

**OBJECTOR'S NOTICE OF OBJECTION, STATEMENT OF ISSUES AND LAWS,
AND REQUESTED REMEDIES**

NOTICE OF OBJECTION

May 7th, 2015

Regional Forester
Objection Reviewing Officer
Pacific Northwest Region
USDA Forest Service
ATTN: 1570 Objections
1220 SW 3rd Ave.
Portland, OR 97204
Email: objections-pnw-regional-office@fs.fed.us

RE: League of Wilderness Defenders/Blue Mountains Biodiversity Project's objections to the Elk 16 Landscape Restoration—Draft Decision Notice and Finding of No Significant Impact and Final Environmental Assessment

Dear Objection Reviewing Officer,

League of Wilderness Defenders/Blue Mountains Biodiversity Project (LOWD/BMBP) hereby formally submits the following objections to the Elk 16 Landscape Restoration Final Environmental Assessment and Draft Decision Notice. LOWD/BMBP has secured the right to submit objections and thereby participate in the pre-decisional administrative review process for this project. LOWD/BMBP has submitted timely, written comments regarding this project at all periods in the process where public comments were specifically requested.

Decision Document

Elk 16 Landscape Restoration Final Environmental Assessment and Draft Decision Notice and Finding of No Significant Impact, including Forest Plan Amendment 77

Date Decision published

April 8th, 2015

Responsible Official

Steven K. Beverlin, Forest Supervisor, Malheur National Forest (MNF)

Description of the Project

The MNF has identified Alternative 2 with modifications from the Elk 16 Environmental Assessment. Therefore, this objection focuses on Alternative 2 with the modifications specified in the Draft Decision Notice. Alternative 2, as modified, includes a total of about 13,240 acres of commercial thinning, 11,159 acres of non-commercial thinning, 207 miles of road maintenance, 2.7 miles of temporary road construction, and fuel reduction that includes 18,760 acres of underburning, 5,359 acres of underburning only, 15,929 acres of grapple piling, 7,913 acres of handpiling, and 958 acres of Jackpot burning. Modified Alternative 2 also includes 374 acres of commercial aspen restoration (logging), 206 acres of non-commercial aspen restoration, 5.3

miles of stream channel restoration, 3.0 miles of road restoration closures, 16.3 miles of road decommissioning, and 0.7 miles of road opening. An estimated 40 million board feet of timber would be logged.

Location

The Elk 16 project area refers to approximately 43,000 acres of National Forest Lands in the Prairie City Ranger District, Malheur National Forest. The project area is located 20-25 miles southeast of Prairie City, Oregon, in eastern Grant County. A small portion of the project area lies in Baker County. There is a parcel of private land in the Crane Prairie area within the project area.

Appellant's Interests

LOWD/BMBP has a specific interest in this decision, which has been expressed through participation throughout the NEPA process. LOWD /BMBP members visit much of the affected area for hiking; camping; backpacking; relaxing; bird, wildlife, and wild flower viewing; mushroom harvesting; photography; hunting; leading educational hikes; and more. The value of the activities engaged in by LOWD/BMBP members, volunteers, supporters, and staff would be damaged by the implementation of this project.

LOWD/BMBP is a non-profit organization that works to protect Eastern Oregon National Forests. Staff, members, volunteers, supporters, and board members of LOWD/BMBP live in various communities surrounding the Malheur National Forest and use and enjoy the Forest extensively for recreation, drinking water, hunting, fishing, general aesthetic enjoyment, family gatherings, viewing flora and fauna, gathering forest products, and other purposes.

Request for meeting

LOWD/BMBP requests a meeting to discuss matters in this objection and seek resolution of concerns through negotiation before the MNF makes a final decision on the Elk 16 project.

Specific issues addressed in this objection

NEPA (National Environmental Policy Act) violations, including: inconsistency with the stated "purpose and need" of the project; overly narrow construction of the purpose and need; failure to provide an adequate range of alternatives; failure to adequately analyze direct, indirect, and cumulative impacts of the project; failure to analyze potential effects to Pacific Fisher; failure to take the requisite "hard look" at project impacts required by NEPA; failure to prepare an Environmental Impact Statement; analysis lacking scientific accuracy and/or lacking professional integrity; failure to disclose scientific controversy; failure to include specialist reports within the Environmental Assessment; failure to provide response to comments within the Final Environmental Assessment; failure to disclose scientific methodology used in analysis; failure to adequately analyze the cumulative effects of proposed Forest Plan amendments; and failure to analyze effects of reduction in Late and Old Structure that would result from project implementation.

Violations of NFMA (the National Forest Management Act) and the Malheur Forest Plan, including: violations of the Eastside screens; failure to provide for population viability for Management Indicator species and other wildlife and fish, including listed species; and improper use of site-specific Forest Plan amendments, including failure to show unique site characteristics; failure to disclose unique site-specific circumstances during the public comment period; failure to adequately analyze cumulative effects of Forest Plan amendments proposed in the context of repeated "site-specific" Forest Plan amendments; failure to analyze the effects of reduction in Late and Old Structure (old growth forest) in the Preliminary Environmental Assessment or to discuss a Forest Plan amendment to reduce LOS prior to the Final Environmental Assessment and

Draft Decision Notice; and failure to demonstrate that proposed Forest Plan amendments are not significant. Other Forest Plan violations include inconsistency between Forest Plan Management Area goals and proposed logging of some of these management areas, including INFISH violations, and violation of Eastside screen requirements to move toward LOS structure.

Clean Water Act violations include not fulfilling the need to avoid stream temperature increases for 303 (d)-listed/TMDL streams listed for water temperature, and creating the potential for increased sediment loading in creeks listed for sediment.

Endangered Species Act violations include causing a potential trend toward federal uplisting for Pacific Fisher, Gray wolf, Bull trout, and Redband trout; and failure to consult with the U.S. Fish and Wildlife Service over Bull trout.

LOWD/BMBP objects to the Elk 16 Landscape Restoration project for the following reasons:

I. The Elk 16 Landscape Restoration project violates the National Environmental Policy Act

The Elk 16 Landscape Restoration project (Elk 16 project) violates the National Environmental Policy Act in the following ways: inconsistency with the stated “purpose and need” of the project; overly narrow construction of the purpose and need; failure to provide an adequate range of alternatives; failure to adequately analyze direct, indirect, and cumulative impacts of the project; failure to analyze potential effects to Pacific Fisher; failure to take the requisite “hard look” at project impacts required by NEPA; failure to prepare an Environmental Impact Statement; analysis lacking scientific accuracy and/or lacking professional integrity; failure to disclose scientific controversy; failure to include specialist reports within the Environmental Assessment; failure to provide response to comments within the Final Environmental Assessment; failure to disclose scientific methodology used in analysis; failure to adequately analyze the cumulative effects of proposed Forest Plan amendments; and failure to analyze effects of reduction in Late and Old Structure that would result from project implementation.

Inconsistency with the stated purpose and need of the project

The Elk 16 project is not consistent with the purpose and need goals as expressed in the Preliminary Environmental Assessment (the analysis document available for public comment.) The Elk 16 project included the following stated desired conditions, goals, and “need” statements that constituted the purpose and need for the proposal (PEA pp.7-10):

Restore the ecological structure and function of forest ecosystems within the project area landscape to improve forest health and increase resilience to drought, fire, insects, diseases, and other disturbances; ...Reduce insect and disease activity by reducing stand density and moving species composition more toward the ecologically desired mix;...Retain and develop future old trees of all species. (PEA p.7)

The EA admits that the existing condition (whereby large and old trees are at a deficit across the landscape and both Late and Old structure (old growth) forest types are below the historic range of variability for abundance) was caused by similar management to what is now proposed by the Elk 16 project on a landscape scale: “The Elk 16 project area has been altered by past management activities including livestock grazing, timber harvest, and fire suppression. Large ponderosa pine was historically targeted for harvest. Past timber harvest and the absence of fire have resulted in many of the forested stands being densely-stocked with a composition of tree species that cannot be sustained in the long term. Current species composition is out of balance with historical conditions in some areas.” (PEA p.7, emphasis ours.)

This past heavy logging of large trees also included large numbers of large Grand fir and Douglas fir. See our field survey sheets and photographs documenting many large fir stumps throughout the sale area, and large live trees of all three species still marked to cut from past timber sale units that were evidently stopped. The blue paint is recent enough to still be easily seen, and indicates recent Prairie City District intent to log large Ponderosa pine, Grand fir, and Douglas fir. Our survey sheets and photographs from our extensive field-surveying over two summers of almost all commercial timber sale units proposed for the Elk 16 projects were sent to the Forest Service as part of our comments and clearly designated as such.

Current plans to log large Grand fir and Douglas fir would continue the Forest Service trend of removing large and future old (the next size class to become old trees) tree structure from the landscape in violation of the Eastside screens and thus the Malheur Forest Plan. As we commented on the PEA: “Logging trees equal to or greater than 21” dbh as proposed violates the purpose and need of the Elk 16 project to ‘retain and develop future old trees of all species.’ (PEA p.7) For Ponderosa pine, trees equal to or greater than 21” dbh are statistically usually old tree already. For other species, trees in this size class are either old trees (greater than 150 years old) or are in the size class closest to achieving that status. Thus logging trees equal to or greater than 21” dbh is not ‘retaining and developing future old trees of all species.’” (Our comment is written on p. 7 of the PEA, so our comments will be designated by PEA page numbers since we have not yet received the Forest Service’s response to comments numbering our comments, which was not included in the Final Environmental Assessment or the Preliminary Decision Notice.)

Some commercial logging sale units surveyed in the current Elk 16 project had apparently never been logged and contained high numbers of large and old Grand fir and Douglas fir compared to logged sale units, as well as higher numbers of large snags and logs, which are also important constituent structures of old growth (LOS) forest. Yet these sale units are also proposed for logging, even though the Grand firs and Douglas firs in these units are often large enough (over 30” dbh) to likely be old trees and are not the products of fire suppression. (See our survey sheets listed under the LOS reduction/Forest Plan amendment objection issue.) The Elk 16 area is highly variable in elevation, aspect, topography, soil type, and consequent moisture retention and site productivity. Thus our emphasis on current tree species composition being potentially out of balance in only some areas, and not necessarily even the majority of the sale area.

Other examples of the inconsistency between the purpose and need and the proposed actions include the following from our comments: The PEA’s purpose and need section states: “There is a need to restore the landscape to a functional condition and ecologically resilient to disturbance....There is a need to reduce the severity and risk of the current insect outbreaks by utilizing silviculture practices.” (PEA p.8) The Silvicultural practices being proposed in Elk 16 are primarily commercial logging and non-commercial thinning. Our response regarding why this is inconsistent with this purpose and need: “Commercial logging has not been shown to be effective in minimizing the impacts of Mountain pine beetle or Western spruce budworm, yet these are the insects deemed to be at epidemic levels in the Elk 16 area, not pine bark beetles most affecting Ponderosa pine.” (PEA p.8)

The Desired condition/goals statement for the fuels reduction purpose and need is stated in the PEA as: “Reduce fuel loading and fire hazard across the landscape (including surface fuels, ladder fuels, and crown fuels) and in lands (including RHCA) near the evacuation routes (Forest Roads 14 and 16) identified for at-risk communities in the Grant County Community Fire Protection Plan.” Further, the PEA states “There is a need to remove fuels from the project area and manage forest vegetation to reduce the risk of catastrophic wildfire.” (PEA p.8) Yet we note that: “The Grant County Community Fire Protection Plan is so comprehensive that it covers most of the county, threatening the intended definition of wildland/urban interface by eliminating wildland designation.” (PEA p.8) Reducing fuel loading and fire hazard across the landscape, rather than strategically, adjacent to affected communities, negates the distinction between wild

lands and urban areas, thus not focusing on the intended WUI interface. Such widespread “fuel” reduction also removes critical forest structure for wildlife, fish, soils, carbon structure, recreational values, and soil nutrient cycling.

Further, our comments go on to say: “RHCAs should not be commercially logged to reduce perceived fire risk as this removes needed large wood for pools for fish, bank stabilizing trees, and needed shading to keep water temperatures cool and support shade-dependent riparian plants.” (PEA p.8) Such removal of large wood from RHCAs (Riparian Habitat Conservation Areas) is the contrary to watershed, riparian, and aquatic habitat restoration purpose and need for the Elk 16 project. This riparian purpose and need is stated as follows in the PEA: “There is a need to improve the condition of streams that lack hardwood vegetation and the ability to capture and store sediment. This includes improvement in large and small wood that helps capture and store sediment, and aspen and other hardwood vegetation to enhance stream shade, temperature, and stream bank stability.” (PEA p.10) Removing large wood from RHCAs by commercial-size logging within the RHCAs is contrary to the goal of improvement in large and small wood that helps capture and store sediment.

Resolution

LOWD/BMBP has commented on its objection to the MNF’s inconsistency of the Elk 16 project with the stated “purpose and need.” See, for example our comments written on the pages of the PEA on p.7 (see above) and also the following comment on our typed comment summary, p.3:

“Further, such extensive and large tree commercial logging is contrary to landscape restoration goals of preserving and increasing large trees on the landscape and protecting the viability of wildlife and fish species, thus contradicting the Purpose and Need for the project.”

We request that, to be consistent with restoration goals, there be:

- *No removal of large and old trees (large being equal to or greater than 21”dbh)
- *No targeted removal of Grand fir and Douglas fir where they historically existed and were well represented in the stand, including as patchy distribution or co-dominant or dominant overstory structure. This would include historical fir prevalence in moist PAGs, on North-Northeast aspect slopes, at high elevations (generally 5,000 feet and higher), in riparian areas, and/or where there is evident large Grand fir and/or Douglas fir structure, including large live trees, large fir snags and logs, and large fir stumps.
- *Drop logging planned to reduce Mountain pine beetle and Spruce budworm outbreaks.
- *Concentrate fuel reduction immediately around affected communities, not spread across the greater landscape and into the back country.
- *No commercial-size logging or tree removal within RHCA buffers as specified by INFISH/PACFISH.

Narrowly construing the Purpose and Need for the project

As our comments on PEA p.122 relate: “The No Action Alternative One discussion re: Aquatic Effects points to the blackmail-like narrowing of the Purpose and Need to only include commercial logging alternatives, no “restoration only” alternative. The public is given no choice to opt for non-commercial-size thinning (which still creates jobs and may have commercial value) plus other ecologically sound restoration such as for aspen and road decommissioning without also accepting logging degradation impacts in RHCAs, LOS, goshawk and marten habitat, and wildlife connectivity corridors, and non-commercial thinning and/or underburning in pristine areas such as IRAs, Potential Wilderness Areas, and the RNA.” Further, on p.45 of the PEA we comment: “Obviously there is not much difference between action alternatives—13,000 acres of

commercial logging in both alternatives 2 and 3, similar levels of non-commercial thinning (10,587 vs. 11,587 acres), only 1 mile of road maintenance difference (208 vs. 207 miles), same mileage of temporary roads, same acreage of fuel reduction (5,386 acres), same watershed restoration activities & amount—obviously the Forest Service does what it wants to with either action alt. by narrowly construing the Purpose and Need.” These comments are also relevant to our “inadequate range of alternatives” objection.

Resolution

LOWD/BMBP has commented on its objection to the MNF’s narrowly construing the purpose and need to ensure that the action alternatives are virtually the same, only differing slightly in scale, contrary to NEPA. See our comments (above) written on PEA pages 45 and 122.

We request that the Elk 16 project be redesigned in a Supplemental or Draft Environmental Impact Statement released for public comment (see the related EA vs. EIS objection below) that offers an adequate range of alternatives with a purpose and need that is not so narrowly construed as to prevent a different alternative from being chosen that would significantly lessen environmental impacts.

Failure to provide an adequate range of alternatives

The Elk 16 Environmental Assessment included an inadequate range of alternatives. The EA should have offered at least one action alternative that avoided Forest Plan amendments that effectively moot the existing Forest Plan by violating Forest Plan standards. Our related comment on page 42 of the PEA: “We are strongly opposed to all Forest Plan amendments used essentially to weaken or moot Forest Plan standards, including in this case, proposed Forest Plan amendments...to log trees > or = 21”dbh that are not OSHA hazard trees....There is an inadequate range of alternatives when both action alternatives require Forest Plan amendments, leaving us no choice but to reject both.” Also: “The Elk 16 project has an inadequate range of alternatives, as both action alternatives propose the same activities with very similar amounts (or acreages, miles) of each. This gives us no choice between alternatives to have substantially less commercial logging, no “temporary” road building, no NCTing in goshawk PFAs, no logging in wildlife corridors, etc. We are offered no choice for benign watershed restoration (e.g. road decommissioning) plus no or little commercial logging impacts.” (PEA p.45) “So why is there no “restoration only” alternative? These are just not restoration.” (our comment, PEA p. 127) “Table 9 makes it clear that there is not much difference between the action alternatives.” (our comment, PEA p.48)

Resolution

LOWD/BMBP has commented on its objection to the MNF’s inadequate range of alternatives in the Elk 16 project Environmental Assessment. See our comments above, including those on PEA pages 42, 45, 48, 50, 58, and 127.

Failure to adequately analyze direct and indirect effects

The Elk 16 Environmental Assessment demonstrates rampant failure to adequately analyze environmental effects of the project throughout the document, including omissions such as not acknowledging that insect infestations are naturally recurring and needed natural disturbances (see our comments on PEA p.8); predictable effects such as to primary cavity excavators (PCEs) from loss of current and future snags (comments PEA p.56); effects to elk (PEA p.57 comments);

effects of large tree removal (comments on PEA p.58); effects of logging wildlife connectivity corridors (comments PEA p.58); effects of conversion of OFMS to OFSS (comments, p.63); no quantification of potential impacts to fish, including regarding increased sediment loading in streams (comments, PEA p.121 & 122); analysis of how the additional impacts of alternative 2 are not necessary to meet the Purpose and Need (comments PEA p.50); effects of logging in RHCAs (comments PEA p.122, 123, & 127); effects of increased sediment in Crane Creek (comments PEA p.133); effects of short-term versus long-term trade-offs (comment PEA p. 126); effects of logging LOS and OFMS (Old Forest Multi-Strata); and effects to most species covered in the EA, including to: Gray wolf (comments, PEA pp. 139-141); Bald eagle (comments PEA pp.141-142); Wolverine (comment PEA p.145); Greater Sage grouse (comment p. 146); Lewis' woodpecker (comments pp. 150-152 & 154); bat species (comment PEA p.159); Whiteheaded woodpecker (comments pp. 155 & 158); Johnson's Hairstreak butterfly (comments PEA p.163); Blackbacked woodpecker (comment PEA p.178); Columbia Spotted frog (comment p. 122); to category 4 streams (comment PEA p.123); regarding status, trends, and viability of Bull trout and Redband trout (comment PEA p.125); and effects of alternative 2 to fish, frogs, and mussels (comments PEA p.123.) We doubt that all these defects in analysis have been corrected in the Final Environmental Assessment. Even if they were, these omissions and distortions still leave significant information gaps for informed public comments and agency decision-making during the public comment period, in response to the Preliminary Environmental Assessment.

We also raised concerns in our comments as to the Forest Service's use of the wrong scale of analysis regarding: water quality effects (PEA p.59); effects to Lewis' woodpeckers (PEA p. 152); effects to Blackbacked woodpecker (PEA pp. 178-179); and logging within RHCAs needing to be assessed at the stream scale for water temperature changes (PEA p. 128)

Resolution:

LOWD/BMBP has commented on its objection to the MNF's failure to adequately analyze direct and indirect effects of the project on a wide range of receptors, including water quality, fish, wildlife, forest structure needed for wildlife habitat, natural disturbance processes, etc. See our numerous comment page citations in the paragraph above.

An SEIS or new DEIS needs to be prepared that fully and accurately analyzes the environmental effects of the Elk 16 projects to NEPA standards, and this analysis document needs to be made available for public comment and agency review.

Failure to adequately analyze cumulative impacts

The Elk 16 project does not adequately analyze the cumulative effects of the proposed actions in combination with past, ongoing, and reasonably foreseeable future actions in at least the following issue areas: re: cumulative effects to Pileated woodpeckers (comments PEA pp.181-2); for Management Indicator Species (comment PEA p.54); to elk (PEA pp. 56 & 190 comments); re: Gray wolf (PEA p.141 comment); to Bald eagle (comment PEA pp. 142-3); to snags (PEA p. 176); to goshawk (comment PEA p. 199); re: the Bull trout MIIH determination (comment PEA p. 125); to American (pine) marten (comments pp. 184-185); to bat species (comments PEA p.160); re: livestock impacts (comments PEA pp. 123-124); re: road maintenance (comments PEA p. 124); re: fire suppression (comments PEA p. 124); re: listed fish species "may effect" determinations (comment p. 121); for effects to aquatic/riparian habitat (comment PEA p. 123); re: ECA (Equivalent Clearcut Area) (comment PEA p.129); and regarding actions within RHCAs (comment p. 129.)

The Preliminary EA for Elk 16 in most cases quickly dismisses the Forest Service's obligation to fully analyze for cumulative effects with wording like the following: "Overall, the combined

effects of the Elk 16 Project with the effects of past, present, and reasonably foreseeable future activities would not be expected to adversely affect pileated woodpeckers or their habitat.” (PEA cumulative effects analysis for Pileated woodpeckers, p.182.) Just saying so does not make it true, or adequate analysis under NEPA. It is not sufficient to list various cumulative effect-contributing activities, and then fail to analyze what these combined effects would do to the long-term viability of a species (or to water quality, soil integrity, etc.), especially in the absence of information disclosed as to the population trends, reproductive success, and viability threshold for that species (or similar parameters to determine effects to other receptors.)

Similarly the fatal vagueness and generalizations of Elk 16 cumulative effects analysis makes it inadequate. For example, regarding American marten: “No management activities would occur within primary source habitat for American marten. Approximately two percent of secondary habitat across the Malheur National Forest would be affected by the Elk 16 project...Consequently, any direct, indirect, or cumulative effects would be expected to result in short term disturbances to secondary habitat, generally limited in time in place, (sic) over the Elk 16 Project area. The Elk 16 Project is consistent with the Forest Plan, and thus continued viability of the American marten is expected on the Malheur National Forest.” (PEA analysis, p. 185.) There are several problems with this analysis. Our comments on this page point out that: “The Elk 16 project is not consistent with the Forest Plan as stated in the PA (PEA) numerous times, as Elk 16 proposed actions would require Forest Plan amendments that effectively violate Forest Plan standards and guidelines, mooted the existing Forest Plan.” Further, one of the proposed Forest Plan amendments would reduce LOS (old growth) structure critical to American marten habitat and another would log and remove large trees, which are needed by marten for denning snags and for sufficient large down wood for sub-nivean (under snow) foraging and thermal protection habitat in the winter. While adherence to the Forest Plan would certainly help protect marten habitat, violations of relevant Forest Plan standards are proposed. Thus the cumulative effects analysis for marten is mis-leading as well as fatally vague (e.g. what are the cumulative effects of reducing marten secondary habitat at the project scale?) Two more of our comments on marten cumulative effects analysis: “We do not agree that Elk 16 proposed commercial logging and burning in marten habitat would have positive cumulative effects.” (PEA p.184) And: “Again, this is not a justifiable conclusion of no adverse effects to populations of marten on the Forest, based on PA (PEA) analysis.” (PEA p.185) There are many such examples of flawed cumulative effects analysis throughout the PEA.

Resolution:

LOWD/BMBP has commented on its objection to the MNF’s failure to adequately consider cumulative effects of the Elk 16 project. See our comments cited in the paragraph above.

An SEIS or DEIS needs to be prepared that adequately analyzes cumulative effects of the project in combination with past, ongoing, and reasonably foreseeable future actions to NEPA standards, with a public comment period to enable informed public comment and agency review.

Failure to use accurate science and professional integrity

There are numerous instances in the Elk 16 of analysis not reflecting the best available science or presenting science inaccurately, in some cases showing a lack of professional integrity. Examples of this in our comments relate to the following subjects: Grand fir “competition” with other trees (on PEA p.134); modeling for forest structural stages in the year 2044 as infeasible due to the failure to account for natural disturbances, future potential logging, and climate change (PEA p.135 & 62); PEA discussion of conversion of OFMS to OFSS as moving toward historic levels of each when actually both alternatives would cause a net reduction in old forest

structure compared to historic abundance (PEA p. 135); the PEA's overly broad definition of "warm/dry" forest types compared to the diverse reality on the ground; re: the Forest Service offering no evidence or proof that future fire suppression activities would be inversely proportional to proposed logging and other management activities planned, as claimed (PEA p.124); re: the Forest Service only assessing the effects of past logging for only up to 30 years ago despite a much longer history of heavy logging in the area (PEA p. 124); re: there being no science cited that demonstrates that "young" (often over 100 years old) Grand fir are actually "threatening" older Ponderosa pine, Western larch, and Douglas fir (PEA p.44); the Forest Service contention that dense forest is automatically not "sustainable" (PEA p.43); and re: natural great variability in forest type, moisture retention, site productivity, and natural forest density on the ground in the Elk 16 project area that is ignored in the PEA analysis and broad brush, blanket logging "prescriptions" proposed, and the misleading characterization of forest habitat structure as "hazardous fuels" (PEA p.16).

We also commented on the lack of Forest Service professional integrity in the following subjects: Calling heavy proposed logging, including logging of large trees badly needed for wildlife and fish habitat, soil nutrient recycling, carbon storage, and recreational aesthetics, and planned reduction of old growth forest (LOS) "restoration" in every case (PEA p. 46); the disingenuousness of claiming that planned removal of existing large conifer trees now available for large wood recruitment in riparian areas would "enhance larger trees in the future (30 years)" or "improve the size, volume, and quality of future down wood" (PEA p. 127); and the cynical, hypocritical, and unprofessional obfuscation of claiming that alternatives 2 and 3 would "move OFSS and OFMS towards historic levels" (PEA p.135) when: "Actually both alternatives reduce old forest structure and remove significant amounts of future old forest structure by logging large trees, commercially logging in LOS (alt. 2) (and) removing old growth snags (hazard trees and future snags) and future old growth logs." (comment PEA p.135) We also comment that: "It seems very unprofessional for so many Forest Service assurances of 'No Impact' to be based on personal communications with (largely rubber-stamping) USFWS personnel rather than on scientific studies." (PEA p. 140)

Resolution

LOWD/BMBP has commented on its objection to the MNF's lack of scientific accuracy and professional integrity in the Elk 16 project analysis. See all our comment citations and descriptions in the two paragraphs above.

In order for the Elk 16 project to comply with NEPA, the Forest Service needs to incorporate the requisite scientific accuracy and professional integrity in analysis in a new SEIS or DEIS available for public comment for the Elk 16 project, in order to better and more accurately inform public comments, agency review, and decision-making.

Failure to disclose and consider scientific controversy

Some of our comments cited above for inaccurate use of the science and inadequate analysis also touch on this problem. The Elk 16 EA analysis fails to disclose the scientific controversy around the assumptions that: logging would actual reduce defoliating insect outbreaks (comments PEA p.8); logging is somehow "restoration" despite its unnatural impacts (comments PEA p.16 and p. 45); the perceived "need" to log large trees, and re: what levels of tree density in the forest were characteristic of historic conditions (comments PEA p. 43.) We also expressed concern over management planned in the Elk 16 project to suppress and reduce needed natural disturbances ("needed" based on best available science): "We are also greatly concerned by the Forest Service's 'War on Nature' campaign to reduce natural disturbances such as wild fire and

insect thinning.” (PEA p. 136) We have also never heard of a 50% ECA (Equivalent Clearcut Area) threshold used for measurable effects in any of the numerous Forest Service EISes and EAs we have reviewed over the last 24 years of monitoring up to four National Forests. Usually the threshold is stated as 16% or less. So we comment: “Please disclose any science that contradicts the 50% threshold for measurable effects assumption.” (PEA p. 129)

Resolution

LOWD/BMBP has commented on its objection to the MNF’s failure to consider scientific controversy in the Elk 16 EA analysis. See our related comments briefly described with page citations in the paragraph above.

The Forest Service needs to prepare an SEIS or DEIS that fully discloses and analyzes scientific controversy regarding several of its key assumptions determining the outcome and effects analysis of the Elk 16 project, as outlined above. Our intention is not for just the preparation of a SEIS or DEIS, but for a chance for the public, other agencies, and decision-makers to have access to the full spectrum of scientific findings to fully inform public comments, agency review, and decision-making, and hopefully start changing the Elk 16 project from a very ecological destructive trajectory to an ecologically sound restoration project or leaving the project area alone to allow for passive restoration and recovery from past logging damage.

Failure to disclose scientific methodology used

The Elk 16 project EA failed to disclose the scientific methodology used in some key areas, including exactly how it was determined that no Forest Plan amendment would be needed after all in the Draft Decision Notice and Final Environmental Assessment, after analyzing the need for a Forest Plan amendment for driving elk cover below Forest Plan standards in the Preliminary EA. We commented on the PEA’s failure to clarify how modeling could predict stand structure and snag abundance as far out as 2044 (PEA pp. 135 & 62); and on how the Forest Service assumed that watershed resiliency would be improved by 4% cumulatively by the Elk 16 project and other projects (PEA p.128.) With respect to the water resiliency improvement assumption, we specifically asked: “What are the assumptions, models, data, and science studies used? Why are these not disclosed in the PEA? How were the impacts of proposed logging and other activities taken into account?” (PEA p.128)

We were also concerned about the methodology behind ECA assumptions: “We are interested in knowing how much of the 24.7% and 11.5% of the Crane Creek and Elk Creek subwatersheds’ ECA would be caused by the Elk 16 project and whether there’s a significant difference in the percentage of ECA caused by alt. 2 and alt. 3. In general the Elk 16 sale encompasses too much commercial-size logging and too much road re-opening....This very limited ECA analysis does not seem to address any hydrological changes in riparian areas from livestock and past timber sales plus the Elk 16 project effects and appears to mask real on-the-ground impacts to hydrologic flows that affect specific stream flows, seeps, or springs, with related negative effects for aspen, riparian and aquatic wildlife and plant species, and access to water for other species.” (PEA p.129)

Resolution

LOWD/BMBP has commented on its objection to the MNF’s failure to disclose scientific methodology used in arriving at conclusions in the Elk 16 project’s EA analysis. See our comments described and cited in the paragraph above, from PEA pages 62, 135, 128, and 129.

The Forest Service needs to prepare a SEIS or DEIS that fully discloses the scientific methodology used to reach analysis conclusions or to support analysis, including science article citations, assumptions and data used in models, and the nature, origin and source dates of any data used. Again, our intent is for the Forest Service to use NEPA as it was intended to design better projects in accordance with environmental protection laws that avoid unnecessary and significant environmental impacts.

Failure to provide public access to information used in preparation of an EIS or EA during the public comment period

Unfortunately the Forest Service response to comments was not included in the Elk 16 Final Environmental Assessment or Preliminary Decision Notice, so we have been unable to check as to how the Forest Service responded to our comments on the Elk 16 PEA in time to incorporate our response to theirs in this objection. This also made it necessary to spend much more time in preparing this objection, as ordinarily we first review the Forest Service response to our comments, which may clarify issues or eliminate some of our concerns. It is our impression that case law requires the Forest Service to incorporate both their response to comments and all their specialist reports used in preparation of the EIS or EA within the body of that document for public review and comment, yet this was not done in the Elk 16 PEA, FEA, or Preliminary Decision Notice. We requested copies of specialist reports and results of wildlife and plant surveys on PEA p.6 of our PEA comments, but have yet to receive them as of May 8th: “We request hard copies or a CD of project record resource reports and results of field investigations (wildlife and plant surveys.)”

Resolution

A designated Forest Service staff person has left me a message that she will be sending me the response to comments soon, but this does not address the general lack of public access to these documents in the way that best facilitates such access: inclusion within the PEA, or with regard to response to comments, within the FEA or Draft Decision Notice, so that people requesting hard copies of these documents still have access in a timely manner, and as not all documents requested or posted to websites. Rural people (as throughout much of eastern Oregon) often don't have access to the internet.

Failure to prepare an EIS

Given the huge scale of the Elk 16 timber sale (over 13,000 acres of commercial logging), the intensity of planned logging (including removal of over 13,200-26,400 large trees, based on the Draft Decision, and planned reduction of old growth forest (LOS), an Environmental Impact Statement should have been prepared for this project. Our comments repeatedly expressed concern over the scale and intensity of the commercial logging planned and consequent effects to wildlife; fish; soil integrity; water quality; Management Indicator, listed, and Sensitive species; carbon storage; never-before logged or roaded, relatively pristine forest; old growth (LOS) forest habitat; and large tree abundance. Logging of large trees and old growth forest is highly controversial for the public, yet much misleading terminology and falsely optimistic analysis assumptions were used to gloss over these issues. Further, our comments noted scientific controversy over several key assumptions and conclusions in the analysis that was not disclosed or analyzed, leading to the impression of a false scientific consensus over the effects of the project. A more thorough cumulative effects analysis would have revealed the ecosystem altering and crushing large scale effects of so-called “accelerated restoration” logging of which Elk 16 is a part, thus supporting the preparation of an EIS based on many connected and similar actions with

similar effects within the same general timescale and over a broad geographic region not confined to the Malheur National Forest alone, but certainly reflected across the broader Malheur National Forest.

An EIS is needed to fully address the scale and intensity of the Elk 16 project itself, the scientific and public controversy over several key assumptions used to shape overly optimistic conclusions regarding the project's environmental impacts, and the enormous cumulative impacts across eastern and central Oregon National Forests from the accelerated scale and pace of logging that is perpetuated under the guise of a region-wide "accelerated restoration" program that encompasses the Elk 16 project.

Resolution

Our comments on the Elk 16 PEA repeatedly emphasized the extreme scale and intensity of logging proposed, the insufficient analysis of cumulative effects of the Elk 16 project in combination with Forest-wide and region-wide similar timber sales over the same general time period and region, and the scientific controversy not being disclosed over key project assumptions and consequent environmental impacts. (See the description of our comments under various sections of this objection, including cited comments on repeated Forest Plan amendments as a cumulative and regional trend below.) These comments support the need for the Forest Service to prepare an Environmental Impact Statement, yet the Forest Service failed to do so.

We request that the Forest Service prepare a DEIS or SEIS for the Elk 16 project with a full 45 day public comment period.

II. The Elk 16 project violates the National Forest Management Act

The Elk 16 Landscape Restoration project violates the National Forest Management Act in the following ways: failure to ensure the viability of Management Indicator species; use of site-specific Forest Plan amendments instead of Forest-wide amendments; failure to adequately analyze the cumulative effects of repeated Forest Plan amendments; failure to demonstrate that Forest Plan amendments are not significant; violation of the Eastside Screens; and inconsistency between Forest Plan Management Area goals and proposed actions.

Failure to ensure the viability of Management Indicator Species (MIS)

Our comments noted many areas of analysis in which the Elk 16 EA failed to demonstrate that the viability of Management Indicator and focal species would be ensured with project implementation. Species of concern for protection of viability included the following Management Indicator species: Rocky Mountain elk (comments PEA pp. 43 & 56); American marten (comments PEA pp. 44, 54, 136, 160, 178, & 182); Northern goshawk (comments PEA pp. 16, 44, 48, 54, 136, 178, and 196); Blackbacked woodpecker (comment, PEA p.54); Whiteheaded woodpecker (comment PEA p. 158); Pileated woodpecker (comments, PEA pp. 44, 54, 136, & 180); and Primary Cavity Excavators (PCEs) (comments PEA pp. 160, & 180.) We are also concerned about failure to ensure viability of focal species on the Forest, including Bald eagle (comment, PEA p. 144); Great Gray owl (comment PEA p. 160); and Blue grouse (comment PEA p. 197.)

Examples of how our comments express these concerns re: failure to ensure the viability of MIS follow: "Reasons for our concerns re: Elk 16 project impacts to Pileated woodpeckers—loss of large snags cumulatively, proposed logging removal of large Grand firs, Alt. 2 logging in LOS habitat, reduction in OFMS habitat, EMC-WHT habitat having an existing deficit in large snags above 4 per acre, plus more loss of existing and future large snags through hazard tree

logging and removal of large Grand fir, and loss of large down wood foraging habitat, and loss of adequate canopy closure.” (comment, PEA p.180) “Again, this rubber-stamping conclusion of combined effects not adversely affecting Pileated woodpeckers and their habitat simply does not logically follow from the preceding PA (PEA) discussion of effects to Pileated.” (comment, PEA p. 182)

“...reasons for our concerns re: Elk 16 impacts to American marten habitat and their viability: cumulative and existing loss of large snags for denning compared to historic conditions and more large existing and future snag loss inevitable with Elk 16 proposed actions, loss of abundant large down wood and future down wood to burning and logging fuel reduction, current concern for marten viability on the Malheur and “very low” suitable habitat available (Wales et al. 2011), etc.” (comment PEA p. 182) “We are concerned by proposed direct and cumulative impacts to the availability of suitable habitat for Northern goshawk, Pileated woodpecker, American marten, and Blackbacked woodpecker, as well as elk and other species. We are concerned by an evident cumulative loss of viability for these species from many similar timber sales increasing in scale across the Malheur National Forest.” (comment PEA p. 54)

“Without reference to population studies of Blackbacked woodpecker populations on the Malheur (including reproductive success and their population trends), it can’t be assumed that the Elk 16 project would not negatively affect Blackbacked woodpecker viability or would not contribute to a trend toward upward listing for the species. We are still concerned that the Elk 16 project would cause negative effects to Blackbacked woodpeckers soon before increased fires. Why aren’t the “vulnerable” ranking for Blackbacked woodpecker and the viability assessment for the Malheur for them (Wales et al. 2011) considered in this Alt. 2 & 3 assessment of direct and indirect effects to Blackbacked woodpecker? (See PA (PEA) p. 172)...Actually this is not entirely true—Denser forest habitat would not be maintained in over half the connectivity/denser forest habitat network due to proposed commercial and non-commercial size logging (see PA (PEA) pp. 170-171) and also would not be maintained in Replacement Old Growth, Goshawk Management Areas (PFAs) and secondary marten habitat, all of which is proposed for some degree of commercial logging. The Dedicated old growth is proposed for non-commercial thinning under alt. 2. Thus these areas cannot be counted on as Blackbacked woodpecker habitat. ...The appropriate scale for impact assessment is project level, not Forest level only....This sounds like a gross over-estimate of available suitable Blackbacked woodpecker habitat on the Malheur and in the Elk 16 project area—evidently not ground-truthed.” (comments, PEA p. 178) “This conclusion (of continued viability) is reached by artificially minimizing impacts to Blackbacked woodpecker by shifting to a Forest-wide scale of assessment. The presumed “small” (unquantified) negative trend of habitat caused by the Elk 16 project is not evaluated as to its actual effects to the viability of the vulnerable-ranked species, whose population has been assessed as of concern for viability on the Malheur National Forest.” (comment PEA p. 179)

Resolution

LOWD/BMBP has commented on its objection to the MNF’s failure to provide for viability of Management Indicator species in the Elk 16 project. See our comment citations and sample quotes in the above paragraphs. Pages in the PEA for these comments include: 43, 56, 44, 54, 136, 160, 178, 182, 158, 172, 174, 175, 44, 180, 141, 160, 197, 16, 48, and 196.

Resolution of this issue would include dropping of proposed logging of large trees (equal to or greater than 21”dbh); cancelation of plans to reduce LOS in the project area; less overall tree density reduction in areas including goshawk PFAs, active Pileated woodpecker habitat, suitable Blackbacked woodpecker habitat, and satisfactory elk and deer cover; dropping of commercial logging in wildlife connectivity corridors, secondary marten habitat, and RHCAs; and no burning of suitable habitat for Pileated woodpecker and American marten.

Use of site-specific instead of Forest-wide Forest Plan amendments:

The Forest Service failed to justify the use of “site-specific” Forest Plan amendments to effectively violate existing Forest Plan standards by not demonstrating that there are any unique site characteristics that would warrant site-specific amendments and failing to disclose any unique site-specific circumstances during the public comment period for scoping or the Preliminary Environmental Assessment. Our comments on the PEA addressing the use of these site-specific Forest Plan amendments appear on PEA pages 42, 43, 44, and 57.

These conditions described in the Draft Decision Notice for Elk 16 to justify the proposed Forest Plan amendments are not site-specific in that they are not unique to the Elk 16 project area at all. Many other timber sales on the Malheur and other eastside forests have used the same rationale for reducing big game cover below Forest Plan standards, for logging large trees equal to or greater than 21” dbh, and for converting Old Forest Multi-Strata forest to Old Forest Single-Stratum structure. Witness the very similar or identical rationales for such Forest Plan amendments in Table 16 (re: reducing elk cover to below Forest Plan standards), and Table 18 (re: using amendment to remove trees greater than or equal to 21” dbh) in the Elk 16 Draft Decision Notice, pp. 55-58 and 63-64. Practically the same word-for-word rationale is given for the Big Mosquito timber sale project as is given for the Elk 16 project for the LOS reduction amendment. Therefore none of the proposed Forest Plan amendments for Elk 16 are really site-specific, based on unique site conditions. This also becomes clear with some of the region-wide trend characterization in the Draft Decision Notice rationale, such as: “In the approximately 20 years since the Eastside Screens were authorized, the influence of past timber harvest and fire exclusion have continued to allow the establishment and crowding of some younger grand fir and Douglas fir” and “Historically, frequent low-intensity and mixed-intensity fire regimes maintained ponderosa pine as the dominant species in the dry forests (Agee 2003, Hessburg et al. 2005).” (Draft Decision Notice, p. 62) Obviously these are generalizations that apply to dominant trends in dry Ponderosa pine-dominant forests across the Blue Mountains forests and are not just specific to the Elk 16 project area.

Based on the distribution across the Malheur NF of similar and identical Forest Plan amendments, the Elk 16 amendments are obviously not a site-specific circumstance, but a Forest-wide and regional trend. Thus site-specific Forest Plan amendments are not appropriate and represent a means of avoiding the broader public controversy of proposing a Forest-wide amendment to log large trees, reduce overall large tree structure across the forest, log old growth habitat and actually reduce old growth structure across the forest, and continually eliminate satisfactory and total cover for elk to below existing Forest Plan standards across the Forest. Such a public admission of plans for the whole Forest to liquidate old growth, large trees, and quality elk habitat would be very unpopular, not represent the best available science, be scientifically extremely controversial, and represent more honestly a complete retrograde Forest-wide move away from managing for ecologically sound restoration, instead reverting to the heavy overlogging of large trees, old growth, and the forest in general that was more typical of the 1930’s through the 1980’s—at a greatly accelerated pace and scale.

Such Forest Plan amendments continue a trend of not meeting multiple use goals (e.g. elk population stability) and objectives for long-term land management on the Malheur NF (e.g. meeting management objective populations for elk, retaining and increasing LOS across the Forest, and maintaining and increasing large wood structure for wildlife and fish habitat, recreation, soil fertility, and carbon storage.) These are not just “minor” changes in standards and guidelines; these amendments are clear violations of Forest Plan standards that increase in significance cumulatively over time. The Finding in the Draft Decision notice does not address the question of whether these amendments are just “minor” changes.

See also our arguments regarding these Forest Plan amendments not really being site-specific in the discussion of our objection that these Forest Plan amendments are significant, below.

Resolution

LOWD/BMBP have commented on our objection to the use of site-specific Forest Plan amendments to effectively violate existing Forest Plan standards across the Malheur National Forest and other eastern Oregon Forests. (In addition to our PEA comments, we have also extensively commented on this issue on multiple timber sale projects across the Malheur and other eastern Oregon National Forests.) Comments on the proposed Forest Plan amendments for the Elk 16 project appear on PEA pages 42-44 and 57.)

For resolution of this objection, the Forest Service needs to drop all the proposed Forest Plan amendments for the Elk 16 project, including canceling the logging and other activities associated with each Forest Plan amendment (e.g. dropping the logging of large trees equal to or greater than 21”dbh, not reducing LOS to further below HRV in violation of Forest Plan standards, and not reducing elk cover to below Forest Plan standards.)

Failure to adequately analyze the cumulative effects of repeated “site-specific” Forest Plan amendments across the Malheur National Forest

The Elk 16 Preliminary and Final Environmental Assessments and Draft Decision Notice failed to adequately analyze the cumulative effects of repeated “site-specific” Forest Plan amendments across the Malheur National Forest. Our related comments on the PEA regarding logging trees equal to or greater than 21” dbh and the broader Forest-wide trend of logging large trees can be found in our comments on PEA pages 44, 127,137, and 160, along with a comment about the regional deficit in large tree structure on PEA p. 58. Regarding the Elk 16’s reduction in LOS, our comments can be found on PEA pages 44, 47, 54, 136, 155, 159, 160, 163, and 180. We also expressed concerns re: reduction in elk cover on PEA pages 43 and 56. An example of our comments on the issue of the cumulative effects of repeated “site-specific” Forest Plan amendments across the Malheur National Forest: “The Elk 16 timber sale (aka “Landscape Restoration”) would entail a dramatic landscape-scale reduction in satisfactory elk thermal (and hiding) cover in an area where such cover has already been significantly reduced by past logging. Hunting pressure for elk in the Elk 16 area is heavy, as we witnessed during bowhunting season and could expect it to be with the advent of rifle season. We are strongly opposed to reducing satisfactory cover for elk below Forest Plan standards, a violation of an already weak and outdated Forest Plan. Cumulatively, the reduction of satisfactory cover for elk is significant, as almost every timber sale (“project”) on the Malheur further reduces satisfactory cover—usually planning to do so to below Forest Plan standards.” (comments, PEA p. 56)

The fact that the Beulah wildlife management unit currently falls below the management objective (DDN p.55) is a great reason for not violating Forest Plan standards for elk cover. These Forest Plan amendments obviously have cumulative impacts to elk and are part of a regional trend in management direction rather than being justified by site-specific circumstances. Re: Table 16 in the Draft Decision Notice, just listing the sources of cumulative effects is not sufficient analysis under NEPA. For instance, the cumulative effects to the populations and viability of elk must be assessed—the combined results of the proposed project and other effects to elk, including other Forest Plan amendments, roading, increased human disturbance, reduction in cover—the effects of all of these to elk reproductive success, population status, and long-term viability on the Forest and in the project area. What is the viability threshold for elk in relation to cover? What would cause populations of elk not to maintain management objective levels? These questions were not analyzed or answered in the PEA, FEA, and the Draft Decision Notice, even though they are central to ensuring the viability of elk on the forest and analyzing the

cumulative effects of repeated Forest Plan amendments to reduce elk cover to below Forest Plan standards across the Malheur NF.

The Forest Plan amendment to allow reduction in summer range satisfactory cover to fall below already minimal Forest Plan standards is part of a distinct widespread management trend with cumulative impacts to elk viability. So it does result in additional projects and activities that will impact big game summer range cover (e.g. the Wolf Vegetation Management Project, also on the Malheur NF), in that a precedent based on Region 6 direction is set for using more such Forest Plan amendments. Witness the continuing trend to use Forest Plan amendments to reduce summer and winter range cover for elk shown in Table 16.

Likewise the PEA, FEA, and Draft Decision Notice failed to adequately analyze the cumulative effects of multiple Forest Plan amendments across the Malheur NF to the abundance and persistence of large trees (greater or equal to 21" dbh) and Late and Old Structure (old growth habitat) across the Forest. There is no quantification of the total number of large trees that would be removed through logging in the Elk 16 project, and no upper limit to that reduction stated. Based on the Draft Decision Notice, this loss could be quite significant to the project area and contribute significantly to the cumulative loss of this structure across the Malheur NF. All commercial logging proposed over about 13,200 acres could include removal of large trees, based on very subjective criteria, and including both Grand fir and also Douglas fir outside of LOS. Such logging could prevent stands close to being LOS now (defined as 10 large trees per acre) from becoming LOS for decades to over a century, as well as eliminate currently identified LOS from meeting the definition for LOS on the Malheur. There is no analysis given of the effects to wildlife, fish, birds, soils, carbon storage, recreational values, scenic values, etc. from such widespread removal of large structure and reduction in existing and near-future LOS—for the project area or the Malheur as a whole, in combination with the effects of similar Forest Plan amendments across the Forest.

See also our arguments below re: the cumulative effects of these Forest Plan amendments in the discussion of our objection that the Forest Plan amendments have significant effects, below.

Resolution

LOWD/BMBP has commented on its objection to the MNF's failure to adequately analyze the cumulative effects of multiple and repeated Forest Plan amendments such as those proposed in Elk 16. Failure to adequately analyze these cumulative effects results in failure to justify these proposed Forest Plan amendments. Our comments on this objection above are cited in the above paragraph and include comments on PEA pages 44, 58, 47, 54, 127, 137, 155, 159, 160, and 163.

To resolve this objection, the Forest Service needs to drop all proposed Forest Plan amendments for the Elk 16 project and their associated logging and other activities or restart the Elk 16 project public comment period with a SEIS or DEIS adequately analyzing the cumulative effects of all these multiple and repeated similar Forest Plan amendments in combination with the Elk 16 project Forest Plan amendment effects for the Malheur National Forest.

Failure to demonstrate that Forest Plan amendments are not significant

The Forest Service has failed to demonstrate in the PEA, FEA, and Draft Decision Notice that the proposed Forest Plan amendments for the Elk 16 project do not have significant effects. Our comments on the PEA address the significance of the Forest Plan amendments proposed for the Elk 16 project. For instance: "The Elk 16 project is not consistent with the Forest Plan as stated in the PA (PEA) numerous times, as Elk 16 proposed actions would require Forest Plan amendments that effectively violate Forest Plan standards and guidelines, mooting the existing Forest Plan." (comment, PEA p.185) Yet the "No significant impact" finding for the Elk 16

project rests on its consistency with the Malheur Forest Plan. Actually the Elk 16 project is not consistent with the Malheur Forest Plan and therefore reaches a level of significant impacts.

On page 163 of the PEA the Forest Service claims that in the mid to long-term under either action alternative, old forest single-stratum and old forest multi-stratum (OFSS & OFMS) are projected to move toward historic levels. We comment: “Why would OFSS and OFMS move to historic levels when a precedent is being set for large scale removal of large trees? OFSS & OFMS require more large trees, not less.” (on PEA p. 163) These amendments don’t have to be the first of their kind to continue setting a precedent for using Forest Plan amendments to remove large trees and reduce LOS through logging, as if they are implemented, other Districts and Forests are more likely to follow suit and perpetuate the trend. However, for reduction in LOS being proposed through a Forest Plan amendment, both Elk 16 and the Big Mosquito timber sale (which has about the same objection deadline) are in fact setting more of a first time precedent, as other Forest Plan amendments have sought to convert OFMS to OFSS, but without a net reduction in LOS—at least on the eastern Oregon National Forests we monitor, including the Malheur. Thus these Elk 16 Forest Plan amendments also rise to a level of significance by perpetuating a Forest-wide and regional trend of using Forest Plan amendments to log large trees and by starting a trend (with the Big Mosquito project) of using Forest Plan amendments to actually reduce net LOS on the Forest.

Another evident trend with the Forest Plan amendments on the Malheur to remove large trees is that the grab for big trees has been getting greedier—the acreage from which they would be logged is getting exponentially bigger—from 2,529 acres of mostly dead trees in 2008 to 8,400 acres of live trees in 2012, and now over 13,240 acres of large live trees in 2015. This exponential increase trend poses more significant cumulative impacts to large tree structure, and suggests that Forest Plan amendments going through leads to more amendments and larger takes of large trees. Further, the timing suggests response to economic demand from the economic recession, not to site-specific conditions. The reduction of large trees is now proposed for the entire area of commercial logging proposed, again indicating a lack of site-specific determination of where to remove large trees—especially given the very subjective, broad criteria for doing so. Taking large trees (that are used to define LOS) out of 32% of the area’s OFMS (over 4,487 acres with no specified limit) is a significant impact to the project area’s LOS, which is already under HRV for OFMS. The Big Mosquito sale is also proposing these Forest Plan amendments to remove large trees and reduce LOS, and the Magone project (in scoping) may also incorporate these amendments. Both of these timber sales post-date Elk 16 timber sale planning and could be following the lead of the Elk 16 project.

Given that large tree structure is generally at a great deficit compared to HRV due to overlogging of large trees (such as is now proposed again), removal of large trees over 26,678 acres of the Malheur (about half of which would be from the Elk 16 project alone at 13,240 acres) is a significant impact, especially considering that most acreage across the Malheur has few or no large trees left, significantly less large trees and old forest than the Elk 16 project area.

So given that these are not really site-specific Forest Plan amendments, in that they are repeated across the Forest with the same or similar rationales at increasing scales of large tree and LOS reduction, the question arises, where does this end? Thus site-specific Forest Plan amendments are not appropriate as they circumvent a bigger, more transparent public process to address these issues. Thus the so-called site-specific process represents a classic case of “death by a thousand cuts”, although it’s actually thousands of cuts.

These Forest Plan amendments (Elk 16’s and other similar amendments) actually change management practices and goals for management areas through the back door, through on-the-ground logging practices. There is specific direction for what is required to implement site-specific Forest Plan amendments that is not being met, as these are not really site-specific rationales based on unique characteristics of the sites. With the cumulative impacts of many such

Forest Plan amendments, the effects of this Forest Plan amendment process actually transcends the duration of individual projects.

While one of these amendments may not directly authorize additional projects that remove large trees or reduce LOS, etc., each such amendment encourages the Forest Service to propose more such amendments. Now they are proposed for virtually every major timber sale. The Forest and District staff are being explicitly directed by Region 6 to use Forest Plan amendments this way, to effectively allow for more logging. The Forest Service is a top-down agency, so this is a predictable future trend that definitely results in significant impacts throughout the Malheur and the region.

With the LOS amendment, as with the 21" dbh amendment, there's an evident recent trend toward violating Forest Plan standards to allow for the logging of old growth (LOS) habitat despite this being completely contrary to ecological restoration goals and majority public desire to preserve old growth forests from logging. On the Malheur in 2010: the Damon project converts 253 acres of OFMS to OFSS, driving OFMS below Forest Plan standards; in 2015 the Elk 16 project proposes to eliminate 9-32% of OFMS as LOS, depending on the ultimate effects of removing large Grand fir on the ground—a reduction off 1,300 to 4,487 acres of LOS, a substantial increase from Damon, and eliminating net LOS. The Big Mosquito project, also on the Malheur, on the same timeline as Elk 16 now, would also use the same amendment to remove large Grand fir within 600 acres of LOS, plus in aspen stands. The difference in acreage of LOS reduced between Elk 16 and Big Mosquito reflects the difference in available abundance of LOS in the two project areas. The Big Mosquito rationale is the same as Elk 16's. Together, these two project increase the acres of LOS affected on the Malheur NF from 254 acres to 2,153 acres of definite LOS reduction. (Draft Decision Notice, p. 68) This is an increase of about 10 times, definitely rising to a level of significance, and may not represent all the LOS reduced by large tree logging in Elk 16.

Obviously there is communication among staff on the same Forest. Thus one amendment appears to lead to another, creating significant cumulative effects across the Forest which are not confined to one project area. This has the effect that amendments likely will result in additional projects or activities that will authorize logging within late and old structure where there will be net loss in LOS, increase the scale and numbers of large trees being cut across the Forest, and/or further reduce elk cover to very marginal levels that may no longer sustain viable elk populations across the Forest, limiting the elks' ability to shift from one area of habitat to another. Elk 16 Forest Plan amendments are therefore posing significant impacts by setting and continuing precedents and trends that are Forest-wide, and in some cases, region-wide. The Elk 16 Forest Plan amendments are a significant escalation toward increasing the scale and intensity of Forest Plan amendments that violate existing Forest Plan standards.

Resolution

LOWD/BMBP has commented on our objection to the MNF's failure to identify the Forest Plan amendments as having significant environmental impacts. See our comment quotes and page numbers in the first paragraph of this objection point, which can be found on PEA pages 185 and 163 of our comments on the PEA.

To resolve this objection, the Forest Service would need to drop all proposed Forest Plan amendments for the Elk 16 project, along with their associated logging (e.g. of large trees, LOS, and satisfactory elk cover in summer range) and other activities.

Other Forest Plan violations

Additional Forest Plan violations in the Elk 16 project include violations of INFISH goals and RMO objectives (see our comments on PEA pages 121, 123, 126, 127, and 133); not meeting Forest Plan goals and standards with proposed Forest Plan amendments as they are implemented (comment, PEA p.6); and inconsistency between Forest Plan management area goals and planned activities, such as logging LOS, Visual Foreground and Middleground areas, RHCAs, and Semi-Primitive Motorized Recreation areas, and non-commercial thinning in a Research Natural Area (see comment on PEA p. 5.) We are also very concerned about violation of the Eastside Screens requirement to move toward LOS (PEA par. 3 statement of this Eastside screens requirement and our response on the same PEA page. 160.)

Examples of our comments: Regarding the Eastside screens requirement “to move stands toward OFMS and OFSS structural stages; maintain all live trees greater than or equal to 21 inches DBH; and maintain connectivity and reduce fragmentation of LOS and Dedicated Old growth” (PEA quote, p. 160), we responded as follows: “We are concerned that past logging targeted and removed many of the largest trees, reducing old forest structures (OFMS, as well as OFSS) and that large green tree replacement trees removed then and proposed for logging now with the Elk 16 sale reduced and would further reduce future large snag potential and large snag densities throughout the project area....We are also concerned that such planned removal of large trees is in clear violation of Forest Plan standards and guidelines designed to benefit multiple species and violates restoration goals.” (comment, PEA p.160)

Regarding violation of INFISH RMOs and standards: “The Forest Service also fails to address sediment loading that may be caused by prescribed burning in RHCAs and/or by log hauling in or near RHCAs. Further, INFISH logging buffers and requirements for large wood retention would be violated without meeting INFISH RMOs.” And “We disagree with the Forest Service contention that the Elk 16 project would not adversely affect watersheds, RHCAs and MA3s, stream channels, water quantity and water quality.” (comments, PEA p. 133)

Resolution

LOWD/BMBP has commented on our objection that other Forest Plan violations include violation of the Eastside Screens, INFISH, and inconsistency between Forest Management Area goals and proposed Elk 16 logging and other activities. See our comments cited and described in the paragraphs above.

To resolve this objection, re: INFISH violations, the Forest Service needs to not allow commercial logging and other activities contributing sediment into RHCA streams or otherwise contributing to non-attainment of INFISH RMOs, such as by changing channel morphology, affecting hydrologic flows, or removing stream shading in a way that could increase water temperatures. To resolve our Eastside Screens violation objection, the Forest Service needs to drop planned logging of large trees, LOS, and wildlife connectivity corridors. To address our concern re: inconsistency with MA goals, the Forest Service needs to meet these objectives by reducing logging impacts in these management areas.

Violation of the Clean Water Act

The Elk 16 project fails to meet Clean Water Act requirements by not clearly avoiding water temperature increases for streams that are or were 303(d) listed for stream temperature and have TMDLs, and by potentially increasing sediment loading in Crane Creek. See our comments on the PEA on pages 128 and 133. “We disagree with the Forest Service’s conclusion that the action alternatives are consistent with the Clean Water Act. The CWA MOU directs that the Forest Service cannot further degrade water quality impaired streams, yet the Forest Service is planning to do so with non-commercial thinning in aspen areas of Class 1 and 2 streams that have a TMDL

for water temperature for Bull trout rearing and spawning (Little Crane, Crane, and Elk Creeks), as the PA (PEA) acknowledges that this thinning would decrease stream shading and increase stream temperatures for up to 20 years. (PA p. 128) Further the Forest Service fails to present analysis supporting its contention that commercial thinning and connected actions would have no measurable adverse effect to macroinvertebrate habitat in Crane Creek (303 listed for biocriteria) or that there would be no measurable increase in sediment in Crane Creek from commercial logging and connected activities. (See PA p. 128) The Forest Service also fails to address sediment loading that may be caused by prescribed burning in RHCAs and/or by log hauling in or near RHCAs.” (comments, PEA p. 133)

Resolution

LOWD/BMBP has commented on Clean Water Act violations. See comment citations and quotes above, which may be found on PEA pages 128 and 133.

To resolve this objection, the Forest Service needs to cancel plans for commercial logging in RHCAs, non-commercial aspen thinning on 303 (d) listed streams where this could increase stream temperature, and analyze and avoid potential sediment delivery from log-hauling adjacent to RHCAs, burning within RHCAs, and other activities that could violate Clean Water Act requirements.

Endangered Species Act violations

The Elk 16 project analysis and Draft Decision Notice fail to avoid the project contributing to a trend toward potential uplisting of Sensitive and Threatened listed species and potential loss of these species’ viability in the project area or on the Malheur NF. The species we addressed for this objection in our comments include Bull trout and Redband trout (comment PEA pp.59, 121, 123, 125 & 126), Gray wolf (comment PEA p. 137), and Pacific fisher (comment PEA p. 44), as well as other species for whom we also commented re: project impacts and potential loss of viability, such as Columbia Spotted frog (comments PEA pp.59, 123, and 137); Canada lynx (PEA p. 137), and Western Ridged mussel (PEA pp. 121 & 123.) Examples of our comments: “The Forest Service offers no detailed analysis considering population trends for Bull trout and Redband trout and existing degraded stream conditions, nor any detailed quantified analysis to support their conclusions that the proposed action would not affect the viability of Bull trout and Redband trout within the project area, nor that ‘effects to bull trout and Redband habitat would be negligible, short term, and not occur beyond the drainage level’, nor that the Elk 16 project would not contribute to a negative trend in viability on the Malheur National Forest for either species. All of this is completely unsubstantiated. We disagree strongly that there is no need for consultation with the U.S. Fish and Wildlife Service.” (Comment PEA p.125)

Resolution

LOWD/BMBP has commented on our objection that the Elk 16 violates the Endangered Species Act. See comment citations and quotes in the above paragraph.

To resolve our objective regarding Endangered Species Act violations, the Forest Service needs to fully meet the requirements of the Endangered Species Act by demonstrating that the selected project alternative would not contribute to a trend toward uplisting or loss of viability for the species listed above, including Bull trout, Redband trout, Gray wolf, Pacific fisher, Canada lynx, Columbia spotted frog, and Western ridged mussel. This may entail eliminating: large tree

logging, reduction of LOS, reduction of deer and elk cover below Forest Plan standards (as they are primary prey of Gray wolves) and logging within RHCAs.

Thank you for your consideration of these objections. We look forward to meeting with you to work on a resolution to our concerns.

Sincerely,

Karen L. Coulter, Director,
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League of Wilderness Defenders
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