Blue Mountains Biodiversity Project

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Submitted online at: https://cara.fs2c.usda.gov/Public/CommentInput?Project=358854 and https://cara.fs2c.usda.gov/Public/CommentInput?Project=359331

Re: Blue Mountains Biodiversity Project's Comments on the Huckleberry to Minam Fuel Breaks and the Upper Wallowa Valley Fuel Breaks

Blue Mountains Biodiversity Project ("BMBP") submits these combined comments on the proposed Huckleberry to Minam Fuel Breaks and Upper Wallowa Valley Fuel Breaks categorical exclusions (referred to collectively as "the Projects"). BMBP is an environmental nonprofit organization dedicated to the protection and restoration of forested ecosystems in the Blue Mountains and Eastern Oregon Cascades.

Project Summaries:

The Huckleberry to Minam Fuel Breaks CE includes:

- 1,120 acres of commercial logging, including 823 acres on slopes >30%
- 1,421 acres of noncommercial logging
- 184 acres of hand thinning in connectivity corridors
- 82 acres of hand thinning in RHCAs
- .53 miles of temporary road construction

The Upper Wallowa Valley Fuel Breaks CE includes:

- 375 acres of commercial logging, including 251 acres on slopes >30%
- 1,874 acres of noncommercial logging
- 175 acres of hand thinning in connectivity corridors
- 189 acres of hand thinning in RHCAs
- 1.58 acres of temporary road construction

The Projects have been improperly segmented to avoid environmental review.

The Forest Service is proposing these two fuel breaks as two separate projects proposed to establish fuel breaks on the Wallowa-Whitman National Forest along the front range of the Wallowa Mountains, both under the categorical exclusion ("CE") established under section 40806 of the Bipartisan Infrastructure Bill, 16 U.S.C. § 6592b. This CE was established to streamline the development of federal actions "intended to reduce the risk of uncharacteristic wildfire on Federal land or catastrophic wildfire for an adjacent at-risk community." 16 U.S.C. § 6592b(c)(1)(B). "Treatments of vegetation in linear fuel breaks covered by the categorical exclusion … may not contain treatment units in excess of 3,000 aces." *Id.* § 6592b(d)(1). Further, any temporary roads constructed for project implementation must be decommissioned within three years of project completion. *Id.* § 6592b(e)(3).

Although the Forest Service frames these fuels breaks as two separate projects, each under the 3,000-acre treatment limit established in the Infrastructure bill, the reality of the situation is that these two fuel break CEs are so interconnected that they should have been developed and analyzed as one project. Further, federal courts have condemned this practice of improper segmentation of federal actions. *See Delaware Riverkeeper Network v. F.E.R.C.*, 753 F.3d 1304, 1312–1319. As the D.C. Circuit explained in *Delaware Riverkeeper*, "[a]n agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration." *Id.* at 1312. Further, the Supreme Court has disallowed this practice, noting that 'proposals for … actions that will have cumulative or synergistic environmental impact upon a region … pending concurrently before an agency … must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action." *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976).

This issue is similar to the practice of inappropriately "stacking" separate CEs to cover the various individual actions of what, in reality, is a single proposed project, thereby avoiding environmental review. *See Friends of the Inyo v. U.S. Forest Service*, 103 F.4th 543, 556–57. The present situation differs slightly in that the current proposed Projects both utilize the same CE authority to cover the same management actions inappropriately segmented to abide by acreage limits, rather than related actions inappropriately split into separate actions covered by multiple CEs. However, both practices are disfavored and likely illegal in most contexts, including the present circumstances.

The Forest Service's proposal of these two fuel break projects—that are so clearly interconnected—as two separate CEs is a clear example of improper segmentation. The Forest Service has proposed no rational endpoint between these two Projects that would justify separate NEPA analysis. The respective project areas extend in a near-continuous line from south of Joseph, Oregon in a northwestern line up to Wallowa, Oregon. The only rationale for separating these projects seems to be to stay under the 3,000-acre limit for the fuel break CE. Nor has the Forest Service explained any independent utility for the two proposed fuel breaks. Both projects are proposed by the same Forest Service office for implementation in the Wallowa Valley for purposes of developing fuel breaks to aid in firefighter response to potential wildfires near at-risk homes and property. These two proposed Projects do not have any independent utility that would serve to justify the Forest Service's decision to separate them into separate CEs. Finally, the two proposed projects clearly share a temporal nexus, both being proposed at the same time—and indeed, in the same proposed action document.

Of course, all three of these points are underscored by the fact that the Forest Service has issued one joint proposed action document for both Projects, and does not separate out the individual management actions beyond the "Proposed Action" table on pages 2–3.

Taken together, the two Projects will treat a total of 4,790 acres with commercial and noncommercial logging, create over two miles of temporary roads, hand thin 271 acres in RHCAs, and hand thin 374 acres within connectivity corridors. These treatments acres exceed the limit established for the use of the fuel break CE established in 16 U.S.C. 6592b(d). Therefore, the Forest Service must withdraw its proposal of these two CEs and, if it wishes to continue to implement the proposed action, must analyze these actions together in an EA or EIS as NEPA requires.

The Forest Service failed to consider and analyze for extraordinary circumstances and Inventoried Roadless Areas.

Even under the CE established in the Infrastructure bill, the Forest Service is required to consider and analyze for extraordinary circumstances that may make the use of a CE inappropriate. 16 U.S.C. § 6592b(c)4). Here, the Forest Service has not analyzed for any potential extraordinary circumstances, as required by the Congressional-approved statute.

An extraordinary circumstance exists related to the presence, and therefore the potential take, of ESA-listed whitebark pine. The Forest Service must analyze for potential adverse impacts to and take of whitebark pine from logging and prescribed fire.

Further, according the Forest Service's own maps, there is planned management activities, including mechanical thinning, within inventoried and likely uninventoried roadless areas bordering Eagle Cap Wilderness. Further, the Infrastructure bill prohibits the application of fuel break CEs "on Federal land on which the removal of vegetation is prohibited or restricted by Act of Congress, Presidential proclamation (including the applicable implementation plan, or regulation[.]" U.S.C. § 6592b(c)(3)(B). The language "prohibited or restricted" is broad, and although there are circumstances under which logging can occur within roadless areas under the Roadless Area Conservation Rule ("Roadless Rule" or "RACR") and therefore not entirely *prohibited*, there is no question that logging within roadless areas is severely *restricted* under the Roadless Rule. 66 Fed. Reg. 3273 (Jan. 12, 2001) ("(a) Timber may not be cut, sold, or removed in inventoried roadless areas of the National Forest System, except" under specific conditions identified in "paragraph (b) of this section."). Therefore, because the proposed CEs would authorize logging within inventoried roadless areas, reliance upon the CE established in the Infrastructure bill is misplaced and illegal.

Inventoried Roadless Areas are critical to fully protect from logging and roading now more than ever, given the vast logging and roading destruction of the National Forests' integrity and the break-down of the forest ecosystems due to past and current rampant logging at high intensity to low basal area retention at a landscape scale and on very short timber sale rotations of only up to about 30 years.

These timber sales have devastated the forest ecosystems just when protecting mature forest cover and increasing and retaining large trees into the future to increase carbon sequestration and carbon storage is more critical than ever before due to extreme, uncontrolled global warming. Global warming effects cause more intense and widespread wildfires, which need to be reduced by protecting natural forest carbon sinks, as well as phasing out fossil fuel use for the ecosystems to survive.

Both logging in the IRAs and on steep slopes 30% create significant environmental impacts, including erosion, potential landslides, sedimentation of downhill streams that could harm Threatened or Sensitive fish species such as Bull trout, and loss of critical wildlife security habitat in the midst of lower elevation habitat becoming unusable due to climate change effects. Most of the wildlife species that are far ranging and/or sensitive to human disturbance or vulnerable to poaching find sanctuary habitat in the Inventoried Roadless Areas and on steep slopes. These include Threatened listed Canada lynx, Threatened Wolverine, Sensitive Pacific fisher, and Pacific marten, which are also a Management Indicator species.

The Forest Service should not be taking advantage at the public's expense by using this Categorical Exclusion authority to get away with logging Inventoried Roadless Areas and steep slopes with no proper analysis in an EA or EIS and with no full NEPA process to ensure that the public is aware of the issues at stake and have in-depth, detailed analysis. The stated "needs" for the project could be met more effectively and more cost efficiently by simply using non-commercial small tree thinning, pruning lower limbs of trees next to major access roads, and prescribed burning in dry forest types, all within 100 feet of private property boundaries and within 50 feet on each side of major access roads. Commercial logging is not needed in IRAs and on steep slopes to reduce fire risk.

Aquatics comments

Please see BMBP's aquatics addendum for BMBP's inputs on the aquatic-related impacts of the proposed actions.

Thank you for your consideration of these comments,

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Blue Mountains Biodiversity Project