

Prairie Hills Audubon Society

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Todd Butler, District Ranger
Hell Canyon Ranger District, Black Hills National Forest
1019 North 5th Street, Custer, SD 57730
Submitted via the project comment portal; copy to Elizabeth Krueger,
elizabeth.krueger@usda.gov

Re: Comments on the Roby Forest Management Project Preliminary Environmental Assessment, Project #293810

Dear District Ranger Butler:

Prairie Hills Audubon Society (PHAS) submits these comments on the Roby Forest Management Project Preliminary Environmental Assessment (EA). PHAS is a volunteer conservation organization based in western South Dakota. For decades we have commented on Black Hills National Forest planning and projects, including the 1997 Forest Plan and the Phase I and Phase II amendments. Our members bird, hike and botanize in the Black Hills, including the dry canyon country along the Wyoming line where this project is proposed. PHAS is listed among the organizations consulted (EA p. 20).

Because the Forest Service is treating Roby as an emergency action, there is no alternatives analysis and no pre-decisional objection process (EA p. 1). Apart from a short scoping period in June and July, this comment period is therefore the public's only opportunity to be heard before a decision. We ask that each point be considered and answered in the decision record.

A note on the scope of these comments. Under USDA's revised NEPA procedures, the Preliminary EA is a short document, and most of the analysis has been placed in eleven separate supporting reports in the project folder. PHAS did not have time to read all of those reports within the 30-day comment period, alongside the EA itself. These comments therefore address what the Preliminary EA says and does not say. Where we note that the EA does not discuss an issue, we ask that the decision document explain whether and where the supporting analyses address it. The EA is the document the public is asked to comment on, and its conclusions should be supported within it, not only in reports few members of the public can review in the time allowed.

Summary of our main concerns

- **The Preliminary EA never mentions the Mountain Mahogany Shrubland Important Bird Area**, which lies within the project area, yet it proposes removing conifers from 4,698 acres of shrubland and prescribed burning on up to 46,073 acres. This IBA holds most of South Dakota's known breeding population of Virginia's Warbler, which SDGFP ranks as Imperiled and identifies as vulnerable to controlled burns.
- **The Fanny/Boles Research Natural Area would be thinned and burned before its management plan exists, which was due under the Forest Plan by about 2008.** The

EA ignores the Forest Plan's RNA standards, and its allowance of motorized vehicles in the RNA conflicts with one of them.

- **Wildlife effects are acknowledged but not analyzed.** Wildlife was not treated as a substantive issue, the migratory bird finding is unsupported, and the EA admits the project would reduce goshawk nesting habitat and could reduce breeding success.
- **Late-succession forest is far below Forest Plan objectives,** yet harvest is proposed on 823 acres designated as old growth and mature, moderately dense forest would move further from its objective.
- **The emergency framing does not fit the facts in the EA.** The decision would be made before cultural surveys and tribal consultation are complete, and it leaves treatment locations, additions and salvage to be decided later, out of public view.
- **The emergency 50 percent test, the fire benefits of regeneration logging, and CMAI are all asserted, not shown.** The Preliminary EA does not show the supporting analysis.
- **PHAS objects to the unlawful USDA NEPA procedures and to the use of "emergency" authority to strip alternatives and objection rights from this project.**
- **Road management is a missed opportunity** to restore unroaded, semi-primitive character in the IBA and RNA canyons.

1. The Mountain Mahogany Shrubland Important Bird Area is missing from the EA

National Audubon Society recognizes the Mountain Mahogany Shrubland Important Bird Area (IBA) in South Dakota (see <https://www.audubon.org/important-bird-areas>, South Dakota). Audubon's site description states:

"This IBA encompasses the majority of Mountain Mahogany shrubland found in South Dakota, primarily in Boles, Roby, Redbird, and Buck Horn Canyons. The dry slopes that support Mountain Mahogany-Skunkbrush shrubs with an open Ponderosa Pine canopy are attractive to a variety of western bird species that are rare or absent in the rest of the state."

The IBA includes, in their entirety, T2S R1E sections 31–33; T3S R1E sections 3–10, 15–21, 27–29 and 33–34; and T4S R1E section 3. That is 24 sections, roughly 15,000 acres, most of it National Forest System land on the Hell Canyon District. The canyons Audubon names are this project's namesake and its main travel routes (Boles Canyon Road, FSR 117; Redbird Canyon Road, FSR 376; EA p. 1). The Fanny/Boles RNA, established specifically to represent mountain mahogany and skunkbrush communities, lies within the same landscape (EA p. 24).

Audubon identifies the IBA's birds of concern:

"This area hosts most of the known breeding population of Virginia's Warbler in the state; this population is separated from the next nearest breeding population by more than 200 km (Swanson et al. 2000). This habitat also supports other rare species that prefer dry shrubland-open pine habitats such as the western race of Blue-gray Gnatcatcher. The 'white-winged' race of the Dark-eyed Junco, endemic to the Black Hills, is a common breeder in this IBA."

The EA does not mention the IBA, Virginia's Warbler, the Blue-gray Gnatcatcher, or the white-winged Junco. It does not analyze shrubland birds at all.

South Dakota lists these species, and mountain mahogany itself, as Species of Greatest Conservation Need

The South Dakota Game, Fish and Parks Department's 2026 Wildlife Action Plan (Appendix D, Species of Greatest Conservation Need) lists:

- **Virginia's Warbler**, state rank **S2 (Imperiled)**: "SD's isolated population is at the northeastern range extent. Breed primarily in dry canyons of western Custer County. Inhabits pine-juniper shrublands found on steep slopes with dense cover of mountain mahogany and skunkbrush sumac." The first conservation threat SDGFP lists is: **"Isolated population in South Dakota may be vulnerable to controlled burns."** The recommended action is to "periodically survey South Dakota's breeding distribution and inform resource agencies of the population's boundaries to encourage appropriate land management" (p. D-79).
- **White-winged Junco**, listed "as South Dakota's only endemic subspecies ... because the state represents a significant portion of this subspecies' range." The recommended action is to "provide native ecosystem diversity with historical disturbance regimes" (p. D-81).
- **Colorado birchleaf mountain mahogany** (*Cercocarpus montanus*), state rank **S3 (Vulnerable)**, a species that is "barely extending into the southern end of the Black Hills" and occurs "in chaparral habitats on limestone or limestone-derived soils." SDGFP calls for continued surveys of "the chaparral habitats in the Black Hills" (p. D-148).

Roby proposes prescribed burning across nearly the entire project area, which takes in the dry western Custer County canyons where this isolated warbler population breeds, and it proposes cutting in the mahogany shrublands. The Preliminary EA mentions none of these species. SDGFP is listed as consulted (EA p. 19), but the EA does not say whether SDGFP was asked about the warbler's breeding distribution. **PHAS requests** that the Forest Service obtain SDGFP's current breeding-distribution information for Virginia's Warbler, map it against burn blocks and shrubland treatments, and exclude occupied habitat from burning and conifer removal unless SDGFP concurs that the treatment is compatible.

The shrubland treatment could remove the very habitat feature that defines the IBA

The habitat Audubon describes is mountain mahogany–skunkbrush shrubland **with an open ponderosa pine canopy**. Audubon lists among the IBA's conservation issues that "Pine Bark beetle infestations, and the resulting logging, could wipe out the Ponderosa Pine overstory favored by Virginia's Warblers and other bird species for song posts and nesting."

The EA proposes to "remove encroaching conifers from shrubland" on 4,698 acres, and says both commercial and non-commercial sized trees may be removed (EA pp. 7, 9). It does not define what counts as "encroaching," how much pine would be retained, or how the open pine canopy that these birds use would be distinguished from encroachment. Commercial-size trees are by definition not recent encroachers. Without a retention standard, this treatment could convert open pine–shrubland into shrubland without the pine overstory, which is the outcome Audubon warns against.

Prescribed fire, mastication and grazing during nesting season

Broadcast burning is proposed on up to 46,073 acres, nearly the whole project area, with "exact locations ... determined at a later date" (EA p. 12). Virginia's Warbler nests on the ground, typically concealed in leaf litter beneath shrubs on slopes. Spring burning, mastication or cutting in the breeding season would destroy nests and young directly, and SDGFP has already identified controlled burns as a threat to this population. The EA contains no seasonal restriction for any bird species.

Audubon also identifies livestock overgrazing as a serious threat: "Mountain Mahogany and other shrubs are stunted, pruned, and crushed by cattle." The EA proposes short-duration targeted grazing to reinforce burn control lines (EA p. 12). Concentrating cattle in mahogany shrubland would aggravate the threat the IBA description identifies.

The migratory bird finding is unsupported

The EA concludes, without analysis, that "the proposed action would not have measurable negative effects on migratory bird populations" (EA p. 29, EO 13186). A small, isolated breeding population like South Dakota's Virginia's Warblers is exactly where local habitat loss can matter to the population. The Migratory Bird Treaty Act and EO 13186 require a reasoned look, not a conclusion.

PHAS requests that the Forest Service:

1. Disclose the IBA in the EA and decision; map the IBA sections against treatment units; and analyze effects on Virginia's Warbler, the western Blue-gray Gnatcatcher, the white-winged Dark-eyed Junco and other shrubland and open-pine birds.
2. Within the IBA, limit "conifer removal from shrubland" to small, young pine and juniper; prohibit commercial removal; and retain all mature ponderosa pine that forms the open overstory.
3. Prohibit burning, mastication, cutting and heavy equipment in IBA shrublands during the breeding season, May 1 through August 15.
4. Exclude targeted livestock grazing from mountain mahogany shrubland.
5. Conduct breeding-bird surveys in IBA units before treatment, and monitor afterward, in coordination with National Audubon, the South Dakota Game, Fish and Parks Department and local birders.

2. Fanny/Boles Research Natural Area: the Forest Plan's standards control

The Fanny/Boles RNA (313 acres) was selected in the 2005 Phase II Amendment Record of Decision to represent mountain mahogany and skunkbrush plant communities (EA p. 24). This decision would authorize manual thinning and prescribed fire inside the RNA, and fuel breaks along its edges. The EA states that "before implementing any approved management activity," a botanist "would work with the RNA coordinator and Forest Service Research Station personnel to develop a site-specific RNA management plan" (EA pp. 13–14).

The RNA is governed by Management Area 2.2 of the Forest Plan (Phase II Amendment, pp. III-15 to III-18). The Preliminary EA does not mention MA 2.2 or any of its standards and

guidelines. Its only compliance finding for the RNA cites the Organic Administration Act of 1897 (EA p. 28, Table 16). Under NFMA, 16 U.S.C. § 1604(i), the project must be consistent with the Forest Plan. A project cannot depart from a Forest Plan **standard** without a Plan amendment. Where it departs from a **guideline**, the NEPA document must explain why. The EA does neither. The MA 2.2 direction that bears on this project includes:

- **Objective 2.2-402:** "Prepare establishment records and management plans following Forest Service manual direction for those areas specified for designation as research natural areas within 3 years of the Phase II Amendment Decision." That deadline passed around 2008. Eighteen years later, the EA proposes to write the Fanny/Boles management plan only after treatments are approved.
- **Standard 2.2-1001:** "Conserve the natural condition of the ecosystem, its processes, and any species or values for which the research natural area was established."
- **Standard 2.2-3201:** "Allow habitat manipulation only for the protection of threatened, endangered, and sensitive species, or where it is necessary to perpetuate or restore natural conditions." The EA asserts that conditions are "degraded" by conifer density and juniper encroachment (EA p. 24), but it presents no data showing that manipulation is *necessary*: no survey, no measure of encroachment, and no comparison to the reference condition the RNA was chosen to represent.
- **Standard 2.2-4102:** prescribed fire may be used "when necessary to restore a natural fire regime, to achieve resource management objectives, or to reduce unnatural fuel loading." We recognize that burning can be consistent with the Plan. But the necessity, objectives, and prescription must be shown, and in an RNA the Plan expects that to come from the establishment record and management plan.
- **MA 2.2 vegetation management direction:** vegetation management "is used only as needed to conserve the biological characteristics for which the RNA was established using methods with the least impact on desired RNA ecological processes." The EA does not explain why thinning, rather than fire alone or no action, is the least-impact method.
- **Standard 2.2-9101:** "Prohibit motorized and mechanized use except when it provides necessary access for research or emergency purposes." The EA instead says motorized vehicles "would not be used in the RNA ... without prior approval by a botanist" (EA p. 13). Allowing motorized use with a botanist's approval is not the same as prohibiting it, and the exceptions in the standard do not include vegetation treatment. This conflicts with a Plan standard and cannot be authorized without a Plan amendment.
- **Standard 2.2-9102:** "Close or obliterate existing roads." The EA lists "road closure" as a means of restoring the RNA (EA p. 2) but does not say which roads in or into the RNA remain open, or commit to obliterating them. **PHAS requests** that all roads and routes in the RNA be closed and obliterated as the standard requires.
- **Standard 2.2-5101:** "The recreation opportunity spectrum class is 'semi-primitive, non-motorized.'" Management of the surrounding canyons should support that class rather than surround the RNA with logging roads and fuel breaks (see Section 7).
- **Standard 2.2-2501:** grazing use may not be increased "pending the research natural area (RNA) management plan," and "grazing suitability and desired vegetative conditions will

be determined by the RNA management plan." The EA's proposed targeted livestock grazing along burn-block edges (EA p. 12) must be excluded from the RNA.

- **Guideline 2.2-5601:** the scenic integrity objective is high. Fuel breaks on the RNA boundary should be designed to meet it, or the EA must explain any departure.

Forest Service Manual direction (FSM 4063) is to the same effect: RNA uses are limited to research, study, observation, monitoring and education that do not modify the conditions for which the RNA was established, and management prescriptions belong in an approved plan, with Research Station Director approval. The Phase II Record of Decision likewise provides that the RNA is to be managed under MA 2.2 "upon establishment record approval," and that establishment records "will outline specific management direction." A 2011 Fanny/Boles RNA establishment record is posted in the project's supporting documentation, but the Preliminary EA never cites it, describes the management direction it contains, or shows that the proposed treatments are consistent with it. The record came about three years after the Forest Plan's deadline, and fifteen years later there is still no RNA management plan.

The history matters here. The Phase II Amendment, and with it the designation of RNAs such as Fanny/Boles, grew out of the September 2000 Settlement Agreement that resolved appeals of the 1997 Forest Plan and litigation over the Veteran salvage sale in the Beaver Park Roadless Area. In that settlement the Forest agreed to analyze candidate RNAs and complete their designation. PHAS was an appellant of the 1997 Forest Plan (Appeal #97-13-00-0120), though not a party to the Veteran sale litigation or its settlement. Authorizing manipulation of a settlement-era RNA ahead of its own management plan undermines the commitments that produced it.

PHAS requests that the Forest Service: (a) explain in the decision how each RNA treatment is consistent with the management direction in the 2011 establishment record, and confirm that the record was approved by the Regional Forester and Station Director as FSM 4063 requires; (b) remove RNA treatments from this decision, or at minimum defer them until the establishment record and management plan are approved by the Rocky Mountain Research Station and made available for public review; (c) remove the provision allowing motorized vehicles in the RNA with botanist approval. Any Plan amendment to allow it must be disclosed and given the objection opportunity the regulations require: the project objection process of 36 C.F.R. Part 218 for an amendment that applies only to this project, or the plan-level objection process of 36 C.F.R. Part 219, Subpart B, for an amendment that applies more broadly (36 C.F.R. § 219.59(b)). The Forest Service may not amend the Forest Plan inside an emergency action that it claims is exempt from objection; (d) close and obliterate all roads in the RNA; (e) exclude targeted grazing from the RNA; and (f) document consistency with each MA 2.2 standard and explain any departure from MA 2.2 guidelines.

3. Wildlife: acknowledged harm, but no analysis

Only two "substantive issues" were carried forward, soils and weeds (EA p. 20). Wildlife was not one of them, although the EA itself reaches "may adversely impact individuals" determinations for fifteen sensitive species, including black-backed woodpecker, flammulated owl, Lewis's woodpecker, grasshopper sparrow, northern harrier and American goshawk (EA pp. 33–34).

American goshawk

The EA concedes that "outside of the known, existing nest area stands, the proposed action would further decrease potential nesting habitat and retain few stands that could provide near-future preferred habitat in the event of loss of existing habitat. This could result in displacement of goshawks or reduced breeding success" (EA p. 34). Forest-wide, mature moderately dense forest (structural stage 4B), the stage goshawks use for nesting, would decline by another 3,123 acres in MA 5.1 and 1,509 acres in MA 5.4, moving further from Forest Plan objectives (EA p. 32, Table 22).

The goshawk has been designated both a management indicator species and a Region 2 sensitive species on the Black Hills. Research funded by the South Dakota Game, Fish and Parks Department (Bruggeman et al. 2023, and the accompanying final technical report to SDGFP) concluded that "through a combination of timber harvest practices and unpredictable natural disturbances ... the BHNF has lost much of its high-quality Goshawk nesting habitat over the past 30 years," that the remaining habitat "has become increasingly fragmented," and that "the BHNF is moving away from management objectives established to ensure Goshawk population viability." The Preliminary EA does not cite this work or disclose the forest-wide trend in goshawk habitat or occupancy. A "not likely to result in a loss of viability" determination cannot reasonably be made without it.

SDGFP's 2026 Wildlife Action Plan ranks the American goshawk **S2 (Imperiled)** in South Dakota and lists as its first conservation threat "forestry practices that remove older growth habitats." It notes that in the Black Hills the birds "select mature stands with a closed canopy, tall trees, and open understory" (p. D-35).

PHAS requests that the Forest Service identify and retain replacement nest stands and post-fledging family areas around each of the four active territories, and defer commercial thinning of 4B and 4C stands in those areas.

Woodpeckers and owls

SDGFP ranks both the black-backed woodpecker and Lewis's woodpecker **S2 (Imperiled)** in South Dakota. For the black-backed woodpecker, SDGFP lists as threats "timber harvest, removal of fire- or insect-affected trees ... and conversion of mature and older growth forests to young stands," and notes that Black Hills abundance "was positively related to % cover of beetle-killed trees and wild fires in the previous 5 years" (p. D-41). Lewis's woodpecker "prefers fire-maintained old-growth ponderosa pine" and nests in "large snags" (p. D-61). Salvage logging after fire or beetle outbreaks, and conversion of mature stands to young ones, are exactly what the Roby decision would authorize.

Research in the Black Hills shows why salvage after wildfire matters most. Rota et al. (2014) found that black-backed woodpecker survival and nest success "were highest in habitat created by summer wildfire, intermediate in MPB infestations, and lowest in habitat created by fall prescribed fire." Populations grew only in summer wildfire habitat; they were declining in both prescribed-fire and beetle-killed forest. Beetle kill and prescribed burns can slow the species' decline, but only recently burned wildfire areas sustain it. The authors stress "the need to maintain early post-wildfire habitat across the landscape." **PHAS requests** that the decision prohibit salvage logging in areas burned by wildfire during the project's 15-year life, or at

minimum retain large, unsalvaged patches of burned forest, and not treat the project's prescribed burning as a substitute for wildfire habitat.

The Black Hills population is small and isolated. A 2012 petition by the John Muir Project, Center for Biological Diversity, Blue Mountains Biodiversity Project and Biodiversity Conservation Alliance sought ESA listing for it. The petition cited genetic research (Pierson et al. 2010) showing the Black Hills birds are genetically distinct from the boreal population, and estimated about 400 pairs. The Fish and Wildlife Service found listing "not warranted" on October 5, 2017 (82 Fed. Reg. 46,618; Docket No. FWS-R8-ES-2013-0034). Without ESA protection, the population's future depends largely on how the Black Hills National Forest manages post-wildfire habitat. Routine salvage logging of wildfire areas under projects like Roby would erode the very habitat that keeps it off the list.

Black-backed woodpeckers need more than fire. They need fire, or beetle kill, in **dense stands of larger trees**. In a Black Hills study of burned forest (Vierling et al. 2008), nest trees averaged 25.7 cm (about 10 inches) in diameter, against 19.8 cm at random sites. Nests were placed deep inside burned areas, away from unburned edges, in places with more intense fire and about twice the snag density of random sites. And 95 percent of nests were where pre-fire canopy cover was 40 percent or more. In Black Hills beetle-killed forest, nest areas averaged about 268 snags per hectare, roughly 109 per acre (Bonnot et al. 2009). Larger, thick-barked snags supply more of the wood-boring beetle larvae the birds feed on, and nest predation, the leading cause of nest failure in the Black Hills, is lower deep inside large, intensely burned patches. Thinning dense mature stands to 40–60 square feet of basal area, as Roby proposes on 5,342 acres (EA p. 8), and converting mature moderately dense forest (4B) to open stands removes the future habitat these birds would need after the next fire or beetle outbreak. **PHAS requests** that the Forest Service retain substantial blocks of dense, mature forest (4B and 4C) untreated across the project area. (Studies as summarized in the 2012 ESA listing petition.)

Black-backed woodpeckers depend on recently burned and beetle-killed forest. The EA authorizes sanitation and salvage logging after any future disturbance anywhere in the project area for 15 years (EA p. 9), and the Preliminary EA does not discuss what that would mean for this species. Lewis's woodpecker and flammulated owl depend on large old pine and snags, which overstory removal (960 acres) and shelterwood cuts (over 3,100 acres) remove. **PHAS requests** retention standards for snags, large live trees and burned patches, and no salvage in recent burns or beetle patches without project-specific wildlife review and public notice.

Northern long-eared bat and "emergency" consultation

The project is "likely to adversely affect" the endangered northern long-eared bat through harvest of roost trees during the active season, alteration of roost areas and disruption of hibernation (EA p. 26). The Fish and Wildlife Service letter in Appendix C1 shows the Forest Service requested *emergency* Section 7 consultation on the basis of Executive Order 14225, "Immediate Expansion of American Timber Production." The emergency consultation regulation, 50 C.F.R. § 402.05, applies to "acts of God, disasters, casualties, national defense or security emergencies, etc." A policy directive to increase timber output is none of these.

Wildlife design criterion 4 requires implementation of measures "specified in the project Biological Opinion for listed bat species (Appendix C)" (EA p. 16). Appendix C contains a biological assessment and correspondence, not a Biological Opinion. **PHAS requests** that the

Forest Service complete normal formal consultation, and make the Biological Opinion and its terms and conditions available to the public, before any decision is signed.

4. Old growth and late-succession forest

Late-succession forest (structural stage 5) is 0.3 percent of MA 5.1 and 0.6 percent of MA 5.4, against a Forest Plan objective of 5 percent in each (EA p. 23, Table 8). The project would not increase it at all (EA p. 32). Yet commercial harvest is proposed on 823 acres that are unsuitable for timber production *because they are designated old growth* (EA p. 31, Table 20), plus thinning in 522 acres of stands designated as structural stage 5.

The EA says most designated stage 5 stands "do not meet the functioning definition" of late succession (EA p. 23). The way to get functioning old forest is to let the oldest and largest trees keep growing. Removing commercial timber from the few designated old-growth stands in a landscape this far below objective is not restoration.

We note that a Forest Service study in the Black Hills, Negrón et al. (2017), found that thinned stands lost far fewer trees to mountain pine beetle than unthinned stands. Even after the outbreak, though, unthinned stands still held roughly twice the live basal area and three times the live trees per acre of thinned stands (63.0 vs. 30.3 ft²/acre; 221.9 vs. 66.9 trees/acre). Thinning reduces beetle mortality largely because it removes the trees first. That trade-off should be disclosed honestly, particularly where the EA itself rates 70 percent of pine acres in the project area at medium to low beetle risk (EA p. 22).

The Forest's own 2022 Forest Plan Revision Assessment for timber recognized the need to "reserve surplus HSS4B and HSS4C stands to support promotion of late successional forest and meet changing wildlife habitat management strategies," and found that harvest levels from 1997 to 2021 were not sustainable: inventory in the 5.0–14.9 inch diameter classes fell an estimated 32–42 percent (citing Graham et al. 2021, RMRS-GTR-422). Roby nonetheless moves 4B further below objective and pushes mature open forest (4A, already 44 percent of MA 5.1 against a 25 percent objective) further above it (EA p. 32). Mature 4A stands left to grow are the quickest path to the late-succession forest the landscape lacks.

Sustained yield. The Forest Service's own Rocky Mountain Research Station found, in General Technical Report RMRS-GTR-422 (Graham et al., February 2021), that the Black Hills' allowable sale quantity of 181,000 CCF per year is not sustainable. The combination of mountain pine beetle mortality and harvest had produced a negative net growth increment, and harvest levels of roughly 72,400 to 90,500 CCF per year "appear to be sustainable" under favorable mortality conditions. Even that range is an upper bound: the authors concluded that 72,400 to 90,500 CCF per year "appear to meet sustainability when only the available timber resource within the suitable timberlands is considered without including other resource needs" (Graham et al. 2021, p. 44), such as goshawk habitat, old growth, and the IBA and RNA values discussed above. When a request was made to withdraw the report under the Data Quality Act, the Forest Service review panel "found no compelling evidence to support the request to retract (withdraw) GTR-422." Both PHAS and the Norbeck Society have raised this issue for years. The Forest's own sale record shows how far the 181,000 CCF allowable sale quantity is from reality. Timber sold peaked at about 253,000 CCF in 2008. It fell to 112,874 CCF in fiscal year 2022 and to just under 100,000 CCF in 2023, a 20-year low. The Forest planned to sell only 63,000 CCF in fiscal year 2024, and about 84,000 CCF (8.4 million cubic feet) was sold in 2025, as reported by South

Dakota Searchlight. Even at the 2008 peak, harvest was running down the standing inventory that GTR-422 later measured. Yet the ASQ has never been amended. The decision should report the fiscal year 2026 volume sold once it is tallied. The National Forest Management Act limits timber sales to a quantity that can be removed in perpetuity on a sustained-yield basis (16 U.S.C. § 1611). Yet the Roby EA, which names timber production as a purpose under Executive Order 14225, does not state how much volume Roby would produce, or how that volume, added to other current and planned sales, compares with a sustainable Forest-wide level. **PHAS requests** that the EA disclose the projected volume (CCF) from Roby and the cumulative Forest-wide harvest it contributes to, and explain how the project is consistent with sustained yield in light of GTR-422.

The legal standard is clear. NFMA requires that the Secretary "limit the sale of timber from each national forest to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained-yield basis" (16 U.S.C. § 1611(a)). Any planned departure from that level "must be consistent with the multiple-use management objectives of the land management plan," and "plans for variations in the allowable sale quantity must be made with public participation" through the plan-revision procedures of § 1604(d). Forest plans must set harvest levels in light of "multiple use" and "sustained yield" as the Multiple-Use Sustained-Yield Act defines them (16 U.S.C. § 1604(e)(2)). That Act defines sustained yield as "the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land" (16 U.S.C. § 531(b)). The general rule under NFMA is non-declining even flow: no more timber may be sold now than can be sold at any time in the future, unless a departure is adopted through the planning process to meet overall multiple-use objectives (see FSH 2409.13, ch. 30). A Secretarial memorandum or executive order calling for more timber is not such a departure. The Black Hills has not published an annual monitoring report since fiscal years 2013–14. The Norbeck Society has made this same request on other recent Black Hills projects. **PHAS requests** that the Roby analysis disclose, in a chart, the annual timber volume offered and sold on the Black Hills National Forest each year since fiscal year 2006, alongside the Plan's ASQ and the sustainable levels identified in GTR-422.

PHAS has raised this issue with the Forest Service for years. PHAS joined the Norbeck Society, the Center for Biological Diversity, the Oglala Sioux Tribe and other groups on letters to the Regional Forester dated February 16, 2021 and January 31, 2023, and to the Forest Supervisor dated June 16, 2021, asking that Black Hills logging be brought within sustained yield. A July 12, 2023 letter to the Under Secretary and the Chief, signed by retired Black Hills National Forest professionals, made the same case. Those signers included the Forest's former Natural Resource Staff Officer, its former Forest Silviculturist, and a former Hell Canyon District Ranger, the district where Roby is proposed. Those letters document that:

- Forest Inventory and Analysis data showed the net growth-to-removals ratio for ponderosa pine on the Forest was already 0.88 in 2011 (Resource Bulletin NRS-83), below the 1.0 needed for sustainability, and that it kept falling in the FIA reports for 2013 through 2017.
- The Forest's own Silviculturist assessed a sustainable sawtimber harvest of 64,000 to 88,000 CCF per year in January 2021, as reported in an August 19, 2021 Forest Service

briefing paper. Neither that range nor GTR-422's accounts for habitat structural stage objectives, steep slopes, CMAI, or other Forest Plan constraints.

- Timber cut was 172,600 CCF in fiscal year 2021 and 123,600 CCF in fiscal year 2022 (Forest Service Cut and Sold reports), well above every sustainable estimate.

These letters asked the Forest to reduce timber sales to no more than 64,000 CCF per year until a revised Forest Plan is in place. They also explained why GTR-422 is significant new information that requires supplemental NEPA analysis for ongoing logging projects. PHAS incorporates the four letters by reference and asks that they be included in the Roby project record. Copies are available from PHAS on request.

Culmination of mean annual increment. NFMA generally requires that stands reach culmination of mean annual increment (CMAI) before regeneration harvest. The EA states that "due to limited recent stand inventory data, stand age is used as a proxy; all stands 120 years or older are assumed to have reached CMAI," and that "field verification confirmed stand age" (EA p. 26). The Preliminary EA does not disclose the stand ages, how many stands were verified, or how. On the nearby Benchmark project, the Norbeck Society's retired foresters sampled stands prescribed for final harvest and found the larger trees to be 83 to 91 years old. **PHAS requests** that the Forest Service disclose the stand-age data and field verification for each overstory removal, seed cut and group shelterwood unit (more than 4,100 acres).

PHAS requests that no commercial harvest occur in designated old-growth or structural stage 5 stands; that any treatment there be limited to small-diameter understory thinning and prescribed fire; and that the largest, oldest trees be retained across the project area.

5. The emergency process, the missing alternatives, and a decision made before the work is done

The EA's own numbers do not describe an emergency. About 4 percent of pine acres are rated very high fire hazard; after the project, 3 percent would be (EA p. 30, Table 19). Seventy percent of pine acres are at medium to low risk of mountain pine beetle (EA p. 22). Implementation would run 15 years, to 2042 (EA p. 19). Timber production is a stated purpose of the project (EA p. 2), and 461 acres previously unsuitable because of steep topography would be logged because "advanced logging techniques would make harvest feasible in areas previously inaccessible or uneconomical" (EA p. 31). The Biological Assessment states only that "more than 50%" of treatment areas lie within the designated emergency situation areas (BA, Introduction). The decision should explain the authority for the remainder.

Secretary's Memorandum 1078-006 itself states that, to use this authority, "at least 50 percent of the treatment areas supporting this authorized emergency action must be within the designated areas." The designated areas are lands rated very high or high wildfire risk, or lands designated under Section 602 of the Healthy Forests Restoration Act for declining forest health. The memo also states that where it is inconsistent with federal law or regulation, "the laws or regulations will control." A document titled "Roby ESD Rationale" is posted in the project folder, but the EA does not summarize it, and PHAS could not review it in the time available. To the extent it does not already do so, **PHAS requests** a map overlaying the very high and high wildfire-risk areas (and any Section 602 areas) on the treatment units, with an acreage breakdown, so the public can

see whether the 50 percent test is met. The Forest Service should also say which designation it relies on.

This landscape has been treated repeatedly. Seven timber sales covering 16,052 acres were awarded in the project area between 2008 and 2022, and five large fires since 2000 burned 10,772 acres in it (EA pp. 21–22, Tables 6–7). Ongoing management needs on ground that was logged this recently are a matter of ordinary forest management, not an emergency. We also question whether the vegetation database (FSVeg) behind the structural-stage and fire-hazard tables has been updated to reflect these past treatments. The Norbeck Society's field checks on the Benchmark project found 20 to 50 percent of stands mistyped.

Will the logging actually reduce fire risk?

About 4,100 acres of overstory removal, group shelterwood and seed cuts are proposed (EA p. 7). Removing the overstory lowers canopy base height, and the dense pine regeneration that follows is highly receptive to fire for years (in the Black Hills, seedling- and sapling-sized ponderosa pine are "susceptible to low-intensity surface fires"; Battaglia et al. 2009, as cited in GTR-422). Opening stands also makes them warmer, drier and windier at ground level. The Forest Service's own GTR-422 notes that "fire suppression, along with timber harvesting activities, altered the structures of the forests by removing the large diameter tree component, increasing small tree densities, and decreasing the amount of open-canopied forests" (Graham et al. 2021, p. 13). The Preliminary EA claims fire-hazard benefits without discussing these offsetting effects. The proposal to burn up to 46,073 acres, nearly the entire project area, is not realistic given the Forest's record of prescribed-fire and precommercial-thinning accomplishments. **PHAS requests** that the EA give a realistic, prioritized estimate of burning and small-tree thinning that will actually be funded and done, beginning near homes and along Highway 16. Commercial treatments justified by fire should not proceed where the follow-up fuels work is unlikely to be completed.

PHAS has made this point since the Jasper fire. Our October 2002 newsletter observed that weather (wind, heat and drought) is the main driver of fire behavior. Logging opens the canopy and leaves the stand hotter, drier and windier, often with slash on the ground. It also deliberately produces a crop of seedlings and saplings whose flammable needles sit close to the ground, a ladder into the crowns. By contrast, old "yellow-bark" ponderosa pines have thick, fire-resistant bark and high crowns, and historically low-intensity ground fires swept past them. In our observation at the time, much of the Jasper fire, which burned 8,106 acres of this project area (EA p. 21, Table 6), burned through medium-density sapling and pole stands (structural stage 3B), not old, closed-canopy forest.

That creates a self-perpetuating cycle. Large trees are cut to pay for the next round of small-tree thinning, the canopy is opened again, more small trees sprout, and the fire-resistant old pines are replaced over time by younger, shorter, more flammable trees. You cannot fireproof a forest. If fire risk is the goal, the Forest Service should retain the large old pines, reduce the rate of seed cuts and other regeneration treatments, and keep regeneration cuts away from homes. Near homes it should rely on thinning of small trees and fuel breaks, and it should show how it will pay to thin the dense regrowth that every regeneration cut produces. **PHAS requests** that the EA map the 492 acres of shelterwood seed cut and 2,654 acres of group shelterwood relative to the 43 residences in and near the project area, and drop any regeneration cut within the home-protection zone.

Roads matter too. The EA itself states that high open road density "is associated with an increased incidence of human-caused wildfire" (EA p. 3), and most wildfires on National Forests are human-caused. Yet the project would still leave 102 to 108 miles of road open to motor vehicles and would build or reconstruct more than 20 miles of road (EA pp. 8, 36). Closing more roads, especially in the IBA and RNA canyons, is among the cheapest fire-prevention measures available, and it would serve wildlife and semi-primitive recreation as well (see Section 7).

Supporting analyses and monitoring

The EA relies on eleven supporting specialist analyses (silviculture, botany and the RNA, wildlife, fire and fuels, hydrology and soils, invasive plants, and heritage), posted separately in the project's online document folder (EA pp. 26–37). The EA itself summarizes most of them in a sentence or two, so the analysis behind its conclusions, including the wildlife and RNA determinations, is not in the document the public was asked to comment on. **PHAS requests** that the decision document explain how the specialists' findings support each conclusion questioned in these comments.

The most recent Black Hills monitoring and evaluation report the EA cites covers fiscal years 2013–14 (EA Appendix B, USDA Forest Service 2015). Promised monitoring is only as good as its funding and reporting. **PHAS requests** that the decision commit to specific monitoring of bird response in the IBA, RNA condition, goshawk territories, weeds and soils, with results posted publicly.

Big game winter range

Forty-one percent of the project area is MA 5.4, big game winter range (EA p. 23). The EA asserts that burning would "improve big game winter range" but does not discuss winter range: thermal and hiding cover, road and logging disturbance in winter, or the loss of 1,509 acres of 4B in MA 5.4 (EA p. 32). **PHAS requests** that this analysis be done and that winter logging and hauling in MA 5.4 be limited.

The emergency authority allows the agency to analyze only the proposed action and no action. It does not prevent the Forest Service from modifying the proposal in response to comments. **PHAS requests** that the Forest Service adopt a modified proposed action that concentrates fuels work around the roughly 43 residences in and near the project area, along U.S. Highway 16 and the main roads, and along ownership boundaries; and that defers commercial harvest in the IBA, the RNA, designated old growth, goshawk territories and steep-slope unsuitable lands.

Meaningful consideration of comments

The comment period closes October 5. The Biological Assessment states that the FONSI "is expected to be signed October 30, 2026," and the cover letter to the Fish and Wildlife Service states that the project "is expected to commence on November 2, 2026" (Appendix C2–C3). A schedule fixed before comments are received raises a fair question whether comments can change anything. The project webpage, by contrast, lists an expected decision date of June 2027. PHAS asks the Forest Service to clarify which schedule is correct. We ask that the decision document respond to each substantive comment.

Surveys and consultation not complete

Cultural resource inventory and Section 106 consultation are complete only for the northern 18,219 acres; inventory for the rest of the project area "is in progress," and tribal consultation "is ongoing" with three Tribes that responded (EA pp. 25, 27). The FONSI cannot reasonably find no significant impact on resources that have not yet been identified. The Black Hills are sacred to the Lakota and other Tribes. **PHAS requests** that no decision be signed for the southern portion of the project until inventory and consultation are finished and their results disclosed.

A decision that leaves the specifics for later

The EA allows "additional areas ... [to] be added or treatment prescriptions adjusted during layout" (EA p. 9), allows sanitation and salvage after any future disturbance (EA p. 9), and defers burn block locations and riparian work locations "to a later date" (EA pp. 12–13). Combined with a 15-year implementation period, this means much of what will actually happen on the ground will never be seen by the public before it happens. **PHAS requests** public notice, with maps, before any unit is added, any prescription is changed, or any salvage sale is offered, and publication of the final unit maps and burn plans.

6. Objection to the unlawful NEPA procedures governing this review

The Forest Service is conducting its NEPA review of the Roby Forest Management Project (Hell Canyon Ranger District, Black Hills National Forest) under the U.S. Department of Agriculture's revised NEPA procedures. These were adopted first as an Interim Final Rule issued without prior notice and comment, 90 Fed. Reg. 29,632 (July 3, 2025) (Docket No. USDA-2025-0008), and then, with minor changes, as a final rule effective April 3, 2026, 91 Fed. Reg. 17,062 (Apr. 3, 2026). That rulemaking rescinded the Forest Service's NEPA regulations at 36 C.F.R. Part 220 in full. It made all solicitation of public comment discretionary (7 C.F.R. § 1b.7(d)), and it eliminated the requirement of former 36 C.F.R. § 220.4(e)(1) that the Forest Service conduct public scoping for all proposed actions, including EAs.

PHAS believes these revised procedures violate the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., and the Administrative Procedure Act, 5 U.S.C. §§ 553, 706(2). They are the subject of pending federal litigation: *Center for Biological Diversity and Sierra Club v. U.S. Department of Agriculture*, No. 3:26-cv-00866 (N.D. Cal., filed Jan. 28, 2026). PHAS incorporates by reference the Complaint in that action (https://biologicaldiversity.org/programs/environmental_health/pdfs/USDA-IFR-Complaint.pdf) and adopts its allegations and arguments as PHAS's position on the lawfulness of the procedures governing this review. PHAS also incorporates by reference the comments of Earthjustice on the Interim Final Rule (Aug. 4, 2025, Docket No. USDA-2025-0008, <https://earthjustice.org/document/nepa-ifr-comments-usda>).

The main points of that Complaint, which PHAS adopts, are these:

- The rule was made immediately effective without advance notice or opportunity for comment, in violation of 5 U.S.C. § 553(b) and (c), and none of the exceptions USDA invoked lawfully applies.

- USDA gave no reasoned explanation for abandoning public participation requirements in place, largely unchanged, since the 1970s, which makes the rule arbitrary and capricious under 5 U.S.C. § 706(2).
- Eliminating public participation is contrary to NEPA's mandate that agencies use "all practicable means," in cooperation with the public, to fulfill NEPA's purposes, 42 U.S.C. §§ 4331(a)–(b), 4332(2)(B).
- The rule is inconsistent with Executive Order 11514 § 2(b), which remains in effect.
- Congress has repeatedly legislated on the settled premise that environmental documents are published for public comment.

USDA's April 2026 final rule does not cure these defects. An agency cannot validate a rule adopted in violation of section 553 by accepting comments only after the rule has taken effect.

How these procedures were applied to Roby

The Forest Service released a four-page Roby project description dated June 2026, with comments due July 15, 2026, through the project website. PHAS received it by email from the Hell Canyon District on the afternoon of June 26, 2026, which left 19 days to comment on a 46,844-acre, 15-year project during the height of the summer field season. PHAS was unable to prepare comments in that window. The EA does not mention this comment period, summarize the comments received, or explain how they changed the proposal. The 26 responses to the early notification are posted in the project's online folder (see EA p. 20, Table 5), but the EA does not say what issues they raised or how the Forest Service responded. **PHAS requests** that the decision document respond to the issues raised in those July comments. The EA itself states that for emergency actions "the duration and format of the public comment period is not prescribed" (EA p. 2). PHAS objects for the record that this notice and comment opportunity is inadequate for meaningful public participation on a project of this size.

The proposal also **grew after that July comment period**. The June description proposed commercial harvest on 10,013 acres plus mixed commercial/non-commercial treatments on "an additional 19,885 acres." The EA proposes mixed treatments on 29,382 acres (EA p. 7, Table 3), an increase of roughly 9,500 acres that the public never saw before this comment period. The June description itself acknowledged that "mountain mahogany shrublands are common in the southwestern part of the project area," yet the Preliminary EA still does not discuss them as bird habitat or mention the Important Bird Area.

PHAS also objects to the use of the Section 40807 emergency authority of the Infrastructure Investment and Jobs Act to eliminate alternatives and the predecisional objection process for this project. Congress created the predecisional objection process for projects documented in an EA or EIS (Consolidated Appropriations Act, 2012, § 428, Pub. L. 112-74), and objection is the public's gateway to administrative and judicial review. Section 40807 is a narrow exception for genuine emergencies. A blanket determination covering 112.6 million acres of National Forest System land (EA p. 1), applied to a project whose stated purposes include timber production and whose implementation runs 15 years, stretches "emergency" past its meaning. PHAS asks that the Forest Service withdraw the emergency designation for Roby and proceed under the ordinary EA process with the Part 218 objection opportunity. If it does not, PHAS asks it to explain in the decision record how this project meets the statutory definition of an emergency.

PHAS submits these comments under protest of the unlawfully truncated procedures and expressly reserves all rights. Should the court in *Center for Biological Diversity v. USDA* vacate the challenged rule in whole or in part, PHAS expects the Forest Service to re-conduct any public participation steps for this project that were omitted or curtailed. PHAS does not concede that the emergency determination, the omission of the objection process, or the use of emergency ESA consultation is lawful for this project, and reserves the right to challenge any decision issued in reliance on them.

7. Roads, unroaded character, and semi-primitive recreation

The EA would reduce roads open to public motor vehicles only from about 118 miles to 102–108 miles (EA p. 36). It would also build 0.52 mile of new permanent road "to allow long-term access into an area with no current legal access" (EA p. 14). The EA does not say where this road is or what that area is like.

The steep, dry canyon country of Boles, Redbird and Roby canyons, with the RNA and the IBA, is some of the least developed land on this part of the Forest. PHAS members who have walked this country recall that the roads shown on older maps were extremely primitive. With targeted closures, the agency could restore a meaningful block of semi-primitive non-motorized (SPNM) recreation opportunity here, which would also improve security for wildlife and reduce disturbance to nesting birds.

PHAS requests that the Forest Service (a) disclose the location and purpose of the new permanent road and the condition of the area it would enter; (b) prioritize the "up to 16 miles" of closures, and closure of user-created routes, within the IBA and around the RNA; and (c) evaluate whether these canyons should be managed for a semi-primitive non-motorized Recreation Opportunity Spectrum class. The Black Hills have very few unroaded areas left, which is why PHAS is separately commenting in opposition to rescission of the 2001 Roadless Rule.

Scenery. The Preliminary EA contains no analysis of scenery or visual quality, and no scenery or recreation specialist report is among the posted supporting documents. The Forest Plan assigns scenic integrity objectives (SIOs) by management area, and the Forest Service's scenery management direction ties those objectives to the recreation setting. The Fanny/Boles RNA carries both a high SIO (Guideline 2.2-5601) and a semi-primitive non-motorized recreation class (Standard 2.2-5101). **PHAS requests** that the decision disclose the SIO for each management area the project affects and show that regeneration cuts, fuel breaks, and road reconstruction, particularly where seen from roads, trails and the canyon floors, will meet those objectives, or explain any departure.

8. Weeds in the shrublands

The EA projects that non-priority weeds, mainly Canada thistle and houndstongue, could increase to as many as 4,400 acres, and priority weeds could nearly double (EA p. 33). Ground disturbance, opened canopy and concentrated grazing in mahogany shrubland would favor these species in the very habitat the IBA protects. Herbicide treatment in shrubland also carries risks to native shrubs and forbs. **PHAS requests** that weed monitoring and early treatment be prioritized in IBA and RNA units, with methods chosen to protect native shrubs.

Conclusion

The Roby EA treats a unique corner of the Black Hills, the home of South Dakota's isolated Virginia's Warbler population and the Forest's mountain mahogany Research Natural Area, as ordinary timber ground. We ask the Forest Service to recognize the Mountain Mahogany Shrubland IBA, protect its open pine–shrubland habitat, defer RNA treatments until a management plan exists, protect old growth and goshawk habitat, complete consultation and surveys before deciding, and use this project's road closures to restore the canyons' semi-primitive character.

Please keep PHAS on the mailing list for this project and send us the decision, the Biological Opinion and any later notices of added units, salvage or burn plans. Thank you for considering these comments.

Sincerely,

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