

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 17, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NORTH CASCADES CONSERVATION
COUNCIL,

Plaintiff,

v.

UNITED STATES FOREST SERVICE, a
federal agency of the United States
Department of Agriculture, and KRISTIN
BAIL, in her official capacity as Forest
Supervisor, Okanogan-Wenatchee National
Forest, United States Forest Service,
Defendants.

No. 2:22-CV-00293-SAB

**ORDER GRANTING
DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT;
DENYING PLAINTIFF’S
MOTION FOR SUMMARY
JUDGMENT**

Before the Court are the parties’ Cross-Motions for Summary Judgment, ECF Nos. 15, 17. A hearing was held on November 30, 2023, by videoconference. Plaintiff was represented by William H. Sherlock. Defendants were represented by Shaun Pettigrew. After hearing oral argument, the Court took the matter under advisement.

After reviewing the parties’ submissions and considering the arguments made at the hearing, the Court grants Defendants’ Motion for Summary Judgment and denies Plaintiff’s Motion for Summary Judgment.

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**ORDER GRANTING DEFENDANTS’ MOTION FOR SUMMARY
JUDGMENT; DENYING PLAINTIFF’S MOTION FOR SUMMARY
JUDGMENT ~ 1**

Facts

1
2 On November 23, 2023, Plaintiff filed this action, challenging the United
3 States Forest Service’s (“Forest Service”) authorization of the Twisp Restoration
4 Project (“TRP”). Plaintiff asks the Court to declare that Defendants violated NEPA
5 and its implementing regulations in designing, analyzing, and implementing the
6 TRP and the related Finding of No Significant Impact (“FONSI”) and vacate the
7 TRP Environmental Assessment (“EA) and FONSI.¹

8 In November 2012, the Forest Service finalized a document titled “The
9 Okanogan-Wenatchee National Forest Restoration Strategy: Adaptive Ecosystem
10 Management to Restore Landscape Resiliency”² (Restoration Strategy). The
11 Restoration Strategy identified the need for a concerted effort “to restore
12 the sustainability and resiliency of forested ecosystems on the Okanogan-
13 Wenatchee National Forest,” in light of documented “(1) increased susceptibility to
14 uncharacteristically large and severe fires; (2) uncharacteristically severe insect
15 outbreaks; and (3) habitats . . . declining for late-successional and old forest
16 associated species.”³ The Restoration Strategy explained that “while the Forest’s
17 aging road network provides needed access for recreation and forest management,
18 it also degrades the condition of aquatic ecosystems.”⁴ To improve forest resilience
19 and aquatic ecosystems on the Forest, the Restoration Strategy promoted a
20 “planning approach based on principles of landscape-level restoration ecology.”⁵

21
22 ¹Plaintiff also brought a claim under the Federal Advisory Committee Act (FACA).
23 Plaintiff waived its FACA claim when it moved for summary judgment on the
24 NEPA claim only.

25 ²AR5890-6009.

26 ³AR5895

27 ⁴*Id.*

28 ⁵*Id.*

1 In April 2019, the Forest Service completed the Twisp Landscape
2 Evaluation (“TLE”), covering six watersheds in the greater Methow Valley in
3 Okanogan County, Washington. The TLE concluded there was an urgent need for
4 ecological restoration projects, given the “widespread degradation of forest,
5 rangeland, watershed condition and stream habitat” and “increased [] risks of
6 uncharacteristically severe wildfire.”⁶

7 In June 2019, the Forest Service created a fourteen-member interdisciplinary
8 team (“IDT”) to develop a restoration project in a 79,682-acre region of the
9 Methow Valley Ranger District. The goal of the project would be to move the
10 landscape toward more resilient desired future conditions by (1) changing the
11 vegetation composition, structure, and pattern to intersect with the historic and
12 future ranges of variability as defined in the Restoration Strategy and other
13 sources; (2) reducing the potential for high intensity wildfires in the wildland urban
14 interface (WUI); and (3) designing and maintaining forest infrastructure, including
15 roads, to reduce water quality impacts and maintain healthy, functioning
16 watersheds that provide high quality water, air, and fishery habitat.⁷

17 In November 2019, a scoping letter was sent to 362 individuals, groups, and
18 agencies detailing the proposed project, scheduling a public open house, and
19 inviting comments on the proposal. The proposed project covered a 77,0380-acre
20 area “southwest, west and northwest of Twisp, Washington in the Twisp River,
21 Alder Creek, Rader Creek, and Wolf Creek drainages.”⁸ The proposed project
22 included closing or decommissioning roads, replacing culverts, reestablishing
23 aquatic connectivity, introducing coarse woody debris and engineered log jams to
24 aquatic habitat, thinning of tree stands, prescribed fire treatments, and removal of
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26 ⁶AR6844.

27 ⁷AR6906.

28 ⁸AR7003.

1 hazard trees. It also included commercial and noncommercial thinning and
2 prescribed fire treatments. The proposed project stated that most of the thinning
3 and prescribed fire treatments would use a “condition-based management
4 strategy.” The proposed project explained that condition-based management
5 involved developing a suite of proposed treatments based on pre-identified
6 management requirements and specific resource conditions across a broad area and
7 applying the most appropriate treatments to obtain the desired conditions based on
8 pre-implementation field reviews. The Forest Service received responses to the
9 scoping letter from 55 individuals, organizations, businesses, and local
10 governments.

11 In October 2020, the Forest Service issued a Draft Environmental
12 Assessment (“EA”). After the release and closure of the comment period, the
13 Forest Service hosted a virtual open house and facilitated a self-guided tour of the
14 project area. Ultimately, the Forest Service received 1,029 comments to the Draft
15 EA.

16 In August 2021, the Cedar Creek Fire burned into the northern portion of the
17 TRP area, causing mild to severe fire effects in the Wolf, Rader, and Little Bridge
18 Creek drainages. In response to the Cedar Creek Fire, the Forest Service revised
19 the proposed action to omit areas potentially affected by the Fire.

20 In January 2022, the Forest Service held a public meeting in which the
21 revisions to the TRP were explained. Additionally, the Forest Service provided a
22 public link to the meeting and materials used, summarized the major changes to the
23 proposed action and provided an update on the status of the Final EA.

24 In April 2022, the Forest Service released the Final EA and a draft Decision
25 Notice and Finding of No Significant Impact (DN/FONSI). The revised proposed
26 action reduced the project area to 24,140 acres. The Final EA’s proposed action
27 provided for non-commercial understory vegetation thinning on up to 13,812 acres
28 and commercial overstory vegetation treatments on up to 8,151 acres.

1 The TRP provided that no overstory treatments would occur in late
2 successional reserves (LSR),⁹ with condition-based thinning on up to 7,275 acres
3 of matrix lands¹⁰ and site-specific treatments for the remainder on matrix lands and
4 in riparian reserves.¹¹ The diameter cap on overstory thinning on matrix lands was
5 reduced from thirty inches (“large” trees) to twenty-one inches (“medium” trees).
6 Fuel reduction through piling, pile burning, and underburning would occur on at
7 most 23,167 acres, with 102.6 miles of associated fire line construction. The
8 proposed action would address transportation management by removing hazard
9 and danger trees, replacing culverts, and road construction, maintenance, and
10 closures. Although there would still be some aquatic habitat enhancement
11 measures, most of that work became a separate project entitled the Twisp Aquatic
12 Restoration Project.

13 The Forest Service received objections during the 45-day commenting
14 period, which were discussed with the Acting Deputy Regional Forester on July
15 12, 2022. Written responses to the objections were provided.

16 On July 20, 2022, the Forest Supervisor adopted the proposed action in the
17 _____

18 ⁹LSRs are intended to “maintain a functional, interactive, late-successional and
19 old-growth forest ecosystem” that will “serve as habitat for late-successional and
20 old-growth related species, including the Northern Spotted Owl.” AR3957.

21 ¹⁰Matrix lands are lands outside the reserves and the other land-use allocations “in
22 which most timber harvest and other silvicultural activities will be conducted.”
23 AR3957.

24 ¹¹Riparian reserves are areas along all streams, wetlands, ponds, lakes, and
25 unstable or potentially unstable areas where the conservation of aquatic and
26 riparian-dependent terrestrial resources receives primary emphasis. Their main
27 purpose is to protect the health of the aquatic system and its dependent species.
28 AR3958.

1 Final EA as the TRP in the final DN/FONSI. The FONSI concluded that an
2 Environmental Impact Statement was not required because it would not “have a
3 significant effect on the quality of the human environment.”¹²

4 **Law**

5 **A. Administrative Procedures Act**

6 Under the Administrative Procedures Act (APA) a reviewing court shall not
7 set aside an agency’s decision unless it is “arbitrary, capricious, an abuse of
8 discretion, or otherwise not in accordance with the law. 5 U.S.C. § 706(A)(2).
9 Agency action is arbitrary and capricious if it:

10 relied on factors which Congress has not intended it to consider,
11 entirely failed to consider an important aspect of the problem, offered
12 an explanation for its decision that runs counter to the evidence
13 before the agency, or is so implausible that it could not be ascribed to
a difference in view or the product of agency expertise.

14 *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43
15 (1983).

16 Review under this standard is narrow and a district court cannot substitute its
17 judgment for that of the agency. *Ecolog Ctr. v. Castaneda*, 574 F.3d 652, 656 (9th
18 Cir. 2009) (citation omitted).

19 Section 101 of NEPA declares a broad national commitment to protecting
20 and promoting environmental quality. 42 U.S.C. § 4331. NEPA does not mandate a
21 particular result, but simply prescribes necessary process. *Robertson v. Methow*
22 *Valley Citizens Council*, 490 U.S. 332, 351 (1989). If the adverse environmental
23 effects of the proposed action are adequately identified and evaluated, the agency
24 is not constrained by NEPA from deciding that other values outweigh the
25 environmental costs. *Id.*

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28 ¹²AR12843.

B. National Environmental Policy Act

NEPA imposes procedural requirements designed to force agencies to take a “hard look” at the environmental consequences of their proposed actions. *350 Montana v. Haaland*, 50 F.4th 1254, 1265 (9th Cir. 2022). To satisfy the “hard look” requirement, an agency must provide “a reasonably thorough discussion of the significant aspects of the probable environmental consequences.” *Id.*

The NEPA review process concludes in one of two ways: (1) the agency determines through an Environmental Assessment that a proposed action will not have a significant impact on the environment and issues a Finding of No Significant Impact, or (2) the agency determines that the action will have a significant impact and issues an Environmental Impact Statement and record of decision. *Envtl. Def. Ctr. v. Bureau of Ocean Energy Mgmt*, 36 F.4th 850, 868 (9th Cir. 2022).

To determine whether an agency has complied with NEPA’s requirements, courts apply a rule of reason, which involves a pragmatic judgment on whether the form, content and preparation of the agency’s assessment foster both informed decision-making and informed public participation. The presumptive remedy for violation of NEPA and the APA is vacatur. 5 U.S.C. § 706; *350 Montana*, 50 F.4th at 1259.

As the Ninth Circuit recently noted, “[i]t is always possible to quibble with an agency’s explanation; a motivated litigant will be able to identify parts of any agency explanation that could have been more precise or thorough. But the arbitrary and capricious standard does not demand perfection.” *Earth Island Inst. v. Muldoon*, 82 F.4th 624, 637 (9th Cir. 2023).

Analysis

In its motion for summary judgment, Plaintiff makes the following arguments challenging Defendants’ Final EA and FONSI: (1) the Final EA failed to analyze a reasonable range of alternatives and relied on an unreasonable narrow

1 purpose and need statement.; (2) the Final EA failed to fully disclose the direct,
2 indirect, and cumulative impacts of the TRP; (3) the NEPA process failed to allow
3 meaningful public participation and failed to adequately inform the public about
4 the TRP; and (4) the Forest Service violated NEPA by failing to prepare an
5 Environmental Impact Statement. ECF No. 15. Plaintiff characterizes the TRP as a
6 massive commercial logging project.

7 In its motion for summary judgment, Defendants make the following
8 arguments: (1) the stated purpose and need for the project was not unreasonably
9 narrow and the Final EA considered a reasonable range of alternatives; (2) the
10 Final EA took a hard look at the project’s potential impacts; (3) they satisfied
11 NEPA’s public participation requirements; and (4) the FONSI was not arbitrary
12 and capricious. ECF No. 17.

13 **1. Purpose and Need / Range of Alternatives**

14 **a. Purpose and Need**

15 NEPA requires an agency to specify the underlying purpose and need for the
16 proposed action. 40 C.F.R. § 1502.13.¹³ “The stated goal of a project necessarily
17 dictates the range of ‘reasonable’ alternatives and an agency cannot define its
18 objectives in unreasonably narrow terms.” *Westlands Water Dist. v. U.S. Dep’t of*
19 *Interior*, 376 F.3d 853, 865 (9th Cir. 2004) (quotation and citation omitted.) That
20 said, agencies have considerable discretion in defining the purpose and need of a
21 project. *Id.* at 866. Thus, courts evaluate the Statement of Purpose and Need under
22 the reasonableness standard. *Id.*

23 _____
24 ¹³Relying on 40 C.F.R. § 1506.13 (2020), The Forest Service informed the Court at
25 oral argument that the decision notice for the TRP applied the 1978 regulations
26 because the scoping for the project predated September 2020. Thus, the citations to
27 the Code of Federal Regulations in this Order refer to pre-2020 regulations, unless
28 otherwise denoted.

1 Beginning with the scoping and ending with the Final EA, the Forest Service
2 identified five needs that the TRP project would address. These included protecting
3 and maintaining aquatic resources and improving watershed resiliency, remedying
4 past forest management by moving the forest toward a more resilient condition
5 consistent with historic and future ranges of variability, enhancing wildlife habitat,
6 reducing fire intensity while creating conditions to safely manage wildfire in the
7 WUI, and managing the transportation system in an affordable, safe, and efficient
8 manner.¹⁴

9 Plaintiff argues the TRP relied on an unreasonable narrow purpose and need
10 statement, but it did not identify which of the five state goals were too narrow or
11 unnecessary. Rather, Plaintiff asserts that by defining the project with these five
12 goals, Defendants manipulated the process to maintain a specific preordained
13 project.

14 Here, Defendants reasonably defined the purpose and need of the Project.
15 Plaintiff has not shown that the five needs, collectively or individually, preordained
16 a specific project. Notably, the TRP authorizes a variety of strategies to meet the
17 stated needs, including non-commercial understory thinning, commercial overstory
18 treatments and fuel reduction through piling, pile burning and underburning. Only
19 the commercial overstory treatment involve the kind of commercial timber harvest
20 that Plaintiff suggests the statement of needs preordained.

21 **b. Reasonable Range of Alternatives**

22 Consideration of alternatives “is the heart of the environmental impact
23 statement.” 40 C.F.R. § 1502.14. The agency must “[r]igorously explore and
24 objectively evaluate all reasonable alternatives [to the proposed action], and for
25 alternatives which were eliminated from detailed study, briefly discuss the reasons
26 for their having been eliminated.” 40 C.F.R. § 1502.14(a). The “touchstone” is

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28 ¹⁴ AR12600-04.

1 “whether [the] selection and discussion of alternatives fosters informed decision-
2 making and informed public participation.” *Westlands Water Dist.* 376 F.3d at 872
3 (quoting *State of Calif. v. Block*, 690 F.2d 753, 767 (9th Cir. 1982)). The agency’s
4 decision “cannot be found wanting simply because the agency failed to include
5 every alternative device thought conceivable by the mind of man.” *Vt. Yankee*
6 *Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 551 (1978).
7 “Nor does NEPA require agencies to evaluate ‘mid-range’ alternatives between
8 action and no action.” *Earth Island Inst. v. U.S.F.S.*, 87 F.4th 1054, 1065 (9th Cir.
9 2023). An agency does not violate NEPA simply because it considered only two
10 alternatives—action and no action. *Id.* Still, “[t]he existence of a viable but
11 unexamined alternative renders an environmental impact statement inadequate.”
12 *Westlands Water Dist.*, 376 F.3d at 868 (citation omitted).

13 Courts review the agency’s range of alternatives under the “rule of reason.”
14 *Id.* Under the rule of reason, the EA need not consider an infinite range of
15 alternatives, only reasonable or feasible ones. *Id.* (citation omitted). Additionally,
16 “an agency is not required to undertake a separate analysis of alternatives which
17 are not significantly distinguishable from alternatives actually considered, or which
18 have substantially similar consequences.” *Id.* (citation omitted).

19 Plaintiff argues the reasons the Forest Service advanced for eliminating
20 viable alternatives were arbitrary and capricious. For example, one of the
21 eliminated alternatives would have been to use a narrower maximum tree diameter
22 than the eventual 21-inch maximum. Plaintiff argues there was no indication in the
23 Final EA how the Forest Service reached that conclusion. Another example is the
24 elimination of the “natural succession” alternative without reasonable justification.

25 Here, the Final EA considered in detail a no-action alternative and an action
26 alternative and explained in detail why other proposed alternatives were not
27 considered. The Final EA provided adequate explanations as to why the additional
28 proposed alternatives did not meet the needs of the Project. The Final EA’s

1 consideration of alternatives satisfies NEPA.

2 **2. Cumulative Impacts**

3 An EA may be deficient if it fails to include a cumulative impact analysis.
4 *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 894 (9th Cir. 2002).¹⁵

5 Plaintiff argues the Forest Service failed to account for the potential
6 cumulative impacts of the Midnight Restoration project. Defendants counter that
7 the Forest Service is still assessing the effects of the Cedar Creek Fire to determine
8 whether previously identified or new treatments would be beneficial and if so,
9 whether to initiate new projects and analyses to cover these areas.

10 The record indicates that at the time the Final EA was issued, the Midnight
11 Restoration Project had not passed the NEPA scoping stage. Contrary to Plaintiff's
12 assertions, Defendants had not fully analyzed the effects of the treatments
13 proposed for the Midnight project area. As such, the EA was not required to
14 consider the cumulative impacts of a project that had not even proceeded to
15 scoping.

16 **3. Meaningful Public Participation**

17 A key aim of NEPA is to ensure that the agency will inform the public that it
18 has indeed considered environmental concerns in its decision-making process.

19 *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983).

20 However, NEPA does not require agencies to circulate a draft EA in every case.

21 *Earth Island Institute*, 87 F.4th at 1067; *see also Block*, 690 F.2d at 771

22 _____
23 ¹⁵“Cumulative impact” is the impact on the environment that results from the
24 incremental impact of the action when added to other past, present, and reasonably
25 foreseeable future actions regardless of what agency (federal or non-federal) or
26 person undertakes such other actions. Cumulative impacts can result from
27 individually minor but collectively significant actions taking place over a period of
28 time. 40 C.F.R. § 1508.7.

1 (cautioning that “requiring agencies to repeat the public comment process when
2 only minor modifications are made promises to prolong endlessly the NEPA
3 review process”). What is required is that agencies “provide the public with
4 sufficient environmental information, considered in the totality of circumstances,
5 to permit members of the public to weigh in with their views and thus inform the
6 agency decision-making process.” *Id.* (quotation omitted).

7 Plaintiff argues that a revised Draft EA should have been prepared following
8 the Cedar Creek Fire and before issuance of the Final EA. Additionally, Plaintiff
9 argues that the public participation was hampered by the Forest Services’ use of
10 condition-based management.

11 Here, the Forest Service provided the public with adequate opportunity to
12 meaningfully participate in the process during the development of the Project. The
13 Forest Service estimated stand characteristics throughout the Project Area,
14 identified which of those stands may be thinned or otherwise treated, detailed the
15 prescription that would apply to the thinning or treatment in each area, as well as
16 assessing the potential effects of those actions.

17 Moreover, it was not necessary to reopen the public comment period before
18 releasing the Final EA after the Cedar Creek Fire burned through a portion of the
19 originally proposed Project area. The public was provided with sufficient
20 environmental information, considering the totality of the circumstances, to allow
21 members of the public to weigh in with their views, thus, informing the agency
22 decision-making process. After the Cedar Creek Fire, the Forest Service presented
23 information at a public meeting before issuing the Final EA. The Forest Service
24 considered the comments and objections to the Final EA and the draft DN/FONSI
25 prior to approving the Project.

26 In this case, the Forest Service met the requirements of NEPA by permitting
27 informed public participation.

28 **4. Environmental Impact Statement**

1 NEPA requires federal agencies to prepare an Environmental Impact
2 Statement (EIS) for major federal decisions “significantly affecting the quality of
3 the human environment.” 42 U.S.C. § 4332(C). An agency is required to prepare
4 an EIS where there are substantial questions about whether a project may cause
5 significant degradation of the human environment. *Native Ecosystems Council v.*
6 *U.S. Forest Serv.*, 428 F.3d 1233, 1239 (9th Cir. 2005).

7 Whether a project is significant depends on both the project’s context and its
8 intensity. 40 C.F.R. § 1508.27. Context means “the significance of an action must
9 be analyzed in several contexts such as society as a whole (human, national), the
10 affected region, the affected interests, and the locality.” § 1508.27(a). Both short-
11 and long-term effects are relevant to context. *Id.*

12 One of the factors to consider is whether the project is “highly
13 controversial.” A project is highly controversial if there is a substantial dispute
14 about the size, nature, or effect of the major federal action. *Humane Soc’y of the*
15 *U.S. v. Locke*, 626 F.3d 1040, 1057 (9th Cir. 2010). Mere opposition to the
16 agency’s proposed action is insufficient to demonstrate a controversy. *Native*
17 *Ecosystems Council*, 428 F.3d at 1240. But where substantial evidence in the
18 record suggests that a project may have highly controversial environmental effects,
19 the agency must at the very least explain why it will not. *Earth Island Inst.*, 82
20 F.4th at 638. If the agency concludes that an EIS is not necessary, it must provide a
21 “convincing statement of reasons to explain why project’s impacts are
22 insignificant.” *350 Montana*, 50 F.4th at 1259.

23 An Environmental Assessment (EA) is used as a screening document to
24 determine whether an agency must prepare an EIS or make a finding of no
25 significant impact (FONSI). 40 C.F.R. §§ 1508.9, .13. In examining the EA, courts
26 look to whether the EA has adequately considered and elaborated the possible
27 consequences of the proposed agency action when concluding that it will have no
28 significant impact on the environment; and courts also look at whether its

1 determination that no EIS is required is a reasonable conclusion. *350 Montana*, 50
2 F. 4th at 1265 (quotation omitted). “Federal agencies must undertake a ‘full and
3 fair’ analysis of the environmental impacts of their activities.” *Id.* (quotation
4 omitted).

5 An agency may issue a FONSI only if, after reviewing the direct and indirect
6 effects of a proposed action, it concludes the action “will not have significant
7 effect on the human environment.” 40 C.F.R. § 1508.13. The Statement of Reasons
8 “is crucial to determining whether the agency took a ‘hard look’ at the potential
9 environmental impact of a project.” *Center for Cmty. Action and Env. Justice v.*
10 *Fed. Aviation Ad.*, 61 F.4th 633, 639 (9th Cir. 2023).

11 Plaintiff maintains—in light of the truly vast scale of the TRP, the lack of
12 critical information, and the other condition-based management projects that the
13 agency has in the works, particularly the Midnight project—it is necessary that the
14 Forest Service prepare an EIS. Additionally, the Final EA and FONSI are
15 unsupportable.

16 In this case, the Final EA discloses the project area and where within the
17 project area vegetation treatment and fuel reduction treatment are authorized,
18 identifies specific prescriptions that apply to each authorized activity, and explains
19 the anticipated timing of implementation of those activities. It also details the
20 decision criteria that will be applied to determine what to do when the ground
21 conditions may differ from the expected conditions, thereby disclosing to the
22 public the maximum potential effects of the project. By doing so, the Final EA is
23 consistent with NEPA’s requirements.

24 The Forest Service’s FONSI was not arbitrary or capricious. The FONSI and
25 supporting documents fully explain the basis for the Forest Service’s conclusion
26 that the Project would not have a significant effect on the quality of the human
27 environment. Plaintiff has failed to identify any significant effects that the Project
28 will have on any Endangered Special Act-listed species. Moreover, the Court

1 declines to find, as a matter of law, that if a project is going to have a significant
2 impact on reducing fire intensity and proximity to urban areas it must be analyzed
3 under the framework of an EIS. Plaintiff has not provided any caselaw to support
4 this contention.

5 At the heart of Plaintiff's challenge is the Forest Service's use of condition-
6 based management. Plaintiff has not shown that this approach violates NEPA as a
7 matter of law. Here, the Final EA disclosed detailed decision criteria that will be
8 applied during the TRP implementation to ensure the actual conditions on the
9 ground meet the expected conditions disclosed in the Final EA. If they do, the
10 approved treatment will be applied. If they do not, the treatment will not be
11 applied.

12 In this case, the Final EA's description of condition-based management
13 details the decision criteria for each approved activity, specific prescriptions that
14 will be applied if those decision criteria are met, maps identifying where those
15 prescriptions would be applied, and estimates of the timing of implementation.¹⁶
16 Additionally, the TRP also provides for implementation of various design features,
17 monitoring and mitigation measures. The Court finds that the use of condition-
18 based management is not arbitrary or capricious as a matter of law and as applied
19 in this case.

20 The Final EA provides sufficient information to the public to understand the
21 scope of the TRP and its potential environmental consequences and meets NEPA's
22 requirements for informed decision-making before an agency's proposed action.

23 **5. Conclusion**

24 The TRP is a 24,000-acre project within the Okanogan-Wenatchee National
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28 ¹⁶AR12616-24, AR12718-32, AR12816-22.

1 Forest, which is over 3 million acres.¹⁷ It is one component of a larger strategy on
2 the part of the Forest Services to create a forest that is more resilient to insect and
3 disease infestation and catastrophic wildfire. It is also the result of careful decision-
4 making on the part of the Forest Service that included more than three years of
5 planning, public participation, environmental analysis and consultation with tribes
6 and other government agencies.

7 In this case, the Forest Service met all the requirements of NEPA in
8 approving the TRP. The Forest Service took a “hard look” by providing a
9 reasonably thorough discussion of the significant aspects of the probable
10 environmental consequences.

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24 ¹⁷The Okanogan-Wenatchee National Forest encompasses more than 3.8-million
25 acres in Washington state and stretches north to south from the Canadian border to
26 the Goat Rocks Wilderness - a distance of about 180 miles.

27 <https://www.fs.usda.gov/main/okawen/about-forest>, last visited on December 19,
28 2023.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff’s Motion for Summary Judgment, ECF No. 15, is **DENIED.**

3 2. Defendants’ Motion for Summary Judgment, ECF No. 17, is

4 **GRANTED.**

5 3. The Clerk of Court is directed to enter judgment in favor of Defendants
6 and against Plaintiff.

7 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
8 forward copies to counsel, and close the file.

9 **DATED** this 17th day of January 2024.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

15 Stanley A. Bastian
16 Chief United States District Judge
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