

NEPA

WildEarth Guardians
Teck Washington, Inc., Pend Oreille Operations
Washington Cattleman's Association
Sierra Club/Alliance for the Wild Rockies
The Lands Council
Stevens County Cattleman's Association
Northeast Washington Forest Coalition

1. Inadequate Response to Comments. Failure to accurately disclose essential information regarding the revised Forest Plan related to direct, indirect, and cumulative impacts, which precludes meaningful public comment.

Response

CEQ regulations at 40 CFR 1503.4(a) state “An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

- (1) Modify alternatives including the proposed action.
- (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
- (3) Supplement, improve, or modify its analyses.
- (4) Make factual corrections.
- (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

The Forest received 926 letters during the comment period for the DEIS and Draft Plan. Preparing responses for each individual commenter is neither efficient nor effective, as there are common themes that emerge from the various commenters. Providing individual responses to each commenter would have resulted in an unnecessarily long and cumbersome document, with excessive duplication.

Appendix E of the FEIS contains responses to comments. When comments were considered collectively, the document indicates which individual letters comprised the summary comment.

The proposed action's direct, indirect, and cumulative impacts to grizzly bear can be found on pages 479-480 of the FEIS, Vol. II. While there is not an extended discussion about the impacts of motorized recreation on the species, the discussion includes the statement “Management of grizzly bears does not vary between alternatives.” Impacts to Canada Lynx are found on pages 480-483 (FEIS, Vol. II). Impacts to woodland caribou are found on pages 483-485 (FEIS, Vol. II). Impacts of motorized recreation to wolverine are found on pages 487-488 (FEIS, Vol. II). Impacts to bull trout are incorporated into the discussion on surrogate and focal species as well as aquatic and riparian systems since: “Properly functioning watersheds provide stable and productive ecological systems and allow for conditions that support aquatic species viability and self-sustaining populations, contribute to the recovery and de-listing of threatened and endangered species, and restore stream systems that do not meet Washington State water quality standards (WADoE 2014f)” (FEIS, Vol. I, p. 7). Impacts of motorized recreation to surrogate wildlife species are found on pages 488-490 (FEIS, Vol II). Gray wolf impacts are incorporated in the discussion of wolverines, which serve as their surrogate species. They are habitat generalists, impacted by road density and winter recreation (FEIS, Vol. II, p. 450).

Appendix C of DEIS states that “A programmatic FEIS, such as this one, considers large areas that encompass a wide array of environmental interactions, not all of which occur on the national forests. Many of these environmental interactions will be most accurately disclosed as cumulative effects in site-specific environmental analyses; they can neither be confidently predicted nor credibly estimated for inclusion in this document. In such cases, these cumulative impacts are discussed to the extent data and information allow. Wherever possible, cumulative impacts of the alternatives have been identified and estimated, even when the impacts are estimated with limited degrees of certainty (DEIS Vol. 2 p 823).

The team then goes on to list the past, present, and reasonably foreseeable programmatic actions.

To address the allegation that there was a lack of plan components related to Subpart A of the Travel Management Rule, the IDT explained how they complied with Subpart A through the completion of the Forestwide Travel Analysis Report in 2014. The team further explained that “Recommendations from the Forestwide Travel Analysis Report have been incorporated into the land and resource management plan in the form of plan components which address ecological, economic, and social sustainability of the road system, including road density recommendations for some management areas. These plan components will be used to inform future decisions on roads at the project level. Any decisions regarding specific roads will be accomplished at the project level, as has been done in the past” (FEIS, Vol. I, p. 22). Forest Plan components related to transportation are found on pages 72-75 of the revised LMP.

To address the allegation from Teck that the team did not address their request to analyze an alternative that excluded all existing mining claims from recommended wilderness areas, the team responded, “The no action alternative and alternative O do not propose recommended wilderness that would affect existing mineral claims or access to them. Some existing mining claims and other mineral-rich areas are within inventoried roadless areas (IRAs), and the 1872 Mining Law, as amended, and §478 of the Organic Administration Act provide for reasonable access to mining claims. The responsible official determined a sufficient range of alternatives related to minerals and mining claims is included in the FEIS, therefore an alternative that completely removes any recommended wilderness that may affect existing mineral claims was considered but eliminated from detailed study” (FEIS, Vol. III, p. 1007).”

The rationale for why Teck’s request was not analyzed in detail is consistent with regulations at 40 CFR 1502.14(a).

The project record indicates that the IDT provided reasonable responses to public comments. Where appropriate, the team consolidated similar comments and responded to them collectively. The team focused their analysis on issues that demonstrated meaningful differences among alternatives and provided rationale for not considering certain topics in detail. In conclusion, I find no violation of law, regulation, or policy.

Remedy

1. Revise the analysis in the FEIS to accurately disclose essential information that allows for meaningful public comment, as required by NEPA.
 - a. No action recommended. See response above.
2. Revise the analysis in the FEIS, Appendix E, to meaningfully respond to and address public comments.
 - a. No action recommended. See response above.

3. The Forest failed to include an alternative that addresses the demand for grazing.

Response

40 CFR 1502.14(a) states that agencies shall “Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.”

Page 80 of the FEIS, Vol. II reads:

“Some commenters suggested that the Forest should consider alternatives that would identify ways to increase livestock grazing to meet local demand, while others felt that the Forest should look for ways to reduce the level of grazing by domestic livestock including total removal of grazing authorizations.

Ultimately, the responsible official decided not to analyze these alternatives in detail because livestock grazing is a suitable use of NFS lands and level of grazing is determined for each allotment under project-level NEPA analysis. Determinations about the type and amount of grazing, seasonal restrictions, and site-specific direction are determined during that project-level analysis.”

I find that the IDT complied with the regulatory requirement by providing a brief rationale for why they did not provide detailed consideration for increasing livestock grazing to meet local demand. Further, the Plan does not reduce authorized livestock grazing but provides a programmatic framework that guides future site-specific actions" (FEIS, Vol. II, pages 650-651).

Remedy

4. ARCS, like INFISH, is a major decision with long-term implications and was, appropriately, open to public comment and review. Similarly, the ARCS-mod updates to ARCS will have long-term implications as well as direct, immediate consequences and the Forest Service must be willing to change the ARCS in response to public comments on the plan. The Forest Service should consider modifying INFISH to provide more flexible restrictions tailored to site-specific conditions to avoid imposing limits beyond what is needed for the optimal level of stream protection.
 - a. No action recommended. “[T]he Aquatic Restoration Strategy (ARS) (USDA Forest Service 2005b), the Aquatic and Riparian Conservation Strategy (ARCS) (USDA Forest Service 2016a) and the Watershed Condition Framework (Potyondy and Geier 2010) have been developed to reflect management direction recommended by current research and supported by regional and national policy” (FEIS, Vol. I, p. 7).
5. Design the Plan to recognize the contribution of grazing to economy and social well-being of people in the region. The management of the Plan can impact adjacent private land. We recommend developing an alternative that is consistent with Forest Service policy and the Colville's desired conditions which meets the demand for authorized grazing by restoring grazing on the 16 vacant allotments, modifying INFISH standard to be more (not less) flexible, and maximizing livestock grazing on suitable lands.
 - a. No action recommended. “Determinations about the type and amount of grazing, seasonal restrictions, and site-specific direction are determined during that project-level analysis” (FEIS, Vol. I, p. 80). Additionally, the Plan includes a Desired Condition relative to the social and economic contributions of livestock grazing (revised LMP, page 83).

3. The Forest must consider a no-grazing alternative, as well as a reduced grazing alternative. Further, the FEIS fails to acknowledge some AMP's have not been updated in over 40 years.

Response

40 CFR 1502.14(a) states that agencies shall “Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.”

Page 80 of the FEIS, Vol. I reads:

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The Multiple-Use Sustained-Yield Act of 1960 states “the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.” Analysis of a “no grazing” alternative would not be consistent with the Act.

Similarly, the National Forest Management Act of 1976 Section 6(e)(1) states management plans shall “provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use, Sustained-Yield Act of 1960, and in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and timber, watershed, wildlife and fish, and wilderness.”

Among the elements common to all action alternatives is to “[r]etain all existing permitted activities and facilities” (FEIS, Vol. I, p. 31).

I find that the IDT complied with the regulatory requirement by providing a brief rationale for why a no grazing alternative was eliminated from detailed study. This determination is also consistent with the Multiple-Use Sustained-Yield Act of 1960 and the National Forest Management Act of 1976 in providing for range resources.

While the analysis does not explicitly state when allotment management plans were last updated, the FEIS includes an explanation that “Opening and closing allotments or changing allotment boundaries are site-specific decisions not made in this forest plan revision process. The revised land and resource management plan and alternatives identify suitable uses (including grazing) for each management area and the FEIS discloses the effects of grazing on other resources. Alternatives are not designed to change boundaries, end grazing, or make site-specific changes to allotments. The revised land and resource management plan describes management direction, such as desired conditions for the variety of vegetation types within grazing allotments, that may result in future changes to allotment management plans (FEIS Vol. I, p. 21).

In conclusion, I find no violation of law, regulation, or policy.

4. Because of the weak direction of Plan Components, the differences between the LMP's revision alternatives are superficial, which violates NEPA.

Response

Forest Service planning regulations at 36 CFR 219.5(a)(2)(i) identifies “The process for developing or revising a plan includes: Assessment, preliminary identification of the need to change the plan based on the assessment, development of a proposed plan, consideration of the environmental effects of the proposal, providing an opportunity to comment on the proposed plan, providing an opportunity to object before the proposal is approved, and, finally, approval of the plan or plan revision. A new plan or plan revision requires preparation of an environmental impact statement.”

CEQ regulations at 40 CFR 1502.14 state that “Based on the information and analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public.”

CEQ regulations at 40 CFR 1501.7(a)(2) states that an agency shall “Determine the scope (§1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.”

Pages 15-20 of the FEIS, Vol. I, describe how comments were used to identify significant issues and formulate alternatives. Six significant issues were identified: old forest management and timber production, motorized recreation trails, access, recommended wilderness, wildlife, and riparian and aquatic resource management.

The team also described how the alternatives were developed and narrowed for detailed consideration:

“The alternatives to the proposed action were developed through the public meetings that continued through 2008 and public comments on the 2011 proposed action scoping. The alternatives represent a range of possible management options from which to choose...

All alternatives to the proposed action considered in detail respond to the need for change or address one or more significant issue. However, not all possible alternatives were carried into detailed study, as the list of options would have been prohibitively large. Instead, the responsible official identified those alternatives that both met the criteria and created a reasonable range of outputs, direction, costs, management requirements, and effects from which to choose. All alternatives considered in detail would meet law, regulation, and policy” (FEIS, Vol. I, p 27).

See response #7 (below) with regard to analysis of Alternative C.

I find that the responsible official and team were compliant with applicable regulations regarding the development of alternatives.

5. The LMP and FEIS do not consider or incorporate best available science in the formulation of alternatives and disclosure of impacts in violation of NEPA and NFMA.

Response

CEQ regulations at 1502.24 states that “Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other

sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.”

For each resource discussed in the FEIS, descriptions of how data were acquired and references to scientific and other information sources are included in the “affected environment” and “need for change” sections. Each resource section also includes a discussion of methodologies and assumptions.

For example, the “affected environment” section for recreation includes a description of the analysis area, survey, trend, and use information that include relevant citations (FEIS, Vol. II, pp. 681-685). The “identification of lands suitable for recreation use” includes some discussion of the methodology used to identify the suitability of areas for specific types of recreation within an NFS unit (FEIS, Vol. II, pp. 686-688). The “methodology” section for recreation includes a discussion of assumptions, methods of analysis, incomplete and unavailable information, and spatial and temporal context for the effects analysis (FEIS, Vol. II, pp 698-700).

In conclusion, I find that the responsible official and interdisciplinary team were consistent with applicable regulations.

6. The FEIS does not disclose the reliability of data and limitations of models in violation of NEPA.

Response

CEQ regulations at 1502.24 states that “Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.”

In their response to comments, the team provided a lengthy explanation of the process used to assess the viability of wildlife species, indicating individuals and groups consulted to develop, review, and validate models (FEIS, Vol. III, pp. 1069-1071). While limitations of the model are not explicitly described, the team does not state that the models are perfect or without flaws. For example, in their discussion about surrogate species, the specialist explained, “By addressing the habitat needs and risk factors identified for surrogate species through the assessment, ecological conditions capable of supporting viable populations of all native and non-native desirable wildlife species, including R6 Sensitive Species, should be enhanced” (FEIS, Vol. III, p. 1070). Processes for peer review were also described in this section.

In the methodology section for forest vegetation, the team described the model used to simulate forest dynamics and development of forest structure. Assumptions were described. A limitation that was noted was that the “analysis was completed prior to the fires that occurred in 2015, and do not reflect changes from those disturbances (FEIS, Vol. I, p. 97).”

Throughout the FEIS, methodology sections lay out assumptions for models used and processes for trying to evaluate and improve existing models (FEIS, Vol. III, p. 1281).

In conclusion, I find the team to be in compliance with law, regulation, and policy.

7. In failing to fully analyze Alternative C, the Forest Service violated NEPA.

Response

CEQ regulations at 40 CFR 1502.14(a) require agencies to “Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.”

Alternative C is described by the objector as the “Citizen Alternative” (FEIS p 148).

The section of the FEIS that described “alternatives considered but eliminated from detailed study” addressed why Alternative C was not considered in detail:

The responsible official determined that many aspects of this alternative had been considered in the analysis for the no action and action alternatives... Because of the multiple use and sustained yield requirement of NFMA, combining all the suggested components of this alternative, which focuses on more restorative and passive management actions, this alternative was not fully developed. Developing this alternative in detail would not have led to viable alternative to be selected for implementation (FEIS, Vol. I, p. 81).

The interdisciplinary team considered how aspects of Alternative C were considered in the analysis and recognized that as a whole, it would not have led to a viable alternative. Therefore, I find the analysis to be consistent with law, regulation, and policy.

Remedy

5. We request the FS prepare a Supplemental EIS that addresses the analytical and scientific issues identified in this objection, and simultaneously undertake the Science Consistency Review process (Guldin, et al., 2003) for the Supplemental EIS. We request the Supplemental EIS takes a hard look at the science of climate change. We request the FS prepare and publicize written responses to comments on the draft forest plan/DEIS, as NEPA requires.
 - a. No action recommended. The FEIS states that, “All alternatives focus on designing desired conditions to provide healthy, resilient forests and more resilient infrastructure (e.g., trails, campgrounds, roads) in the face of climate change and other disturbance factors. Climate change is identified in the purpose of and need for action section of this FEIS as a reason for updating the 1988 forest plan.” (FEIS, Vol. I, pp. 22-23). Discussion of environmental consequences of alternatives relative to climate change starts on page 155 for the FEIS. Response to comments can be found in Appendix E of the FEIS.
6. We request the FS include, for full analysis and comparison to other alternatives, Alternative C as conceptually outlined in our DEIS comments and herein. We remain prepared to advise the agency on the composition of such an ecological/biocentric alternative.
 - a. No action recommended. See response above.

8. The Forest Service failed to conduct monitoring directed by the 1988 Forest Plan which has compromised the FEIS's ability to analyze and disclose cumulative effects. In addition, the lack of monitoring caused the Analysis of the Management Situation and Forest Plan FEIS to be uninformed.

Response

The 1982 Planning Rule at 36 CFR 219.12(k) reads, "At intervals established in this Forest Plan, implementation will be evaluated to determine how well objectives have been met, how accurate effects and cost projections are, and how closely management standards and guidelines have been applied." Table 5.2 of the 1988 Colville Forest Plan contains the monitoring actions, identifying the monitoring items, units of measure, frequency, and other information.

Monitoring and evaluation reports can be found on the Land Management Planning portion of the Colville National Forest website. These reports date back to 1989.

Monitoring reports were conducted annually, with a few exceptions where results from multiple years were combined. There is a gap in monitoring reports from 2003-2011. From 1989 through 1997, the format of the monitoring reports follows closely with the monitoring plan presented in the forest plan. Starting in 1998, the format of the plans changed to focus more on accomplishment reporting and lessons learned from monitoring.

As per the monitoring plan, these reports contain information about project-level NEPA compliance and whether project level decisions required amendments to the Forest Plan. For example, the monitoring report from 2012 states, "Review of NEPA documents and monitoring conducted by other resource specialists shows that each of the resource areas listed above are meeting standards and guidelines located in the Forest Plan" (2012 Monitoring Report, p. 3). Some reports also contain implementation and effectiveness ratings that summarize the required best management practices from project-level NEPA documents.

The IDT referenced the use of monitoring data as it relates to aquatic and riparian habitats on page 1049 of the FEIS: "Recent monitoring and assessments also suggest the strategies appear to be achieving their goals of maintaining and restoring aquatic and riparian habitats and key ecological processes at watershed and larger scales (see FEIS appendix H, and Hydrology and Fisheries sections of the FEIS for additional discussion and references)."

The Analysis of the Management Situation refers to the results of monitoring reports in several locations in the document, indicating that these reports informed the analysis (pp. 2, 7, 8).

Staff on the Colville National Forest consistently provided monitoring reports, per their 1988 monitoring plan through 1997. While the frequency of publication and formatting of the reports changed in subsequent years to focus on estimating performance outputs and services, the plans continued to look at how project level activities were consistent with forest plan standards, guidelines, and best management practices. In conclusion, I find no violation of law, regulation, or policy.

9. This document circumvents NEPA because its length and complexity effectively preclude the majority of people from participating in the process.

Response

CEQ regulations at 40 CFR 1500.1(b) state that “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.”

CEQ regulations at 40 CFR 1500.2(d) require agencies to “(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.”

CEQ regulations at 40 CFR 1500.4 provide guidance on how agencies shall reduce excessive paperwork. This guidance includes directions such as, “Discussing only briefly issues other than significant ones,” “Following a clear format for environmental impact statements,” “Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues,” and “Incorporating by reference.”

Appendix A of the FEIS provides a description of the public involvement process the revision team conducted. The process included multiple public and agency meetings and workshops, allowing attendees to provide input on the need for change and “listen to the public stakeholder dialogue around these [key] issues as participants sought to reach areas of common ground and understanding” (FEIS, Vol. II, p. 895). Additionally, “A summary of comments and identified significant issues has been posted to the project website” (FEIS, Vol. III, p 906).

Public comments (Appendix E of the FEIS, Vol. III) contained multiple requests for additional information, analysis of additional alternatives, or more detailed analysis. The revision team responded to unique requests in the appendix or referenced where in the document their concerns were considered.

Through their public involvement, the revision team identified 6 significant issues. These are described starting on page 15 of the FEIS, Vol. I. They also describe which comments were eliminated from detailed study (FEIS, Vol. I, p. 20) and other topics of interest to the public that relate to the decision that were not addressed in the FEIS (FEIS, Vol. I, p. 20-24).

The format of the FEIS includes clearly labeled headers that are bookmarked (pdf), so that readers can easily navigate to resource areas that interest them or skip those that are not of interest.

Laws, policy, guidance are referenced, with links for those individuals wishing to read in more detail. Additional detail from specialist reports were incorporated by reference, and a link to the reports were provided on the revision website. Research citations were also incorporated throughout the document.

Given the level of public interest, contention on various issues, and requests for additional information, the revision team did a reasonable job limiting the number of pages. The public involvement strategy offered the public multiple opportunities to engage with the revision team to provide input and clarify questions. Therefore, I find this analysis is consistent with law, regulation, and policy.

Remedy

7. The Remedy would be to withdraw this document, trim it down to a manageable size and present the aspects of the plan in a manner that can be understood by an average reader/commenter. We assert that this plan, as written does not offer that opportunity!
 - a. No action recommended. See response above.
8. This plan should be withdrawn and presented in a manner that is reflective of the Mission of the Forest Service, which is Multiple Use Management. Indeed, even the title of the Document identifies it as a "Land Management Plan" - this is a major divergence from previous management plans which were entitled "Land and Resource Management Plan (LRMP)" it infers that the agency is managing the land, but no longer feels compelled to manage the resources (e.g., timber, grazing, minerals) for the good of the people.
 - a. No action recommended. The plan already analyzes where resources like livestock grazing is suitable and provides objectives, standards, and guidelines that guide project-level analysis (FEIS, Vol. I, p. 80).

10. Objectors are not provided the same opportunity afforded to the writers of the EIS as objectors must provide all documents referenced with their objection.

Response

CEQ regulations at 40 CFR 1502.21 state that “Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.”

Regarding document incorporation for objectors, Forest Service regulations at 36 CFR 218.8(b) state that “Incorporation of documents by reference is not allowed, except for the following list of items that may be referenced by including date, page, and section of the cited document, along with a description of its content and applicability to the objection. All other documents must be included with the objection.

- (1) All or any part of a Federal law or regulation.
- (2) Forest Service directives and land management plans.
- (3) Documents referenced by the Forest Service in the proposed project EA or EIS that is subject to objection.
- (4) Comments previously provided to the Forest Service by the objector during public involvement opportunities for the proposed project where written comments were requested by the responsible official.”

Incorporation by reference is consistent with CEQ regulations. The requirement for objectors to include referenced documents with their objection is consistent with Forest Service regulations. In conclusion, I find no violation of law, regulation, or policy.

Remedy

9. The remedy would be to allow us to reference literature, as was done in the text of this document, without having to send hundreds of pages of copies of the literature we wished to cite!

- a. The objector need not cite any documents listed in 36 CFR 218.8(b)(1-4). All other documents must be included with the objection to ensure compliance with agency regulations.

11. One of their FOIA requests was not replied to.

Response

The Freedom of Information Act (5 U.S.C. § 552 (a)(4)(a)(ii)), authorizes agencies to charge “for document search, duplication, and review, when records are requested for commercial use.”

In a letter to Chance Gowan, dated 7/13/2016, the Forest Supervisor responded to the FOIA request by explaining that, “Since you are making this FOIA request as a representative of the Cattlemen's Association, the request was placed into the commercial use category. This category of requester pays for search, review, duplication, and other services and direct costs.”

The letter also provided an estimate of the cost to government for providing the request and the following statement, “If you would like to discuss modifying your request to see if there is a way to reduce costs,” please contact the Forest Environmental Coordinator.

The letter noted that Mr. Gowan requested “that no charges be levied for this request,” and provided an explanation of information required to determine a fee waiver. The deadline to request a fee waiver was set for 7/29/16.

Another letter from the Forest Supervisor, dated 8/10/16, indicated to Mr. Gowan that neither a written nor verbal response was received to date and that the FOIA request would be closed.

In conclusion, I find that the responsible official acted consistently with law, regulation, and policy.

12. This Plan seems to be setting site-specific standards and values without the accompanying site-specific evaluations and then incorrectly and inappropriately applies them across the entire landscape.

Response

Forest Service planning regulations at 36 CFR 219.2(b)(2) state that “A plan does not authorize projects or activities or commit the Forest Service to take action. A plan may constrain the Agency from authorizing or carrying out projects and activities, or the manner in which they may occur. Projects and activities must be consistent with the plan (§219.15).”

Planning regulations further define standards and guidelines (36 CFR 219.7(e)(1)(iii-iv)): “A standard is a mandatory constraint on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements... A guideline is a constraint on project and activity decisionmaking that allows for departure from its terms, so long as the purpose of the guideline is met. (§219.15(d)(3)). Guidelines are established to help achieve or maintain a desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.”

Finally, planning regulations authorize permanent or project/activity-specific amendments to the plan (36 CFR 219.15(c)(3-4)).

Throughout the FEIS, readers are reminded that “and resource management plan provides a broad framework that guides project-level decisions, but does not authorize, fund, or carry out any site-specific activities” (FEIS, Vol. I, pp. 8, 10, 21, 23, 24, etc.).

While standards and guidelines may refer to specific activities within management areas, “the specific location, design, and extent of such activities are generally not known at this time. The decisions are made on a site-specific (project-by-project) basis. Therefore, the discussions here refer to the potential for the effect to occur and are, in many cases, only estimates. The effects analyses are useful when comparing and evaluating alternatives on a forestwide basis, but are not intended to be applied directly to specific locations on the Forest” (FEIS, Vol. I, p. 83).

References to specific activities within management areas were used to estimate effects of the various alternatives. They do not authorize any site-specific activities. Forest Service planning regulations allow for amendments to the plan, when site-specific analyses have been conducted and the amendment is deemed necessary by the responsible official. Therefore, I find no violation of law, regulation, or policy.

Remedy

10. This plan should be withdrawn and re-written as an OVERSIGHT DOCUMENT, with requirements that are site-specific in nature reserved for site specific NEPA proposals that are developed under the "Umbrella" provided by this document! [14-10]

a. No action recommended. The plan complies with law, regulation, and policy. See response above.

13. No maps are provided (or referenced) that allow the reader to understand the magnitude of restrictions.

Response

Please see the response to the previous objection point related to the FOIA request.

The maps were requested under the same FOIA request from Mr. Gowan, dated 7/5/16.

Since Mr. Gowan failed to respond to requests for clarification and additional information required to process a fee waiver, the request to receive maps was not processed.

Furthermore, on the plan revision website (<https://www.fs.usda.gov/detail/colville/landmanagement/planning/?cid=stelprd3824594>), there are links to maps by alternative, a full 2018 map packet, an interactive GIS map, and an option to download specific geospatial files.

I find no violation of law, regulation, or policy.

14. **The grouping of comments emasculated the specificity of the problem(s) and showed complete disrespect for the efforts made by the public to provide comment. The response to our comments were generic and augmented by seemingly endless references to “literature cited” in an overt attempt to circumvent NEPA.**

Response

CEQ regulations at 40 CFR 1503.4(a) state that “An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

- (1) Modify alternatives including the proposed action.
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The Forest received 926 letters during the comment period for the DEIS and Draft Plan. Preparing responses for each individual commenter is neither efficient nor effective, as there are common themes that emerge from the various commenters. Providing individual responses to each commenter would have resulted in an unnecessarily long and cumbersome document, with excessive duplication.

Appendix E of the FEIS, Vol. III, contains responses to comments. When comments were considered collectively, the document indicates which individual letters comprised to summary comment. Many of the comments from this particular objector received responses ranging from one paragraph to over 1-page in length. These responses contained references to where relevant information could be found in the FEIS or in other sources, per the regulations.

When the objector provided a comment that was not brought up by other objectors, the comment received an individualized response (FEIS, Vol. III, pp 1044, 1049).

In conclusion, I find no violation of law, regulation, or policy.

15. A mechanism should have been provided to allow reviewers a simple way to “crosswalk” between the DEIS and FEIS in order to track changes and understand if our comments were addressed in a meaningful way.

Response

CEQ regulations at 40 CFR 1503.4, cited above, provide agencies with direction on responding to comments.

Pages 24-26 of the FEIS, Vol. I, provide a summary of the changes made between draft and final EIS. Appendix E (Response to Public Comments) is also another avenue for the public to understand how their comments were addressed. The latter approach is consistent with 40 CFR 1503.4(b).

In conclusion, I find no violation of law, regulation, or policy.

16. NEPA was violated because privileges were granted to the Kalispel Tribe that were not legally appropriate and then information pertaining to those meetings was not made available to the public.

Response

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, dated November 6, 2000, defines “Indian tribe” as an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

The Bureau of Indian Affairs’ list of federally recognized tribes, pursuant to 25 U.S.C. 479a, includes the Kalispel Tribe (83 FR 34863). Per this notice, “The listed Indian entities are acknowledged to have the

immunities and privileges available to federally recognized Indian Tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such Tribes.”

Under EO 13175, Section 3 (c)(3): “in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.”

Forest Service regulations at 36 CFR 219.1(e) state that “During the planning process, the responsible official shall comply with Section 8106 of the Food, Conservation, and Energy Act of 2008 (25 U.S.C. 3056), Executive Order 13007 of May 24, 1996, Executive Order 13175 of November 6, 2000, laws, and other requirements with respect to disclosing or withholding under the Freedom of Information Act (5 U.S.C. 552) certain information regarding reburial sites or other information that is culturally sensitive to an Indian Tribe or Tribes.”

The plan revision team summarized the concerns of the Kalispel Tribe in the ROD (pp. 16-17). Information about the decisions that were made by the responsible official pertaining to the plan revision are contained in the FEIS and ROD. Any agreements, if any, made between the responsible official and other entities not pertaining to the plan revision are outside the scope of this objection process.

Under EO 13175, the Kalispel Tribe have a federally recognized, government-to-government relationship with the United States. Under 36 CFR 219.1(e), the agency may withhold information from a FOIA request that is culturally sensitive to an Indian tribe. In conclusion, I find the responsible official and revision team’s process to be consistent with law, regulation, and policy.

17. The FEIS does not correctly analyze Alternative B – the objector suggests 75% of the land base is available for restoration instead of the 37% projected in the analysis (see issue 19-2 (below)).

Response

As cited in their response to NEWFC’s comment, “The proposed revised forest plan does not provide target requirement for timber outputs nor an upper limit on the amount of timber produced per year. The plan identifies areas of the Forest that are suitable for scheduled timber harvest and provides an estimate of what might possibly be produced annually during the life of the plan at a given budget level” (FEIS, Vol. III, p. 1011).

As described on page 104, FEIS, Vol. I, “To be part of the suitable forest land base, the land must be assigned to a management prescription that includes the basic elements of sustained timber removal and regeneration in compliance with the Multiple-Use Sustained-Yield Act. Table 31 shows timber suitability by alternative as determined by this method. Appendix G contains full details of how these numbers were developed.”

Appendix G provides a description of the timber removal and restoration zones by alternative. It also contains descriptions of the models used in the analysis, their limitations, and other assumptions made.

Additionally, the description of Alternative B states, “Scheduled timber harvest would be suitable on 37% of the forest. Timber harvest would be allowed for other resource benefit on an additional 46% of the forest” (FEIS, Vol. I, p. 30). This additional acreage of harvest allowed for other resource benefit is more than the acreage suggested by the objector.

The revision team provided adequate rationale for their assignment of land base available for restoration and their description of Alternative B provides for more acreage available for timber harvest than the objector suggests; therefore, I find no violation of law, regulation, or policy.

18. County Commissioners were given more weight in the recommended wilderness decisions than were other various interests.

Response

The objectors referenced the ROD:

“Public opinion regarding wilderness recommendation varies widely. The Forest received many comments about recommending wilderness throughout the planning process. Many people favor recommending additional areas for wilderness while many others do not agree with any new wilderness recommendations. The Ferry, Pend Oreille, and Stevens County commissioners do not support additional recommended wilderness in the revised land management plan.

The county commissioners do not support recommended wilderness. To be responsive to these concerns, modifications were made in the final EIS and final revised land management plan, reducing the final acres of recommended wilderness in the selected alternative from 69,000 acres to 61,700 acres.”

This excerpt is taken from the Engagement with Tribes, State and Local Governments, other Federal Agencies, and the Public, section of the ROD, which summarizes the engagement processes and concerns of the various entities. Among the concerns from the county commissioners was the number of acres of recommended wilderness.

While the wording in this section gives the impression the responsible official reduced the number of acres of recommended wilderness based solely on the lack of support from the commissioners, other areas of the project record indicate others were also unsupportive of the amount of recommended wilderness proposed in the revised plan.

For example, in their response to comments, the revision team explains the process for evaluating and considering areas for recommended wilderness to authors opposing addition wilderness designations (FEIS Vol. 3, pp 1024-1025).

In their discussion of significant issues, the revision team explained the position of both those in favor and those opposed to recommendations for additional wilderness. They then discuss the evaluation criteria and key indicators used to develop the variations between the alternatives (FEIS Vol. 1, p 18). Additional discussion of those for and against additional wilderness can be found on pages 78-79 of the FEIS, Vol. I.

Numerous letters received during the comment period for the DEIS reflect opposition to increasing the amount of wilderness. These letters can be found on the project website.

In conclusion, the excerpt referenced by the objector, when taken out of context, does appear to show preferential treatment for county commissioners. However, an evaluation of the larger project record shows the reduction in recommended wilderness reflects a larger public sentiment against additional wilderness recommendations. As a result, I find no violation of law, regulation, or policy.

Recommendation

The team may want to consider revising the verbiage on page 18 of the draft ROD to clarify that the commissioners' opposition to recommended wilderness was not the sole reason for the modification of the final acreage.