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Title:
Comments: I hereby object to Mud Creek Vegetation Management Project, Draft Decision and Finding of No Significant Impact (FONSI) for the reasons that follow.

1.
Condition-Based Decision Process Violates the Law Plus Requires EIS

The proposed action violates the letter and the intent of the National Environmental Policy Act of, as amended, 1969 (NEPA, 42 USC [sect] 4321-4347), the Council of Environmental Quality (CEQ), in that it:

1.Does not provide sufficient information for the public to provide substantive comments. [See Ref. 1, my comments, paragraphs 1) and 2)]. The project lasts for two decades, conditions will change, how and exactly where, the public does not know, nor does the EA [Ref. 3 and 4] [mdash] in fact, the very premise of "Conditions-Based Analysis, on page 10 of the Final EA admits that, "As a result, this project uses a condition-based implementation approach that is responsive to changing conditions and allows the flexibility to achieve desired conditions." [Ref. 6. pp. B-65-B-66; Ref. 3, Final EA, pp. 10-11.]

While claiming to "identify and describe the environmental conditions in the project area that would warrant and action[hellip]" [Ref. 6, Final EA, p. 10], the desired conditions are vague aspirations rather than something the public can sink their teeth into. Though the public comments in Ref. 6 show that the public gave their best shot, some noted in Ref 6, Response to Comments, "Comment group 6," on page B-7 that "where the FS get these desired conditions is unclear." The FS response was to see two project file documents, PF-SILV-001 and PL-FIRE-001 for "desired conditions[hellip] in detail." But those documents circle around to the Purpose and Need and describe desired conditions as general landscape outcomes, not specific site conditions. For example, PF-SILV-001, after parsing the discussion by tree-habitat type, we see the entire "detailed description" for cold forest types:

The desired conditions in cold forests include an increase in whitebark pine species composition, low stand densities without direct competing vegetation, minimal canopy layers, or horizontally stratified age- classes and openings to create nutcracker caching opportunities. Priority must be taken to emulate fire's historic effects on the landscape to create conditions so the whitebark pine species can persist into the future. The primary objectives in restoration treatments are to (1) mimic some historical disturbance process, mainly wildland fire, (2) facilitate whitebark pine regeneration and cone production, and (3) create optimum nutcracker caching habitat (Keane et al, 2012). Where openings occur, planting blister rust resistant seedlings are desired to ensure reaeration establishment and desirable genetics (Schwandt et al, 2013). The desired conditions will provide forage, cover, and snags for the wildlife species dependent on cold forest habitats. [Ref. 8) p. 12]

It's like telling the Federal Aviation Administration (FAA) you want certify an aircraft you have yet do design, by describing the four forces of lift, weight, thrust, and drag, saying you will use jet engines, and providing a few parameters such as maximum weight of the aircraft you plan do design [mdash] then saying, "trust me, I know how to design an airplane." It simply doesn't work that way with the FAA and it shouldn't work that way with NEPA.

If fact, it doesn't. The public is clearly required to give substantive comments in order to expect an agency response [40 CFR [sect] 1503.4], but the public has no opportunity to comment specific actions, in a specific place, in specific site conditions, and have some recourse if the delegated official gives an arbitrarily or capricious response.

2."Condition-based" process does not comply with the Forest Service's own regulation.

36 CFR [sect] 220.7 - Environmental assessment and decision notices, clearly anticipates situations in which conditions on the ground will change and prescribes "adaptive management" as the method to be used:

(iv) The proposed action and one or more alternatives to the proposed action may include adaptive management. An adaptive management proposal or alternative must clearly identify the adjustment(s) that may be made when monitoring during project implementation indicates that the action is not having its intended effect, or is causing unintended and undesirable effects. The EA must disclose not only the effect of the proposed action or alternative but also the effect of the adjustment. Such proposal or alternative must also describe the monitoring that would take place to inform the responsible official whether the action is having its intended effect.

This mandate for a specific proposal, which is defined in 40 CFR [sect] 1508.1, means that the how, what, and where is specified and the impacts and intended effect described. It then says that adjustments may be made as the project goes forward. This is a far cry from a list of prescriptions to be applied in locations unspecified.

The public is given no opportunity for objection or judicial review when the "Conditioned-based" decision occurs. [See Ref. 1, my comments, paragraphs 1) and 2)]. The Mud Creek Project is, in fact, a process of creating "proposals" as defined in NEPA Regulations 40 CFR [sect] 1508.1:

Definitions, paragraph (x), "Proposal means a proposed action at a stage when an agency has a goal, is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and can meaningfully evaluate its effects. A proposal may exist in fact as well as by agency declaration that one exists."

Appendix B to the EA [Ref. 5] is simply an attempt to recreate the NEPA proposal-review-comment process while omitting legally required steps, the most important of which is the right to object to a decision. More importantly, it appears to be an attempt to take the courts out of the process when the rubber finally meets the road with a specific, what, how, and where decision that the public can finally sink its teeth into, saying,

The line officer with the delegated authority (as outlined in Forest Service Handbook and Forest Service Manual) retains the authority to make final decisions related to location, extent, and types of activities planned and completed, consistent with the decision.

References to handbooks and manuals aside, which have no regulatory authority, this clearly violates the Forest Services own process for implementing the HEPA process and a transparent attempt to take away the right of the public to seek administrative or judicial relief.

4.Notwithstanding other factors, the novel introduction of a new process dubbed "conditioned-based" decision making over a two-decade period is a significant precedent, requiring an Environmental Impact Statement. The Mud Creek Project certainly "establishes a precedent for future actions" [40 CFR [sect] 1508.27 (6)] because of

the decision-making process, the admitted fact that conditions will change over the 20 year life of the project, the likelihood conditions will change substantially over the 20 year life of the project, the nature of the evolving understanding scientific research in understanding the project area natural processes.

The "possible effects on the human environment are highly uncertain" and because of climate change and other natural forces involve "unknown risks." [40 CFR [sect] 1508.27 (5)].

The very nature of a project of this duration, combined with closing the door on objections and the resort to judicial relief, in Ravalli County, is likely to be highly controversial. In this county, a wide range of interest groups supporting environmental, natural resource extraction, trail and motorized use, and others avail themselves of objection and judicial processes. For the Mud Creek Project, it follows that this project is likely to be controversial as to the effect on the human environment, because those effects are not now known, but will become known as decisions are made [mdash] and when

the decision is made it is very likely someone or some group will want its objections heard. [40 CFR [sect] 1508.27 (4)].

II. Clear-cuts Do Not Meet Purpose and Need, EIS Required

The inclusion of large clear-cuts, seed tree cuts, and even age management is an arbitrary and capricious attempt meet a desired outcome for timber which is not listed as a purpose and need:

1.The Forest Service ignored my substantive comments regarding clear-cuts. [See Ref. 1, my comments, paragraphs 3) and 4)]. This violates the Forest Service's own regulation, 36 CFR [sect] 220.4 (c)(3) and CEQ regulation, 40 CFR [sect] 1503.4 - Response to comments.

In my comments, I noted that the EA contained no citation whatsoever that recommended clear-cuts to "reduce the probability, severity, and intensity of wildfire." [Ref. 1, Paragraph 3) a.]. The response to comments did not mention or respond to this comment. [See See Ref. 6, Concern Group 1, pp. B-22-B-23]

In my comments, I noted that the EA contained no citation whatsoever that recommended clear-cuts to "reduce the probability, severity, and intensity of wildfire." The response to comments [Ref. 6, paragraph 3) a, Concern Group 1, pp. B-22-B-23] did not mention or respond to this comment.

I provided citations to peer reviewed literature [Ref. 1 paragraph 3) e. and f; and Attachment titled, Mud Creek Project, Wildlife Effects Analysis Report], including from leading and often cited researchers, which contradict the premise in the EA that clear-cuts and even-age management have a beneficial effect reducing the impact of wildfire, the EA having provided no scientific support for that premise in the first place. The Forest Service ignored this input and the contradictory scientific evidence. This additionally violates 36 CFR [sect] 220.4 (j)(1)(iii).

The comments in my comments under paragraph 4) regarding input parameters to models at a specific point in time, knowing the conditions and parameter inputs would change through time were not answered [Ref. 6, Concern Group 5, pp. B-31-B-32].

2.Clear-cuts, seed tree cuts, and even-age management optimized for a purpose and need which is not included in the EA. The EA [Ref. 3, Final EA, pp. 1-4] does not include any need or purpose for the economic value of

timber harvested. Yet the methods proposed have a long-standing well-known purpose for optimizing output for timber harvest on both public and private lands. [My comment Ref. 1, paragraph 3) leading sentence and 3) b.].

3.The impact of clear-cuts is controversial and has been at least since the late 1960's. The Bitterroot Controversy went national in 1970 and '71, the controversy being clear cuts and their effect on the human environment. The controversy as not abated. Thus, notwithstanding any other issue, an EIS is required given the large clear-cuts prescribed.