Rutledge, Kris -FS

From: Dick Artley [redacted]
Sent: Thursday, December 13, 2018 7:39 AM
To: FS-objections-alaska-regional-office
Subject: Objection to the Prince of Wales Project
Attachments: _____Scanned signature for Dick Artley.doc

December 13, 2018

ATTN: Reviewing Officer: Regional Forester USDA Forest Service, Alaska Region

Below you will find my objection to the EIS and draft ROD for the Prince of Wales Project.

Required 36 CFR § 218.8(d) Objection Information

Proposed Project Name: Prince of Wales project

Name and Title of the Responsible Official: Earl Stewart, Forest Supervisor

Proposed Project will be Implemented on: Thorne Bay and Craig Ranger Districts, Tongass National Forest

Objection Introduction

This objector submitted his comments on the DEIS for the proposed project on May 29, 2018

Please direct Supervisor Stewart 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. As you can see it would never pass court muster.

<u>Objection Point #1</u>---The Responsible Official does not acknowledge that the research conclusions of scores of independent scientists' indicate that even casual exposure to glyphosate may cause significant health problems … even cancer.

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

None of this was done. The EA still does not indicate glyphosate will NOT be applied. Incredibly, Supervisor Stewart does not care if he applies a chemical that research shows can cause cancer, autism, birth defects, miscarriages, neurological disorders and liver/kidney disease. Most public servants would avoid the risk since there are at least a dozen alternatives.

What type of person would take action if there were even a small chance it would cause a child to die painfully from cancer later in life … just because his employer says it's OK? Normal people play it safe when there is doubt about the wisdom of taking action, especially if the action might cause a human death. There were alternatives to accomplish the same goal. The Responsible Official chose not to use them.

Failure to tell the public this chemical will **<u>not</u>** be applied to vegetation in your forest leaves the door open for you to apply glyphosate. This violates **18 U.S.C. § 1001(c), 40 CFR 1501.2 (b), 40 CFR 1502.16(a) and (b), 40 CFR §1508.27(b)(2), 40 CFR and** the Apr. 21, 1997 **Executive Order No. 13045**

A person who is guilty of reckless endangerment creates a substantial risk of death or serious physical injury to another person. Your witless need to please the USDA by embracing man-made chemical corporations shows your next promotion on the USFS is more important than human lives. Reckless endangerment is a felony.

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

<u>Objection Point #2</u>---The draft NEPA document indicates there will be clearcut silvicultural prescriptions associated with the selected alternative for the Prince of Wales project. The following required disclosures mandated by NFMA are not included in the draft NEPA document.

The objector requested the Responsible Official to eliminate all proposed clearcut units, replace them with partial cut units and consider restoring the area to what it was before it was logged by planting the same on-site species.

This wasn't done.

Therefore, the final EIS violates **40 CFR 1500.2(e) and (f), NEPA Sec. 101(b)(2)** and **NEPA Sec. 101(c)**

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

Objection Point #3---The Responsible Official does not discuss how the project's harvest and slash/Rx burning activities will affect protected bird species or if there will be potential adverse effects to the birds.

The objector requested the Responsible Official to identify the birds that exist in and near the project area that are protected under the Migratory Bird Treaty Act and discuss how these birds will be protected during burning and timber harvest operations.

Please don't just identify the migratory bird species that are likely to exist in the sale area and tell me the habitat destruction and likely mortality of individual birds and eggs is acceptable because it won't lead to ESA listing or extirpation of the birds in the area. Instead, explain why the likely bird deaths don't meet the take definition.

This wasn't done.

Therefore the Prince of Wales project violates **the Migratory Bird Treaty Act of 1918.**

> Note: Judges are aware that federal agencies cannot consciously violate the MBTA by claiming the bird species' being harmed is not listed under ESA, or won't be pushed closer to listing when the harm occurs.

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

Objection Point #4---The NEPA document fails to evaluate predicted project impacts to climate change and climate change impacts to forest resources and ecosystem services associated with the project.

The objector requested the Responsible Official to include a discussion of climate change in the final NEPA document showing how 1) the Prince of Wales project will affect climate change, and 2) climate change will affect the resources analyzed in Chapter 3 in the final EA.

This wasn't done.

Therefore, the final EA violates

1) Climate Change Considerations in Project Level NEPA Analysis (**Washington Office Memo January 13, 2009**);

2) **Executive Order 13514** of October 5, 2009; and

3) The **National Environmental Policy Act**. NEPA states that all Federal agencies "to the fullest extent possible" must provide a detailed environmental impact statement (EIS) (42 U.S.C. 4332). Neither Congress nor the courts have indicated precisely how much detail an EIS must contain. However, courts consistently have held that, at a minimum, NEPA imposes a duty on Federal agencies to take a "hard look at environmental consequences" (Natural Resources Defense Council v. Morton, 458 F.2d 827, 838 (D.C. Cir., 1972).

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

Objection Point #5---The Responsible Official does not indicate that temporary roads will be obliterated after use which requires the sideslopes to be brought back to the natural angle of repose such that there will be no recognizable running surface. Temporary roads that are not obliterated become long-term linear sediment sources.

The objector requested the Responsible Official to:

- Obliterate all temporary roads after use and tell the public this will be done in the rewritten NEPA document and highlight the choice to obliterate temporary roads on the decision document.

- Include a link to the NPDES permits for the roads planned to be constructed for this project.

- Assure that the rewritten NEPA document defines an obliterated road correctly: 1) it contains no running surface, 2) the CMPs have been removed, and 3) the natural sideslope that existed before the road was constructed is reestablished by placing the fill back in the cut.

- Assure the rewritten NEPA document describes a road obliteration monitoring plan to assure the sediment is being reduced as expected. The ROD should indicate the USFS will provide funding for the monitoring and accomplish the monitoring.

This wasn't done.

The Responsible Official proposes to decommission temporary roads after use.

This violates **36 CFR 212.5(b)(2)** because decommissioning a road that will never be needed again does not restore the road to a more natural state. If the road will be used in the future it's not a "temporary" road and should have been constructed to system road standards.

The objector's comments on the draft included 1) USFS literature describing the need for such monitoring, and 2) science describing the superiority of decommissioning clearly showing why the extra cost of obliteration eliminates the need to spend more money in the future trying to eliminate sediment. Clearly, the objector's referenced showed the Responsible Official that obliteration eliminates chronic sediment delivery, restores hillslope hydrology, and reduces impacts to aquatic, riparian, and terrestrial ecosystems of roads crossings.

Therefore, the final NEPA document violates:

- **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.

- **40 CFR 1500.1(c)** because the ineffective proposal to decommission temporary roads after use will not "protect, restore, and enhance the environment."

- **40 CFR 1500.2(f)** because the ineffective proposal to decommission 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."

- **40 CFR 1500.2(e)** because the ineffective proposal to decommission temporary roads after use will not "avoid or minimize adverse effects of these actions upon the quality of the human environment."

- The Responsible Official proposes to decommission temporary roads. This violates **36 CFR 212.5(b)(2)** because this does not restore the road to a more natural state.

Decommissioning a road does not "reestablishing former drainage patterns, stabilizing slopes, restoring vegetation, blocking the entrance to the road, installing water bars, removing culverts, reestablishing drainage-ways, removing unstable fills, pulling back road shoulders, scattering slash on the roadbed, completely eliminating 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: Comply with the objector's request above.

Objection Point #6---All reasonable action alternatives that don't include commercial logging were eliminated from consideration because the Purpose & Need was too narrow, specific and described an action rather (harvest timber) than a goal. The Purpose & Need was written in such a way as to force and justify selection of the Proposed Action and render other reasonable alternatives to the Proposed Action inapplicable.

The objector requested the Responsible Official to write a new (expanded) Purpose & Need that allows reasonable alternatives to the Proposed Action to be analyzed in detail and assure the project goals stated in the P&N are not mutually exclusive … that is achieving the goals for one resource will adversely affect another resource mentioned in the P&N as a resource to be enhanced. Then reinitiate the NEPA comment and analysis process to analyze the new reasonable alternatives, especially those suggested by the public during the comment period.

This wasn't done.

Therefore, the final EIS violates **40 CFR 1500.2(d) and (e)** and **40 CFR 1506.6(a)**

Writing a P&N that renders all action alternatives other than the Proposed Action nonresponsive to the P&N is also inconsistent with court precedent:

In ***National Parks & Conservation Association v. Bureau of Land Management***, 606 F.3d 1058 (9th Cir. 2010).

Opinion Excerpt:

> "The BLM did not, however, consider these options in any detail because each of these alternatives failed to meet the narrowly drawn project objectives, which required that Kaiser's private needs be met."
>
> "The BLM adopted Kaiser's interests as its own to craft a purpose and need statement so narrowly drawn as to foreordain approval of the land exchange. The BLM may not circumvent this proscription by adopting private interests to draft a narrow purpose and need statement that excludes alternatives that fail to meet specific private objectives, yet that was the result of the process here."

Friends of Southeast's Future v. Morrison, 153 F.3d 1059, 1066 (9th Cir.1998).

Opinion Excerpt:

> Agencies enjoy "considerable discretion" to define the purpose and need of a project.
>
> "An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality."

Davis v. Mineta, 302 F.3d 1104, 1119 (10th Cir. 2002)

Opinion Excerpt:

> "While it is true that defendants could reject alternatives that did not meet the purpose and need of the project, *Boomer Lake*, 4 F.3d at 1550, they could not define the project so narrowly that it foreclosed a reasonable consideration of alternatives. *Colo. Envlt. Coalition v. Dombeck*, 185 F.3d 1162, 1174-75 (10th Cir. 1999); *Simmons v. United States Army Corps of Eng'rs*, 120 F.3d 664, 669 (7th Cir. 1997)."

City of Carmel-By-The-Sea v. U.S. Dept. of Transportation, 123 F.3d 1142, 1155 (9th Cir. 1997)

Opinion Excerpt:

> "Project alternatives derive from an Environmental Impact Statement's "Purpose and Need" section, which briefly defines "the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 C.F.R. s 1502.13. The stated goal of a project necessarily dictates the range of "reasonable" alternatives and an agency cannot define its objectives in unreasonably narrow terms. See Citizens Against Burlington, 938 F.2d at 196."
>
> "Specifically, Carmel argues that the Federal Highway Administration and Caltrans unjustifiably narrowed its statement of "Purpose and Need" from the Draft Environmental Impact Statement/Report to Final Environmental Impact Statement/Report by including a requirement of Level of Service C."

Citizens Committee to Save Our Canyons v. U.S. Forest Service, 297 F.3d 1012, 1018 (10th Cir. 2002) (citing ***Davis v. Mineta***, 302 F.3d 1104.

Opinion Excerpt:

> "courts will not allow an agency to define the objectives so narrowly as to preclude a reasonable consideration of alternatives"

Citizens Against Burlington, Inc., et al v. James B. Busey IV 938 F.2d at 196 (District of Columbia Circuit, 1991)

Opinion Excerpt:

> "an agency may not define the objectives of its actions in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality."

Simmons v. United States Army Corps of Engrs., 120 F.3d 664, 669 (7th Cir. 1997)

Opinion Excerpt:

> "One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing "reasonable alternatives" out of consideration (and even out of existence). The federal courts cannot condone an agency's frustration of Congressional will. "If the agency constricts the definition of the project's purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act. Nor can the agency satisfy the Act. 42 U.S.C. § 4332(2)(E)."

Sierra Club v. U.S. Dep't of Transp., 310 F.Supp.2d 1168, 1192 (D. Nev. 2004) (citing ***City of Carmel-By-The-Sea v. U.S. Dep't of Transp***., 123 F.3d 1142, 1155 (9th Cir. 1997)).

Opinion Excerpt:

> "While it is true that defendants could reject alternatives that did not meet the purpose and need of the project, they could not define the project so narrowly that it foreclosed a reasonable consideration of alternatives."

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

<u>Objection Point #7</u>--- 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 describing logging-related natural resource damage. Each scientific statement includes the link to the source document that contains the statement.

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.

The objector requested the Responsible Official to include some source documents from the **<u>Opposing Views Attachments</u>** in the References/Literature Cited section of the final NEPA document and also, cite the specific quotes presented for the source literature in the text of the NEPA document the Responsible Official chose to include in the References/Literature Cited. The objector requested the Responsible Official to include links to each **<u>Opposing Views Attachments</u>** that the chose to include in the References/Literature Cited section and explain why this is best science and trumps the information presented in the **<u>Opposing Views Attachments</u>**.

This wasn't done. Incredibly, the References section contains <u>only</u> (emphasis added) documents that support timber harvest or are neutral in spite of the fact hundreds of scientific documents are available that describe the logging-generated resource damage in detail . Don't you think the pubic deserves to weigh the evidence themselves by reading science that both supports and opposes commercial timber harvest?

Keep in mind 40 CFR 1502.9(b) allows the Responsible Official to ignore responding to opposing views only if it can be shown to be irresponsible.

> *"40 CFR 1502.9 (b) Final environmental impact statements shall 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."*

Since this wasn't done, the final NEPA document violates: **40 CFR 1500.1(b) and (c)** and **40 CFR 1500.2(e) and (f)**

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

<u>Objection Point #8</u>---The NEPA document does not discuss the items shown below that are required by 40 CFR 1502.16.

The objector requested the Responsible Official to include a discussion of the following items in the final NEPA document.

> (e) Energy requirements and conservation potential of various alternatives and mitigation measures.
>
> (f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.
>
> (g) Urban quality, historic and cultural resources, and the design of the buil environment, including the reuse and conservation potential of various alternatives and mitigation measures.

This wasn't done.

Therefore, the final EIS violates **NFMA Section 5 and 40 CFR 1500.1(b) and 40 CFR 1502.16.**

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

<u>Objection Point #9</u> --- The Responsible Official did not respond to the opposing views attached to the objector's comments.

The objector requested the Responsible Official to respond to the opposing views contained in the Opposing Views Attachments.

This wasn't done.

Therefore, this NEPA document has violated: **40 CFR 1502.9(b)**

40 CFR 1500.2(e) and (f) because it did not "*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," and did not "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."*

40 C.F.R. § 1502.9(a) because the final NEPA document did not *"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. § 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."*

The opposing views statements submitted by this objector represented “major points of view.” Any thesaurus will show a synonym of “point of view” is an “opinion.” Opposing Views must never be considered irresponsible and rejected because of their source.

42 USC § 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 … 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…project will reduce the intensity of future wildfires in the project area."

How this objection point can be resolved: comply with the request discussed above.

Objection Point #10 --- The Responsible Official rejected public suggestions for alternatives to be analyzed in detail in addition to the Proposed Action. In spite of the other ideas, the Responsible Official analyzed only the Proposed Action in detail.

The objector requested the Responsible Official to respond to analyze the citizen-generated alternatives in detail.

This wasn't done.

Therefore, this NEPA document has violated **40 CFR 1503.4**

How this objection point can be resolved: comply with the request discussed above.

Sincerely,

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

Dick Artley [redacted]

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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