered under the Endangered Species Act (ESA). Avoiding harm to these species should be central to any federal management, particularly when that management is proposed for the explicit purpose of supporting biodiversity. The affected public cannot meaningfully comment on, nor can the EA provide sufficient evidence regarding, the impacts on these species or their habitat 40 years into the future.
- **The Forest Service has failed to properly evaluate the risks to ecological integrity of the plan, particularly with regard to invasive species.** The Wildlife Specialist Report included in the supporting documents notes that the proposed action would likely result in “increase of current population sizes and increased establishment of new populations” of nonnative invasive plants (p. 76) and similarly for Alternative 1 (p. 77). *See* Biological Evaluation and Specialist’s Report (Metzmeier & Taylor, April 2024) in EA Supporting Documents. Both the Forest Service and Kentucky Heartwood have documented the increase in non-native invasive species in previously logged areas.
- **The risks of sedimentation and landslides from logging on the steep slopes have not been adequately considered.** The Jellico mountains are some of the steepest and most landslide-prone mountains in the state. The Forest Service’s analysis does not look at the most relevant issues related to landslide risk. The assumption that sensitive habitats will be protected and proper BMPs will be followed is not protective enough for high quality streams with endangered aquatic species. Detailed site specific investigation is required and highly susceptible areas should not be disturbed. Water pollution and landslides from logging on steep slopes is reasonably foreseeable and must be taken into account in the review of ecological integrity and endangered aquatic species effects. *See* Kentucky Heartwood comments of December, 5, 2022 and at <https://kyheartwood.org/public-comments/jellico-comment-period/>: “Record-breaking rains, including the 16 inches that fell on July 30th, 2022, have resulted in major landslide events and erosion on steep slopes, and have impacted streams through increased sedimentation. [8] As will be discussed in our section on slope instability and landslide concerns, **the Forest Plan and Kentucky forestry BMPs are inadequate for preventing harm to the aquatic endangered species from extensive logging in the Jellico project area.**”

- A quick scan of the list of master logger “bad actors” (which listing can be a result of repeated failures to correct violations) shows that it is eminently foreseeable that mistakes or neglect are likely with regard to the implementation of BMPs, especially when logging in challenging terrain like the steep slopes of the Jellico project area. https://masterlogger.ca.uky.edu/sites/masterlogger.ca.uky.edu/files/bad_actor_list_4.pdf\
- As pointed out in public comments by Kentucky Heartwood, the project area includes a substantial portion of the designated critical habitat for the federally endangered Cumberland darter (*Etheostoma susanae*) as well as habitat for the federally threatened blackside dace (*Chrosomus cumberlandensis*) and the impacts to these species were not adequately considered. Record-breaking rains, including the 16 inches that fell on July 30th, 2022, have resulted in major landslide events and erosion on steep slopes, and have impacted streams through increased sedimentation. The Forest Plan and Kentucky forestry BMPs are inadequate for preventing harm to the aquatic endangered species from extensive logging in the Jellico project area.
- A delicate population of a federally-listed endangered mussel, the Cumberland Elktote (*Alasmidonta atropurpurea*), has also been identified in Jellico Creek. [9] This is one of several populations which the USFWS describes as likely having low resiliency due to small and isolated population. One of the threats to this mussel species is excessive sedimentation from resource extraction. No comprehensive surveys have been conducted in Jellico Creek since 2005, making a full survey of the area absolutely necessary before logging.
- The Forest Service should adhere to the Forest Plan and provide a clear explanation of how they intend to maintain the 7,400 acres of habitat required by Cerulean Warblers in the Jellicos. These habitats are essential for the survival and well-being of these species, and it's critical that they are preserved and protected.
- The Forest Service needs to commit to a concerted effort across the Jellico project area to treat and control tree of heaven. This includes all areas, regardless of planned timber harvest or other management.

III. The Forest Service has failed to provide full and meaningful public participation in developing the proposed plan and the alternatives.

While the Forest Service did permit public comment on the scoping process, it has not provided for a “collaborative” public process in accordance with 36 CFR 219.1(c) (“The purpose of this part is to guide the collaborative and science-based development, amendment, and revision of land management plans that promote the ecological integrity of national forests and grasslands and other administrative units of the NFS.”). The regulations specifically provide that “the responsible official shall provide opportunities to the public for ... developing a plan proposal...” 36 CFR 219.4(a). Clearly the regulations are designed to provide full and meaningful public participation. By combining ecologically desirable activities (like remediating invasive species) with those that do not further the goal of restoring and maintaining ecological

integrity, the Forest Service has created a set of alternatives that require false choices (between no action, for example, and control of invasive species **combined with** clearcutting and shelterwood processes that increase the spread of those species) rather than offering an alternative that complies with the Forest Service's goal to "promote the ecological integrity of national forests." **This false choice demonstrates the harm in denying the public the opportunity for meaningful input in development of the alternatives.**

Moreover the discussion of "crop trees" fails to meet the Forest Service mandate to "share information in an open way with interested parties," by obscuring the nature of the crop trees and the economic pressures on the Forest Service and by extension on the national forest which it stewards. *See* 36 CFR 219.4.

Finally, we understand that the Forest Service has delayed required ESA consultation with the U.S. Fish and Wildlife Service regarding impacts to threatened and endangered species. As such, the EA lacks adequate analysis and consideration of impact and alternatives. This has also stymied the public's right make meaningful and informed comments on the EA.

IV. The EA is tainted due to the timber targets developed by the agency.

We understand that the Forest Service has mandated timber targets that include a more than 400% increase in logging in the Daniel Boone National Forest (DNBF) in the last 20 years. Documents obtained by Southern Environmental Law Center clearly show that the DBNF is prioritizing the timber harvest mandate over other forest needs, including recreation, forest health, water quality, and more. The development and use of timber targets (and their use for evaluation of employees) constitutes a prior taint on this EA. *See* In the case of, the Ninth Circuit. *See* 214 F.3d 1135 (9th Cir 2000), discussed in *Anderson v. Evans*, 314 F.3d 2006 (9th Cir. 2002) (overturning a finding of no significant impact and ruled that the EA was tainted by a prior agreement between the government and the Indian tribe allowing whaling to proceed).

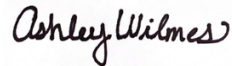
We understand that the Forest Service has mandated timber targets that include a more than 400% increase in logging in the Daniel Boone National Forest (DNBF) in the last 20 years. Documents obtained by Southern Environmental Law Center clearly show that the DBNF is prioritizing the timber harvest mandate over other forest needs, including recreation, forest health, water quality, and more. The development and use of timber targets (and their use for evaluation of employees) constitutes a prior taint on this EA. *See Metcalf v. Daley*, 214 F.3d 1135 (9th Cir 2000) (overturning a finding of no significant impact and ruled that the EA was tainted by a prior agreement between the government and the Indian tribe allowing whaling to proceed); *Anderson v. Evans*, 314 F.3d 2006 (9th Cir. 2002).

In this case, the Forest Service adopted timber targets prior to this EA. It appears that both the proposed action and alternative 1 were developed to meet those targets. Rather than considering recreation, forest health, water quality as well as logging to develop a plan, it appears that the Forest Service pre-determined its target and developed the EA accordingly rather than taking a "hard look" at the issues listed above. As such, the EA is arbitrary and unlawful. We oppose the Forest Service's indiscriminate cutting of older forests driven by volume-based timber targets.

V. Conclusion

The EA as prepared does not support a finding of no significant impact for the proposed action, or for alternative 1 and as such, the Forest Service should prepare an Environmental Impact Statement. Kentucky Resources Council further urges the Forest Service to engage in a collaborative process to develop alternatives to manage the project area to promote ecological integrity while supporting all of the goals for the forest including recreation, forest health, and conservation of sensitive, threatened, and endangered species. Finally, we urge the Forest Service to reject the proposed action, as a 40-year logging project that would log 10,000 acres of mature and old-growth forest is not responsible logging or forest management. Thank you for this opportunity to comment.

Sincerely,



Ashley Wilmes, Esq.
Executive Director
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, KY 40602
Phone: 502-875-2428
Email: ashley@kyrc.org