

From: [Dick Artley](#)
To: [FS-appeals-alaska-regional-office](#)
Subject: Big Thorne Project
Date: Friday, July 26, 2013 10:52:59 PM
Attachments: [Scanned signature for Dick Artley.doc](#)

July 26, 2013

ATTN: Appeal Deciding Officer: Beth Pendleton, Regional Forester

Below you will find my appeal of the Big Thorne project Decision.

Required 36 CFR § 215.14 Information

Decision document title: Record of Decision for the Big Thorne Project

Decision document subject: The ROD describes the decision to implement Alternative 3.

Date of the decision: June 28, 2013

Name and Title of the Responsible Official: Forrest Cole, Forest Supervisor,
Thorne Bay Ranger District, Tongass National Forest

Appeal Point # 1 Description --- Supervisor Cole has violated 40 CFR 1502.16 because he does not discuss "any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented" in Chapter 3 of this EIS.

Below is an excerpt of 40 CFR 1502.16:

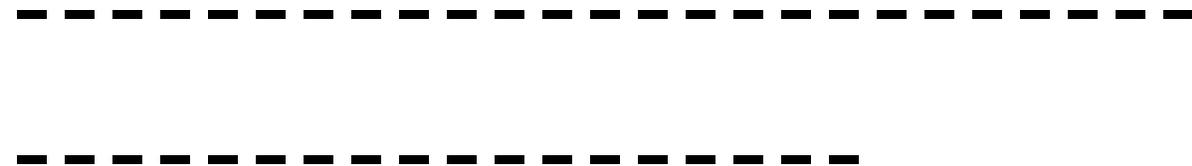
"The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable

commitments of resources which would be involved in the proposal should it be implemented.”

Please do not respond to this appeal point by saying the Responsible Official does not make any irreversible or irretrievable commitments of resources with this timber sale.

This is not the point. Congress knew many lay members of the public could not determine if any irreversible or irretrievable commitments of resources will be made with the timber sale or not after reading the NEPA document several times.

Congress would not have promulgated this law had they not wanted the Responsible Official to conclusively state whether irretrievable commitments of resources will be made or not.



Appeal Point # 2 Description --- Chapter 3 of this EIS describes the adverse effects to natural resources in and downstream from the sale area from temporary road construction as “short term.” Congress recognized that repeated “short-term” effects might accumulate to form a long term adverse effects. The past and reasonably foreseeable future projects are listed but there is no analysis data showing the magnitude of the increase on sediment and stream temperature from this “short-term” increase when added to the existing condition resulting from past projects. Supervisor Cole has violated 40 CFR 1508.8.

Additional information supporting the appellant’s allegation described above is shown in the following court opinions:

- Lands Council v. Powell* (2004; 379 F.3d 738)
- Muckleshoot Indian Tribe v. U.S. Forest Service* (1999; 177 F.3d 800)
- Neighbors of Cuddy Mtn. v. U.S. Forest Service* (1998; 137 F.3d 1372)
- Blue Mountains Biodiversity Project v. Blackwood* (1998; 161 F.3d 1208)
- Selkirk Conservation Alliance v. Forsgren* (2003; 336 F.3d 944)

The sedimentation of streams is predicted to be “short term” frequently in Chapter 3. There is no data or explanation why the author believes the aquatic damage will be “short term.” Also, the author is not identified. The appellant wants to know the experience and background of the author who makes such important, unsubstantiated conclusions.

Stream sedimentation is perhaps **THE** (emphasis added) most important cause of aquatic resource damage. Since the EIS acknowledges that the logging and road construction activities will cause sediment that will find its way to the streams, such a serious impact must never be so cavalierly minimized with unsubstantiated statements made by authors of unknown experience and background.

Therefore the Big Thorne timber sale EA violates 40 CFR 1500.1(b) **and** 1502.16(a)

and (d).

Appeal Point # 3 Description --- Supervisor Cole has violated 36 CFR 215.6(d) and 40 CFR 1503.4 because he did not respond to the comments submitted by the appellant during the formal 45-day comment period on the DEIS.

The appellant submitted comments on the DEIS on November 3, 2012.

Appendix B contains the Responsible Official's responses to public comments.

Table B-1 lists the names of the individuals, organizations, and agencies submitting comments on the Big Thorne Project Draft EIS. The appellant's name is not listed in Table B. None of the appellants comments are mentioned in Appendix B.

The appellant's comments on the DEIS are quoted below:

November 3, 2012

Dear Supervisor Cole,

I have reviewed the DEIS for the Big Thorne Project.

As a communal owner of the Tongass National Forest I am saddened that the Responsible Official is proposing to cause long-term harm to my natural resources using my tax dollars to prepare this corporate-friendly project.

Unlike the References Section Contained in the DEIS, the Opposing Views Attached to these Comments Describe the Resource Degradation Inflicted to the Forest Ecosystem caused by Logging and Road Construction

The attachments to these comments present the "responsible" opposing views of hundreds of independent, unbiased Ph.D. biological scientists who describe the resource damage caused by the majority of commercial timber and road construction sale activities taken at any location, on any topography, at any elevation, at any time.

The Responsible Official's response to each of these opposing views is governed by 40 C.F.R. § 1502.9(a) and 1502.9(b). You will not like these 2 laws but I'd suggest reading them anyway. They will spoil your beliefs that the pesky public must not interfere when you propose to pillage their forest for corporate gain.

This member of the public has provided the electronic links to the source documents for each opposing

view.

Comment: Please include these opposing view source documents in the References section of the final DEIS. When describing the environmental effects of the timber sale activities to the countless natural resources in the project area please cite the resource damage described in the source documents contained in the attachments.

Comment: It violates the law to give the public a skewed (one sided) description of the environmental effects of a proposed project as you have done in this DEIS. I suggest you become familiar with the meaning of "hard look." You should also read the Administrative Procedures Act.

Selectively citing USFS employee-authored literature because it supports the project and rejecting other non-USFS authored literature that explains the massive resource damage caused by logging is worse than unethical. Read the biased References section of the Big Thorne DEIS and you will immediately realize the need to include some of the opposing views source documents contained in **Attachments #1 and #4**.

Comment: The opposing views quoted in **Attachment #1** were authored and/or signed by 237 different unbiased Ph.D. biological scientists with no connection to the USDA. Does it surprise you that about 77% of the source documents listed in the References section of this DEIS that drove the project are authored by USDA employees with financial incentives to portray logging as ecosystem-friendly? Intelligent Americans will immediately detect bias towards logging in the References.

Comment: The opposing views quoted in **Attachment #4** were authored and/or signed by 52 different unbiased Ph.D. biological scientists with no connection to the USDA. They indicate that road construction inflicts more resource damage than any logging-related activity.

Comment: The attachments contain statements by over 500 nationally recognized Ph.D. biological scientists who describe how and why logging and road construction inflict long-term, irreversible damage to countless natural resources in the forest. Of course Forest Supervisors and District Rangers who manage the public land in a competent manner they would halt all commercial timber sales their jobs would be in jeopardy. This provides a financial incentive to harm the natural resources in the forest with unneeded commercial timber sales.

Comment: Does the Responsible Official believe their TMA and silviculturist know more about the ecological impacts of logging and roading than the 500 scientists quoted in the attachments? Yes or No. Please explain.

Comment: After reading the quotes in the attachments does the Responsible Official feel comfortable basing his decision to proceed with the Big Thorne timber sale based on the advice of the TMA and silviculturist? This rejects the research conclusions of 500 scientists. Why does this reflect sound decision making? Do you understand the meaning of "lying by omission"?

Comment: Please do not discount the scientist's observations by claiming:

1) there will be no compelling, major adverse natural resource impacts because the timber sale planning is guided by BMPs and the forest plan unless the Responsible Official identifies the specific guidance, where it is applied and how the guidance will mitigate the likely impact to the resources.

2) claiming they are not site-specific to this timber sale. All the damage discussed by the scientists is clearly intended to apply in all cases where an action occurs. If the Responsible Official still claims the scientists' predictions do not apply because they are not sit-specific then the Responsible Official must not include and literature in the References section of the final NEPA document that does not mention the name Big Thorne."

3) rejecting the opposing views because they are "opinions" won't work. View and opinion are synonyms.

The Responsible Official must "base decisions on a consideration of the relevant factors and must "engage in a substantial inquiry into the facts, one that is searching and careful." When the Responsible Official fails to cite literature in the References section of the DEIS describing the likely adverse effects of logging-related activities he does not consider the relevant factors. What he clearly has put into motion is a well-used USFS strategy to deceive the public into believing science supports projects like this one.

Figure it out Mr. Cole. As you read the statements of hundreds of scientists who describe multiple ways the forest's natural resources are trashed by commercial logging at any location... who will a District Court Judge believe? Will he/she believe a person whose promotion potential depends on offering timber to the resource extraction corporations, or hundreds of unbiased scientists with nothing to gain when they testify?

The DEIS P&N Statements Indicate that One Reason for the Timber Sale is to "contribute to a long-term supply of economic timber for the timber industry on Prince of Wales Island"

The DEIS at page 1-4 states:

"The purpose and need for the Big Thorne Project is to contribute to a long-term supply of economic timber for the timber industry on Prince of Wales Island and on the Tongass National Forest in general (including both large and small operators), in a manner that is consistent with the multiple-use goals and objectives of the Tongass Land and Resource Management Plan (Forest Plan). This would contribute to the timber supply that would help sustain the current timber industry while transitioning to a sustainable forest industry based on young-growth management. The purpose for the project and its underlying need are described in greater detail in the following subsections. The detailed rationale for scheduling a large sale in the Big Thorne project area is presented in Appendix A of this EIS."

Comment: Not all local communities have a timber extraction-based economy. In the final EIS please include the economic analysis showing that the particular communities needing economic help by providing more raw materials for wood products:

- 1) have a timber-based economy, and
- 2) the economy is in jeopardy because of the lack of timber

Telling the Public "Don't Worry, we'll do it" isn't Acceptable

The EPA requires Federal Agencies to secure a NPDES permit if their earthwork activities (clearing, grading, and excavating) disturb 1 acre or more. This is certainly the case with this project.

Comment: Since the Responsible Official must obtain a NPDES permit from EPA before any activity may commence on this timber sale, the Decision Document must state that the permit will be obtained immediately after the decision document has been signed. Given the trustworthiness of the USFS, telling the public "we'll get it later" is unacceptable.

Comment: Section 101(b)(4) requires all USFS to support biodiversity. This human manipulation of the natural forest conditions significantly harms the biodiversity of the area. The final NEPA document must contain a section detailing how the diversity of fish and wildlife habitat will be maintained with this project.

The Responsible Official Chooses to Circumvent the Will of the American Public to Provide

Volume for the Natural Resource Extraction Corporations

The following forest service publication describes what the public wants from their national forests:

Survey results of the American public’s values, objectives, beliefs, and attitudes regarding forests and grasslands: A technical document supporting the 2000 USDA Forest Service RPA Assessment. Gen. Tech. Rep. RMRS-GTR-95. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station. 111 p.

Link to Complete Report: http://www.fs.fed.us/rm/pubs/rmrs_gtr095.pdf

Comment: The quote below from the USFS survey discussed above proves that the Proposed Action in the Big Thorne DEIS is the antithesis of what the American public want done to their precious national forest land:

“The public sees the restriction of mineral development and of timber harvest and grazing as being more important than the provision of natural resources to dependent communities (although this is still seen as somewhat important).” (Pg. 28)

Comment: Supervisor Cole, you are arrogant enough to accept your salary provided by the American public to caress your corporate masters and still consider yourself a public servant.

Supervisor Cole, since you have read my comments and attachments you are now contemplating how to deny that the ecological harm I describe will occur in and downstream from the Big Thorne project area. Of course you will respond to my comments above with untrue, deceptive statements or meaningless responses (i.e. “so noted” or “thanks for the comment” etc.) to accomplish your goal and perhaps come closer to meeting your volume expectations. It’s sad that you call yourself a public servant and enjoy the salary provided by the public to take actions that benefit corporate America.

Judges can easily determine the difference between 1) a response to the public that is informative and relates to the issue at hand, and 2) a so-called response of a few meaningless words written by a Responsible Official who is frightened to really respond because the response would contradict the lies emphasizing the timber sale’s benefits to the forested ecosystem described in DEIS.

Please notify this member of the public when the ROD and final EIS are first posted online, the legal notice of decision is published in your newspaper of record and the 45-day appeal period begins.

Sincerely,

Dick Artley’s scanned signature is contained in the “signature” attachment.

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Da99333@gmail.com
208-983-0181

Appeal Point # 4 Description --- Supervisor Cole has violated 40 CFR 1505.2(c) because the EIS for the Big Thorne timber sale does not "state whether all

practicable means to avoid or minimize environmental harm from the alternative selected have been adopted."

An excerpt of the law is shown below:

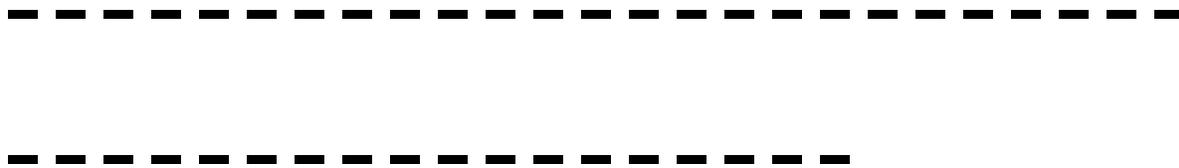
"(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation."

Of course the ADO will respond to this appeal point by saying the Responsible Official had taken all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted."

This is not the point. Congress knew many lay members of the public could not determine whether all practicable means to avoid or minimize environmental harm when the selected alternative is implemented after reading the NEPA document several times.

Congress would not have promulgated this law had they not wanted the Responsible Official to divulge to the public that all practicable means to avoid or minimize environmental harm have been taken in the development of the preferred alternative.

This is not a trivial omission.



Appeal Point # 5 Description --- Supervisor Cole has violated 40 CFR 1507.2 because the EIS for the Big Thorne timber sale 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."

An excerpt of the law is shown below:

"Agencies shall:

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration."

I will point out the word "shall" in the law.

Of course the ADO will respond to this appeal point by saying the Responsible Official had given unquantified environmental amenities appropriate consideration.

This is not the point. Congress knew many lay members of the public could not

determine these resources had been given appropriate consideration after reading the NEPA document several times.

Congress would not have promulgated this law had they not wanted the Responsible Official to explain and highlight the methods and procedures used to insure that presently unquantified environmental amenities and values had been given appropriate consideration.

Finally, do not...I repeat, do not reject this appeal point by stating "No scoping or comment period references were received from the appellant about this issue." You and I both know this is required for the new objection process but there is no law, regulation or policy that requires this for appeals. If you disregard this information I would be guaranteed a win in court on this issue. I know some pro-bono attorneys who would be glad to take-on this sure win in court. Your lies will be counterproductive here.

Relief Requested

The appellant asks the ADO to direct the Responsible Official to withdraw the Decision and rewrite the DEIS with a new alternative analyzed in detail that responds to a new Purpose & Need. The current P&N goal to "contribute to a long-term supply of economic timber for the timber industry on Prince of Wales Island and on the Tongass National Forest in general" would be dropped.

Of course the economics of local timber dependent communities is important, but it should not drive a sale. The timber volume would be a positive benefit of a sale intended to enhance the health of the forest's natural resources.

The new DEIS should fully develop an alternative that does everything described in the selected alternative but logging and road construction.

In addition the new alternative should:

- comply with 40 CFR 1505.2(c),
- comply with 40 CFR 1502.16,
- comply with 40 CFR 1507.2, and
- respond to **all** comments received during the 45-day comment period.

Then, please instruct the Responsible Official to reinitiate the 45-day comment period on the revised pre-decisional DEIS

Sincerely,

The appellant's scanned signature is contained in the "signature" attachment.

Dick Artley [retired forest planner, NEPA legal compliance reviewer, forest NEPA

coordinator, and forest appeals/litigation coordinator --- Nez Perce National Forest,
Idaho, also FEI instructor (Corvallis, Oregon)]

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