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First name: Dick

Last name: Artley

Organization:

Title:

Comments: USGS Volcanic Monitoring Stations in the Mt. Hood Wilderness -- Environmental Assessment

September 25, 2019

ATTN: objection reviewing officer

Below you will find my objection to the EA and draft DN for the North Clack Project.

Required 36 CFR [sect] 218.8(d) Objection Information

Proposed Project Name: North Clack Project

Name and Title of the Responsible Official: Jackie Groce, District Ranger

Proposed Project will be Implemented on: Clackamas Ranger District, Mt. Hood

National Forest

Objection Introduction

This objector submitted his comments on the pre-decisional EA for the proposed project on March 24, 2019

Please direct Ranger Groce 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.

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 Responsible Official has violated the public trust in the agency.

The Responsible Official has also violated:

40 CFR [sect]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 [rdquo]reasonable[rdquo] and [ldquo]avoids or minimizes adverse effects[rdquo] of road construction [ldquo]upon the quality of the human environment.[rdquo]

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: Analyze a no new roads alternative in

detail and display the results in the final NEPA document.

The Responsible Official does not acknowledge that the research conclusions of scores of independent scientists[rsquo] indicate that even casual exposure to glyphosate may cause significant health problems [hellip] even cancer.

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

None of this was done. The herbicide information in the EA still indicates glyphosate will be applied. In spite of the overwhelming evidence that glyphosats causes cancer, autism, birth befects, miscarriages, neurological disorders and liver/kidney disease, it appears that Ranger Groce still thinks glyphosate is safe.

Most public servants would avoid the risk since there are at least a dozen alternatives to glyphosate application that will accomplish her objectives.

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 [ldquo]Affecting[rdquo] to mean the action [ldquo]will or may (emphasis added) have an effect on[rdquo] the human environment. An adverse effect need not be certain to qualify for Chapter 3 disclosures [hellip] just possible according to [ldquo]best science.[rdquo] Also 40 CFR 1508.8(b) defines effects as being ecological and [ldquo]aesthetic, historic, cultural, economic, social, or health.[rdquo] Since herbicides containing glyphosate clearly will or may , adversely affect health, these possible effects on health must be (emphasis added) 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 [sect]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.

- [middot] birth defects,

- [middot] non-Hodgkin[rsquo]s lymphoma (a form of cancer),

- [middot] mitochondrial damage,

- [middot] cell asphyxia,

- [middot] miscarriages,

- [middot] attention deficit disorder,

- [middot] endocrine disruption,

- [middot] DNA damage,

- [middot] skin tumors,

- [middot] thyroid damage,

- [middot] hairy cell leukemia (another cancer),

- [middot] Parkinson disease,

- [middot] premature births,

- [middot] decrease in the sperm count,

- [middot] harm to the immune system in fish

- [middot] death of liver cells,

- [middot] severe reproductive system disruptions

[middot] and chromosomal damage.

The intensity disclosures in the FONSI do not acknowledge this information, thus the draft FONSI is illegal. Any judge would rule that the NEPA analysis for the North Clack project should be an EIS and the decision documented in a ROD because its application will clearly have a [ldquo]significant effect on the human environment.[rdquo] The final EA violates the NEPA at section 101(b)(2) because it does not [ldquo]assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;[rdquo]

How this objection point can be resolved: Rewrite the NEPA document to assure the Proposed Action specifically states [ldquo]herbicides that contain the chemical glyphosate will not be applied.[rdquo]

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 or die should a wildfire occur.

The objector requested the Responsible Official to: analyze another alternative in detail that educates the public about Dr. Cohen[rsquo]s methods and offers USFS assistance (with landowner approval) to apply Dr. Cohen[rsquo]s fine fuels removal methods on land owned by elderly and handicapped homeowners.

This wasn[rsquo]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 [ldquo]avoid or minimize adverse effects of upon the quality

of the human environment.[rdquo]

It also violates:

NEPA Sec. 101(b)(2) because the Responsible Official does not [ldquo]assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;[rdquo]

NEPA Sec. 101(c) because [ldquo]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.[rdquo]

[middot] Ex. Ord. No. 13045, Apr. 21, 1997 [section 1-101(a)] because the Responsible Official does not [ldquo]make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children.[rdquo]

[middot] 40 CFR [sect]1508.27(b)(2) because the Responsible Official will be unable to write a FONSI. The intensity category discusses [ldquo]The degree to which the proposed action affects public health or safety.[rdquo]

[middot] 5 CFR 2635.101(b)(1) See:

<https://www.law.cornell.edu/cfr/text/5/2635.101>

18 USC 1001 (a)(3), because the Responsible Official knew harvested areas did not slow down fires and reduce the destructive potential, yet she told the public otherwise. Thus she knowingly and willfully wrote the EA that contained [ldquo]materially false, fictitious, or fraudulent statements.[rdquo]

How this objection point can be resolved: Rewrite the NEPA document to include a Dr. Cohen methods alternative in analyzed in detail. If the P&N was written to exclude alternatives to the Proposed Action that do not involve logging, the P&N must be modified to allow non-logging alternatives to be analyzed in detail. The goal as described in the P&N should not be fuels reduction. The goal should be to examine

alternatives that save human lives. Fuels reduction logging would still be one action alternative.

Disclosing the adverse effects of increased noise to the recreation experience and wildlife that the North Clack project will cause is required by law.

The objector requested the Responsible Official to include a section in the final NEPA document that highlights each adverse impact predicted by the recreation IDT member and describe for each adverse impact why the benefits of this project are more important.

This wasn't done.

Therefore, the final EA violates 40 CFR 1508.3 because these likely indirect adverse effects were not discussed in Chapter 3. The omission of this information from Chapter 3 also violates 42 USC section 7641 and Title 42--The Public Health and Welfare, Chapter 65-- NOISE CONTROL, Sec. 4901.

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

Ranger Groce will leave her temporary roads in a condition where they will harm aquatic habitat and water quality because they will generate sediment during precipitation events and the spring thaw.

The objector requested the Responsible Official to make it clear to the public that all actions required under 36 CFR 212.5(b)(2) will be taken by saying so in the EA and also including the statement that all temporary roads that will be constructed for this project will be "completely eliminated by restoring natural contours and slopes" that

existed before it was constructed. Also, complete obliteration eliminates the running surface of the road.

This wasn't done.

Therefore, the final NEPA document violates:

[middot] The Clean Water Act requires federal official to secure National Pollutant Discharge Elimination System (NPDES) permits when federal officials create point sources for water pollution. NPDES permits have been required since 1972. This case shows some federal officials don't seek out these permits from the EPA because they know the EPA won't grant the permit. Here, the Responsible Official cares more about accumulating volume than complying with United States law.

[middot] 40 CFR 1500.1(c) because the ineffective proposal to use Ranger Groce's proposal to rehabilitate and close temporary roads after use will not "protect, restore, and enhance the environment."

[middot] 40 CFR 1500.2(f) because the ineffective proposal to use Ranger Groce's proposal to rehabilitate and close temporary roads after use will not "restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment."

[middot] 40 CFR 1500.2(e) because the ineffective proposal to use Ranger Groce's proposal to rehabilitate and close temporary roads after use will not "avoid or minimize adverse effects of these actions upon the quality of the human environment."

[middot] The Responsible Official proposes to rehabilitate and close temporary roads. This violates 36 CFR 212.5(b)(2) because this does not restore the road to a more natural state.

Using Ranger Groce's proposal to rehabilitate and close temporary roads after use does not "reestablish former drainage patterns, stabilize slopes, restore vegetation, block the entrance to the road, reestablish drainage-ways, remove unstable fills, pull back road shoulders, scatter slash on the roadbed, and completely eliminate the roadbed by restoring natural contours and slopes." 36 CFR 212.5(b)(2) states that decommissioning actions must include "but are not limited to" the actions listed above.

How this objection point can be resolved: Assure the final NEPA document tells the public that all actions required under 36 CFR 212.5(b)(2) will be taken and also including the statement that all temporary roads that will be constructed for this project will be "completely eliminated by restoring natural contours and slopes" that existed before it was constructed. Comply with the objector's request above.

The Proposed Action will clearly cause the resource degradation and destruction described in the ATTACHMENTS to these comments.

The vast majority of scientific logging-related effects literature is authored by independent scientists not affiliated with the USDA. These independent scientists describe how logging activities will damage and impair the proper functioning of numerous natural resources. The objector presented multiple opposing views attachments with his comments on the draft NEPA document containing statements by hundreds of Ph.D. scientists (with links to the original literature) describing logging related natural resource damage.

Real professionals (whether they be scientists or public land administrators) do not selectively choose literature citations that will support their case and systematically

exclude those that don't as is the case here.

The objector requested the Responsible Official to include some source documents from the Opposing Views Attachments in the References/Literature Cited section of the final NEPA document and also, cite the specific quotes presented in the source literature in the text of the NEPA document. The objector requested the Responsible Official to include links to each Opposing Views Attachment.

This wasn't done. Incredibly, the References section contains only documents that support timber harvest.

Since this wasn't done, the final NEPA document violates:

40 CFR 1500.1(b) because important environmental information was not made available to citizens before the decision was made.

[middot] 40 CFR 1500.1(c) because the public was denied the opportunity to understand the adverse environmental consequences of the logging treatment.

40 CFR 1500.2(e) 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. Some adverse effects of project activities described by scientists in the Attachments was not mentioned in the final NEPA document.

40 CFR 1500.2(f) because the Responsible Official was unable to avoid or minimize any possible adverse effects upon the quality of the human environment without knowledge of the adverse effects. Had the Responsible Official known about these effects he would have acknowledged the existence of some adverse effects described in the Attachments in the final NEPA document.

How this objection point can be resolved: include some source documents from the Opposing Views Attachments in the References/Literature Cited section of the

final NEPA document and also, cite the specific quotes presented in the source

literature in the text of the NEPA document. The objector requested the Responsible Official to include links to each Opposing Views Attachment.

The Responsible Official did not respond to each clearly labeled comment submitted by this objector on the draft NEPA document.

This objector asked the Responsible Official to provide feedback to his observations/concerns expressed in his clearly labeled comments. There should have been no chance the Responsible Official could miss the comments.

This objector's comments on the draft EA contained the following opposing views attachments:

Whoever was in charge of writing the EA was not familiar with NEPA. There is no [ldquo]Response to Comments[rdquo] section like every other USFS final NEPA document contains. The closest thing I could find was this:

Results of Public Involvement for North Clack Integrated Resource Project

This strange document dealt with a few public comments in general. It dealt with comments that were convenient to deal with. The IDT leader should take a basic course in NEPA before trying another EA or EIS. My major issues covered on my comments was 1) the toxic danger of glyphosate exposure, and 2) using Dr. Cohen's fine fuels removal methods to protect homes in the WUI. My comments on the draft included Opposing Views Attachments #1, #4, #8, #11 and #27. The Results of Public Involvement for North Clack Integrated Resource Project did not contain the words [ldquo]glyphosate[rdquo], [ldquo]Cohen[rdquo] or [ldquo]attachments.[rdquo] Clearly, the IDT leader didn't have

easy answers to my comments so he eliminated the [ldquo]Response to Comments[rdquo]

section.

Other Mt. Hood NF NEPA documents comply with NEPA. Here are examples:

The Rocky Restoration Project EA contains Appendix C --- Response to
Comments

Link:

https://www.fs.usda.gov/nfs/11558/www/nepa/102817_FSPLT3_4524500.pdf

The Final Environmental Impact Statement for the
Site-Specific Invasive Plant Treatments for Mt. Hood National Forest and
Columbia River Gorge National Scenic Area in Oregon, including Forest Plan
Amendment #16 contains APPENDIX Z Response to Comments

Link:

https://www.fs.usda.gov/nfs/11558/www/nepa/15663_FSPLT1_015680.pdf

The Volcanic Monitoring Stations in the Mt. Hood Wilderness EA contains
Appendix A: Response to Comments at page 119

Link: <https://www.fs.usda.gov/project/?project=46254>

Therefore, the final North Clack Project EA has violated:

40 CFR 1500.4 because it did not respond to the comments submitted by the public.

40 CFR 1500.2(e) and (f) because it did not [ldquo]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,[rdquo] and did not [ldquo]use all practicable
means, consistent with the requirements of the Act and other essential considerations
of national policy, to restore and enhance the quality of the human environment and
avoid or minimize any possible adverse effects of their actions upon the quality of the
human environment.[rdquo]

40 C.F.R. [sect] 1502.9(a) because the final NEPA document did not [ldquo]respond to

comments as required in part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

40 C.F.R. [sect] 1502.9(b) because the agency did not [make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.]

42 USC [sect] 4372(d)(4) because the final NEPA document does not promote the [advancement of scientific knowledge of the effects of actions and technology on the environment and encourage [1] the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man.]

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 Responsible Official does not comply with the will of Congress: [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.]

Not responding to responsible opposing views is also inconsistent with court precedent:

In *Sierra Club v. Eubanks* 335 F. Supp. 2d 1070 (ED Cal. 2004), the court stated:

"credible scientific evidence that [contradicts] a proposed action must also be evaluated and considered."

In *Seattle Audubon Society v. Lyons* 871 F. Supp. 1291, 1318 (W.D. Wash. 1994), the court stated:

"[the EIS] must also disclose responsible scientific opinion in opposition to the proposed action, and make a good faith, reasoned response to it."

In *Seattle Audubon Society v. Moseley* 798 F. Supp. 1473 (WD Wash. 1992) , the court stated:

"[t]he agency's explanation is insufficient under NEPA [hellip] not because experts disagree, but because the FEIS lacks reasoned discussion of major scientific objections."

In *Sierra Club v. Bosworth* 199 F.Supp.2d 971, 980 (N.D. Cal. 2002), the Court held that the Forest Service violated NEPA when it failed to:

"disclose and analyze scientific opinion in support of and in opposition to the conclusion that the[hellip]project will reduce the intensity of future wildfires in the project area."

How this objection point can be resolved:

Write responses to the opposing views and other comments and include them in an appendix in a rewritten final NEPA document and post this appendix online. Then evaluate the draft DN (and modify it) if the Proposed Action will cause resource harm (indicated by one or more Opposing Views) that was not acknowledged in the final NEPA document.

The Responsible Official rejected suggestions for alternatives to be analyzed in detail submitted by American citizens who own the Mt. Hood National Forest.

The objector requested the Responsible Official to analyze at least 1 citizen-generated alternative in detail. There were clearly more options to satisfy the Purpose and Need besides the single alternative (Proposed Action) analyzed in

detail.

This wasn't done.

Therefore, this NEPA document has violated 40 CFR 1503.4

How this objection point can be resolved: Analyze at least 1 citizen-generated alternative in detail. If the P&N is written so narrow that only alternatives that propose commercial logging respond to the P&N then modify the P&N so alternatives that do not harvest timber that satisfy the P&N goals may be analyzed in detail.

Final Statement to the Objection Deciding Officer

While working on the NezPerce NF in north Idaho as the forest planner my major duty was to assure each proposed project complied with the forest plan natural resource standards. I was also the NEPA legal compliance reviewer, forest NEPA coordinator, and forest appeals/litigation coordinator.

USFS Region 1 had an appeals review team in the late 1990s before I retired in 2003. Three employees from across the Region were invited to the RO for a week.

Our job was to read the appeal and the NEPA document being appealed. We provided the ADO with our recommendations on whether to uphold the decision or rule on favor of the appellant. During one appeal review team session we recommended that the ADO rule in favor of the appellant. The ADO laughed and told us she never rules in favor of an appellant that does not have a history of taking court action if their appeal is turned down. Of course you know I don't have the money to hire an attorney to take on OGC attorneys. I know you have rejected all but trivial objection points before you read my objection. Two of my objection points are not trivial.

Sincerely,

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

Dick Artley (retired USFS forest planner and a person who believes the availability of undeveloped public land for his grandchildren is more important than short-term corporate profit)

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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