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First name: Lauren

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Organization:

Title:

Comments: Thank you for considering the following scoping comments on the Humboldt-Toiyabe National Forest's

proposed Prescribed Fire Restoration Project. Defenders of Wildlife (Defenders) is a national non-profit conservation organization with 1.8 million members and supporters in the U.S., and over 3,000 in Nevada, and is dedicated to protecting all wild animals and plants in their natural communities. To this end, Defenders uses science, public education and participation, media, legislative advocacy, litigation, and proactive on-the-ground solutions in order to impede the accelerating rate of extinction of species, associated loss of biological diversity, and habitat alteration and destruction.

Defenders generally agrees that prescribed fire is an important tool for restoring natural fire regimes to ecosystems. However, we strongly oppose approving this project with a programmatic categorical exclusion (CX) under the National Environmental Policy Act (NEPA).

The Forest Service is proposing to adopt a CX to "increase the pace and scale of prescribed burning" 1 [

1 Dunkelberger, W.A. 2020. Letter: Forest-wide Prescribed Fire Restoration Project. Humboldt-Toiyabe National Forest. November 9. Pg. 1.] on

the Humboldt-Toiyabe National Forest (HTNF). The project would enable multiple prescribed burning projects each year up to 10,000 acres with an objective of treating up to 100,000 acres annually. Using a CX for a proposed action of this scale is inappropriate and likely not in accordance with the NEPA.

The Forest Service should prepare an Environmental Assessment or Environmental Impact Statement to analyze the effects of the proposed project

The CX may not be lawful as a programmatic effort to significantly increase the agency's management footprint. CXs are intended to be used for "small," "insignificant," and "routine" projects, Sierra Club v.

Bosworth, 510 F.3d 1016, 1027 (9th Cir. 2007), not large landscape-level projects. Such projects likely have direct, indirect, and/or cumulative effects because they are not by definition "insignificant" or

[ldquo]routine.[rdquo]

NEPA aims to improve the quality of the human environment by relying on sound science and public engagement to reduce and mitigate harmful environmental impacts. NEPA protects against unnecessary and avoidable harm that, if federal agencies were not required to take a [ldquo]hard look[rdquo] at when planning management actions, would accumulate and result in permanent impacts to wildlife, water quality, cultural resources, and other natural resources.

It[rsquo]s hard to imagine that the proposed action would not have significant impacts to the HTNF[rsquo]s wildlife,

including 12 species federally protected under the Endangered Species Act and over 100 Regional Forester Sensitive Species, and other natural and cultural resources and values. For example, applying prescribed burning in sagebrush ecosystems has been shown to have significant detrimental impacts on the sagebrush vegetative community and associated species. Knick et al. 2005; Ellsworth and Kauffman 2010; Ellsworth and Kauffman 2017. While the HTNF[rsquo]s scoping proposed action document indicates an understanding of these issues, the impacts of prescribed burning activities must be assessed in an EA or EIS.

To determine whether the proposed project[rsquo]s impacts may be [ldquo]significant,[rdquo] the Forest Service should

first prepare an Environmental Assessment (EA). 40 C.F.R. [sect][sect] 1501.4, 1508.9. If the EA reveals that [ldquo]the

agency[rsquo]s action may have a significant effect upon the . . . environment, an EIS [Environmental Impact Statement] must be prepared.[rdquo] Nat[rsquo]l Parks & Conservation Ass[rsquo]n v. Babbitt, 241 F.3d 722, 730 (9th Cir.

2001) (internal quotations omitted). If the agency determines that no significant impacts are possible, it must still adequately explain its decision by supplying a [ldquo]convincing statement of reasons[rdquo] why the action[rsquo]s effects are insignificant. Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1212 (9th Cir. 1998).

Using an EA to authorize this project would enable public engagement in compliance with NEPA and

the spirit of democracy

The Forest Service must provide for public engagement on projects undertaken with an EA or EIS but not for those undertaken with a CX. Public engagement is often responsible for important improvements in project design and implementation. Sometimes these improvements are incorporated through additional alternatives, modification of the proposed action, or the addition of mitigation commitments, while other times they are adopted as a result of appeal or adjudication. The point is that without the benefit of the EA or EIS process, the shortcomings of the projects would not have been revealed or addressed.

The Forest Service must consult with the U.S. Fish and Wildlife Service to identify potential harms to species listed as threatened or endangered under the Endangered Species Act

Under Section 7 of the Endangered Species Act and its implementing regulations each federal agency, in consultation with the Services must insure that any action authorized, funded, or carried out by the agency is not likely to (1) jeopardize the continued existence of any threatened or endangered species or (2) result in the destruction or adverse modification of the critical habitat of such species. 16 U.S.C. [sect] 1536(a). Agency [ldquo]action[rdquo] is broadly defined to include actions that may directly or indirectly cause modifications to the land, water, or air, and actions that are intended to conserve listed species or their habitat, specifically including, as here, [ldquo]the promulgation of regulations.[rdquo] 50 C.F.R. [sect] 402.02(b). Under

the Services[rsquo] joint regulations implementing the ESA, an action agency such as Forest Service must initiate consultation under Section 7 whenever its discretionary action [ldquo]may affect[rdquo] a listed species or critical habitat. 50 C.F.R. [sect] 402.14(a); see also Ass[rsquo]n of Home Builders v. Defenders of Wildlife, 551 U.S.

644 (2007).

See Attachments:

[bull] Ellsworth, L. M., & Kauffman, J. B. (2017). Plant community response to prescribed fire varies by pre-fire condition and season of burn in mountain big sagebrush ecosystems. Journal of Arid Environments, 144, 74-80.

[bull] Ellsworth, L. M., & Kauffman, J. B. (2010). Native bunchgrass response to prescribed fire in ungrazed mountain big sagebrush ecosystems. *Fire Ecology*, 6(3), 86-96

[bull] Knick, S. T., Holmes, A. L., & Miller, R. F. (2005). The role of fire in structuring sagebrush habitats and bird communities. *Studies in Avian Biology*, 30, 63.

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