

Excerpts from Bark's Administrative Appeal of the Jazz Timber Sale



FSR 6311-130 October 2011, above



FSR 6311-130 July 2012 after pre-decisional clearing, above



Gate removed on FSR 6311-130, above

1) Forest Service made an “irreparable and irretrievable commitment of resources” prior to a final decision

CEQ regulations require that “until an agency issues a [R]ecord of [D]ecision . . . no action concerning the proposal shall be taken which would: (1) [h]ave an adverse environmental impact; or (2) [l]imit the choice of reasonable alternatives.” 40 CFR. § 1506.1(a). In addition, the regulations clearly prohibit such predeterminative action, stating that “[a]gencies shall not commit resources prejudicing selection of alternatives before making a final decision.” 40 C.F.R. § 1502.2(f).

Courts have generally agreed on the “trigger point” for predetermination, holding that an agency has violated NEPA when it made an irreversible and irretrievable commitment of resources to an outcome prior to making its final decision. *See Forest Guardians v. United States Fish & Wildlife Serv.*, 611 F.3d 692, 714 (10th Cir. 2010), *Conner v. Burford*, 848 F.2d 1441, 1446 (1988). This irreversible commitment of resources “seriously imped[es] the degree to which [an agency’s] planning and decisions could reflect environmental values.” *Metcalf v. Daley*, 214 F.3d 1135, 1143 (9th Cir. Wash. 2000) . . .

In light of such a clear prohibition on pre-emptive action, Bark is astonished that not only has the Forest Service made an irreversible and irretrievable commitment of resources prior to making its final decision, it tried to cover this up in the EA. I’m referring, of course, to the Forest Service prematurely logging Forest Service Road 6311.130.

FSR 6311.130 had been naturally recovering for years, and was included for decommissioning in the 2007 Clackamas Restoration Projects EA. On a site visit in July, Bark staff found that the gate to the road had already been removed, and all of the vegetation that has regrown in the past 20-30 years was logged.
[Bark Appeal at p. 2]



'Existing alignment' FSR 6311-180 going into Unit 18

4) Failure to Take a Hard Look at Environmental Consequences

e. Impacts of Road Building, not adequately analyzed because masked as “re-building”

Wildland roads can significantly impact the hydrology, geomorphology, and ecology of many national forests. Roads alter hillslope hydrology by reducing soil infiltration, concentrating water through road drainage structures, and converting subsurface flow to surface flow (Gucinski et al. 2001; Luce 2002). Overland flow can cause geomorphic changes including chronic erosion (Swift 1988), development of gullies connecting road drainage features directly to the stream network and increased risk of landslides (Montgomery 1994; Wemple et al. 1996), all of which degrade aquatic habitat.

Terrestrial wildlife is also greatly influenced by road density. Roads impact wildlife in a variety of ways including direct mortality from vehicle collisions; increased poaching, over-hunting, and over-trapping facilitated by access; reduced numbers of snags and down logs; increased negative edge effects; facilitated or hindered movement depending on species; and chronic negative interactions with humans (Wisdom et al. 2000).

The Forest Service recognized the importance of removing roads from the Collawash Watershed in its recent Increment 2 Road-decommissioning project. The Increment 2 Preliminary Assessment acknowledged that “until a road is removed and natural drainage patterns are restored, the road will likely continue to affect the routing of water through watersheds. *Inc. 2 PA at 33.* And that, [t]he sediment contribution to streams from roads is often much greater than that from all other road management activities combined, including log skidding and yarding.” *Inc. 2 PA at 34.*

Now, rather than continuing to restore the watershed by decommissioning roads, the Jazz Timber Sale will re-build 12 miles of decommissioned roads at a cost of over \$250,000. In no way can rebuilding these roads be construed as restoration, as it will have the double effect of both losing the recovery that has already begun to occur on these roads, and creating new sources of sediment, increased temperature, and habitat fragmentation for years to come.

[Bark Appeal at p. 24]

2) Best Management Practices

a. Failure to Follow MHFP direction on BMPs

Appendix H of the Mt. Hood Forest Plan discusses the reason for, and format of, BMPs in detail. It notes that, “BMPs are incorporated into the design of the alternatives to avoid or minimize potential adverse water quality problems. . . . Appropriate BMPs are selected for each project by the interdisciplinary team The selected BMPs, an estimate of their effectiveness, and a plan for monitoring them is included in the project EA or EIS.” RMP at H-3.

The Forest Plan further instructs that each BMP should consist of Title, Objectives, Explanations, Implementation and Responsibility, Ability to Implement, Effectiveness and Monitoring. RMP at App. H-5. Instead of following the very specific direction of the Forest Plan for describing the BMPs, and including such necessary information as implementation & responsibility, ability to implement, and effectiveness, the Jazz EA merely lists BMPs very generally.

b. Monitoring shows BMPs are not consistently implemented or effective

The limited monitoring done by the FS soils scientist in January 2012 found that BMPs to protect soil and limit erosion were not always implemented as anticipated. It is important to note the Forest Service only surveyed two units (Swag 23 & 24) for compliance with ground-based yarding BMPs, and in both of these found that the BMPs were not followed, and that detrimental soil impacts occurred.

In addition to the Forest Service’s own monitoring, this summer Bark volunteers did extensive surveys of thirteen units of recently thinned timber sales in the Clackamas River Ranger District.¹ While Bark is still analyzing the statistical data gathered, our initial review of the information gathered points to numerous instances where the BMPs were not implemented, were not effective at preventing environmental damage, and/or the timber company violated the terms of its contract.

For example, 53% of units surveyed had non-decommissioned landings with signs of erosion; 69% of units had incorrect or incomplete leave tree markings that did not comply with the contract requirements; 23% of units had marked leave trees that had been cut; and 85% of units had invasive species present.

[Bark Appeal at p. 6]



172 year stump in Swag unit 24, above



Leave tree cut in Swag unit 24, above



Stump in bottom of picture is at edge of skid trail, 21' from a seasonal stream.

This document covers only a portion of our appeal points. Bark staff are happy to answer any questions and/or to set up a field trip with the CSP to see the areas of concern addressed in our appeal.

Bark’s Jazz Appeal can be found at:
<http://bark-out.org/tsdb/jazz/Jazz.Appeal.Bark.pdf>

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