



October 29, 2019

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RE: Bear Grub Project Scoping Comments

Thank you for accepting these scoping comments from the Klamath Siskiyou Wildlands Center (KS Wild) on behalf of Oregon Wild and Cascadia Wildlands. Contact information for our organizations may be found at the conclusion of this document. Please send our organizations hard copies of the forthcoming NEPA analysis and decision documents for the Bear Grub timber sale.

Our organizations are often supportive of small-diameter thinning projects, and we remain steadfastly opposed to the logging of mature forest stands, significant reductions in overstory forest canopy, construction of new logging roads in these impaired watersheds and we join with our neighbors in opposing logging prescriptions that increase fire hazard while removing wildlife habitat. ***We are particularly opposed to logging that downgrades or removes forests that currently provide the habitat and ecosystem benefits associated with Northern spotted owl (NSO) Nesting, Roosting and Foraging (NRF) habitat and logging that replaces mature forest stands with second-growth timber plantations.***

We are concerned that BLM timber planners appear to be interpreting the 2016 RMP as precluding meaningful collaboration or the implementation of any conservation sideboards for actions on public lands located in the Harvest Land Base. We encourage the agency to embrace an approach to project planning that allows community values and concerns to be incorporated into project layout and design.

QUESTIONS AND CONCERNS

The Bear Grub timber sale scoping notice raises a number of questions and concerns for our organizations that we hope the BLM will address.

The scoping letter contains virtually no information describing the current condition of stands identified for logging activities. What is the seral class as species composition of the areas identified for harvesting? Are mature late-successional forest stands present in the project area within their historic range of variability? How many large diameter trees (greater than 20” inches dbh) may be subjected to logging? What percentage of these watersheds comprised of late-successional forests providing NSO NRF habitat? How much spotted owl and Coho critical habitat is present in the planning area? Are any riparian features in the project area listed under section 303(d) of the Clean Water Act and is BLM management bound by Total Maximum Daily Loads for streams in the area?

CITIZENS’ ALTERNATIVE

Our organizations hereby propose an action alternative designed to meet the purposed and need for the Bear Grub timber sale in which:

- Fuels are reduced in the project area;
- Small trees in overly dense stands are thinned;
- Remaining mature forests and large diameter trees (over 20” inches DBH) are retained;
- Downgrading and removal of suitable spotted owl habitat is avoided;
- Existing roads are upgraded;
- And road density is reduced.

The recommendations above are reasonable and have been successfully implemented by BLM Districts throughout Oregon. The Medford BLM is capable of planning and successfully implementing timber sale projects that seek to produce wood fiber while retaining canopy cover and wildlife habitat, avoiding harvest of large-diameter preferred tree species, and reducing (rather than increasing) cumulative impacts to soil and watershed resources. Please consider implementing the reasonable sideboards utilized in previous successful “dry forest restoration” BLM projects in Southern Oregon and within the Ashland Resource Area.

COLLABORATION AND CONSENSUS-BASED MANAGEMENT

We request that the BLM formally collaborate with stakeholders, organizations and persons who are interested in the development of the proposed action and alternatives. As you know, “the Department [of Interior] continues to encourage collaboration with the public in an approach to alternative development and decision-making. The

implementation of any such approach is determined by the [Responsible Official].” (See FR 73:61294; DOI Implementation of NEPA).

We suggest Collaboration in NEPA—*A Handbook for NEPA Practitioners*” available at http://ceq.eh.doe.gov/nepa/nepapubs/Collaboration_in_NEPA_Oct2007.pdf which has been reviewed by the Department of Interior. Collaboration would be towards incorporating consensus-based management as described in 43 CFR Part 46.110. We note that Part 46.110 (c) states: “the Responsible Official must, whenever practicable, use a consensus-based management approach to the NEPA process.” Since time is of the essence, collaboration needs to begin soon.

The DOI regulations provide for consensus towards an alternative and solicitation of relevant site-specific comments:

43 CFR § 46.110 Incorporating consensus-based management

- (a) Consensus-based management incorporates direct community involvement in consideration of bureau activities subject to NEPA analyses, *from initial scoping* to implementation of the bureau decision. It seeks to achieve agreement from diverse interests on the goals of, purposes of, and needs for bureau plans and activities, as well as the methods anticipated to carry out those plans and activities. For the purposes of this Part, consensus-based management involves outreach to persons, organizations or communities who may be interested in or affected by a proposed action with an assurance that their input will be given consideration by the Responsible Official in selecting a course of action. (emphasis added)
- (b) In incorporating consensus-based management in the NEPA process, bureaus should consider any consensus-based alternative(s) put forth by those participating persons, organizations or communities who may be interested in or affected by the proposed action. While there is no guarantee that any particular consensus-based alternative will be considered to be a reasonable alternative or be identified as the bureau’s preferred alternative, bureaus must be able to show that the reasonable consensus-based alternative, if any, is reflected in the evaluation of the proposed action and discussed in the final decision. To be selected for implementation, a consensus-based alternative must be fully consistent with NEPA, the CEQ regulations, and all applicable statutory and regulatory provisions, as well as Departmental and bureau written policies and guidance.
- (c) The Responsible Official must, whenever practicable, use a consensus-based management approach to the NEPA process.
- (d) If the Responsible Official determines that the consensus-based alternative, if any, is not the preferred alternative, he or she must state the reasons for this determination in the environmental document.
- (e) When practicing consensus-based management in the NEPA process, bureaus must comply with all applicable laws, including any applicable provisions of the Federal Advisory Committee Act (FACA).

TIMBER PRODUCTION CAPABILITY CLASSIFICATION

The forthcoming Bear Grub NEPA analysis must disclose the Timber Production Capability Classification (TPCC) of forest stands the project area. Please discuss the agency's methodology for logging on TPCC lands and how this interacts with the agency's interpretation of O&C Act and its guidance regarding "annual sustained yield capacity." Please also indicate if the agency believes that forest stands subject to log landing and logging road construction will be managed to ensure sustainable timber production or if they will be managed into future as areas in which conifers are not present and hence not producing timber volume or providing habitat values.

NORTHERN SPOTTED OWL

Should the BLM refuse to implement Recovery Action 10 and Recovery Action 32 when implementing the Bear Grub timber sale it is probable that the project will likely adversely affect the recovery of the species.

We believe there is considerable risk that the BLM will not follow:

- The direction (RMP ROD page 23) to: Apply the concepts of Ecological Forestry and consistently with the owl recovery plan and the designation of critical habitat for the northern spotted owl.
- The Management Objectives (RMP ROD page 74) that encourage the BLM to enable forests to: (1) recover from past management measures, (2) respond positively to climate-driven stresses, wildfire and other disturbance with resilience, (3) ensure positive or neutral ecological impacts from wildfire, and (4) contribute to northern spotted owl recovery.
- The direction (RMP ROD page 115) to conserve and recover species that are ESA-listed, proposed, or candidates, and the ecosystems on which they depend

The RMP advises management direction to recover from past management impacts, to respond positively to climate-driven stresses, and to ensure positive or neutral ecological impacts from wildfire. Logging of large diameter trees and the downgrading of existing NRF habitat are antithetical to these RMP objectives.

CUMULATIVE IMPACTS

Please provide a thorough cumulative impacts analysis of the proposed logging and road construction in combination with other federal logging and private logging activities and ORV use.

One of the specific requirements under NEPA is that an agency must consider the effects of the proposed action in the context of all relevant circumstances, such that where “several actions have a cumulative...environmental effect, this consequence must be considered in an EIS.” Neighbors of Cutty Mountain v. US Forest Service., 137 F.3d 1372, 1378 (9th Cir. 1998) quoting City of Tenakee Springs v. Clough, 915 F.2d 1308, 1312 (9th Cir. 1990)). A cumulative effect is “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or persons undertakes such other actions.” 40 CFR § 1508.7.

Our cases firmly establish that a cumulative effects analysis “must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects.” Klamath Siskiyou Wildlands Center v. BLM, 387 F.3d 989, 993 (9th Cir. 2004). To this end, we have recently noted two critical features of a cumulative effects analysis. First, it must not only describe related projects but also enumerate the environmental effects of those projects. See Lands Council v. Powell, 395 F.3d 1019, 1028 (9th Cir. 2005) (holding a cumulative effects analysis violated NEPA because it failed to provide adequate data of the time, place, and scale” and did not explain in detail “how different project plans and harvest methods affects the environment”). Second, it must consider the interaction of multiple activities and cannot focus exclusively on the environmental impacts of an individual project. See Klamath Siskiyou Wildlands Center, 387 F.3d at 996 (finding a cumulative effects analysis inadequate when “it only considers the effects of the very project at issue” and does not “take into account the combined effects that can be expected as a result of undertaking” multiple projects).

-Oregon Natural Resources Council et al. v. Brong. 9th Circuit. July 24, 2007.

Given the repeated acknowledgements in the BLM’s watershed analysis regarding the impacts of past BLM logging and road activities on the hydrological and terrestrial health of the project area, it is vital that the BLM analyze and disclose the cumulative impacts of past activities and its future plans.

Please note that Federal timber planners in the Shasta-Trinity National Forest recently concluded on page 5-4 of the Hidden Valley Watershed Analysis that:

Raines 1998 noted that traffic levels on unpaved roads was the most significant factor in surface erosion rates and predicted that with reduced traffic volumes the surface erosion rate would drop by a factor of 4 or 5...

The cumulative (and direct) impacts on sediment and erosion rates from timber haul are particularly important for the Bear Grub planning effort given that riparian road densities are high, elevated sediment and turbidity levels are occurring as a result of an extensive road network and other disturbances, and hauling and road maintenance activities are expected to result in short-term increases in sediment and turbidity. This may negatively impact already 303(d) listed streams in the planning area in violation of the Clean Water Act. The BLM must

quantify the cumulative impacts of sediment production from haul and explain why it intends to increase sediment loading in this highly impacted watershed.

Additionally, the cumulative terrestrial and hydrological impacts from the significant logging throughout the “checkerboard” land use pattern in the planning area must be disclosed and analyzed in a forthcoming EIS. The level of logging and road construction on both BLM and private industrial timber-lands in the area is extreme by any measure and has significantly altered by the species and seral composition across thousands of acres. The impacts of this practice on wildlife connectivity must be fully disclosed and analyzed prior to rendering the decision to build more logging roads and remove more forest canopy.

EDGE EFFECT AND BLOWDOWN

Edge effect and blowdown associated with, and exacerbated by, logging activities on public and private lands are a significant issue for this project area. BLM planners must acknowledge, analyze and account for the impacts of significant canopy removal through logging on edge effect and blowdown.

ROAD DENSITIES SHOULD BE REDUCED

“Numerous studies have shown how roads may increase the length of the drainage network by intercepting ground or surface flow and precipitation, resulting in disruption of natural flow paths.” Sterling Sweeper EA page 3-61. Ashland Resource Area, Medford BLM.

“The primary sediment source in the Applegate-Star/Boaz Watershed Analysis Area appears to be from road surfaces, fill slopes, and ditchlines.... Drainage areas with high numbers of road stream crossings are likely to experience the most sediment movement into stream channels.” Applegate-Star/Boaz WA, Page 60. Ashland Resource Area, Medford BLM.

It is likely that the BLM will build new logging roads regardless of the existing road density, the recommendations of its own WA, the content of public comments, and the existence of opportunities for timber harvest that do not require additional logging road construction. Road density reduction needs will likely be ignored in the forthcoming decision document. New BLM logging road construction is certain and inevitable: one can bet the farm on it. Hypothetical road decommissioning in other decisions is speculative and dependent upon unidentified funding sources. This is directly opposite of the approach recommended by the BLM’s WA.

The BLM has repeatedly acknowledged the need to reduce (rather than increase) road densities in the planning area. The cumulative impacts of landings, ORV routes, and skid trails, when combined with the significant existing impacts of the extreme road density must be quantified and disclosed in the forthcoming NEPA document.

In the nearby Sterling Silver project the Ashland Resource Area acknowledged that:

“Reduced soil porosity [as from road and landing construction] also can reduce water infiltration rates, thereby accelerating surface runoff and soil erosion.” – Sterling Silver EA page 3-30

“Many of the roads have been poorly maintained and have been degraded as a result of use during the wet season.” –EA page 3-30.

“There would be a noticeable increase in soil erosion the first few rain events after [road] construction.” –EA page 3-33.

“There would be a slight to moderate (15-50%) increase in erosion rates as a result of the combination of harvesting timber and fuel reduction activities which would last approximately 3 to 5 years. A slight cumulative increase in erosion rates would occur as a result of road building.” -EA page 3-37.

Implementation of Alternative 3 “would be less impacting to the soil resources, as there would be no road construction...” –EA page 3-38.

“High road densities, greater than 4.0 per square mile are found in all of the drainages within the analysis area.” –EA page 3-40.

“[T]here is also a network of OHV trails. These features often utilize old road beds...” –EA page 3-41

“[E]levated sediment and turbidity levels are occurring as a result of an extensive road network and other disturbances such as OHV use.” –EA page 3-44.

Hence, the BLM has previously recognized that: (1) road construction contributes to peak flows; (2) the agency has failed to adequately maintain its existing network of logging roads; (3) road construction will increase soil erosion and compaction; (4) avoiding road construction would better protect soil resources; (5) the existing road density on BLM lands is high; and (6) the agency has been ineffective in preventing ORVs from exacerbating the impacts of the BLM road system. Yet the agency often insists on proposing new additional road construction while refusing to consider or develop reasonable action alternatives (as suggested in the BLM’s WA) that would reduce road density. Such an approach is arbitrary and capricious.

The BLM is aware that ORV use is occurring in the project area and that ORV use is adversely impacting terrestrial and aquatic forest values. But the BLM is unable to ascertain the extent to which its proposed actions will facilitate and enable such ORV impacts. Either the BLM must quantify the effects of its actions, or it must complete an EIS. The agency cannot conclude that logging activities may contribute to an already significant problem that cannot be quantified and yet just shrug off the consequences as immaterial to the inevitable decision to log and build roads and the cumulative impacts that will flow from those activities.

Similarly, the BLM must disclose the location, number and cumulative impacts of new log landings in conjunction with the significant impacts occurring from the excessive

transportation system. How many acres will be utilized as landings, where will these landings be located, and what are their synergistic impacts with the network of logging roads?

Attached to these scoping comments is a 2010 peer-reviewed article by Colombaroli and Gavin entitled “Highly Episodic Fire and Erosion Regime Over the Past 2,000 Years in Siskiyou Mountains, Oregon.” Please note that the paper indicates that “over millennia fire was more episodic than revealed by nearby shorter tree-ring records and that recent severe fires have precedents during earlier drought episodes but also that sediment loads resulting from logging and road building have no precedent in earlier fire events.” Please note that this conclusion directly contradicts the anti-fire pro-road boilerplate that generally serves as the BLM’s analysis of the no-action alternative.

Please do not propose activities that will cumulatively, synergistically, and directly contribute to aquatic degradation of streams and watersheds that are 303(d) listed under the Clean Water Act.

Please consider the following statement by your colleagues in the Forest Service on page III-6 of the 2010 Rustler EA in which they conclude that:

Temporary roads are also expected to have an irretrievable reduction in soil productivity since they are bladed (soil is mixed and displaced) and compacted. Even once rehabilitated, the soil profile is modified to a degree that may take many years to return to the productive state of the undisturbed forest soils adjacent to it.

The November 2000 (Forest Service) National Forest Roadless Area Conservation FEIS page 3-30 says that temporary roads are not designed and constructed to the same standard as classified roads and therefore result in a “higher risk of environmental impacts.”

The Forest Service Roadless FEIS also says:

"Temporary roads present most of the same risks posed by permanent roads, although some may be of shorter duration. Many of these roads are designed to lower standards than permanent roads, are typically not maintained to the same standards, and are associated with additional ground disturbance during their removal. Also, use of temporary roads in a watershed to support timber harvest or other activities often involves construction of multiple roads over time, providing a more continuous disturbance to the watershed than a single, well-designed, maintained, and use-regulated road. While temporary roads may be used temporarily, for periods ranging up to 10 years before decommissioning, their short- and long-term effects on aquatic species and habitats can be extensive."

-Roadless Area Conservation FEIS — Specialist Report for Terrestrial and Aquatic Habitats and Species prepared by Seona Brown and Ron Archuleta, EIS Team Biologists

Please note that BLM specialists have come to similar conclusions. A BLM soils scientist spoke to the restorative value of decommissioning “temporary” roads. He says:

“[w]hat I have seen so far have been nothing more than modified rock rippers and little lateral fracture of the soil occurs and the extent of de-compacting is very limited.” Coos Bay BLM, Big Creek Analysis file, section F, Soils Report. Page 4.

The BLM cannot assume that temporary and new roads will have little environmental effect because they are “temporary.” The BLM has shown no scientific evidence to support this assumption. In fact, scientific research has shown exactly the opposite. *Effectiveness of Road Ripping in Restoring Infiltration Capacity of Forest Roads*. Charles H. Luce, USDA Forest Service Intermountain Research Station, 1221 S. Main, Moscow, ID 83843. September 1996. *Restoration Ecology*, Vol. 5, No. 3. page 268.

Research results, published in *Restoration Ecology*, show there is nothing temporary about temporary roads, and that ripping out a road is not the equivalent to never building a road to begin with. “The saturated hydraulic conductivity of a ripped road following three rainfall events was significantly greater than that of the road surface before ripping... most saturated hydraulic conductivities after the third rainfall event on a ripped road were in the range of 22 to 35 mm/hr for the belt series and 7 to 25 mm/hr for the granitics. These conductivities are modest compared to the saturated hydraulic conductivity of a lightly disturbed forest soil of 60 to 80 mm/hr.” *Id.*

Your colleagues in the Forest Service have reported that forest roads have negative effects on water quality, fires, wildlife habitat, spread of noxious weeds, and local economies. USDA Forest Service, “Forest Roads: A Synthesis of Scientific Information,” Pacific Northwest Research Station, General Technical Report PNW-GTR-509. May, 2001. Page 4.

According to the Forest Service:

- The number of large fires are dramatically higher in areas that are already roaded than in inventoried roadless areas. USDA Forest Service, Roadless Area Conservation Final Environmental Impact Statement, Volume 1. November, 2000. Page 3-115.
- Human-caused wildland fire is nearly five times more likely to occur on essentially roaded lands than on essentially unroaded lands. USDA Forest Service, Roadless Area Conservation Final Environmental Impact Statement, Volume 1. November, 2000. Page 3-116.
- According to independent scientists: based on an objective study over 15 years, large wildfires are more likely to occur and to burn to greater extents in areas outside of roadless areas. Eastman, Jill C., John R.G. Townshend, Christopher O. Justice, Robert Sohlberg, and Compton J. Tucker. “Roadless Areas and Forest Fires in the Western United States.” May 29, 2002: American Geographical Union Spring Meeting.
- Road construction and timber harvest can result in measurable reductions in water quality. USDA Forest Service, Roadless Area Conservation Final Environmental Impact Statement, Volume 1. November, 2000. Page 3-49.

According to independent scientists, the spread of both native and exotic pests and pathogens in many forest systems can be linked to the ready travel corridors provided by extensive road networks. Please note that your colleagues in the Grants Pass

Resource Area concluded that in the Deer North EA (page 102) that “roads are one of the main vectors for noxious weed spread and introduction”.

- Trees at forest edges created by roads had 2.4 times more gypsy moth egg masses than trees in the forest interior. Bellinger, R.G., F. W. Ravlin and M.L. McManus. “Forest Edge Effects and Their Influence on Gypsy Moth (Lepidoptera: Lymantriidae) Egg Mass Distribution.” 1989. *Environmental Entomology*. 18: 840-843.
- Forest edges have been found to be source populations for tent caterpillars. Roland, J. “Large-Scale Forest Fragmentation Increases the Duration of Tent Caterpillar Outbreak.” 1993. *Oecologia* 93:25-30.

Attached to these comments you will find a recently published peer-reviewed article by Daniele Colombaroli and Daniel Gaven entitled Highly Episodic Fire and Erosion Regime Over the Past 2000 Years in the Siskiyou Mountains, Oregon. The study indicates that the past 50 years of logging and road construction have had much greater impacts to sediment loading to watersheds than have wildfire events. These findings are directly relevant to the proposal to construct more logging roads in the Bear Grub project area.

Also attached to these comments is a peer-reviewed article by Trombulak and Frissell (2000) detailing some of the negative impacts of road construction and use on both terrestrial and aquatic ecosystems. The abstract for the article reads as follows:

Roads are a widespread and increasing feature of most landscapes. We reviewed the scientific literature on the ecological effects of roads and found support for the general conclusion that they are associated with negative effects on biotic integrity in both terrestrial and aquatic ecosystems. Roads of all kinds have seven general effects: mortality from road construction, mortality from collision with vehicles, modification of animal behavior, alteration of the physical environment, alteration of the chemical environment, spread of exotics, and increased use of areas by humans. Road construction kills sessile and slow-moving organisms, injures organisms adjacent to a road, and alters physical conditions beneath a road. Vehicle collisions affect the demography of many species, both vertebrates and invertebrates; mitigation measures to reduce roadkill have been only partly successful. Roads alter animal behavior by causing changes in home ranges, movement, reproductive success, escape response, and physiological state. Roads change soil density, temperature, soil water content, light levels, dust, surface waters, patterns of runoff, and sedimentation, as well as adding heavy metals (especially lead), salts, organic molecules, ozone, and nutrients to roadside environments. Roads promote the dispersal of exotic species by altering habitats, stressing native species, and providing movement corridors. Roads also promote increased hunting, fishing, passive harassment of animals, and landscape modifications. Not all species and ecosystems are equally affected by roads, but overall the presence of roads is highly correlated with changes in species composition, population sizes, and hydrologic and geomorphic processes that shape aquatic and riparian systems. More experimental research is needed to complement post-hoc correlative studies. Our review underscores the importance to conservation of avoiding construction of new roads in roadless or sparsely roaded areas and of removal or restoration of existing roads to benefit both terrestrial and aquatic biota.

-Trombulak, S.C. and C.A. Frissell. 2000. Review of ecological effects of roads on terrestrial and aquatic communities. Conservation Biology 14(1): 18-30.

The cumulative impacts of “temporary” road construction, significant unregulated ORV use, landing construction and widespread tractor yarding on this highly impacted watershed must be fully disclosed in an EIS due to the ongoing significant impacts to hydrology (and soils) acknowledged in the WQRP and the WA. In addition to disclosing these cumulative impacts, we strongly urge the BLM to avoid the negative impacts associated with these practices and begin restoring the damage caused by the agency’s past actions.

NEOTROPICAL MIGRATORY BIRDS

The regional decline of migratory birds is a significant issue for this project. Numerous studies have reported local and regional trends in breeding and migratory bird populations throughout North America.

The forthcoming NEPA document for this project should analyze and disclose the potential impacts of conifer thinning operations and brush removal on neotropical bird population trends.

The cumulative effects analysis on migratory birds should not rely exclusively on the Resource Management Plan, Riparian Reserves and LSRs to provide for species viability into the future, because it is the collective and cumulative impact of individual habitat removing actions that is pushing these species towards extinction.

Simply concluding that the scale of the project is small, relative to the size of the nation, hence migratory bird populations will not be affected, will not suffice.

As per DOI BLM instruction memo 2008-50 the BLM must “include migratory bird species of concern in the affect environment [analysis] when any of these species may be affected by the proposed actions...” Further, the agency must “emphasize avoidance or minimizing negative impacts and restoring and enhancing habitat quality...”

Note that Table 2 of the following document indicates that the timing of projects is associated with risk to nests such that there is a lower risk level if the project occurs outside the general nesting period and a higher risk level when operation occur during the general nesting period:

<https://www.ec.gc.ca/paom-itmb/default.asp?lang=En&n=8D910CAC-1>

Please develop and implement seasonal operational restrictions to avoid project impacts while land birds are nesting in the project area. An example of such restrictions may be found in the Highway 89 Safety Enhancement and Forest Ecosystem Restoration Project on the Shasta-Trinity National Forest in which **project activities that could impact cavity-nesting and ground-and-shrub-nesting migratory bird species are prohibited during the primary nesting period of April 15 to July 31.**

Pursuant to the Migratory Bird Treaty Act (MBTA), it is unlawful “at any time, by any means or in any manner to . . . take [or] kill . . . any migratory birds, [and] any part, nest, or eggs of any such bird.” 16 U.S.C. § 703(a). This prohibition applies to federal agencies and their employees and contractors who may not intend to kill migratory birds but nonetheless take actions that result in the death of protected birds or their nests. *Humane Soc’y of the United States v. Glickman*, 217 F. 3d 882 (D.C. Cir. 2000) (holding that federal agencies are required to obtain a take permit from FWS prior to implementing any project that will result in take of migratory birds); see also *Robertson v. Seattle Audubon Soc’y*, 503 U.S. 429, 437–38 (1992) (finding that federal agencies have obligations under the MBTA) and *Center for Biological Diversity v. Pirie* (191 F.Supp.2d 161 (D.D.C. 2002) (allowing injunctive relief against federal agencies for violations of the MBTA).

The prohibition on “take” of migratory birds includes destruction of nests during breeding season. Specifically, “nest destruction that results in the unpermitted take of migratory birds or their eggs, is illegal and fully prosecutable under the MBTA.” U.S. Fish and Wildlife Service, Migratory Bird Permit Memorandum, from Director Steve Williams dated April 15, 2003.

Under the MBTA, “any person, association, partnership, or corporation” who violates the MBTA or regulations thereunder are subject to criminal and civil penalties. 16 U.S.C. §707. Violations of the MBTA are prosecuted as a misdemeanor, and upon conviction thereof, are subject to fines of up to \$15,000 or imprisonment of up to six months, or both. *Id.*

The forthcoming NEPA document should evaluate the effects of the Project and alternatives on migratory birds protected under the MBTA. The MBTA prohibits the destruction of nests and eggs of migratory birds. The BLM should evaluate the impacts of project activities on migratory bird nests, should disclose the breeding season for each migratory bird species found in the project area, and should proposed measures (such as seasonal restrictions) to avoid destruction of nests.

Please note that page 115 of the 2016 RMP ROD specifically directs the BLM to “conserve or create habitat for species addressed by the Migratory Bird Treaty Act...”

BARRED OWLS

Barred owl competition and displacement are significant concerns impacting Northern spotted owl management in this project area.

Given the BLM’s refusal to implement NSO Recovery Actions 10 and 32 to mitigate the effects of Barred Owl encroachment on NSO recovery in this project area, it is essential that the Bear Grub NEPA analysis should provide qualitative information regarding Barred Owls and their effect on NSO presence, reproduction and recovery in the project area.

BUREAU SENSITIVE SPECIES

The Bear Grub timber sale scoping notice makes no mention of BSS species in the project area. We believe there is considerable risk that the BLM will not follow the 2016 RMP ROD direction (page 115) to “implement conservation measures that reduce or eliminate threats to Bureau Sensitive Species...”

The direction (RMP ROD page 115) to “include altering the type timing, location, and intensity of management actions” for the benefit of BSS species appears incompatible with the BLM’s intent to focus on timber production targets regardless of impacts to wildlife habitat in this planning area.

Please implement the direction (RMP ROD page 72) to “[u]tilize integrated vegetation management in designing and implementing treatments... for any of the following reasons... Restore and maintain habitat for Bureau Special Status species.”

Please implement the direction (RMP ROD page 106) to “[p]rovide for the conservation of Bureau Special Status plant and fungi species.”

The Bear Grub timber sale scoping notice contains no information or management goals regarding Pacific fisher (or any other BSS species). We are concerned that proposed regeneration and large tree logging may contribute to the need to list the species under the ESA.

SPECIAL STATUS PLANTS

Please be explicit in the forthcoming NEPA documentation about the management of BLM special status plant species in this project.

GROUP SELECTION, PLANTATION ESTABLISHMENT AND FIRE HAZARD

“Plantations are extremely flammable because of high crown to trunk ratio and because crowns are very close to the ground.”

-Upper South Fork Trinity River Happy Camp Creek Watershed Analysis, Shasta-Trinity National Forest at page 21.

“While the severity varied throughout the fire area, young timber plantations carried the fire while older stands tended to be more resistant. This is mostly due to young timber plantations having a high density of ground fuels.”

-BLM Douglas Complex Fire 9/5/13 Burned Area Emergency Rehabilitation Plan

Our organizations are extremely concerned that the proposed logging followed by the establishment of artificial plantations may increase future fire hazard in the Bear Grub planning area. The practice of converting mature forests into early seral stands significantly increases fire hazard in the mid- to long-term. Young stands are more susceptible to intense fire behavior and severe fire effects than unlogged mature forests,

including burned forests (DellaSala et al. 1995, Odion et al. 2004). The increased susceptibility of second-growth trees to severe fire is due to:

- Structural characteristics, such as fine and interlocking branch structures situated low to the ground, which facilitate high heat energy output by fire and rapid fire spread (Sapsis and Brandow 1997).
- Warm, windy and dry microclimates compared to what would exist in an unlogged burned forest that possessed more structural diversity, ground shading and barriers to lateral wind movement (Countryman 1955, van Wagtenonk 1996).
- Accumulations of large volumes of fine logging slash on the ground surface (Weatherspoon and Skinner 1995).

In addition to these direct and indirect effects on the fire environment, the cumulative effects of early seral stand establishment include the creation of more highly flammable even-aged stands on a landscape already vulnerable to uncharacteristically large and severe fires. The number and distribution of even-age tree plantations resulting from industrial timber management has altered fire behavior and effects at both stand and landscape scales. (Frost and Sweeny 2000, Hann et al. 1997, Huff et al. 1995). Perry (1995) suggests that the existence of sufficient young tree patches on a forest landscape creates the potential for “a self-reinforcing cycle of catastrophic fires.” Most plantations occur near roads (DellaSala and Frost 2001), which presents an added risk of human-caused ignitions during hot and dry conditions (USDA 2000).

Please note that the BLM BEAR Report for the Douglas Fire Complex acknowledged that “while the [fire] severity varied throughout the fire area, young timber plantations carried the fire while older stands tended to be more resistant. This is mostly due to young timber plantations having a high density of ground fuels.”

Two fires in 2002 on the Umpqua National Forest were evaluated for their effect on the forest. Excerpts from the March 2003 Wildfire Effects Evaluation Project by the Umpqua N.F. are make clear the impact of creating more tree plantations:

"Plantations had a tendency to increase the rate of fire spread and increased the overall area of stand-replacement fire effects by spreading to neighboring stands." Page 4

"Fire burned most plantations with high intensity and spread rapidly through the canopy of these young stands." Page 20.

"Plantation mortality is disproportionately high compared to the total area that plantations occupied within the fire perimeter." Page 26-27.

"Crown fire spreads readily through these young stands: rates of fire spread can be high, and significant areas or mortality can occur in and adjacent to these stands." Page 32.

Finally, the report concludes that the fire behavior in forest that had not been converted to tree farms was normal. "The pattern of mortality in the unmanaged forest resembles historic stand-replacement patch size and shape." Page 64.

We agree with the finding at page 98 of the Medford BLM Trail Creek Timber Sale EA indicating that:

A forest's resiliency to fire can be increased by managing surface fuels to limit the flame length, removing ladder fuels to keep flames from burning into tree crowns...and retaining larger diameter trees that are more fire resistant.

The BLM's proposal to remove mature forest canopy may increase fire hazard necessitating completion of an EIS. Please note that the Watershed Analysis indicates that early and mid-seral stands currently dominate the watersheds in the planning area. Furthering this trend has significant consequences for wildlife and fire behavior.

Please note that management direction contained on page 62 of the 2016 BLM RMP for SW Oregon specifically requires the BLM to conduct logging activities in the Harvest Land Base (HLB) "to enhance timber values and to **reduce fire risks** and insects and disease outbreaks." (Emphasis added) We are very concerned that the proposed Bear Grub logging will increase, rather than decrease, fire risk in the HLB in both the short and long term.

ORV USE IS A SIGNIFICANT ISSUE

Ongoing ORV use in the project area is having a continuing unanalyzed significant impact on the human environment and the potential for the timber sale to exacerbate these impacts must be analyzed and disclosed in an EIS.

ORV and dirt bike trails proliferate from the BLM road system into the surrounding unroaded forest. Further, BLM closure mechanisms such as gates and berms in the project area have proved largely ineffective at reducing or halting inappropriate and damaging ORV use. Hence new permanent or temporary road construction will foreseeably lead to more off-road ORV use emanating from the new roads.

Furthermore, ORV and dirt bike use will likely extend onto ground-based and skyline yarding corridors. Such inappropriate use has occurred in the past, is occurring in the present, and hence is foreseeable in the future.

Lastly, the cumulative impacts of ORV in streams and through riparian reserves must be analyzed in conjunction with the BLM's proposed activities.

PROJECT PURPOSE AND NEED

Please note that the Purpose and Need for the project does not identify a site specific detailed "need" to treat Riparian Reserves to meet the direction of the 2016 BLM RMP

and ROD. Hence Riparian Reserve logging is outside of the appropriate scope of this project.

Please further note that the project purpose and need is artificially narrow in its focus on logging activities. The many additional land management objectives of the O&C Act and the 2016 RMP are largely absent from the BLM single-use (logging) management objective.

CONCLUSION

Removing and reducing mature forest canopy is a shortsighted and counterproductive way of attempting to meet BLM timber targets. Please work with interested stakeholders to develop projects that increase, rather than decrease, forest and watershed health. In both the short and long term substantive partnerships that acknowledge all of the interests in America's public lands are more effective than are proposals that primarily serve a narrow set of timber interests.

Regards,

/s/ George Sexton

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