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### **Additional Comments on the Farley Vegetation Management Project Draft Environmental Impact Statement**

These are additional comments to be added to our comments on this project that were sent previously.

#### **Overly Narrow & Inconsistent Purpose & Need.**

The Farley Project FEIS states the project's Purpose and Need as:

“The purpose and need for the proposed project are to **conduct timber harvest, commercial and non-commercial thinning**, fuels treatment, prescribed burning, and reforestation on Umatilla National Forest lands in the Desolation Creek watershed in the Blue Mountains of northeastern Oregon to:

- **capture present economic value of raw forest materials for the benefit of local and regional economies**
- reduce forest fuel loads and to promote long-term forest stand structure and tree stocking densities that are more consistent with historic conditions
- promote forest resilience to large-scale wildfire, disease and insect infestations and the long-term sustainability of forest and associated resources (such as fish, wildlife, scenic values, and recreation), as well as economic and social values.”

The primary Purpose the Forest Service has put forth is to conduct timber harvest and commercial thinning and is focused first on the economic value of “raw forest material for the benefit of local and regional economies. The predetermined logging and timber economics focus that has been taken by the agency is inconsistent with the multiple use management direction, the LRMP as amended by the eastside screens, and pertinent scientific research recommendations for the area's ESA and Oregon State listed

wildlife, salmonid species, management indicator species, and species of concern, and scientific research recommendations for actions in mixed conifer forest ecosystems – and as such is in violation of the NEPA. In *Muckelshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, fn. 7 (9th Cir. 1999) the Court held that the purpose and need cannot be so narrow that only one type of action alternative will work. In this case, the Forest Service has drawn its purpose and need too narrowly, apparently in an attempt to limit the alternatives that will serve the purpose. As a result of the narrow purpose and need, the Forest Service undermines the NEPA process and does not give serious consideration to the no action alternative, or to the development of forest plan legally compliant and scientifically-based restoration action alternatives.

In *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815, rev'd in part, 490 U.S. 332 (1989) (internal citations omitted) the Court determined that the EIS was inadequate because it failed to examine all reasonable alternatives. The Court held that “the range of alternatives considered must be sufficient to permit a reasoned choice.” Here, beyond the statutorily required “no action alternative,” only one type of logging alternative was developed and considered – in four versions that the DEIS itself states have little variation in premise or impacts: “The effects expected under all of the action alternatives generally would be the same; the difference between individual alternatives (in terms of magnitude of effect) would be proportional to the number of acres subjected to the various treatment activities under each alternative.” (eg. pp. 126-127 other places under “Direct and Indirect Effects” regarding most resource values or issues analyzed.)

. These logging alternatives differ only by extent and focus of acres logged. They do not differ in action methods or economic objectives. The Forest Service failed to consider other reasonable activities in violation of NEPA.

### **The Farley DEIS Fails to Provide a Legally Compliant Range of Reasonable Scientifically-based Alternatives**

The Farley Project DEIS analysis fails to provide a reasonable range of alternatives that includes scientifically and ecologically sound management proposals. The purpose and need was designed in such a way as to constrain alternatives and, in so doing, pre-determined the decision prior to NEPA analysis. See attached *EPIC v. USFS*, No. 05-17093; D.C. No. CV-04-0175-GEB (stating that similar action alternatives do not meet the requirement of a reasonable range of alternatives and a narrow purpose and need statement is impermissible).

A basic requirement of NEPA is that federal agencies must consider a reasonable range of alternative actions in an EIS. 42 U.S.C. § 4332(2)(c)(iii); 40 C.F.R. § 1502.14; *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1988). The range of alternatives should “sharply [define] the issues and [provide] a clear basis for choice among options by the decision-maker and the public.” *Id.*

Under NEPA, alternatives analysis must:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated. ...

(c) Include reasonable alternatives not within the jurisdiction of the lead agency. 40 C.F.R. § 1502.14 (a) and (c). See *California v. Block*, 690 F.2d 753, 765-69 (9th Cir. 1982) (reversing EIS for failure to address reasonable range of alternatives); see also *Muckleshoot Indian Tribe v. USFS*, 177 F.3d 800 (9th Cir. 1999) (reversing EIS for failure to address reasonable range of alternatives).

The DEIS ignores core NEPA requirements for an adequate range of alternatives by the improper use of purpose/need to limit alternatives (see above). In this instance, by too narrowly defining the purpose and need for this project, in a manner that is at odds with credible scientific recommendations; and the NFMA, CWA, MBTA, ESA, and LRMP ecological objectives and policies; the agency illegally constrains management direction prior to NEPA analysis and disclosure and circumvents NEPA requirements for objective evaluation of alternatives before decisions are made. These actions leave no room for alternatives. These are predetermined decisions, which lead to foregone conclusions.

### **Violation of Alternatives Requirement in Federal Law.**

In the DEIS, the Forest Service indicates that it considered but dismissed a range of other action alternatives. The Forest Service dismisses these as if they are the only other alternatives. However, there are other scientifically sound alternatives and a significant range of credible pertinent scientific research that the DEIS failed to disclose or assess in addressing and developing reasonable ecologically capable action alternatives. The action alternatives present are based upon the same scientifically insupportable premises and as such are not a legitimate range of alternatives to fulfill NEPA's high quality science, expert advice, site-specific accuracy, and reasonableness requirements. The Forest Service has failed to comply with NEPA's alternative development requirements, has failed to adequately disclose or responsibly address and incorporate existent scientific controversy and research, and instead has prejudiced the DEIS towards the selection of an ecologically unwarranted harmful logging alternative by arbitrarily and capriciously selectively limiting the disclosed science and developed alternatives to those which can be manipulated to its timber sale goals. As such the DEIS and the action alternatives presented violate both the NEPA and if implemented would violate the NFMA.

### **The Forest Service Must Consider Restoration Alternatives.**

NEPA requires that federal agencies "to the fullest extent possible . . . use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. § 1500.2(e). NEPA also requires the Forest Service to "study, develop, and describe appropriate alternatives to the recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses." 40 C.F.R. § 1501.2 (c). Environmental analysis documents must "[r]igorously explore and objectively evaluate all reasonable alternatives" to the project. 40 C.F.R. § 1502.14(a). The Council on Environmental Quality (CEQ), which promulgated the regulations implementing NEPA, characterizes the discussion of alternatives as "the heart of the environmental impact statement." 40 C.F.R. § 1502.14. A decisionmaker must explore alternatives in sufficient enough detail to "sharply focus the issues and provid[e] a clear basis for choice among options by the decisionmaker and the public." *Id.* § 1502.14. All reasonable alternatives must receive a "rigorous exploration and objective evaluation..., particularly those that might enhance environmental quality or avoid some or all of the adverse environmental effects." *Id.* § 1500.8(a)(4). The analysis of the alternatives must be "sufficiently detailed to reveal the agency's comparative evaluation of the environmental benefits, costs and risks of the proposed action and each reasonable alternative." *Id.*

The Ninth Circuit stated in *California v. Block* that "[a]s with the standard employed to evaluate the detail that NEPA requires in discussing a decision's environmental consequences, the touchstone for our inquiry is whether an EIS's selection and discussion of alternatives fosters informed decision-making and informed public participation." *California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982). The purpose of requiring the agency to consider a number of reasonable multiple alternatives is to insist that no major federal project be undertaken without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different

means. *Environmental Defense Fund v. Corps of Engineers*, 492 F.2d 1123, 1135 (5th Cir. 1974); *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810 (9th Cir. 1987), rev'd on other grounds, 490 U.S. 332 (1989).

To comply with NEPA, “the discussion of alternatives ‘must go beyond mere assertions’ and provide sufficient data and reasoning to enable a reader to evaluate the analysis and conclusions and to comment on the EIS.” *Citizens Against Toxic Sprays v. Bergland*, 428 F. Supp. 908, 933 (D. Or. 1977). A detailed and careful analysis of the relative merits and demerits of the proposed action and possible alternatives is of such importance in the NEPA scheme that it has been described as the “linchpin” of the environmental analysis. For this reason, the discussion of alternatives must be undertaken in good faith; it is not to be employed to justify a decision already reached. *Id.*

The Forest Service failed to include a reasonable range of science based alternatives; and as such this legally non-compliant EIS must be withdrawn. Among scientifically reasonable alternatives not developed, though they were noted in previous comments and summarily dismissed without addressing scientific controversy and supporting scientific research recommendations, the Forest Service must consider an alternative in its analysis which consists of treating small-diameter fuels in only ecologically appropriate forest locations (lower elevation ponderosa pine dominant – frequent low intensity fire plant association group forests) to reduce fire risk – outside of designated and uninventoried ecological roadless areas and higher elevation mixed fire severity mixed conifer forests (which should be left to nature’s time proven and scientifically recommended processes).

Additionally, when the Forest Service is faced with a choice of providing the timber industry with short term economic gain (which is dubious at best in the current economic downturn) and providing for the forest’s overall ecological integrity and long-term habitat viability, the Forest Service has a duty under the management plan direction for the lands at issue to prioritize habitat and salmonid waterway protection and recovery objectives. Umatilla LRMP designations, objectives and intent clearly uphold this priority throughout much of the Farley Project area. As such, presented alternatives must comply with scientific recommendations and existent LRMP-eastside screen requirements.

Functioning watersheds, diverse wildlife, and healthy soil that will sustain large-diameter tree growth in the future provides significant ecological and economic benefits to the regional and local economies, including recreation, environmental quality, water quality, and recovering salmonid populations and watersystems over the long-term. However, the myopic focus on timber as the only viable economic reality violates NEPA’s mandates to meaningfully address economics issues and impacts as they relate to the proposed action. By placing economics within the purpose and need, the agency must thoroughly disclose and address this issue. Current economic downturns and significantly reduced societal need for wood products, coupled with an over-abundance of unsold supply and consequent mill shut downs evidence that the purpose and need inclusion of wood products within its economic objectives is unfounded. There are other more viable economic contributions and societal needs that are better met by protecting the areas forest ecosystems and waterways than by needlessly logging them as proposed.

Instead of developing misplaced societally unneeded logging alternatives, the DEIS failed to reasonably address and develop a science based alternatives, such as: The Forest Service must consider a scientifically-sound restoration-based alternative that does prioritize commercial logging above all other options. The Forest Service could focus this alternative on the removal of small-diameter flash fuels where ecologically appropriate, the restoration of area soils, the removal of invasive exotic plants, the reduction and prevention of grazing harms, the recovery of 303(d) listed waterways, protection and recovery of salmonid species, ESA listed species, and species of concern habitat and populations, prevention of OHV harms and use area restrictions, and the removal of unneeded roads and old logging

roads and skid trails. Again, adhering to scientific recommendations and LRMP designations, commercial logging in undeveloped uninventoried roadless areas must be dropped. A restoration-based alternative could meet the purpose and needs of the proposed project throughout much of the area's already managed roaded forests by providing local jobs and reducing fuel loads by removing the small-diameter flash fuels from the lower elevation frequent low intensity fire areas, where the such work has scientific support. By failing to include non-commercial logging alternatives other than "no action" the DEIS violates the requirements of the NEPA, APA, and the NFMA.

### **Terrestrial Wildlife Species:**

#### ***Wolves***

The DEIS fails to adequately address the projects detrimental impacts on wolves that may utilize the project area, as wolf populations are known to be returning to Oregon, and have been reported within the North Fork John Day Ranger District. Wolves prefer large roadless undeveloped forest areas and natural ecosystems such as found in the project area. Wolf presence in Eastern Oregon and the Umatilla NF has been recognizably increasing over the past few years, with reports of wolf sightings growing exponentially. The DEIS's lack of comprehensive disclosures and adequate analysis on growing wolf use and potential adverse project impacts, and failure to protect undeveloped unroaded areas from logging and road building harms violates the NEPA, NFMA, and the ESA, and is contrary to Oregon States wolf recovery plan objectives. Similarly, the DEIS apparent contention that its land management activities are compatible with wolf protection and recovery is unsupported by fact. A few years ago two of three returning wolves were killed (and a third was captured and deported to Idaho). Since then additional wolf sightings have been reported, with a recent discovery of another returning wolf found shot in NE Oregon. It is well known that management actions that remove forest cover, degrade natural ecosystems, and allow for more human visibility and movement, significantly decrease returning wolves chances for survival. The lethal track record of human-caused killings of returning wolves testifies to this unfortunate reality. Logging the Farley Project would subject any current or future wolves in the area to increased risk of death from illegal human shootings. The DEIS must be withdrawn and redone to correct these illegal NEPA deficient "analysis" and lack of thorough accurate disclosures and conclusions. The proposed alternatives must be revised to provide for the protection and recovery of Oregon's returning wolves.

#### ***Eagles***

Similarly with eagles, absent credible project area protocol survey information to substantiate agency DEIS claims and conclusions, the agency inappropriately ignores scientific research of this far-ranging large raptor. It is known that eagles utilize the greater area and may at times be found within the project's units and adjacent areas. As these and other raptors rotate their nest locations over time, it is possible that project units and adjacent areas could be used by eagles for roosting, nesting, and hunting territory. Surveys throughout the region's forests over the past 16 plus years by our organizations have frequently found eagle nests within interior forest areas, often several miles from their salmonid hunting and roosting sites. The DEIS violates the NEPA by their lack of meaningful and accurate analysis and requisite meaningful scientific disclosures and conclusions regarding eagles.

#### ***American (Pine) Marten.***

There is not sufficient analysis in the EIS of the effects of the proposed project on American marten in the planning area. The forests of the Umatilla including the Farley Project area, have historically provided marten habitat. It is likely that at least some of the project areas still provide marten habitat—both for denning and foraging, as well as dispersal and travel corridors, as recent scientific research confirms that

old forest dependent wildlife species are well adapted to the cyclic natural disturbance changes in the region's fire ecology forests ever changing mosaic patterns. Research has also documented that martens and other forest-dependent species are not adapted to logging and road disturbance however, and that these management actions can extirpate and harm marten populations and habitat. The EIS fails to adequately and responsibly address this issue.

The agency has an obligation under NEPA to assess the direct, indirect, and cumulative impacts to all species that will be affected by the proposed action. 40 C.F.R. §§ 1502.16. The Forest Service also has an obligation to obtain missing information or state why it could not be obtained if that information is necessary to make an informed decision. *Id.* § 1502.22. Finally, the agency has a duty to prepare a new EIS when there are unknown risks to the environment—and its current EIS is deficient in addressing these issues. *Id.* § 1508.27.

In this case, the Forest Service failed to accurately and adequately assess how the proposed timber sales and road construction into previously unroaded areas will impact marten. The Umatilla NF clearly is not meeting the requirements of NEPA and NFMA as they apply to pine marten, and is precluded from implementing the proposed project as a result.

#### **Aquatic Species and Watershed Habitat/Water Quality Issues:**

***Middle Columbia Steelhead (ESA Threatened-listed), Interior Redband/Rainbow Trout (sensitive listed), Westslope Cutthroat Trout (sensitive listed).***

The EIS fails to accurately disclose to protocol ongoing and/or recent surveys for these and/or other aquatic species in the affected watersheds. Absent this pertinent site-specific survey information, and in contravention to a wealth scientific research addressing the many known adverse impacts of logging and road building on salmonid species populations, habitat, and water system quality, the EIS proposes harmful logging and road construction in all of the Farley Project's action alternatives. The DEIS itself – even with its limited deficient “analysis” concludes the project is likely to adversely affect (LAA) ESA threatened-listed Steelhead trout, their critical habitat, and essential fish habitat; and that it “may impact” redband trout and Chinook salmon. Yet somehow, despite scientific documentation that bull trout are among the most critically sensitive imperiled fish species, the DEIS concludes the project is not likely to adversely affect this species. The DEIS fails to accurately disclose and address how the project will affect both short and long term bull trout, chinook salmon, and steelhead recovery objectives in and downstream of the project area. The analysis presented fails to support the DEIS impacts conclusions, and fails to address pertinent scientific research and recommendations for salmonid habitat and populations recovery. The DEIS fails to disclose the range of scientific controversy concerning logging and road building actions in salmonid waterway forests in violation of the NEPA. The project if implemented would violate the NEPA, NFMA, CWA, and ESA with respect to salmonid species and their habitat, and likely result in further significant incremental harm to these species. The DEIS as such must be withdrawn and these issues responsibly addressed, with a range of restoration alternatives capable of protecting and restoring these imperiled species and their habitat.

***Salvage logging and associated activities will cause cumulative impacts that violate PACFISH and INFISH.*** Large logs are an essential feature of healthy complex aquatic habitat, because they armor stream banks, provide pool habitat, help store sediment, help dissipate energy during high flows, and physically partition habitat. Large wood in contributed from both inside and outside the riparian habitat conservation area. Logging will remove large wood that in time would otherwise contribute to complex stream habitat and therefore violate PACFISH and INFISH prohibitions on actions that would retard attainment of riparian management objectives, and may be inconsistent with the biological opinions

governing PACFISH implementation with respect to steelhead trout and Chinook salmon.

The EIS admits that salvage logging will increase sediment delivery but the analysis uses the WEPP model to analyze soil erosion, and this model has limitations that are not fully disclosed in the EIS, such as: WEPP can only consider one “slope” at a time, and one “activity” at a time and does not adequately integrate multiple slopes and activities. Importantly, the EIS aquatic cumulative impacts analysis fails to disclose the total cumulative effects of past management activities, including recent and past fires, past postfire salvage logging, other fuels reduction actions, timber sales, previously clear cut areas that are young planted stands, the reopening of closed roads, road maintenance, landings, log hauling, OHV use and growing impacts – including areas within the project that evidence resource degradation, etc.

In its analysis of sediment delivery, water quality, and future large wood input the EIS failed to adequately consider and disclose steepness of slope issues, which has a direct bearing on the inevitable movement of soil and wood toward streams.

In its analysis of sediment delivery and water quality, the EIS failed to consider the fact the RHCA buffers may be compromised by fires, OHV use, livestock grazing, and future projects, or disclose and address areas where there are existent cumulative impacts within these buffers.

In its analysis of sediment delivery and water quality, the EIS failed to consider the fact that the removal of trees and future downed logs from upslope areas will reduce the landscape capacity for sediment storage. Standing trees and medium to large logs on the forest floor act as sediment traps, but if they are removed that function is eliminated.

The EIS failed to address cumulative impacts from livestock grazing or to disclose alternative provisions for the removal of livestock from logged and burned areas for a minimum of five or more years to allow the areas to recover post project.

The EIS analysis of large wood and sediment failed to consider the impacts of removing hundreds of hazard trees from miles of haul roads in RHCAs. Since the EIS allows removal of the portion of large logs that are felled across roads or outside RHCA boundaries, fallers are motivated to fall hazard RHCA trees toward the “money spots” (roads and upslope away from RHCAs) and away from streams where they would naturally fall and do the most good. By failing to address the incentive to log RHCAs inconsistent with the RMOs the EIS under-estimated the impacts.

Road reopening, maintenance, and log hauling will also unavoidably retard attainment of RMOs in violation of PACFISH/INFISH. BMPs are inadequate and do not assure that impacts will be avoided.

Large areas undisturbed by roads, landings, burned slash piles, and logging help protect watershed values such as soil conservation, nutrient cycling, water infiltration, and uninterrupted flow of water and materials from uplands to streams. This in turn helps ensure high quality water for listed and unlisted fish and other aquatic organisms. Logging and slash burning in uninventoried roadless areas will degrade watershed values by disturbing soil increasing erosion, disrupting nutrient cycles, and depriving streams of potential large structures. The EIS failed to adequately disclose the full effects of logging and how it will degrade unroaded areas and aquatic systems.

With respect to water quality and salmonid populations and habitat, the DEIS alternatives, analysis, and conclusion fail the NEPA's high quality science, reasonableness, cumulative impacts, and site-specific accuracy requirements.

**Conclusion:**

As noted in our earlier comments to which this is an addition: We request that this DEIS and its proposed actions be withdrawn, and a legally compliant, ecologically protective, scientifically-founded restoration project be developed for this area that works with – instead of against – natural forest processes, forest resiliency, and integrity. We look forward to discussing these issues further with agency staff and decision-makers. As previous comments were filed before the due date of Oct. 20<sup>th</sup>, and as there are many additional significant DEIS legal and ecological deficiencies and concerns, we hereby supplement our previous comments with this addition.

*For the Natural Heritage of us all,*

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