

January 20, 2015

Regional Forester
Southwestern Region
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Submitted via e-mail to objections-southwestern-regional-office@fs.fed.us

Objection to “Four-Forest Restoration Initiative” Final Environmental Impact Statement and Draft Record of Decision

Pursuant to the National Environmental Policy Act of 1970 (42 U.S.C. §4321 et seq.) and the Collaborative Forest Restoration Program (16 U.S.C. § 7303) Stephen M. Dewhurst (Dewhurst), a private citizen, objects to the Final Environmental Impact Statement (FEIS) and Draft Record of Decision (DROD) for the Four-Forest Restoration Initiative (4FRI). Legal Notice of the FEIS, DROD, and the Objection process appeared in the Arizona Daily Sun on December 4, 2014. Dewhurst provided written comments regarding the Draft EIS (DEIS) during the designated comment period in June, 2014.

Project Name: Four Forests Restoration Initiative (4FRI)

Deciding Officials: M. Earl Stewart, Forest Supervisor, Coconino National Forest and Michael R. Williams, Forest Supervisor, Kaibab National Forest

Location: Coconino and Kaibab National Forests

Description: Restoration activities on approximately 586,110 acres over a 10-year period, or until objectives are met.

Objector: Stephen M. Dewhurst

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Interest: Dewhurst is a citizen of the United States and a resident of Flagstaff Arizona, which is within the 4FRI project area. Dewhurst is an Associate Professor of Forestry at Northern Arizona University, where he teaches among other things forest planning, natural resources policy, forest management and analysis, and geographic information systems. Dewhurst is objecting as a private citizen, on the grounds that the flaws in the

FEIS, and the failure to follow the NEPA process in the preparation of the FEIS, violate the National Environmental Policy Act, the terms of the Collaborative Forest Landscape Restoration Program, the Forest Service Manual, and do not serve the public interest. Dewhurst's arguments and positions do not necessarily represent the views or official positions of his employers; Northern Arizona University, the Arizona Board of Regents, and the State of Arizona.

Remedy: Withdraw the FEIS based upon 2 violations of the letter and intent of the National Environmental Policy Act and the Collaborative Forest Landscape Restoration Program. Revise the FEIS to replace the Purpose and Need for Action from the FEIS with the original Purpose and Need for Action from the DEIS. Develop a reasonable ecological restoration alternative, and include it in the effects analysis. Prepare a new DROD reflecting the additional information provided by the revised FEIS.

A reasonable ecological restoration alternative might be constructed by combining the treatment of Threatened or Endangered Species habitat from the current preferred alternative in the FEIS with more aggressive science-based ecological restoration treatments in areas already identified for the maximum intensities of thinning. These ecological restoration treatments should be based upon the reference conditions specified in USFS GTR-310 *Restoring Composition and Structure in Southwestern Frequent Fire Forests*. The authors of GTR-310 should be consulted in identifying the appropriate reference conditions for the project area.

Reasons:

1) Reason 1: Failure to develop and analyze a reasonable ecological restoration alternative.

This objection is based upon issues raised during the public comment period for the DEIS by Dewhurst, which describe an inadequate range of alternatives and the failure to develop and consider an appropriate ecological restoration alternative. The failure of the US Forest Service (Forest Service) to incorporate an ecological restoration alternative violates the procedural requirements of NEPA, guidance provided by the Forest Service Manual, and the specific intent of the CFLRP.

The Forest Service has developed an ecological restoration alternative, but has eliminated the alternative from detailed analysis in the FEIS based upon the conclusion that, among other reasons, the alternative (as the Forest Service has defined it) violates the Endangered Species Act (ESA). The elimination of this alternative is based upon the false premise that an ecological restoration scenario must, by definition, violate the ESA. But the alternative violates the ESA because of how the Forest Service has chosen to define and implement the alternative, not because of an inherent incompatibility between ecological restoration and endangered species management.

As a point of clarification, the Forest Service has misinterpreted the wording in my comments regarding the DEIS, specifically the meaning of the term "full restoration".

The meaning of the term as I intended it referred to the intensity of the restoration-based forest thinning treatments, which should be based upon scientifically-based reference conditions, and did not imply that those treatments must be implemented across the entire landscape. I made this clear to the Forest Service in a meeting I had with Dick Fleischman, acting team leader for 4FRI, in March of 2014.

Sec 102 of NEPA (42 USC §4332 (B)) tasks “the Federal Government, in consultation with the Council on Environmental Quality (CEQ) to develop methods and procedures to insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with technical and economic considerations”. §4332 (D) of NEPA requires “the Federal Government to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which unresolved conflicts concerning alternative resources.” §4332 (H) of NEPA requires “the Federal Government to initiate and utilize ecological information in the planning and development of resource oriented projects.”

The implementing regulations for NEPA are found at 40 CFR Parts 1500-1508. Part 1502 of the regulations concerns environmental impact statements. Quoting from §1502.14: titled “Alternatives including the proposed action”:

“This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

- (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
- (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.”

In a Memorandum to Agencies titled *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations* (46 Fed. Reg. 18026), in section (2a) CEQ addressed the question of what constitutes a reasonable alternative:

“Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis on what is “reasonable” rather than whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the point of the applicant.”

Chapter 2020 of the Forest Service Manual defines ecological restoration and the responsibility of the agency and responsible officials in implementing ecological restoration. Section 2020.3(1) defines this policy:

“All resource management programs have a responsibility for ecological restoration including, but not limited to, management of vegetation, water, wildland fire, wildlife, and recreation. Management activities may range from monitoring resource conditions to manipulation of terrestrial and aquatic ecosystems to regulation of human uses.”

The decisionmakers for 4FRI are the Forest Supervisors of the Coconino and Kaibab National Forests. Section 2020.45 of the Forest Service Manual describes the responsibilities of Forest and Grassland Supervisors regarding ecological restoration:

Forest and Grassland supervisors are responsible for:

1. Implementing forest and grassland programs consistent with national and regional policy for ecological restoration.
2. Establishing management direction and policy to ensure ecological restoration is considered and integrated, as appropriate, into forest and grassland programs and is also included in the Land Management Plan.

4FRI received funding under the CFLRP. The CFLRP is contained in PL 111-11, the Omnibus Public Land Management Act of 2009. Under TITLE IV--FOREST LANDSCAPE RESTORATION, SEC. 4001. PURPOSE, it states that:

The purpose of this title is to encourage the collaborative, science-based ecosystem restoration of priority forest landscapes through a process that—

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. .

(4) demonstrates the degree to which--

(A) various ecological restoration techniques--

(i) achieve ecological and watershed health objectives; and

(ii) affect wildfire activity and management costs;

(Note sections eliminated for brevity)

Under the request for funding under the CFLRP, “The 4 Forest Restoration Initiative: Promoting Ecological Restoration, Wildfire Risk Reduction, and Sustainable Wood Products Industries: A proposal for funding under the Collaborative Forest Landscape Restoration Program”, the proponents state that:

Restoration objectives: The goal of the 4FRI is to achieve ecological restoration across ~2.4 million acres of contiguous ponderosa pine forest on National Forest System lands in northern Arizona. Restoration can be defined as a suite of intentional actions that initiate or accelerate ecosystem recovery with respect to health (functional processes), integrity (composition & structure), and sustainability (resilience & resistance to disturbance).

In summary, the Forest Service has violated or ignored the National Environmental Policy Act, the Forest Service Manual, and the provisions of the Collaborative Forest Landscape Restoration Program by not including a reasonable ecological restoration alternative in the FEIS for 4FRI. Not including a reasonable ecological restoration alternative in the FEIS denied the reviewers, the public, and the decisionmakers the opportunity to evaluate the environmental and economic benefits of an ecological restoration strategy.

2) Reason 2: Violating the procedural requirements of NEPA by revising the Purpose and Need for Action in the 4FRI project FEIS, after the analysis was complete.

This objection is based upon new information not available to Dewhurst at the time of the comment period for the DEIS. Specifically, the Forest Service has altered the Purpose and Need for Action for the 4FRI project in the FEIS without providing an opportunity for the public to comment on this change. Furthermore, the project goals with respect to a particularly important environmental indicator, Fire Regime Condition Class (FRCC), in the Purpose and Need for Action was changed between the DEIS and the FEIS.

Writing for the unanimous majority in *Robertson v. Methow Valley Citizens*, 490 U.S. 332 (1989) Justice Stevens noted: "...NEPA's reliance on procedural mechanisms -- as opposed to substantive, result-based standards -- to demand the presence of a fully developed mitigation plan before the agency can act." This underscores the widely understood fact that complying with NEPA requires following the procedures laid out for its implementation. These procedures are laid out in the CEQ regulations which implement NEPA (40 CFR Parts 1500-1508). Part 1502 describes the content and stepwise procedure for developing an EIS as follows:

- 1502.13 Purpose and need.
- 1502.14 Alternatives including the proposed action.
- 1502.15 Affected environment.
- 1502.16 Environmental consequences

This procedure clearly puts the definition of the Purpose and Need for the project before the definition and development of the alternatives or the effects analysis. There is no provision in the NEPA rules for the revision of the Purpose and Need after the analysis

is complete. Doing so subverts the entire NEPA process, by allowing the Forest Service to change the Purpose and Need after the analysis and public comments identify problems with the EIS, but without going through the process of redeveloping the alternatives and conducting a new analysis. In his comments on the DEIS, Dewhurst identified the fact that none of the alternatives in the DEIS met the Purpose and Need with respect to FRCC. Rather than develop new alternatives which would address the Purpose and Need, the Forest Service changed the Purpose and Need to make the comments moot.

In the DEIS, the discussion of FRCC in Chapter 1: Purpose and Need for Action is presented as follows:

Fire Regime Condition Class

Fire regime condition class (FRCC) is a coarse-scale evaluation protocol developed to support planning and risk assessments (Schmidt et al. 2002, Hann et al. 2004). FRCC assessments determine how departed a landscape's fire regime is from its historic fire regime. It is scaled from 1 to 3, with 3 being the most departed and 1 being the least departed.

Approximately 59 percent of the project area is in condition class 3. This indicates the fire regime is significantly departed from historical ranges (table 13). In condition class 3, the risk of losing key ecosystem components is high. Approximately 27 percent of the project area is in FRCC 2, indicating the ecosystem is moderately departed from its historical range. The departure in fire frequency has resulted in dramatic alterations to fire size, intensity, severity, landscape patterns, and/or vegetation attributes.

The desired condition is to have 100 percent of the project area in FRCC 1. In FRCC 1, fire regimes would be within historical ranges and the risk of losing key ecosystem components would be low. Vegetation, fuels, and natural disturbances would be intact and functioning within historical ranges. There is a need to reduce the percent of the ponderosa pine and grassland vegetation in FRCC 2 and FRCC 3 and move the fire regimes toward FRCC 1.

Table 11. Existing and desired fire regime condition class ponderosa pine

Fire Regime Condition Class (FRCC)	Existing Condition (percent of total area)	Desired Condition (percent of total area)
FRCC 1	14	100
FRCC 2	27	0
FRCC 3	59	0

Note in particular the description of the Desired Condition, both in the text and in Table 11. A desired condition of 100 percent FRCC 1 indicates that the landscape will be restored to a basically natural fire regime when compared to historical conditions.

The equivalent passage from the FEIS Purpose and Need for Action shows how the Forest Service has changed the Desired Conditions in the Purpose and Need relative to what was stated in the DEIS:

Fire Regime Condition Class

Fire regime condition class (FRCC) is a coarse-scale evaluation protocol developed to support planning and risk assessments (Schmidt et al. 2002, Hann et al. 2004). Fire regime condition class assessments determine how departed a landscape's fire regime is from its historic fire regime. It is scaled from 1 to 3, with 3 being the most departed and 1 being the least departed.

The fire regime is significantly departed from historical ranges on about 66 percent of the project area. The project area is classified as FRCC 3 (table 13). In FRCC 3, the risk of losing key ecosystem components is high. Approximately 25 percent of the project area is in FRCC 2, indicating the ecosystem is moderately departed from its historical range. The departure in fire frequency has resulted in dramatic changes to fire size, intensity, severity, landscape patterns, and vegetation attributes.

The desired condition is to have 100 percent of the project area in FRCC 1 and 2. In FRCC 1 and 2, fire regimes would be within historical ranges and the risk of losing key ecosystem components would be low. Vegetation, fuels, and natural disturbances would be intact and functioning within historical ranges. There is a need to reduce the percent of ponderosa pine and grassland vegetation in FRCC 3 and move the fire regimes toward FRCC 1 and 2.

Table 13. Existing and desired fire regime condition class for ponderosa pine

Fire Regime Condition Class (FRCC) Indicators	Existing Condition (% of total area)	Desired Condition (% of total area)
Vegetation Condition Class 1	14	100
Vegetation Condition Class 2	25	
Vegetation Condition Class 3	61	
FRCC of Treatment Area	3	1-2

Note the table number has changed, from Table 11 in the DEIS to Table 13 in the FEIS, due to other changes in the document.

This change in the Desired Conditions is not trivial. The language in the FEIS allowing FRCC 2 to be the Desired Condition in the FEIS means that the treatments undertaken in 4FRI do not have to restore a natural fire regime, while the language in the DEIS implies that the restoration of a natural fire regime is required. Dewhurst noted in his comments regarding the DEIS that none of the alternatives in the DEIS created a single acre of FRCC 1, and therefore the range of alternatives was inadequate. Changing the Desired Conditions in the FEIS made those comments moot. Dewhurst believes that the change in the Desired Conditions in the Purpose and Need in the FEIS was an

attempt by the Forest Service to avoid dealing with the issue of an inadequate range of alternatives in both the DEIS and the FEIS.