



FSEEE Forest Service Employees for Environmental Ethics

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TRANSMITTED BY E-MAIL to comments-bighorn@usda.gov

August 25, 2022

USDA Forest Service Rocky Mountain Region
Attn: Reviewing Officer
1617 Cole Blvd., Bldg. 17
Lakewood, CO, 80401

RE: OBJECTION -- Bighorn National Forest Invasive and Other Select Plant Management

Dear Reviewing Officer,

Pursuant to 36 CFR 218, FSEEE files this objection to Bighorn Forest Supervisor Andrew Johnson's Draft Record of Decision for Invasive and Other Select Plant Management for the Bighorn National Forest. On July 20, 2020, FSEEE submitted scoping comments regarding this proposal. On August 9, 2021, FSEEE commented on the draft EIS.

Introduction

FSEEE supports the project's primary goal of preventing and reducing the loss of native plant communities associated with the spread of invasive plant species, especially annual grasses. To date, the Forest Service has been largely successful in doing so thanks to its routine, on-going efforts, and, most significantly, to the Bighorn's physiographic location, e.g., its high elevation and remote location. That the Forest Service has been successful without the use of aerially-applied herbicides is compelling evidence that their proposed use here does not justify the significant environmental trade-offs and risks (partially) disclosed in the FEIS. Our objections below are based on concerns we have raised throughout the planning process and on concerns based on new information in the FEIS.

I: FSEEE objects to including Duncicap larkspur as an "Invasive Plant Species Known to Occur in the Bighorn National Forest" and to the ROD's proposal to kill it.

Contrary to the proposed ROD (see Table 2-4), Duncicap larkspur is NOT an "invasive" species. See [invasive.org listing for Duncicap larkspur](https://invasive.org/listing-for-duncicap-larkspur) (USDA-Forest Service-sponsored website, copy filed herewith). It is an indigenous species native to the Bighorn mountains. The Federal Noxious Weed Act of 1974, as amended by the Agricultural Risk Protection Act of 2000, 7 U.S.C. § 2814 ("Management of Undesirable Plants on Federal Lands"), which is the comprehensive

framework for the management of "plant species that are classified as undesirable, noxious, harmful, exotic, injurious, or poisonous, pursuant to State or Federal law," exempts from its definition of "undesirable" plants those that are "indigenous to an area." 7 U.S.C. § 2814(e)(7). Thus, the Forest Service is barred by law from considering a county's "noxious" designation in deciding that an indigenous plant is undesirable and warrants control. By seeking to justify its decision to kill larkspur on the basis of county "noxious" designations, the Forest Service is acting arbitrarily, capriciously, and beyond its statutory authority, in violation of the Administrative Procedures Act. 5 U.S.C. § 706.¹

Even if the Forest Service could kill larkspur to make the range safer for cattle, it must first determine that the Bighorn's larkspur is actually toxic to livestock. That the Forest Service has failed to do so is inexplicable given its USDA-companion agency's research. In "*The Biogeographical Distribution of Dunccecap Larkspur (Delphinium occidentale) Chemotypes and Their Potential Toxicity*," the USDA's Agricultural Research Service reports that Dunccecap larkspur's geographic populations differ dramatically in their toxicity to livestock (copy filed herewith). Larkspur in Idaho and Montana, for example, are non-toxic to livestock, while larkspur in much of Utah and southern Wyoming is toxic (at certain times of year). Notably, however, neither ARS nor anyone else has analyzed larkspur in the Bighorn mountains for its livestock toxicity (*see* ARS report map at 650). The ARS report emphasizes that "These findings have **important implications** in grazing management decisions on *D. occidentale*-infested range-lands, and they demonstrate that botanical classification alone **is not a good indicator** to determine the toxic risk of *D. occidentale*" (emphasis added). In sum, the Forest Service relies upon "not a good indicator" to conclude that Bighorn larkspur is toxic, without acknowledging this obvious shortcoming (in violation of NEPA), and without collecting the plant data necessary to making a reasoned decision (in violation of NEPA and the APA).

II. FSEEE objects to the ROD's proposal to aerially spray tebuthiuron to kill sagebrush.

FSEEE objects to aerial spraying of tebuthiuron to kill sagebrush because, according to the FEIS, "Tebuthiuron can leach into groundwater. Therefore, **there is potential for water quality implications** in Bighorn National Forest and on adjacent lands in the four-county area." FEIS at 3-125 (although this statement is in the "Maximum Herbicide Application Scenario Analysis," it applies to any level of tebuthiuron use) (emphasis added). Inexplicably, however, the FEIS fails entirely to disclose what the "implications" to water quality will be. For example, the FEIS 1) fails to disclose that Wyoming water wells already register tebuthiuron contamination (*see* "Pesticides in Wyoming Groundwater," USGS report, attached); 2) fails to disclose the additional tebuthiuron contamination of water wells that will be caused by the Forest Service's proposed aerial spraying; and, 3) fails to disclose the effects to users of the increasingly contaminated well water. In sum, on the one hand the FEIS acknowledges a "potential" for

¹ It might be helpful for the Reviewing Officer to consider whether the Forest Service could rely on a county's designation of a federally-listed threatened or endangered plant as "noxious" to justify killing it. Of course not. Under the Federal Noxious Weed Act, as amended, the same applies to indigenous plants.

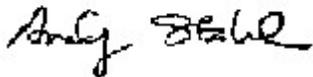
deleterious impacts to water quality while, on the other hand, it fails to assess the magnitude, location, and consequences of those impacts. These omissions violate NEPA.

Remedy Requested

FSEEE requests that you direct the Bighorn's forest supervisor to revise the ROD, as follows:

- 1) Eliminate herbicide treatment of Duncecap larkspur; and,
- 2) Eliminate aerial application of tebuthiuron for any purpose.

Sincerely,

A handwritten signature in black ink that reads "Andy Stahl". The signature is written in a cursive, slightly slanted style.

Andy Stahl
Executive Director
Forest Service Employees for Environmental Ethics