

OVERVIEW OF SUMMARY JUDGMENT BRIEF
Wild Watershed et. al. v. Hurlocker et. al.
January 15, 2019

Summary:

A programmatic environmental impact statement (EIS) must be prepared in accordance with the National Environmental Policy Act (NEPA) to address the potentially significant impacts of mechanical clearing and burning on potential wilderness (roadless areas), old growth habitat, wildlife diversity, recreation and human health. The Hyde Park and Pacheco Canyon projects must be permanently enjoined until NEPA is fully complied with. pp. 1-2 and 27

NEPA and the 2014 Farm Bill:

Congress did not create an exception from NEPA for projects that qualify for insect and disease treatment under the 2014 Farm bill. Instead it set up a process in which projects could be categorically excluded from detailed analysis under NEPA. These projects, including Hyde Park and Pacheco Canyon, must still be given a hard look under NEPA. In addition, the 2014 Farm Bill requires that categorically excluded projects be limited to 3000 acres, must maximize the retention of old growth and large trees and consider the best available science.

The Forest Service cannot split these two projects apart under cover of the 2014 Farm Bill in order to avoid doing a programmatic analysis of impacts to the surrounding 100,000 acre Headwaters forest. Together the Hyde Park and Pacheco Canyon projects total 4,383 acres. On-going and planned projects in the surrounding forest cover nearly 22,000 acres of largely potential wilderness. NEPA requires that the Forest Service consider the potential cumulative effects of extensive mechanical clearing and burning in the larger forested landscape. pp. 8-14

The public could not effectively comment on the projects because supporting documents from Forest Service experts were not made available. p. 6

Potential Wilderness (roadless areas):

Sixty-six percent of the two projects is within inventoried roadless areas that have been proposed as additions to the Pecos Wilderness. The Forest Service did not disclose the impacts to the wilderness character of aggressive tree removal and burning or whether such actions would preclude these areas from being protected as wilderness in the future.

The courts have consistently found that timber harvest would have serious environmental consequences in roadless areas. Removing up to 90 percent of trees to reduce fuels would have similar impacts.

According to Forest Service reports, approximately 65% of trees over 9 inches diameter would be removed in mixed conifer forest and 75-90% trees over 9 inches from ponderosa pine.

Old Growth Forests:

The Santa Fe forest plan establishes a minimum age of 180 years for old growth ponderosa pine forests. There are “many” 180 year old ponderosas in Hyde Park roadless areas according to the Forest Service. Yet no old growth analysis was done. pp. 16 and 17

Former Forest Service planner Rich Fairbanks found that the requirements of the forest plan to identify and protect old growth were ignored. Also, ignored were the requirements of the 2014 Farm bill to maximize the retention of old growth and large trees. pp. 19, 20

It is unlikely old growth will ever develop. The Forest Service acknowledges that repeated treatments would preclude the development of the late seral stages (old growth) and the warming climate could prevent regeneration of future old growth. There is no strategy for protecting existing or potential old growth or discussion of treatment effects on old growth. p. 22

Northern goshawk and its prey, the tassel eared squirrel, depend on mature and old growth forests. This coevolved relationship is key to the continued existence of ponderosa pine forests. The status of their populations is unknown because they are not monitored. Reducing

canopy cover below 40 percent will harm both species. The Forest Service failed to address this concern during public comments or consider the impacts of extensive habitat manipulation. pp. 22-24

Public Health:

The Headwaters forests would be burned annually for years to come. In contrast, natural mixed severity wildfires happen once or twice in a person's lifetime. Annual low-intensity prescribed burning emits large amounts of fine particulate matter and heavy metals, including mercury, into the atmosphere causing adverse health effects even when complying with air quality standards. According to health professionals, there is no safe level of exposure below which adverse impacts are not observed. The Forest Service failed to respond to these public health issues, saying only that air quality standards will be complied with. pp. 24-26

