

Brad Mellotte

The attached pdf contains my comments. Thank you.

I object to the Request for “Exceedances Due to Wildfires” under the 2016 Exceptional Event Rule (EER).

In doing so, I appologize for the disorder of my objection. However potentially causing economic harm to my community as threatened in the Request Report gave me pause, and I am unfortunately making this objection at the 11 hour.

I object on the moral and ethical ground that allowing the Exemption would be trading our regional status of attainment for our public’s health, and more specifically the health and life expectancy of our most vulnerable populations: the poor, minority groups with higher incidents of breathing illness, pregnant women, children and a very large portion of the population more sensitive to wildfire smoke due to cardio-pulmonary illnesses, asthma, other breathing diseases, and heart disease.

We cannot make a moral, ethical and legal decision to allow air pollution to exceed national, state or local standards for sake of retaining our attainment status.

Our clean air agencies have been put in the position of covering US Forest Service (USFS) managed fire smoke particulate air pollution. Instead of the USFS paying to obtain exceedance exemptions for their managed fires (the Norse Peak Fire), our State and local clean air agencies are forced to do so. The USFS is standing by on the sidelines watching, but not paying or taking any responsibility for the pollution exceedances it significantly helped to produce and emit.

I do not overlook the theory that should our Region lose our attainment that we may suffer economically. Rather, I believe our laws do, or should, put the value of human health before wealth.

**AN EXCEEDANCE EXEMPTION WILL CAUSE MORE POLLUTED AIR AND HARM HUMAN HEALTH AND LONGEVITY**

The cause of the exceedances of air pollution for which this exemption is sought is in the direct control of the United States Forest Service (USFS). The USFS does not consider public health when making “Go” decsions to manage a wildfire instead of taking steps to suppress it. If this exceedance exception is granted, the USFS will have no political pressure or incentive to ever consider public health when making wildfire management decisions, and we will continue to harm public health, including our most vulnerable populations, who will be disproportionately harmed. These smoke sensitive populations will pay with their health and life expectancy so that the few can make accumulate more wealth. Trickle down theory may suggest a loss of income may flow downstream to the entire community. However, a loss on income is not a moral or

ethical trade for public health; this is the very reason we as a nation created our environmental laws.

**IF THERE ARE ANY NEGATIVE ECONOMICAL AFFECTS FROM LOSING NON-ATTAINMENT STATUS THAT CAN BE QUANTIFIED, OUR STATE AND LOCAL CLEAN AIR AGENCIES SHOULD STAND-UP FOR THE CITIZENS OF WASHINGTON STATE AND DEMAND FULL REIMBURSEMENT FROM THE MOST SIGNIFICANT AIR POLLUTION OFFENDER INVOLVED WITH THIS EXEMPTION REQUES.**

The USFS is what is threatening our Region's non-attainment status as a direct result of USFS Wildfire Use (WFU) policies and plans.

The USFS does not consider human health when making fire management decisions. The USFS' "let it burn" policies and plans are creating the dangerous air pollution we suffer every summer fire season now. And the they only intends to increase WFU—which will cause more smoke and dangerous air pollution next summer and into our immediate future—unless they are stopped.

**Economic reimbursement for any loss should be sought in litigation, along with other costs our State suffers as a result of USFS' WFU policies and plans. Other costs would include our State's higher medical expenses during "managed" forest fire events that our State Department of Health directly links to the exceedances at issue.** See: Washington State Department of Health findings regarding wildfire smoke pollution affect on public health.

When congress created the Flame Act , Congress also required oversight of the USFS by the GAO.

**THE GAO HAS SPECIFICALLY FOUND IN ITS LATEST 2017 AUDIT THAT THE USFS HAS "DIVERTED FROM ITS CURRENT MISSION" NEGLECTING NON-FIRE (WFU) PROGRAMS.**

**The 2017 GAO Report states:**

"Congress charged USFS with the considerable responsibility of managing 193 million acres of land, maintaining our national forests for "outdoor recreation, range, timber, watershed, and wildlife and fish purposes," and "developing[ing] and administering[ing] the renewable surface resources of the national forests for multiple use and sustained yield..."

And that:

**Non-fire programs and projects—as well as the communities that depend on them—have suffered as a result. ....**

**The GAO specifically found the USFS has failed to use fuel reduction alternatives as it promised, despite USFS Chief Thomas Tidwell’s included 2015 statement that “the cost of fire suppression” had a “debilitating” impact on the agency’s other activities and forced it to shift its staff in addition to its resources.”**

The GAO knows Chief Tidwell’s comment is not entirely truthful, and reported accordingly in its 2017 Audit. The GAO knows that the USFS is reimbursed by the US Congress for these fires that “had a debilitating impact of the agency’s other activities.”

**But this is not all the GAO found in its 2017 Report. The GAO further found:**

**“...problems with the USFS hazardous fuels reduction activities have persisted. In 2016, the United States Department of Agriculture’s Office of the Inspector General issued a report determining that [the] USFS lacks a cross-agency method for prioritizing hazardous fuels treatment projects, overstated the number of acres treated by hazardous fuels projects, and potentially charged activities to the wrong budget line item.”**

This last statement supports the logical conclusion that is much less expensive for the USFS to allow natural fires to burn to promote their forest health and forest fuel reduction policies and plans. When the USFS allows wildfires to burn into large sizes then claimed as disasters by FEMA or our State Governor, the then Flame Act, or our current Federal Budget this year, reimbursed the USFS for its fire fighting costs. If the USFS allows smaller fires to burn into catastrophic emergencies they will be reimbursed outside and above their annual budget by these special allocations. In this way the USFS actually increases its budget by allowing wildfires to burn into national disasters—it receives additional funds for fighting large fires that in turn increase forest health and forest fuel reduction costs.



**USFS FIRE MANAGEMENT DECISIONS ARE MADE BY THE THE THE USFS' WHEN IT DRAWS ITS "POLYGON" OF ITHE INTIAL FIRE DECISION PLANNING AREA, WHICH IS NOT DETERMINED UNTIL A NATURALLY IGNITED FIRE STARTS.**

In the case of the Norse Peak Fire, the Initial Decision to suppress or manage the fire **set the planning area as 102,000 ptentiall treatable acres.** Although only approximately 52,000 acres burned according to USFS post fire reports.

**The conclusion here is that the USFS intended for the Norse Peak Fire to burn up to 102,000 acres in furtherance of its forest health treatment and fuel reduction program.** Because "where there is a forest fire there is also smoke," the USFS intended the pollution exceedances to occur. The Norse Peak Fire and air pollution it helped significantly to create cannot threfore be said to have been reasonably uncontrollable or preventable as required by the EER.

**THE CURRENT "LET IT BURN" POLICIES AND PLANS ARE NOT BASED UPON ALL SCIENCE AS THE USFS CLAIMS.**

The USFS directed the 40 scientists composing its often quoted science forum that did **not** consider the human health issues or impacts of wildfire.

The USFS states that its current policy is based upon a sound 2010 science summit, where it hired 40 scientist from different scientific disciplines to study wildfire use as a forest health and catastrophic fire prevention tool using "the best available science." What the USFS does not tell the public or Congress however, its that **the USFS directed the scientists pariticipating in the forum to limit thier scientific research and analysis to consdier 4 areas of environmental affects, and to speicically exculde consideration of public health in its recommendation** as public health was provided for in other laws and regulated by other agencies.

THIS IS AN INTERESTING FACT AS THE NEPA AND CAA DO NOT ALLOW AGENCIES TO TAKE ACTIONS THAT MAY BE HARMFUL TO THE ENVIREONMENT OR HUMAN HEALTH.

THE USFS WFU POLICY AND PLAN IS NOT BASED UPON ALL AVAILABLE AND BEST SCIENCE AS IT EXCLUDES CONSIDERATION OF PUBLIC HEALTH.

**AN EXCLUSION OF THE NATURAL RESULT OF AN INTENTIONAL FIRE MANAGEMENT ACT IS NOT — NOT REASONABLY CONROLLABLE OR**

PREVENTABLE.

**THE USFS SHOULD PROVE ITS CASE IN THIS EXEMPTION PROCEEDING; NOT CITIZENS WANTING TO BREATHE CLEAN & NON-POLLUTED AIR.**

It should not be up to laypersons like me with no real prior environmental law, science experience and special knowledge to prove that the USFS' WFU plans and policies are not harming the environment and human health. NEPA puts this burden clearly in the court of the polluting / requesting party. I do not have the knowledge and expertise, or resources to compete with the scientific technical models offered in this Request. I can only cite legal and logical arguments that are found within in the digital public record that may not be directly responsive to this Request, but are directly applicable and relevant to the issues presented.

Protection from emitters of air pollution that harm human health is the job of the EPA, and our State and local Clean Air Agencies.

In this case, it appears that the Washington State Department of Natural Resources is charged by our state legislature with regulatory control over USFS emissions, and if DNR does not do their job the EPA is required to do so.

**MOU's & STATE PARTICIPATION IN AIR POLLUTION EXCEEDANCES**

I have requested from the Yakima Clean Air Agency but not yet received a copy of the Memorandum of Understanding (MOU) entered into, upon my information and belief, in 2009 between the United States Forest Service (USFS) and Washington State clean air regulatory agencies. I could not find this MOU published online. This MOU, upon my information and belief, was the result of the Yakima Clean Air Agency attempting to enforce clean air laws against the USFS for starting a prescribed burn that polluted the air the Yakima Valley in 2009. The USFS legally challenged YCAA authority and jurisdiction, which YCAA was upon my information and belief, forced to settle in the face of overwhelming litigation costs.

An Oregon MOU the USFS has entered into with a complaining state and local government in the recent past which is published on the internet, granted the agreeing town, county and state agencies the stated unenforceable benefit of receiving less smoke from USFS fire activities; an illusory legal right to which the town, county and state were already entitled under federal environmental law. (but apparently unenforceable against the USFS).

WHAT IS INTERESTING ABOUT THE OREGON MOU THAT MAY BE RELEVANT TO THAT OF WASHINGTON, IS THAT THE MOU REQUIRES STATE AND LOCAL CLEAN AIR AGENCIES TO:

**“... SUPPORT A RENEWED PUBLIC PERCEPTION THAT THE U.S. FOREST SERVICE AND BLM ARE RESPONDING TO THE NEED OF CLEAN AIR IN THE PRINEVILLE UGB AREA.”** (Emph. Added).

This goal is consistent with official USFS research, such as the 2012 *Research Perspectives on the Public and Fire Management: A Synthesis of Current Social Science on Eight Essential Questions*

The USFS is attempting to create or promote a “public perception” that they are responding to public concern about the need for clean air instead of spending their money on research regarding actual smoke reduction or mitigation. The USFS has been and continues researching how to sell the smoke of its WFU program to the American Public regardless of public or state or local government opinion. If the USFS was truly concerned about its reputation it only need act according to the public’s need for clean air—it would not need to hire social scientists to advise them on how to create a “perception.”

**This is relevant to the Exceedance Request because it is partial proof that the USFS can do much more than it is to mitigate wildfire smoke emissions—that much of USFS fire management, including the Norse Peak Fire was deliberate and intentional.**

**OUR WASHINGTON STATE AND FEDERAL CLEAN AIR AGENCIES, THOSE AGENCIES THE PUBLIC BELIEVES ARE PROTECTING THEIR HEALTH ARE REQUESTING EXCEEDANCE EXEMPTIONS TO KEEP OUR LOCAL “ATTAINMENT” STATUS, BUT THE PRACTICAL AFFECT IS THAT AN EXEMPTION WILL ONLY PROMOTE USFS FIRE MANAGEMENT “LET IT BURN” WFU POLICY.**

Our government Agencies charged with protecting public health are requesting an exceedance exemption of a “widespread regional wildfire event” that “caused the particulate pollution levels to exceed the PM10 National Ambient Air Quality Standard.”

A significant portion of subject the air pollution was caused by the Norse Peak Fire near Yakima.

AN EXCEEDANCE EXEMPTION WILL VIOLATE THE NATIONAL ADMINISTRATIVE PROCEDURE ACT (ACA), THE NATIONAL ENVIRONMENTAL PROTECTION ACT

(NEPA), THE NATIONAL CLEAN AIR ACT (CAA), AND STATE AND REGIONAL LAW, WILL BE HARMFUL TO PUBLIC HEALTH, AND WILL SERVE ONLY TO CONTINUE TO PROMOTE USFS WILDFIRE WFU POLICIES AND PLANS THAT VIOLATE THE PUBLIC'S RIGHT TO CLEAN AIR.

The Requesting party cites EPA's Exceptional Events Rule which was promulgated in 2007. That may be the official Federal Register title of that regulation. However, the Regulation is more clearly defined in EPA's Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations, EPA 2016

Ozone exceedances were the only pollution source to be regulated in the 2007 regulation. The Exceptional Events Rule is clear in this regard where it the EPA states:

**"The data** used in the comparison of historical concentrations analysis **should focus on concentrations of O3** at the influenced monitor and nearby monitors if appropriate. Evidence of additional impacts on air quality [carbon monoxide (CO), particulate matter (PM), nitrogen oxides (NOx), etc.] can also be provided if they provide additional insight." (Emph added)

"The EPA would not consider the physical event (e.g., a high wind or the wildfire) to be an exceptional event unless the resulting event-generated pollution (e.g., particulate matter (PM) or ozone) reached and caused an exceedance or violation at a monitoring location or locations."

**The new revised regulation is titled the "2016 Treatment of Data Influenced by Exceptional Events."**

The 2016 rule also states within its summary:

"In addition to finalizing revisions to the Exceptional Events Rule, the EPA is also announcing the availability of the final version of the non-binding guidance document titled Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations, which applies the rule revisions to wildfire events that could influence monitored ozone concentrations." Supra at page 68216

**BECAUSE THE EXCEPTIONAL EVENT RULE DOES NOT CLEARLY MAKE AN EXCEPTION FOR PM 10 PARTICULATES ALONE, EXCEPT AS THEY MAY BE RELEVANT TO OZONE LEVELS, THE EXCEPTIONAL EVENT RULE DOES NOT APPLY.** The Request Report does not tie the PM 10 exceedances at issue to any ozone affectation. This language not only supports the O3 requirement and purpose of the regulation, but also the requirement that said emissions must be transported from one jurisdiction into another.

PM particulates can be precursors to ozone, and in that manner PM particulates may be relevant. However, the Request Report does not tie the PM 10 exceedances at issue to any ozone affectation.

The Requester's Exceedance Request Report state's that:

**“Ecology has discussed with EPA Region 10 during the initial notification process and determined that the PM 10 exceedances listed in Table 1 are regulatory significant and an exceptional event demonstration.”**

**ECOLOGY WOULD NOT HAVE DISCUSSED THE RELEVANCY OF PM 10 PARTICULATES WITH EPA REGION 10 IF ECOLOGY ITSELF DID NOT QUESTION THE REGULATORY SIGNIFICANCE OF PM 10 PARTICULATES. THE PARTICULATES COULD IN FACT BE RELEVANT, ONLY IF TIED TO OZONE AFFECTATION.**

**“FOREST FIRES ALLOWED TO BURN AS MANAGED FIRES BY USFS WFU DECISION ARE NOT:  
“NOT REASONABLY CONTROLLABLE OR PREVENTABLE,”**

The regulation is stated in a “negative proof” sense, because **it is the Requesting Agency's burden of proof to show that a managed fire allowed to burn was NOT reasonably controllable or preventable.**

**WHEN THE USFS IS NOT REQUIRED TO TAKE PUBLIC HEALTH INTO CONSIDERATION BEFORE MAKING A “GO” DECISION TO MANAGE A NATURALLY IGNITED WILDFIRE AS PART OF THEIR FOREST FUEL TREATMENT PROGRAM, WE CANNOT HONESTLY STATE THAT THE FIRE WAS TRULY “NOT REASONABLY CONTROLLABLE OR PREVENTABLE.**

A wildfire can only be truly “not reasonably controllable or preventable” if the decsion to

manage it is placed within the primary and most important context of protecting human health.

**My logic does not mean that the USFS must put firefighter health or safety in danger. My logic means that the USFS must consider public health as the number one consideration of all intentional actions to manage or suppress a wildfire. If the USFS does not, they have not properly considered the degree of need based upon the most critical value in the decision process to suppress a fire instead of managing it—public health. And we cannot honestly state that a fire is “not reasonably controllable or preventable.”**

The USFS had no problem placing elite smoke jumpers on the American Ridge fire that was combined in name with the Norse Peak Fire in very arguable similar conditions. I will admit this argument takes us into the area of discretion, however **discretion can only be exercised if the most single important value in American Environmental Law, human health, is considered.**

The EER regulation further states, at page 68216:

**“As part of the EPA’s mission to protect public health, this action [Regulation] promulgates new requirements for mitigation plans for areas with known, recurring events.”**

The EPA cannot conduct its mission to protect public health if it allows the requested exceedence exemption. As the fires of this summer of 2018 have again proven to us, the USFS’ promise to the public that we should expect more wildfires and smoke in our immediate future is true to its word. With smoke pollution like the Yakima Valley experienced in 2017 and then again in 2018, the **EPA must require that we suspend our offending region’s attainment so that the required and appropriate mitigation efforts can begin. It will be only then that a very significant source of our summer wildfire pollution, the USFS in its fire management decisions, is for once held accountable to the public for the public health harm it has been “deciding” to emit.**

## **PUBLIC NOTIFICATION REQUIREMENTS**

The public had and has no input to fires the USFS decides to manage.

The Exceptional Event Rule requires all States to notify the public promptly whenever an event occurs or is reasonably anticipated to occur which may result in the

exceedance of an applicable air quality standard. Perhaps that occurred in this case. The dangerous air pollution produced by the managed fire at issue that harmed communities within its airshed, whether local or stratospheric, was not the product of public involvement that the USFS claims to practice or that the NEPA and CAA require.

The “event” actually occurred several months before the Norse Peak Fire started, when the USFS was required to make a pre-season plan for public notification purposes but did not. The public was not therefore allowed to comment on the ongoing state of dangerous air created by managed fires, except to complain to the USFS that is intent on continuing its expansion of WFU.

**The public was denied its absolute statutory and regulatory right of an advance 30 day public comment period as required by environmental law at the time the USFS is required to publish its pre-season fire management area description and intentions.**

In this analysis, it should be noted that recent studies show that much of the science the USFS relies upon in making its fire management/smoke decisions (that it does not consider) is very uncertain. The only certainty the USFS will admit regarding smoke science is that the science is evolving, still uncertain, and in need of continuing research. See the *Joint Fire Science Program Smoke Science Plan Conclusion: Smoke Science Accomplishments Under the Plan, Final Report*, 21 April 2017

Given this fact, one might question that if the smoke impacts of a wildfire are uncertain, that the fire is not reasonably controllable or preventable. **However, all the Joint Fire Science Report tells us is that the USFS is uncertain about its ability to predict smoke pollution from any given fire. In this respect, the USFS is playing a game of risk with the public’s health; the USFS is intentionally managing fire activities, the resulting smoke pollution of which it cannot with any certainty predict or forecast. This directly violates the NEPA and CAA, as the USFS knows there is risk of environmental or public harm being imposed upon the American public, and yet it does not attempt to comply with federal and state clean air laws by publishing its intentions and public notice as normally required.**

**AS A MATTER OF EQUITY, IF A POLLUTER IS VIOLATING FEDERAL AND STATE ENVIRONMENTAL LAWS WHILE PRODUCING A POLLUTION EXCEEDANCE, IT SHOULD NOT BE ALLOWED THE BENEFIT OF THAT SAME LAW’S EXCEEDANCE EXEMPTION. IF AN AGENCY INTENTIONALLY VIOLATES THE LAW, IT SHOULD NOT RECEIVE A COROLLARY BENEFIT OF THAT LAW IN FURTHERANCE OF ITS VIOLATION. ALLOWING THE EXCEEDANCE EXEMPTION IN THE CASE AT ISSUE WILL NOT BE ANY STEP IN THE RIGHT DIRECTION OF REGULATING**

## **DANGEROUS AIR POLLUTION EXCEEDING FEDERAL OR STATE STANDARDS.**

THE EER IS WRITTEN BACKWARDS AND IS CONTARY TO OUR ENVIRONMENTAL LAWS. IF A CONSTANT AND CONTINUING POLLUTER LIKE THE USFS CAN CONTINUE TO POLLUTE WITH IMPUNITY, AND WITHOUT ANY MITIGATION EFFORT AFTER DANGEROUS EMISSIONS THAT THEY ALONE DECIDED SHOULD BE PUMPED INTO OUR CLEAN AIR, THE USFS SHOULD BE THE PARTY MAKING A REQUEST FOR A SPECIAL EXCEEDANCE ALLOWANCE, INSTEAD OF SCHEDULING MORE SMOKE AND PRESCRIBED BURNS THIS VERY MONTH.

## **NON-CONSDERATION OF HUMAN HEALTH**

UNFORTUNATELY, THE USFS DOES NOT REQUIRE ITS FIRE MANAGERS TO CONSIDER HUMAN HEALTH IN MAKING A “GO” DECISION TO MANAGE INSTEAD OF SUPPRESS A FIRE. THE USFS’ FIRST AND TOP PRIORITY WITH REGARD TO FIRE DECISIONS, AS INSTRUCTED BY USDA SECRETARY SONNY PERDUE IN THE 2017 DIRECTION TO WILDFIRE LEADERSHIP IS:

“We expect agency administrators and fire managers in all of your agencies to adhere to the following guidance:

**“Firefighter and public safety is a core value that governs every decision and activity,**

**Understand and embrace the guiding principles set forth in the Federal Wildland Fire Management Policy and National Cohesive Wildland Fire Management Strategy,...”** (Emph added).

**UNFORTUNATELY, FIREFIGHTER AND PUBLIC SAFETY DOES NOT INCLUDE PUBLIC HEALTH.** Although rules of the past may have paid lip service to human health, **the last 22 years have seen promulgation of “planning rules” that allow the USFS to disregard human health when making fire management decisions.**

To completely understand how this happened, one needs to read all USFS regulation history from prior to its proposed 1995 Fire Management Plan where it explicitly stated:

“effectively incorporate current fire-related information, including scientific knowledge, risk assessment, social and economic concerns, and **public health**



**considerations**, supra at page 11.

wildland fire management agencies must, early in the process, **involve public-health and environmental regulators** in developing the most workable application of policies and regulations.” Supra, page 10.

describe early and explain issues such as ecosystem condition, risks, consequences (**including public health impacts**), and costs in open dialogue with internal and external constituents, supra at page 12

conduct all prescribed fire projects consistent with land and resource management plans, public health considerations, and approved prescribed burn plans, supra at page 15.

Fire program activities and the increasing interconnection between fire activities and existing environmental, **public health**.. and tort laws require inter-Departmental legal and policy analysis to ensure coordination and compliance, supra at page 30.

Fire weather support is critical to firefighter and public safety and **protection of public health** . . .”

The use of fire to sustain ecosystem health is based on sound scientific principles and information and is balanced with other societal goals . **including public health** and safety, air quality, and other specific environmental concerns, supra at page 31.

“The philosophy, as well as the specific policies and recommendations, of the Report continues to move our approach to wildland fire management beyond the traditional realms of fire suppression by further integrating fire into the management of our lands and resources in an ongoing and systematic manner, consistent with public health and environmental quality considerations . We strongly support the integration of wildland fire into our land management planning and implementation activities . Managers must learn to use fire as one of the basic tools for accomplishing their resource management objectives,.”  
supra

**The Memorandum introducing the 1995 Federal Wildfire Policy contains no less**

**than 18 signatures of representatives of the USFS, BLM, National Biological Field Station, Department of the interior, BIA, USFW, US Fire Administration, Department of Commerce/National Weather Service, FEMA, and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.**

HERE FOR THE FIRST TIME IN 1995, THE USFS DISTINGUISHES FIREFIGHTER AND PUBLIC SAFETY FROM THE PROTECTION OF PUBLIC HEALTH. THE MEANING OF FIREFIGHTER SAFETY UNDER CURRENT REGULATIONS IS OBVIOUS. HOWEVER, WITHOUT A CLOSE READING OF CURRENT AND HISTORICAL REGULATIONS THE MEANING OF "PUBLIC SAFETY" CLEARLY DOES NOT MEAN GENERAL PUBLIC HEALTH. THE TERM PUBLIC SAFETY IN USFS REGULATIONS MEANS THE SAFETY ONLY OF THAT PART OF THE PUBLIC WHO RESIDE IN THE WILDFIRE URBAN INTERFACE, OR WFU IN USFS LANGUAGE.

**Public health was very important in fire management in 1995. The USFS then began its obviously planned campaign to slowly remove public health from its updated regulations and fire plans in 2001, 2005, 2008, 2009, 2012 (the Planning Rule for Fire Management Plans), and the 2014 Fire Management Plan.** The removal of public health from USFS fire management decision making policy was systemtically, gradually and intentionally removed so that the USFS could further its WFU policies and plans without the restrictions of environmental laws. In the 2012 Planning Rule, the USFS states that

**"Specific requirements that were brought up by respondents, such as consultation or coordination with the U.S. Fish and Wildlife Service for species listed under the Endangered Species Act of 1973 or with State Air Quality Boards for air quality management under the Air Quality Act, are addressed elsewhere in Agency regulation and policy. The final rule does not include or reiterate existing direction provided elsewhere."**

**THE USFS HAS NOW WRITTEN PUBLIC HEALTH CONSIDERATIONS COMPLETELY OUT OF THEIR FOREST HEALTH AND FUEL REDUCTION PLANS.**

This provision brings up the WUI, which is defined in Forest Service regulations as an area within several miles of a wildfire. This is the only area where "public safety" is considered. However with even USFS science telling us that wildfires from hundreds of miles away can cause harm to human health, the WUI as described as that area within several miles of a fire is nothing but arbitrary and capricious.

The WFU WUI is defined in other USFS official documents as that area being within several miles of the actual wildfire.

THE 102,000 FIRE MANAGEMENT AREA DESIGNED DURING THE INITIAL DECISION OF THE NORSE PEAK FIRE IMPARTS INTENT TO MANAGE A VERY LARGE FIRE; A FIRE THAT GREW INTO A NATIONAL DISASTER QUALIFYING FOR BUDETARY FIRE SUPPRESSION FINANCIAL REIMBURSEMENT. Source: WFDSS NORSE PEAK INITIAL DECISION PUBLISHED AUGUST 13, 2017.

THE EXCEEDANCES AT ISSUE CANNOT BE EXCEPTIONAL EVENTS BECAUSE THEY ARE THE RESULT OF A FIRE THAT WAS INTENTIONALLY NOT SUPPRESSED BUT RATHER “MANAGED” FOR FOREST HEALTH AND FUEL REDUCTION PURPOSES. CERTAINLY, UNFORSEEN WILDFIRES THAT START UNEXPECTEDLY IN DANGEROUS ENVIRONMENTAL SITUATIONS AND ARE NOT REASONABLY ABLE TO BE SUPPRESSED WOULD NOT FIT THE DESCRIPTION OF:

**“Routine emissions generated by and transported from anthropogenic sources are not exceptional events.” Supra at pg. 68246**

In footnote 53 of this last provision regarding routing emissions from anthropogenic sources, the footnote reads.

“An example of routine emissions generated by and transported from anthropogenic sources might include emissions of ozone precursors or directly emitted particulate matter (or PM precursors) from one state or foreign country’s power plants transported into another state or the U.S...”

PM particulates can be precursors to ozone, and in that manner PM particulates may be relevant. However, the Request Report does not tie the PM 10 exceedances at issue to any ozone affectation.

The Exceedance Request Report state’s that:

**“Ecology has discussed with EPA Region 10 during the initial notification process and determined that the PM 10 exceedances listed in Table 1 are regulatory significant and an exceptional event demonstration.**

**Ecology would not have discussed the relevancy of PM 10 particulates with EPA Region 10 if Ecology itself did not question the regulatory significance of PM 10 particulates. The particulates could in fact be relevant, if tied to ozone affectation.**

The Final Rule itself, as set forth in 40 CFR Parts 50 and 51, states:

“This final rule contains definitions, procedural requirements, requirements for air agency demonstrations, criteria for the EPA’s approval of the exclusion of event influenced air quality data and requirements for air agencies to take appropriate and reasonable actions to protect public health from exceedances or violations of the NAAQS.” (Emph added)

However, when the USFS is not required to take public health into consideration before making a “Go” decision on a naturally ignited wildfire to manage it as part of their fuel treatment program, we cannot state that the fire was truly

“not reasonably controllable or preventable.”

As required by the black letter regulation. If no agency attempts or tries to suppress a fire, how can we know if it was not controllable or preventable. My logic does not mean that we must put firefighter health in danger, my logic means that we must consider public health, as human health is the number one consideration of all intentional actions with the risk of causing environmental and human health harm. The USFS had no problem placing elite smoke jumpers on the American Ridge fire that was combined in name with the Norse Peak Fire.

The “new” USFS fire management policies and plans did not begin as a catastrophic fire prevention tool. It began as a Forest Health tool. Catastrophic Fire reduction purposes were only added later to better sell the USFS’ Forest Health by fire policy.

The USFS began adding catastrophic fire prevention as a more prevalent reason to support WFU to gain additional public support in its “public education” ground battle designed by USFS Social Scientists.

The public will not tolerate putting forest health above public health. But by slight of hand the public may be confused just enough to remain mute by the argument/sales pitch that managed fires prevent larger and more catastrophic future fires.

USFS current science research does not support this proposition.

## **AN EXCEEDANCE EXEMPTION VIOLATES OUR STATE'S SMOKE MANAGEMENT PLAN.**

As our Smoke Management Plan states:

“In 1995, the Legislature amended the Clean Air Act to exempt "emissions from silvicultural burning in eastern Washington that is conducted for the purpose of restoring forest health or preventing the additional deterioration of forest health" from the reduction targets of the Clean Air Act. The Legislature clearly does not want the emissions ceiling of the Clean Air Act to be an obstacle to restoring forest health.”

## **OUR STATE SMOKE MANAGEMENT PLAN FURTHER SPECIFIES WHEN AN EXCEEDANCE EXEMPTION MAY BE ALLOWED:**

### **I. FOREST HEALTH CONDITIONS WHICH MAY QUALIFY FOR EXEMPTION**

A. Species Composition - Control species composition to favor the creation and maintenance of stands of fire-resistant seral tree species over climax species.

B. Stand Density - Control of stand density to favor more open fire-resistant and healthy stands over dense, overstocked stands subject to drought stress, insect and disease infestation and high intensity fire.

**C. Natural Fuels Build-Up - Control of fuels build-up due to natural processes and not a direct result of management activities,**

D. Insect and Disease - Control or prevention of insect or disease outbreaks.

**E. Restore Natural Processes - Correct the interruption of natural ecological process caused by the exclusion of fire in fire-dependent ecosystems. (Emph added)**

## II. TYPES OF BURNING QUALIFYING FOR EXEMPTION

A. Underburning.

B. Prescribed stand replacement fire not directly associated with a timber harvest.

**C. Burning conducted as part of a project designed for forest health and not primarily as a commercial activity.**

D. Burning of piled ponderosa pine slash created between January and June to prevent bark beetle outbreaks when no alternatives are available.

## III. ALTERNATIVES TO FOREST HEALTH BURNING

**Fire is not the only appropriate method of restoring forest health in every situation. Often, stands are so dense and fuel loads are so high that fire is not an option.**

Biomass removal instead of, or in combination with burning are effective in decreasing smoke emissions by reducing fuel loading and decreasing the need for burning.

Mechanical treatments such as thinning reduce the need for burning and allow for better control of emissions when burning is used.

Timing of harvest to avoid creating concentrations of ponderosa pine slash during January through June is effective in preventing bark beetle outbreaks.

Alternatives to burning provide opportunities for improving forest health by reducing fuel loading and creating opportunities to reintroduce fire into the ecosystem.

**Although our State Smoke Management Plan may provide for “Burning conducted as part of a project designed for forest health,” which could arguably**

be included in USFS fuel reduction policies and plans, our law specifically states in the Alternatives to Burning Section that **WHEN THE FOREST IS DENSE WITH HIGH FUEL LOADS**, as the USFS is claiming all of our un-burned forests to be, **FIRE IS NOT AN OPTION**. \*(emph added)

## **THE EXCEEDANCE REQUESTS OVERLOOKS HARMFUL CUMULATIVE EFFECTS OF WILDFIRE SMOKE TO HUMAN HEALTH.**

The Request Report does not consider other particulates, including PM 2.5 particulates, caused by the “exceptional events.” It does not appear from the Report, or it is not clear, that the combined effects of both PM 10 and PM 2.5 particulates on the stated days have been considered. Both these particulates are mentioned in the Request Report, but the cumulative and combined effect of these 2 different size particulates on human health has not been determined.

The NEPA and CAA were written to protect human health. These laws require that certain air quality standards be met to protect public health. These laws require any air polluter, whether private, state or federal to consider the human health impact of any action. These laws also require air polluters to consider the cumulative effects of intended act upon pollution emitted in the past and that may be planned in the future.

**THE EER VIOLATES APA AND NEPA AND CAA AS IT DOES NOT CONSIDER THE CUMULATIVE IMPACTS OF TIME PRIOR TO 3 YEARS PRIOR TO THE REQUESTED EXCEEDANCE. HUMAN HEALTH PARTICULATE HARM IS CUMULATIVE BEYOND A 3 YEAR LOOKBACK.**

## **WHEN DO YOU WANT YOUR SMOKE?**

This is the trite quote the USFS invokes in educating the public, or otherwise pushing its WFU policies and plans literally down the throat and into the lungs of the trusting public. The quote itself describes a USFS wildfire management plan that violates the NEPA and the CAA in that it does not consider present vrs. future health impacts of alleged future catastrophic fires. We are simply told the same line over and over, ad nauseum, in USFS Youtube propaganda videos and internet slide shows: unless we burn more now, we will have to breathe even more smoke in the future. This is “the more smoke to get less smoke argument.” But the USFS science to back-up this argument is uncertain, violating the NEPA and CAA.

This trite scientific argument, or position statement, violates NEPA because if forest fuel remedial measures are necessary they must be evenly distributed over present and future generations.

As the Washington University Journal of Law & Policy, Volume 32 New Directions in Environmental Law states:

“The primary purpose of NEPA was achieved upon its enactment: the articulation of a national statement of policy for the environment. Section 101 of NEPA established the policy goal —to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”

And as recently reported in the Yakima Herald Republic Newspaper on September 13<sup>th</sup>, the USFS only intends on increasing WFU in the immediate and distant future:

“Prescribed fire is one of the best tools in our toolbox to stop living in dense wildfire smoke summer after summer,” said Holly Krake, U.S. Forest Service public affairs officer. “While it seems counterintuitive, part of the solution to the intense wildfire problem in Eastern Washington is more fire, not less, and in the right ways and times.”

...

“This program makes sure that we can start to do this at a larger scale and make sure we have people trained to do prescribed burns,” said Nikolaj Lasbo, social and digital media manager for The Nature Conservancy.

...

Other prescribed burns are planned for the area starting in about two weeks, including the Naches Ranger District. Krake said on the day of a prescribed burn, the agency will post the location, potential smoke forecast and acreage for the fire by 9 a.m.

...

While the smoke from the prescribed burns may cause the air quality to decrease slightly, the health effects will be negligible and will not reach the unhealthy and hazardous levels seen this summer, Lasbo said.

...



Krake said there were no days where the air quality was at the unhealthy for sensitive groups level or worse during prescribed burns in the area last spring.

...

“The main thing to note coming off this really bad summer is how do you want your smoke and how bad do you want it to get?” Lasbo said. “Prescribed fires reduce fuel and reducing fuel means better air quality down the road in the case of a megafire.”

In the analysis of whether smoke from a managed fire is not reasonably controllable or preventable, it should be noted that recent studies show that much of the science the USFS relies upon in making its fire management / smoke decisions (that it does not consider) is very uncertain. The only certainty the USFS will admit to regarding smoke science is that the USFS science is evolving, still uncertain and in need of continuing research. See the Joint Fire Science Program Smoke Science Plan Conclusion: Smoke Science Accomplishments Under the Plan, Final Report, 21 April 2017

One might question that if the smoke impacts of a wildfire are uncertain, that the fire is not reasonably controllable or preventable. However, all this Joint Fire Science Report tells us is that the USFS is uncertain about its ability to predict smoke pollution from any given fire. In this respect, the USFS is playing a game of risk with the public's health. The USFS is intentionally managing fire activities for landscape purposes, the resulting smoke pollution of which it cannot with any certainty predict or forecast. This directly violates the NEPA and CAA, as the USFS knows there is risk of environmental or public harm being imposed upon the American public, and yet it does not attempt to comply with federal and state clean air laws by publishing intent and receiving notice as the administrative procedure act requires.

THE LITIGATION HISTORY OF THE USFS IS FINALLY SETTLED

THE TRUE ENVIRONMENTALISTS WHO WERE THE FLY IN THE USFS OINTMENT OF THE PAST TRADED THEIR CLEAN AIR, AS WELL AS THAT OF THE REST OF THE UNSUSPECTING PUBLIC, IN EXCHANGE FOR MORE ROADLESS AREAS. IN THIS WAY THEY KILLED 2 BIRDS WITH ONE STONE. THEY FINALLY OBTAINED THE USFS CAPITULATION TO BURN INSTEAD OF LOG FOREST FUELS, AND THEY OBTAINED MORE ROADLESS AREAS THAT WOULD MAKE IT MORE EXPENSIVE AND DIFFICULT FOR LOGGERS TO EXTRACT WOOD PRODUCT. THESE PEOPLE WOULD TRULY RATHER SEE IT BURN THAN THINNED BY LOGGING. BY THE TIME OF THE GREAT USFS LOGGING CAPITULATION, THE

## ARGUMENT OF THE CLEAR CUTTING OF THE PAST WAS LONG PULLED OFF THE NEGOTIATING TABLE AS MOOT.

The “timber barons” are long dead now, or aged and worn down beyond their capacity to fight. The litigation that ensued when the timber industry was the largest special interest group in developing forest management policy was simple forest economics that supported many rural communities vrs. idealistic and philosophical argument based upon environmental rabidity. Now it is the forest fire industry that is the largest special interest group.

The “environmentalists” who started all of the USFS previous litigation are now in control of the USFS, and they now want to tighten the ability to challenge environmental issues in Court. Now that they have finally won, are in complete control and without the threat of administrative public comment upon their new USFS fire science and its corresponding fire management policies and plans, they have no need to challenge their own environmental policies and plans. Now the new WFU USFS regime wants desperately to change the legal rules that helped them finally gain control of forest policy and cut off the ability of the public to litigate environment and public health transgressions.

This is very consistent with the official record without any speculation. As then Agricultural Secretary Vilsack stated in his environmentally famous of 2009:

“Unfortunately, the debate around the future of our forests and forest policy has been highly polarized for a long time. I don't need to remind anyone in Washington state about the debates around spotted owls, clearcutting and other forestry issues. But, given the threats that our forests face today, Americans must move away from polarization. We must work towards a shared vision -- a vision that conserves our forests and the vital resources important to our survival while wisely respecting the need for a forest economy that creates jobs and vibrant rural communities.

...

Yet, the Forest Service faces a number of barriers in pursuing a restoration agenda. The Forest Service has struggled for years with a budget that has forced management funds to be shifted to fire fighting. We must do better. The Obama Administration is already working with Congress to ensure that the Forest Service has the funds it needs both to fight fires and to manage forests. shared

vision begins with restoration. Restoration means managing forest lands first and foremost to protect our water resources, while making our forests more resilient to climate change....”

I do not personally believe that then President Obama could know of the dangerous air pollution the USFS then intended, and that this veiled statement portended.

But Secretary Vilsack continued:

...

A second barrier to accomplishing restoration is a history of distrust between environmentalists, the Forest Service and the forestry community. The result has been seemingly countless appeals of forest management activities and subsequent litigation. Certainly, litigation and appeals have served as a useful backstop against misplaced management decisions. But, given the scale of restoration that must occur, a shared vision built on collaboration will move us beyond the timber wars of the past. Litigation and conflict should become less prevalent because they are viewed as less necessary. Fortunately, that process has begun. In many regions today, the Forest Service charts a path forward by building trust among diverse stakeholders through collaboration and engagement.

...

In the short term, I have asked Chief Tidwell to initiate a process to develop new planning rules to guide the management of our National Forests consistent with the vision I have outlined today. Secondly, we will monitor progress towards protection of roadless areas in the courts and will act to protect leadless areas as necessary.

This is where Secretary Vilsack arguably, knowingly or unknowingly, promised the then litigation friendly environmentalists that the USFS would throw into the trade not only more WFU, but also more roadless areas in exchange for their votes and a ceasefire of ongoing litigation. This is very arguably how the USFS induced this one time adversary to trade a logging free forest for the health of their children, as well as that of the public.

Now, the current USDA secretary likes to blame “the environmentalists” on frustrating the USFS’ WFU and “resulting air pollution.” This is obviously a misdirected barb, as those that may be frustrating the USFS’ WFU policies are not “environmentalists” except in the sense that they wish to breathe clean air.

The requested wildfire air pollution exceedances that are the subject of this Exemption Request have unfortunately become part of our clean air agencies' expected events. These air pollution exceedances are now part of our environment.

However, the NEPA and CAA and their State counterparts were adopted for just such an occasion. When these Acts were born into law, many areas of our Country, including the Yakima Region, were then out of attainment. Nothing has really changed. We are simply out of attainment again. I cannot imagine the NEPA and CAA drafters believing that annual air pollution events would ever be exempted from these laws. These laws were created to protect human health from air pollution levels "exceeding" harmful levels. To allow the Requested Exceedance Exemptions would be throwing away 50 years of air pollution clean-up and mitigation efforts.

This Requested Exemption is clearly against Federal environmental policy and law, as well as against Washington's Smoke Management Act.

**Respectfully submitted,**

**Brad Mellotte**