North Nestucca Restoration Project  
Environmental Assessment (EA)  
Appeal Statements and Responses  
Siuslaw National Forest  
July 2013

Appellant 
Dick Artley (DA)  

Appeal Number 
13-06-12-0001-215

Effects

Appellant Statement #1: Appellant asserts that the Responsible Official violated Title 1, Section 102 [42 USC § 4332] (c) by not having a detailed discussion in the EA about “adverse environmental effects which cannot be avoided should the proposal be implemented.” DA at 2.

Response: I find that the Responsible Official analyzed the environmental effects from the North Nestucca Project appropriately, in accordance with Title 1, Section 102 [42 USC § 433](c) and 36 CFR 220.7(b)(3)(iv).

Title 1, Section 102 [42 USC § 4332](c) directs the agency to, in any instance of Federal actions significantly affecting the quality of the human environment, display a detailed statement (i.e. and environmental impact statement or EIS) of the environmental impacts, non-avoidable adverse environmental effects, alternatives to the proposed action, and any irreversible and irretrievable commitments of resources if the proposed action be implemented. In addition, this directs the agency to state the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity. More specifically for an Environmental Assessment (EA) which applies to this project, the Code of Federal Regulations (CFR) at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the direct, indirect, and cumulative impact of the proposed action and any alternatives.

As stated in the Decision Notice (DN) at 7, the Responsible Official found that the North Nestucca Project was not considered a major Federal action and would not significantly affect the quality of the human environment. The Responsible Official made that determination because of the limited context and intensity of the project. DN at 8. Because of this determination that an EIS is not required, Title 1, Section 102 [42 USC § 4332](c) gives no further guidance to the Responsible Official, thus, the regulation pertaining to an EA applies.

In accordance with the regulation, the Environmental Assessment (EA) points out the project impacts and the context to these impacts concerning fuels, wildlife, soils, hydrology, fisheries, lichen, fungi, heritage, recreation, scenic quality, and economic resources. EA at 35-134. The Responsible Official detailed within those sections the beneficial, as well as the limited adverse effects (minimized with project design criteria; EA at Appendix A) of implementing the North Nestucca Project, in compliance with law, regulation and policy.
**Appellant Statement #2:** Appellant states that the Responsible Official has violated 40 CFR 1505.2. Appellant asserts that the EA did not address all practicable means to avoid or minimize environmental harms. DA at 2.

**Response:** I find that the Responsible Official appropriately supported the Finding of No Significant Impacts (FONSI) by displaying the North Nestucca Project’s design criteria and mitigation measures, thus minimizing environmental harm from the North Nestucca Project.

The regulation at 40 CFR 1500 are divided into different subsections that focus on regulations for environmental impact statements (EIS) and other environmental analysis documents. The subsection of 40 CFR Part 1505.2 speaks specifically to environmental impact statements, or EISs. Due to the context and intensity of this project, the Responsible Official addressed the effects of the North Nestucca Project in an environmental assessment. Decision Notice (DN) at 7. Therefore, the specific regulation at 40 CFR 1505.2(c) does not apply to the Responsible Official’s North Nestucca EA. However, the regulation at 40 CFR 1500.2(c) directs the Responsible Official to state whether all practicable means to avoid or minimize environmental harm from the selected alternative have been adopted or why they have not, which does apply to this project.

Within the North Nestucca EA, project design criteria and mitigation measures were displayed. EA Appendix A at 2-3. These features were outlined by the Responsible Official to make sure overall objectives and action consequences were address appropriately. For example, a wildlife design criteria (retain large trees with cavities, broken tops, or forks) was included to make sure Late-Successional Reserve (LSR) objectives were obtained. In addition, mitigation measures were outlined later in Appendix A of the EA. EA Appendix A at 10. These are displayed by the Responsible Official in order to show how certain implementation actions, or the lack thereof, can minimize adverse project effects. EA Appendix at 10-24.

**Appellant Statement #3:** Appellant states that the Responsible Official has violated 40 CFR 1507.2. Appellant asserts that the EA does not “identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.” DA at 2.

**Response:** I find that during the analysis of the North Nestucca Project the Responsible Official properly considered unquantifiable environmental amenities and values, following 40 CFR 1507.2 and Title 1, Section 102 [42 USC § 4332] (c).

The regulation at 40 CFR 1507.2(b) states that Federal agencies shall identify methods and procedures following section 102(2)(B), insuring that presently unquantified environmental amenities and values may be given appropriate consideration.

The Responsible Official made it clear within the North Nestucca EA that there were multiple methods and procedures followed for identifying environmental amenities and values. These included deriving the project need from the Siuslaw National Forest Land and Resource
Management Plan, Nestucca River Watershed Analysis, landscape-scale assessments, best available science, and local resource data collected. EA at 14. These avenues list an array of unquantifiable environmental amenities and values, including the water, vegetation, wildlife, fish, and scenic resources.

In addition, the Responsible Official invited public comments which surfaced other public values within the North Nestucca Project area. EA at 29. These comments were responded to and considered within Appendix E of the EA.

**Best Available Science**

**Appellant Statement #4:** Appellant asserts that the Responsible Official did not provide scientific literature describing adverse effects from logging and road construction. DA at 2. Specifically, the literature that supports the EA is not specific to the North Nestucca project and is not relevant. DA at 2-3.

**Response:** I find that the Responsible Official used appropriate documentation to support his findings within the North Nestucca Restoration Project EA.

The regulation at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the impacts of the proposed action and for any alternatives. Forest Service policy (June 20, 2007) directs the Responsible Official to base their decision on technically sound science.

The effects of the selected alternative, Alternative 2, and its context were thoroughly described within the EA. EA at 35-144. Both beneficial effects and adverse effects were discussed throughout the EA, for example in the EA at 44 (potential positive forest fuel effects) and in the EA at 91 (potential adverse soil effects). The EA states that “roads have the most potential for sediment runoff...” EA at 91. The Responsible Official states that, the activities proposed in the North Nestucca Project will “generate fuels (slash)”, adding to the existing dead and down fuel loadings and affecting fire behavior. EA at 44. In addition, within Appendix E of the EA, the Responsible Official responded to and therefore showed consideration of opposing viewpoints that were brought up during the commenting period.

I also note that the Responsible Official detailed project design criteria and mitigation measures within Appendix A of the EA. These measures and criteria minimize the potential adverse environmental effects from the North Nestucca Project.

The North Nestucca Project displayed an unbiased analysis through a variety of reference types (EA Appendix F) and considered all references brought forward during scoping and during the formal comment period (EA Appendix E). Specifically, the references that were used in the North Nestucca Project were academic articles, professional organization articles, government agency articles, past NEPA decisions, and professional experience (education, past training, years of experience, and certification knowledge). The Responsible Official and his resource
specialists surfaced the best available science from various mediums and adequately met the best available science provisions of the Forest Service guiding regulation and policy.

**Appellant Statement #5:** Appellant state that the Responsible Official unjustifiably discarded the appellant’s supplied scientific articles. DA at 3. Therefore, the Responsible Official violated 40 CFR 1500.1(b) because “...the information provided to the public is not ‘high quality’ and an ‘accurate scientific analysis’ would not be possible without information describing the adverse impacts of logging and road construction.”

**Response:** I find that the Responsible Official used appropriate documentation to support his findings within the North Nestucca Restoration Project EA. In addition, the Responsible Official considered all public comments when making the North Nestucca decision.

The regulation at 40 CFR 1500.1 explains the purpose of the National Environmental Policy Act (NEPA), which is to make sure high quality information is free flowing, and to ensure that Responsible Officials “make decisions that are based on understanding of environmental consequence, and take action to protect, restore, and enhance the environment.”

Within the EA and Decision Notice (DN), the Responsible Official outlined the public involvement process for the North Nestucca Project. EA at 29; DN at 7. The Responsible Official replied to public comments within Appendix E of the EA. Specifically, the appellant’s comments were considered by the Responsible Official within this appendix. The Responsible Official fully complied with the requirements of law, regulation, and policy for an EA, and responded specifically to the appellant’s comments, clearly displaying consideration of the comments submitted.

Considering the public involvement process undertaken in the North Nestucca Project, both the EA and the DN display (EA at 29 and DN at 7) how information was flowing between the Responsible Official and the interested publics. In addition, the Responsible Official supplied a logical decision rationale within the DN. DN at 2 to 4.

With regards to the information submitted by appellant that were viewpoints which did not agree with the project, the no action alternative fully responded to this viewpoint and was considered in detail. EA at 32.

The regulation at 36 CFR 220.4(c)(2) directs the Responsible Official to consider public comments when making a decision on relevant environmental documents. The Responsible Official displayed this consideration in the North Nestucca Project by responding to appellants and other interested public’s comments in Appendix E of the EA.

In getting to the root of the appellant’s unjustifiably discarded article discussion, I see this appeal point as an appellant assertion that the project effects analysis, as outlined in the EA, was not adequate or properly supported.
The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to describe the effects of the proposed action and any alternatives in terms of context and intensity. The effects of the selected alternative, Alternative 2, were thoroughly described. EA at 35-144. Both beneficial effects and adverse effects were discussed. For example, potential positive forest fuel effects were discussed (EA at 44) and potential adverse soil sediment effects were discussed (EA at 91).

Note, the Responsible Official detailed project design criteria and mitigation measures within Appendix A of the EA. These measures and criteria minimize the potential adverse environmental effects from the North Nestucca Project.

**Wildlife**

**Appellant Statement #6:** Appellant asserts that the Responsible Official has violated the Migratory Bird Treaty Act of 1918 because the logging and “slash/RX burning” activities will not protect “migratory birds against pollution, detrimental alterations, and environmental degradation (16 USC Section 703).” In addition, the appellant states that the proposed activities will “kill migratory bird chicks by ‘destroying their nests or eggs.’” DA at 3.

**Response:** I find that the Responsible Official adequately consider and disclosed the North Nestucca Project effects to migratory birds or landbirds, complying with the Migratory Bird Treaty Act. Pursuant to Executive Order 13186, 66 Fed. Reg. 3853 (2001), Responsibilities of Federal Agencies to Protect Migratory Birds, the MOU (signed December 8, 2008 and published in the Federal Register on February 13, 2009) between the Forest Service and the US Fish and Wildlife Service outlines a collaborative approach to promote the conservation and reduce the potential for incidental take of migratory birds. The Executive Order directs agencies to take certain actions to further comply with the migratory bird conventions, the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA), and other pertinent statutes. The MBTA, signed in 1918, and amended in 1936, 1974 and 1989, implements the United States’ commitment to four international conventions (with Canada, Mexico, Japan, and Russia) for the protection of migratory birds. Appellant’s citation to 16 USC 703 is specific to the ‘incidental take’ of a species, which would occur if a bird was killed by project activities.

Overall, the Forest complied with the Act and MOU by analyzing effects to migratory birds in the North Nestucca EA, including analyzing specific effects to northern bald eagles and pileated woodpeckers. EA at 53-54 and EA at 62. In order to minimize the potential for incidental take to occur, the Forest complied with the MOU by following the agreements that apply to the Forest Service. According to the MOU and specific to incidental take, the Forest shall “Consider approaches, to the extent practicable, for identifying and minimizing take that is incidental to otherwise lawful activities, including such approaches as: 1. altering the season of activities to minimize disturbances during the breeding season; 2. retaining snags for nesting structures where snags are underrepresented; 3. retaining the integrity of breeding sites, especially those with long histories of use and; 4. giving due consideration to key wintering areas, migration
routes, and stopover; 5. minimizing or preventing the pollution or detrimental alteration of the environments utilized by migratory birds whenever practical by assessing information on environmental contaminants and other stressors relevant to migratory bird conservation.” FS Agreement # 08-MU-1113-2400-264.

The Responsible Official, through the EA, presented the public with a landbird assessment, analyzing resident, short-distance and neotropical migrant bird species. EA at 63-66. The activities proposed in the North Nestucca Project are stated to have minimal effect on landbirds at population levels. EA at 64. Table 9 within the EA (at 65) specifically displays the effects of the project to each bird species. EA at 65.

The Responsible Official provided project design criteria and mitigation measures within the EA in order to protect or minimize the risk of ‘incidental take’ of landbirds or migratory birds. EA Appendix A at 3 and 11-20. For example, harvest prescriptions will keep 10% of each unit in an untreated condition, maintaining habitat for populations of wildlife species. EA Appendix A at 3. In addition, snags will be left intact if no safety concerns are present, maintaining habitat for the pileated woodpeckers and other cavity nesters. EA at 62. Finally, seasonal restrictions on burning and harvest operations will protect nesting species, including spotted owls and other migratory birds. EA Appendix A at 11 and 12.

**Appellant Statement #7:** Appellant states that the North Nestucca EA does not discuss how “burning and logging activities have been modified for the birds to minimize habitat disruption.” DA at 3. In addition, the appellant asserts that the EA needed to and didn’t mention the 2000 USFS authored bird protection Plan (http://www.docstoc.com/docs/15441067/The-Landbird-Strategic-Plan), Executive Order 13186 (http://ceq.hss.doe.gov/nepa/regs/eos/ eo13186.html), or the 2004 North American Landbird Conservation Plan. DA at 3.

**Response:** I find that the Responsible Official adequately considered and disclosed the North Nestucca Project’s effects to migratory birds or landbirds. In addition, mitigation measures and project design criteria were discussed in Appendix A of the North Nestucca Restoration Project EA.

See Appellant Statement #6, where I described how the Responsible Official addressed landbirds or migratory birds within the EA. This response explains where the Responsible Official addressed mitigation with the North Nestucca Project EA.

**Appellant Statement #8:** Appellant states that the Responsible Official did not comply with Executive Order 13186 (Federal Register, February 13, 2009 [Volume 74, Number 29]). This requires “each agency to develop and implement a Memorandum of Understanding with the Fish and Wildlife Service that shall promote the conservation of migratory bird populations.” (http://edocket.access.gpo.gov/2009/E9-3118.htm) DA at 4.
Response: I find that the Responsible Official adequately considered and disclosed the North Nestucca Project’s effects to migratory birds or landbirds.

See Appellant Statement #6, where I described how the Responsible Official addressed landbirds or migratory birds within the EA. This response explains where the Responsible Official addressed the Memorandum of Understanding between the Forest Service and the Fish and Wildlife Service. Appellant’s citation to the Federal Register is actually the citation to the MOU between the Forest Service and US Fish and Wildlife Service, which was signed in accordance with EO 13186 of 2001.

Climate Change

Appellant Statement #9: The appellant states that the Responsible Official violated 40 CFR 1500.1 of NEPA because the North Nestucca EA does not analyze how the project will affect climate change. DA at 1.

Response: I find that the Responsible Official allowed for a free flow of information during the North Nestucca Project process, allowing for issues to surface and appropriate analysis to be carried through.

The regulation at 40 CFR 1500.1 explains the purpose of the National Environmental Policy Act (NEPA), which is to make sure high quality information is free flowing, and to ensure that Responsible Officials “make decisions that are based on understanding of environmental consequence, and take action to protect, restore, and enhance the environment.”

Appellant states that climate change was considered in the EA. Scoping, a process used to surface issues related to the proposed action, was conducted on the project starting on June 30, 2010. A review of appellant’s scoping comments indicates that he did not, nor did any other public, specifically raise climate change as an issue.

In addition, the District offered the appellant and other interested publics the opportunity to comment on the EA during the formal 30-day comment period, which was held on October 17th, 2012. A review of appellant’s comment letter indicates that he did not raise climate change as a concern with this project. I note that Appendix E of the EA responded in depth to appellants comments, thus complying with the regulation to consider comments on an EA. 36 CFR 215.6(b)(1).

Nonetheless, the Forest Service letter “Climate Change Considerations in Project Level NEPA Analysis,” (January 13, 2009) provides guidance for addressing climate change within NEPA documents. This letter points out that not every project needs to quantitatively analyze greenhouse gas emissions. In addition, the scale and scope of the project will necessitate the type (qualitative or quantitative) and extent of the climate change analysis.
The Responsible Official identified two potential project issues. They include new road construction and effects to snags and course woody debris. EA at 29. Climate change did not surface as an issue during scoping or the comment period, thus there was no further need for analysis. In addition, the Responsible Official displayed an appropriate rationale for his selection of Alternative 2. DN at 3. The Responsible Official selected Alternative 2 because it met the project need, speeding up late-successional and old-growth development and enhancing the health of streams and associated aquatic ecosystems.