Data Submitted (UTC 11): 5/5/2014 12:00:00 AM
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Comments: UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
SOUTHWESTERN REGION
CARSON AND SANTA FE NATIONAL FORESTS

In the Matter of DRAFT SUPPLEMENTAL
ENVIRONMENTAL IMPACT STATEMENT
FOR THE INVASIVE PLANT CONTROL
PROJECT

COMMENTS OF JAN BOYER

Do not do this project. These toxic products will cause young women to miscarry. Nothing is worth that curse.

These comments on the Draft Supplemental Environmental Impact Statement ("DSEIS") are submitted in response to the letter of March 17, 2014 from the Forest Supervisors of the Santa Fe and Carson National Forests, and the Notice of Availability for EIS No. 20140077 published on March 21, 2014 in the Federal Register.

I previously submitted comments on the Draft Environmental Impact Statement ("DEIS") on August 14, 2002. I appealed the Record of Decision ("ROD") and Final Environmental Impact Statement ("FEIS") as an individual on December 26, 2005. I also participated in a group appeal of the ROD and FEIS dated January 9, 2006, in which the lead appellant was Wild Watershed. In response to these appeals and others, the ROD was reversed by the Appeal Deciding Officer, Lucia M. Turner, on February 23, 2006, and the FEIS was not adopted. (Attachment A). The reasons for reversal were spelled out:

1. "Further analysis is needed to address the Management Indicator Species population trend for ptarmigan."
2. "[E]valuation and documentation of environmental cumulative effects" is needed. "The disclosure of cumulative effects needs to be strengthened with specific attention to wildlife species."
3. "[T]he concern from the New Mexico Environment Department, which implements the Clean Water Act regarding the use of picloram in the municipal watersheds, needs to be addressed."

The Forest Service has now let eight years pass, and comes back with almost the same proposal that was already rejected, except that the few protections for the environment that were contained in the first version have now been eliminated. And it does so without correcting any of the deficits that caused this plan to be rejected the first time.

A.The Forest Service No Longer Even Pretends to Care About the Environment

The FEIS has been revised in the following ways:

1. The preferred alternative in the FEIS only contemplated using herbicides on 22% of the treatment areas, or 1,644 acres. The preferred alternative now contemplates using herbicides on all treatment areas without exception, or 13,256 acres. The Forest Service's response to letters and petitions from well over one thousand people opposing any herbicide use is to increase the area it wants to spray eightfold.
2. Mechanical treatment, employing heavy equipment such as tractors, has increased even more spectacularly. The FEIS only proposed to do this on 162 acres. Now the DSEIS proposes to treat 12,713 acres this way, even though, on the same page that it proposes to do this (p. 17), it states that "[t]hese methods have not been demonstrated to be effective," and that they "reduce plant and root vigor" by compacting the soil.
3. The Forest Service now explicitly plans to discharge pesticides into waterways. It intends to obtain three

types of permits to do this: (a) a permit under the Clean Water Act for a discharge of pesticides into "Surface Waters of the United States"; (b) a "Pesticide General Permit" under the Clean Water Act; and (c) a permit from the New Mexico Environment Department allowing "short-term degradation to the chemical, physical or biological integrity" of surface waters.

4. The number of weed species to be eradicated has increased from 32 to 37.

5. The number of different herbicides to be used has increased from 12 to 13. The statement that only 8 of them will be "primarily" used has been deleted.

6. One of the purposes of the project was originally to encourage "culturally important plants such as osha, wild spinach, willow, and purslane" which decline where weeds occur. This purpose has been deleted, perhaps because those culturally important plants will be decimated, not encouraged, by the quantities of herbicides now envisioned.

7. The requirement to reseed or replant after treatment has been deleted. The Forest Service no longer pretends to care whether anything grows back, least of all native plants. The only important purpose of this project is evidently to use as many chemicals as possible regardless of the outcome.

8. The prohibition on using herbicides within the boundary of the known population, or occupied habitat, of threatened, endangered, or sensitive species of plants, has been deleted. This has been changed to not using herbicides within 25 feet of individual plants.

9. The prohibition on the use of high-risk herbicides within a 1,000-foot buffer around the habitat of sensitive species has been deleted. Now both "low-risk" and "high-risk" herbicides are to be permitted within 25 feet of individual plants.

10. The requirement to limit the use of herbicides, grazing, fire, and heavy machinery near certain heritage resources has been deleted.

11. The Forest Plan Amendment has a new provision allowing herbicides to be applied "in areas of human habitation."

12. The requirement in the Forest Plan Amendment that only allowed herbicide applications if "effective ground cover is quickly restored" has been deleted.

13. The Forest Plan Amendment, now allowing the use of herbicides in municipal watersheds, in areas of human habitation, and on soils with low revegetation potential, is suddenly labeled a "nonsignificant" amendment.

14. The phrase "mitigation measures" no longer appears in the document. These are now called "design features."

15. The requirement that there be no "long-term" adverse environmental, economic, or social impacts has been deleted. Now adverse impacts are permitted to last up to "6 months." Considering that the Forest Service's plan is to repeat treatments once a year, the new provision allows adverse environmental, economic, and social impacts for 6 months out of every year, or half the time, indefinitely into the future.

16. The use of herbicides "in highly used developed recreation areas" is now specifically planned (during weekdays only!).

17. The absolute prohibition on broadcast burning in riparian areas has been deleted. Now it is only banned if it is "solely for the purpose of treating weeds." If treating weeds is one of the purposes, this is now permitted.

18. The Forest service has added a provision allowing it to "drive off roads to treat weeds."

19. The FEIS specified that treatments were only going to occur "along riparian areas, roads, trails, recreation sites, administrative sites, gas/oil pads (and pipelands) and range improvements" and in "areas of recent disturbance." That limitation has been deleted; the DSEIS permits herbicides everywhere.

A DSEIS that has vastly weakened the environmental protections that were already so weak that they were rejected by the Appeal Deciding Officer in 2006 must be rejected again.

B.The Existing Deficiencies in the FEIS Have Not Been Corrected

1. The status of the white-tailed ptarmigan has not been further investigated. The Appeal Deciding Officer specifically instructed the Forest Service to do this. Yet the DSEIS retains the identical language that was in the FEIS: "Little is known about this avian species in New Mexico, for it lives on the windswept tundra above 11,000 feet." The only difference between the two documents is that in the DSEIS the Forest Service adds a single unreferenced, unsubstantiated sentence saying "white-tailed ptarmigan habitat and population trend are considered stable"-a statement that is contradicted by the statement that "little is known" and that was clearly

added for the sole purpose of addressing the objection of the Appeal Deciding Officer. A statement that addresses the form and not the substance of her objection does not comply with NEPA's requirement for a detailed analysis.

2. The Forest Service has still not analyzed the cumulative effects on wildlife. The Appeal Deciding Officer clearly instructed the agency to "strengthen" and "document" the section on cumulative effects with respect to wildlife. The Forest Service has utterly failed to do this. "Strengthening" does not mean merely repeating the same conclusory sentence four more times. Yet that is exactly what the Forest Service has done, and no more, in the DSEIS. The FEIS states: "The actual direct and indirect effects of each alternative on MIS, TES and migratory bird species are predicted to be of such low magnitude that they cannot be measured." (at p. 100). " The DSEIS says exactly the same thing, but repeats it several times: "The actual direct and indirect effects of each alternative on MIS, TES and migratory bird species are predicted to be of such low magnitude that they cannot be measured." (at p. 61). ""Because there are no measurable direct or indirect impacts to population or habitat trend for any management indicator species, there would be no cumulative effects from this project." (at p. 69). "Because there would be no negative direct or indirect effects to threatened or endangered species due to the design of the project, there would be no cumulative adverse effects." (at p. 73). "Because there would be no measurable direct or indirect effects to sensitive species as a result of the protective design features being in place, there would be no cumulative effects." (at p. 83). "The direct and indirect effect to migratory birds would be immeasurable." (at p. 87).

3. The New Mexico Environment Department's concern about the use of picloram in watersheds is explicitly rejected. The DSEIS, announcing its intention to ignore the Department, states without further analysis that "[t]he agency believes that retaining flexibility in weed treatments is crucial to the success of this project."

In each case the agency addressed the form, and not the substance, of the Appeal Deciding Officer's objections-and sometimes not even that. No analysis was done, and no documentation attempted. When the Appeal Deciding Officer required the agency to "address" the Environment Department's concern about picloram, the agency did just that-in one sentence, saying "we disagree." When she required the agency to "strengthen" its statement that there are no cumulative effects on wildlife, the agency merely repeated its sentence saying that four more times. When she required the agency to "address" the population trend for ptarmigan, the agency stated-although it had no basis on which to do so-that the population is "stable." When she required "documentation," the agency didn't even make the attempt. The DSEIS has to be rejected again, on the same three bases as the FEIS was rejected, because none of the deficiencies that were found has been corrected.

C.The Forest Service is Still Not Complying With the Rehabilitation Act.

I dealt with this issue in detail in my 2002 comments and in my 2005 appeal. The contents of those two documents are incorporated as if fully stated herein. The Forest Service has not quantified the risk to people with multiple chemical sensitivities. No one with expertise about MCS was consulted in preparing the FEIS, the ROD, or the DSEIS. The so-called "design features" are ineffective in preventing exposure to herbicides to people at risk of injury or death from such exposure. The Forest Service's documents are fatally biased, because the list of sources of information about herbicides identified by the Forest Service reads like a Who's Who of the petrochemical industry.

D.Internal contradictions invalidate the DSEIS.

What is the half-life of the herbicides? 24 hours? One year? Three years? More? Does anybody know? The Forest Service seems to use whatever number it needs in order to support the point that it wants to make on a particular page. On page 95 of the DSEIS it claims that "[t]he risk of herbicides leaching through the soil into groundwater is low" because "[t]he half-lives (the time it takes for half the active ingredient to degrade) of most of the herbicides are 24 to 48 hours." Therefore, it says that "[t]he direct and indirect effect to groundwater quality from the action alternatives is minor to immeasurable." (at p. 108). Then a few pages later, it says that "[h]erbicides are expected to have effects on soils for a year." (at p. 115). Then it says that glyphosate has a half-life of up to "several years." (at p. 116). Then it says that picloram "last[s] longer in soil" and is highly leachable. (at p. 118). And the FEIS says that "[p]icloram can be highly leachable in some soils" (at p. 319), that it "maintain[s] toxicity to plants for up to 3 years" and that "[t]he half-life can vary from one month to 3 years." (at p. 273).

E.The Forest Service Gives No Justification For Its Expanded Proposal

The Forest Service admits that the Carson and Santa Fe National Forests are not being inundated by weeds, and that the area occupied by weeds is no larger now than it was nine years ago. It now says that 15,260 acres are occupied by weeds, up from 7,260 acres, but the agency states that "the increase in weeds in the project area is mostly explained by more surveys of the locations of weeds," and not by an actual increase. Yet the agency has come back with a plan to spray, in perpetuity, lands throughout the over 3 million acres of these forests, including wilderness areas, inventoried roadless areas, wild and scenic rivers, research natural areas, endangered species habitat, municipal watersheds, highly used developed recreation areas, and areas of human habitation, repeatedly with up to thirteen different toxic herbicides, which do not distinguish between healthy and sick, young and old, and which will render all of our public lands permanently inaccessible to a large disabled population.

CONCLUSION

The Forest Service wants to vastly intensify-way beyond what was proposed just nine years ago-both chemical and mechanical treatment of the Carson and Santa Fe National Forests, without even correcting already existing deficiencies that caused its original plan to be rejected by the Appeal Deciding Officer. For all of the above reasons, the DSEIS does not comply with the National Environmental Policy Act. It does not contain the "detailed statement" of environmental impacts demanded by the public and the Appeal Deciding Officer and required by 42 U.S.C. § 4332(2)(C)(i). It does not assure for all Americans, including the chemically sensitive, "safe, healthful, productive" surroundings. 42 U.S.C. § 4331(b)(2). It does not analyze cumulative impacts. 40 C.F.R. § 1508.7. It does not analyze the so-called "design features." "'A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.'" Neighbors of Cuddy Mountain v. United States Forest Service, 137 F.3d 1372, 1380 (9th Cir. 1998) (internal citation omitted). It does not contain site-specific analytical data. 40 C.F.R.§ 1502.1. Its data are internally inconsistent and not of the required "high quality," 40 C.F.R. § 1500.1(b), and "scientific accuracy, 40 C.F.R. § 1502.24. It ignores the admonition that "NEPA's purpose is not to generate paperwork-even excellent paperwork-but to foster excellent action." 40 C.F.R. § 1500.1(c).

This project is nothing but a conveyance of public lands to the petrochemical industry and must, like the FEIS eight years ago, be rejected.

Respectfully submitted,

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May 5, 2014