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Wild & Scenic North Fork Salmon River

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- Project Name: Bear Country Project
- Responsible Officials: Klamath National Forest Supervisor, Rachel Smith
- Klamath National Forest, Scott Salmon Ranger District

Thank you for accepting this objection pursuant to 36 CFR § 218 from the Environmental Protection Information Center (EPIC), lead objector, and the Klamath Siskiyou Wildlands Center (KS Wild) regarding elements of the Bear Country Project on the Klamath National Forest. EPIC and KS Wild have standing to bring this objection, as the issues covered here were discussed and raised in our September 6, 2019 scoping comments and October 21, 2021 Draft EA comments regarding the Bear Country Project. In our comments we expressed concerns, provided science and made recommendations regarding the proposed project and its impact on the environment, threatened and endangered species, mature and old forest habitats, Riparian Reserves and other substantive issues included in this objection.

1. **Prescriptions will leave the Bear Country landscape with increased fire hazard.**

The near entirety of the project is based on reducing the risk of wildfire, all the resource impacts rely on this assumption, yet there is no supporting fire and fuels report. The scientific information that is available reveals that efficacy of the type of treatment proposed does not significantly reduce flame length; does little to protect mature forest stands; and start to lose effectiveness after just ten years. Our organizations have provided the agency with reams of scientific research, for the Bear Country project and several other projects on the Salmon/Scott Ranger District in the administrative record provided during scoping, exemplifying the fact that removing overstory trees and heavily reducing the canopy will cause solar radiation to dry micro-climates and create a significant vegetative response in the understory, while subsequently increasing ground and ladder fuels, rate of spread by increased wind velocity, fire risk, hazard and behavior. In fact, dense canopy cover in mature

forests can decrease these risks.[1][2][3][4] It is important to note that the current Community Wildfire Protection Plan recommends maintaining at least 60% canopy, with a 27" dbh limit, where it exists for just this reason. Fire resiliency and mature forest habitat are not mutually exclusive. There is a more wholistic way among humans, nature and fire to exist[5] in these watersheds.

While the project includes small diameter vegetation removal and underburning, these treatments are only effective for a short time and must be maintained through time to have the results that the agency claims. More importantly, they must first be implemented to have any effect, which is a rarity given the current forest and district track record. The Bear Country analysis does not address the possible increased fire hazard. The Forest Service should not rely on the positive impacts on uncertain future actions it has failed to take in the past in order to counterbalance the negative environmental impacts of its timber sales.

Particularly egregious is removing stands to a square foot basal area of 50-100', 20-25' leave tree spacing and 30-50% residual canopy cover. Much of the commercial natural stands in Mathews Creek, Black Bear Summit and slope above the North Fork Salmon target what little remains of mature and old growth forests in these watersheds. Further, the proposed prescription is located in Late Successional Reserves, NSO suitable and critical habitat, NSO core nest areas and home ranges and extreme entry in Riparian Reserves in these key watersheds violates multiple laws and regulations as well as the intent in which they were created.

Remedy #1: In Natural Stands: provide diameter limit of 26" throughout all prescriptions; increase canopy cover minimums >80% in all suitable N/R habitat and >60% in all other areas.

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[1] John D. Alexander, Nathaniel E. Seavy, C. John Ralph, and Bill Hogoboom. Vegetation and topographical correlates of fire severity from two fires in the Klamath-Siskiyou region of Oregon and California. *International Journal of Wildland Fire* 15(2) 237-245 https://doi.org/10.1071/WF05053 Published: 31 May 2006

[2] Lininger, Jay. *Fire History and Need for Fuel Management in Mixed Douglas-Fir Forests of the Klamath-Siskiyou Region, Northwest California and Southwest Oregon, USA. University of Montana, Missoula, MT. 2004.*

[3] Odion, D., Frost, E, Strittholt, J., Jiang, H., DellaSala, D., Moritz, M. *Patterns of Fire Severity and Forest Conditions in the Western Klamath Mountains, California.* Conservation Biology, Pages 927-936. Volume 18, No. 4, August 2004.

[4] Powers, D. Mathew. *Silvicultural Impacts on fuels and Wildfire Behavior in Moist, Westside Pacific Northwest Forest.* Dept. Forest Engineering Resources and Management Oregon State University.

[5] Dominick A. DellaSala, Bryant C. Baker, Chad T. Hanson, Luke Ruediger. *Have western USA fire suppression and megafire active management approaches become a contemporary Sisyphus? Biological Conservation 268 (2022) 109499.*

2. **The Bear Country Project Treatments in Late Successional Reserves violate the Northwest Forest Plan and the Klamath LRMP.**

Key components of LSRs include multi-layered forests, large trees, snags and large logs, moderate to high canopy closure and trees with physical defects. Extensive road building and logging in the LSRs have left forest stands in the project highly fragmented.

Roads and timber harvest have wreaked havoc in these watersheds. Road density within Riparian Reserves of the Eddy Gulch LSR is above the mean for the 17 west-side LSRs. Roads can affect wildlife in several ways. Road construction removes habitat, increases sedimentation in streams, affects wildlife distribution and movements, and increases the potential for outside disturbance factors. Road building, reconstruction and landing construction eliminate habitat for NSO and multiple other late successional dependent species. Numerous sightings of martens and fishers have been made in the LSRs. So, road building is having a direct impact on these critical species.

Connectivity, the ability to move across the landscape, is crucial to the long-term persistence and viability of many species and especially critical for late-successional dependent species. LSRs and Riparian Reserves were created to allow the movement and dispersal of late-successional dependent species. Eddy Gulch LSR, in combination with Taylor/Carter Meadows LSR extend protected habitat to the southwest, helping to connect habitat across the Trinity Alps Wilderness. Eddy Gulch LSR is within 6 miles of the Little North Fork/Crapo LSR, Marble Mountain Wilderness, and Taylor/Carter Meadows LSR. The amount of dispersal habitat in the surrounding watersheds is above the 50% threshold, except in Lower South Fork Salmon which is at 48 %.

Connectivity is limited to the north of the Eddy Gulch LSR and the east of the Little North Fork LSR. This is due to the lack of contiguous forest cover because of poor soil and higher elevations in the Marble Mountain Wilderness. Dispersal habitat for late-successional dependent species is severely limited to the west of both these LSRs down the North Fork towards Forks of Salmon due to the large blocks of early seral stage habitat as a result of the 1977, 1987, and more recent fires and accompanying “salvage” logging.

The Eddy Gulch LSR has its origin as a Habitat Conservation Area (HCA) under the ISC's strategy. The intent of the designation was to provide habitat for an area that would support 20 northern spotted owl nesting pairs in the future (adjusted for demographic and environmental uncertainty). Critical Habitat Unit CA 25 serves to extend protected owl habitat to the southwest, helping to connect to CHUs CA 29 and CA 31 across the high elevation habitat in the Salmon-Trinity Alps Wilderness, and extends to the east toward the Shasta-McCloud area of concern. It is expected

that this CHU, combined with contiguous habitat in the Marble Mountain Wilderness will support 22 nesting pairs over time". The LSR meets the spotted owl pair goal of the critical habitat unit.

The desired condition within LSRs is to minimize the negative effects of roading, including a reduction in the amount of road-related sediment. Standards and guidelines for LSRs state that road construction is generally not recommended unless potential benefits exceed the cost of habitat impairment. Additionally, standards and guidelines for key watersheds prescribe that existing system and non-system road mileage be reduced.

Management activity within LSRs must be consistent with the objectives, policies, standards and guidelines set for these lands. While some of the proposed project area needs treatment, such as plantations, the project does not clearly result in greater assurance of long-term maintenance of habitat. The permanent removal of 1,525 acres of habitat (223 Nest/Roost (N/R), 701 Foraging, 601 Dispersal) the downgrading of 62 acres of N/R, the degradation of 8,769 acres of suitable habitat with the addition of >14 miles of reconstructing old logging roads, 4.5 miles of new construction and approximately 20 new landings would prevent the LSRs from playing an effective role in the objectives for which they were established.

Remedy #2: In Natural Stands: provide diameter limit of 26" throughout all prescriptions; increase canopy cover minimums >80% in all suitable N/R habitat and >60% in all other areas and forgo or greatly diminish proposed "temp" road use and construction.

3. **Riparian Reserve logging and vegetation removal violates the Clean Water Act, Wild and Scenic Rivers Act, Northwest Forest Plan Aquatic Conservation Strategy, the Klamath LRMP.**

Treatments across the board propose to target mature and old-growth trees in Riparian Reserves and would remove up to 50% canopy directly adjacent to the waters edge or as defined in the Bear Country Prescription Matrix the "channel zone", heavy equipment would be allowed up to 30' away from the water's edge and up to 10' in intermittent streams. Proposed treatments include removing all brush in the channel zone. This approach is ***more extreme*** *than what* ***the California Forest Practice Rules allow*** for private industrial logging corporations and directly violates the Aquatic Conservation Strategy and its objectives. This extreme canopy reduction and ground disturbance is not appropriate for Key watersheds that are already 303 (d) listed as impaired under the Clean Water Act, especially within, Activity Centers, Critical Habitat and Late Successional Reserves.

The Wild and Scenic North and South Forks and Mainstem Salmon River all currently: have elevated temperature; are "at-risk" for turbidity and; are "not

functioning" for large woody debris (LWD). Multiple tributaries, including Black Bear, *Crawford and its *West Fork, Indian, *Mathews and Negro Creeks are "not functioning" or "functioning at-risk" for a variation of LWD, pool quality, refugia, streambank condition, drainage network, road density and riparian reserves. These are the same tributaries that provide: *Coho Critical Habitat; thermal refugia and; spawning, rearing and holding habitat for salmon, steelhead and resident trout.

Riparian Reserves in the Salmon River watershed are some of the most productive, sensitive and diverse sites in the area. They provide important habitat for aquatic species including listed fish species and terrestrial species such as the willow flycatcher, Pacific fisher, Humboldt marten, black bear, elk, ring-tailed cats and other species. Riparian Areas tend to support complex structural conditions and the proximity of water is highly important for wildlife.

Riparian Reserves, along with the Late Successional Reserve network, were set up under the NW Forest Plan not only to protect riparian species and their habitat, but also for terrestrial wildlife to provide: edge effect between vegetation types; hiding; foraging; nesting and thermal cover; travel corridors; migration routes; habitat connectors and connectivity between populations. Even intermittent streams, while they may be generally lacking in true riparian vegetation and higher in slope, play an important role such as microclimate, especially on south facing slopes. These are vital functions of Riparian Reserves and both aquatic habitat conditions and connectivity for terrestrial wildlife must be enhanced or at least maintained by agency actions.

The 787 acres of Riparian Reserve logging in the Bear Country Project does not achieve these important goals and would: increase temperature and sediment; remove primary constituent elements for NSO; and degrade aquatic and terrestrial habitat conditions in the planning area. This is particularly odious given the paper thin rationalization discussed below.

Fire in Riparian Reserves

It is falsely assumed in the EA that untreated stands would be impacted by future high severity fire events and would act as wicks. This statement is conjecture and does not reflect the reality of mixed severity fire on this landscape. Wildfires in the Klamath-Siskiyou Mountains and Salmon River create mosaic burns with most acres burning at low to moderate severity. Because Riparian Reserves tend to have cooler micro-climates and are on lower slope positions they often act as fire refugia and generally burn at lower severity than the surrounding landscapes. The density of riparian forests is a natural adaptation to the sites' aquatic nature and to both readily available water conditions and slope position. Being in canyon bottoms, these areas are also the most likely to benefit from heavy smoke inversions when

active fires are burning[6]. These characteristics tend to moderate fire severity in riparian reserves, especially those in heavily incised canyons where topographic features shelter the riparian area from heavy solar exposure and excessive winds. These conditions also tend to elevate humidity levels along stream corridors and benefit from persistent smoke inversions.

According to the 2019 KNF Monitoring Report recent fires on the KNF have burned less severely in riparian areas and are not acting as "wicks" or "chimneys" that increase burn severity. On the contrary, The data show that a relatively small portion of the fire areas burned at a high soil severity, ranging between one and seven percent with an average of three percent. Low or very low severity burn accounts for 72 percent of the fire areas. The percentage of perennial stream length with high severity burns ranges between 0.2 and three percent with an average of one percent, which is less than half of the percentages for the larger fire area. Because perennial streams burn at a lower severity than the adjacent uplands there is no evidence that riparian reserves on the Klamath National Forest act as a wick for high-intensity fire. Unlike perennial streams, the percent of high severity burn in intermittent streams is nearly the same as for the entire fire area. Intermittent streams burn at a higher severity than perennial streams, but not higher than upland areas as would be expected if wicking was occurring. This data and analysis can be found in the Klamath National Forest Five-year Report to the Water Board[7]."

In most locations, rather than being "overly dense" and therefore a "fire hazard," riparian reserves are naturally more dense, more productive, cooler and moister, contain more water resources and grow in largely closed canopy forest conditions with dense vegetation and multiple canopy layers. Logging to reduce density, eliminate or reduce canopy layering and open forest canopy in Riparian Reserves is often misguided and works against the natural tendency of this environment and undermines its function as natural fire refugia. The streams in the Bear Country Project Area are key watersheds, critical for the survival of wild salmon and are also listed as water quality limited under the Clean Water Act. We remind project planners that the Salmon River watershed is one of the most important tributaries of the Klamath River and the Salmon River maintains both the only viable spring chinook salmon population in the watershed and the last completely wild salmon and steelhead runs. The Salmon River and its fisheries benefit from cold-water tributaries and from mature or late successional forests in the river corridor. Numerous tributary streams proposed for Riparian Reserve logging would be

[6] Estes, B. L., E. E. Knapp, C. N. Skinner, J. D. Miller, and H. K. Preisler. 2017. *Factors influencing fire severity under moderate burning conditions in the Klamath Mountains, northern California, USA.* Ecosphere 8(5):e01794. 10.1002/ecs2.1794

[7] *USDA. 2020. Fiscal Year 2019 Monitoring and Evaluation Report.* Klamath National Forest. Yreka, California. November 2020.

degraded by project activities, reducing functionality of the Riparian Reserve network and impacting aquatic or watershed values.

The Hydrology Report reveals the inconsistency in the Forest Service's reasoning. On page 7 it states, "In select Riparian Reserves, prescriptions may reduce shade below site effective levels, but only if it is for the future attainment of additional shade, as allowed by Waiver condition 4." But if the intent of the prescriptions is to prevent the riparian reserves from acting as a "wick", how can it promise the attainment of additional shade in the future? The very thing that forest service claims they want to reduce (a dense canopy) is the thing that provides necessary shade.

> *Waiver Condition #4:*
> *USFS shall manage and maintain designated riparian zones (as defined in Finding No. 12), to ensure retention of adequate vegetative cover that results in natural shade conditions, within 300 feet slope distance on each side of fish-bearing streams, 150 feet slope distance on each side of perennial streams, and 100 feet slope distance on each side of intermittent streams, or the site potential tree height distance on each side of the stream, whichever is greatest (per NWFP ACS Strategy). Reference to the NWFP ACS Strategy includes any modifications to those documents during the life of this Waiver**, so long as the modifications are equally or more protective of water quality,** as determined by the Executive Officer. Timely implementation is necessary for sediment and temperature TMDL compliance. Site-specific potential effective shade is defined as the shade on a watercourse equivalent to that provided by topography and potential vegetation conditions at a site. Exceptions to this condition will be considered. In order for Regional Water Board staff to determine the adequacy of the justification for an exception, the justification must identify the proposed canopy reduction and expected recovery time, provide an estimate of the pre- and post-project shade or solar impacts, and explain how such an exception will result in a net long-term benefit to water quality and stream temperatures.*

The Aquatics Report highlights the effects of the proposed treatments, "Treatment prescriptions are divided into stands based upon objective, such as fuels or improving northern spotted owl habitat. Stand density is reduced across the Project area. Within northern spotted owl foraging habitat, the models favor an outcome of increased QMD with similar large trees per acre, compared to the no treatment option. Due to differing treatment aims, fuels and other stands have a less homogeneous outcome, with similar or decreased QMD and often decreased large trees per acre, as to be expected given goal to strategically decrease fuel loading in many locales."

First, in some areas the change in number and size of trees is insignificant. Second, the other proposed treatments would result in decreased growth and fewer large trees in Riparian Reserves. The proposed entry into Riparian Reserves is not needed to attain ACS objectives and are clearly not more protective than ACS buffers.

Sediment, Temperature and Analysis

The desired future conditions from the North Fork (NFWA) and Lower South Fork Watershed Analyses (LSFWA) include:

> The primary goal is for the maintenance of healthy functioning ecosystem where aquatic and terrestrial components are properly linked. RRs are used to maintain riparian structures and the function of aquatic system, provides benefits to riparian-dependent and associated species, enhance habitat conservation for organisms that are dependent on the transition zone between upslope and riparian areas, improve travel and dispersal corridors for many terrestrial animals and plants, and provide greater connectivity of habitats within the watershed. The RR will also serve as dispersal corridors for LSRs.
>
> Where site capability allows, stream shading is 80%.
>
> Summer water temperatures are maintained below 69 degrees F.
>
> Roads are a minimal source of eroded sediment.
>
> The miles of open road are managed at a level that reduces habitat fragmentation and disturbance to wildlife.
>
> Habitat is sufficient for sustainable populations of indigenous aquatic species. Fine sediment in streams is reduced to levels consistent with good quality aquatic habitat.
>
> Riparian features are well identified on maps and on-the-ground.
>
> Adequate cool deep pools during summer months especially in the mainstem Lower south Fork to support summer holding populations.
>
> A road system that does not significantly impact wildlife or contribute to habitat degradation.
>
> The effects of roads in Riparian Reserves and LSRs are minimized and road densities are reduced where appropriate.
>
> Mid to late-seral stands in Riparian Reserves are maintained over the long-term.
>
> Fine sediments in streams are reduced to levels consistent with good quality aquatic habitat, less than 15% fines on average.

> Fish habitat is fully utilized. Stream temperatures are consistent with high quality habitat to the extent possible.

The Lower South Fork Watershed Analysis Map, Figure 3-2 shows that the project area from Black Bear Creek to the west were delineated as Areas With Watershed Concern. From Figure 3-3 it appears that there are multiple active and dormant landslides as well as toe zones throughout the project area. These areas were not depicted on any project maps.

The Aquatic Resources Report states on page 10, "*Site-specific analysis discussion will focus on water drafting within the range of anadromous and resident fish*." "*For the remainder of the Project area, Project components are outside the distribution of analysis species, habitat is not present, and distance to occupied or suitable habitat is too distant for an effect to occur*." This is not the case. Project components are in Riparian Reserves, with logging inside "core" areas, vegetation removal inside "channel" areas and habitat is present.

The Aquatic Report concludes that the commercial logging would have: the potential to elevate water temperatures; possible impacts to substrate character; the potential for reduced future recruitment and; may have negative short-term effects. Control feature construction has the potential to affect the peak and base flow Indicator. Control feature maintenance has the potential to affect the peak and base flow Indicator. The construction (or reconstruction) of control features would add road-like features to the landscape. A subset (24.4 miles) of the total (34.1 miles) control feature mileage falls within the following categorization: units which require equipment for execution. The expectation is that the addition would be permanent. As a result of Project implementation, most watersheds would experience an increase in ERA and USLE disturbance indices.

The Hydrology Report greatly generalizes the current state of Riparian Reserves by explaining conditions that may primarily describe some upper reaches and intermittent streams and uses that one description to justify logging across all Riparian Areas. The Aquatic Resources Report provides a much more nuanced description.

The Aquatic Resource Report (emphasis added), at page, 10 states, "…wetter systems

> with a developed floodplain have a much wider area where groundwater influence allows growth of species which require proximity to water. In these latter systems, the transition from "riparian" to "upland" is much more subtle and **may be difficult to definitively delineate**. A stream "riparian zone", where hydrophilic vegetation predominates, contrasts with the "Riparian Reserve" defined in the Klamath National Forest Land Resource Management Plan, the latter of which is a standard-width derived land allocation, whose purpose is to serve as a planning tool and to ensure protective and buffering setbacks away from stream channels. **The width of a "Riparian Reserve" is generally greater than a stream's true riparian zone, and often includes**

true upland vegetation within it." "As with the riparian zone, the uplands are varied when considered across the landscape area of the Project. The exact species composition of local vegetation is dependent on geology, elevation, aspect, soils (both natural and as affected by historic mining practices), wildfire, timber harvest, and microclimate."

The Aquatics Report describes buffer widths at page 22 (citations omitted, emphasis added), "In the case of timber harvest, increased sediment input to streams is one of many potential impacts to aquatic biota… while smaller buffers (i.e., 15 meters [49 feet] or less) may be sufficient to preserve physical stream characteristics, larger widths are required to maintain biological components…. **In regards to effectively filtering sediment from upland management activities, 30 meters (98 feet) is a general recommended width**, although **other habitat components such as noise reduction, stream shading, large woody debris recruitment and retention should also be taken into account, as well as needs of individual species**. Effective buffer width at any given location will vary depending upon the landscape and upslope management activity, but eventually stream protection efficacy will plateau, after which disproportionately larger buffer widths are required to yield ever smaller increments in sediment removal or improved biological response."

The LOC states that "*Effective stream shade will be maintained over all fish-bearing streams in Project Riparian Reserves via no treatment buffers, whether associated with intermittent or perennial streams, to prevent negative effects to stream water temperature*." However, this statement would be false according to EA and other reports.

The spatial scale for short-term impacts to aquatic species is ten years. To wild salmon nearing extinction, with extremely low fish counts and massive fish kills last year, ten years is three lifetimes. The Bear Country analyses are silent to the current population numbers and water quality conditions, which have seen significant sediment impulses due to recent fire footprints. (Salmon River Spring Chinook Salmon pictured at right.)

The Aquatics Report, NOAA Letter of Concurrence (LOC), Hydrology Report, EA and Project Design Features and the Bear Country Prescription Matrix all provide disparate descriptions of Riparian Reserve buffers. The analyses did not adequately consider: soil porosity or compaction; change in microclimates and increase in air temperature and; did not provide any maps or detailed description of the location of RRs. We are concerned with the multiple effects to aquatic species and MIS river and stream associated species, as well as actual physical harm from machinery and burning within riparian reserves. Ultimately, the fact remains, there will be an increase in water temperatures and there will be an increase in sediment. The disparity of the EA, reports and LOC never the less show that the TMDL requirements relating to stream temperature and sediment would not be met.

Cumulative Effects

We are concerned with the cumulative effects of past, current and future projects as well as the amount of treatment proposed, including commercial logging activities within Riparian Reserves, road use, road construction, reconstruction of Level 1 and non-system roads and landing construction. The most pervasive human impact to the health and connectivity of aquatic systems is the construction and maintenance of roads. Roads constitute a large percentage of increased erosion rates. Roads increase landslide potential, surface and channel erosion over the long-term. All identified legacy sediment sites within the Project area are associated with roads. We are also concerned that the cumulative watershed impact of the Bear Country Project does not comply with the Clean Water Act, TMDL plans, the Aquatic Conservation Strategy and the Endangered Species Act.

The Aquatics Report does admit to cumulative impacts to the Salmon River watershed however, it did not include the Region 5 Hazard Project or the River Complex.

To 'consider' cumulative effects, some quantified or detailed information is required . . . General statements about 'possible' effects and 'some risk' do not constitute a 'hard look' absent a justification regarding why more definitive information could not be provided." *Neighbors of Cuddy Mountain v. USFS*, 137 F.3d 1372, 1379–80 (9th Cir. 1998).

As we noted in our comments, the Ninth Circuit has recently cautioned against the type of "list" cumulative effects analysis used here, wherein the agency lists nearby projects occurring or reasonably expected to occur, but fails to make findings regarding potential impacts of them combined. Simply listing nearby projects without analyzing what impacts each might have on the environment and adding them together for a true look at potential cumulative impacts will not satisfy NEPA.[8]

Legacy Sediment Sites

We are concerned with the amount of untreated Legacy Sediment Sites on the KNF and the ability of the KNF to follow through with its responsibilities to comply with the water quality waivers from the California State Water Control Board. The agency identified legacy sediment sites for treatment, yet does not disclose the historic failure to follow through with the treatment of legacy sediment sites during timber sale implementation. Water quality waivers have been provided in the past contingent on the treatment of these sites, yet in many circumstances the logging and road construction took place and the mitigation of legacy sediment site never

[8] *Bark v. U.S. Forest Serv*., 958 F.3d 865 (9th Cir. 2020).

occurred, creating a significant backlog for legacy site treatment. Given the backlog of Legacy Sediment Sites left untreated in the Westside Project alone, no more water quality permits should be offered to the KNF until previous obligations are met and all previously approved Legacy Sediment Site remediation has been fully implemented.

The scale of the project, the intensity of impacts and the agencies previous failure to follow through with water quality waiver requirements should require the completion of a full Environmental Impact Statement (EIS) and a full analysis of compliance with previous water quality waivers.

The USFS "cannot avoid preparing an EIS by making conclusory assertions that an activity will have only an insignificant impact on the environment." *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 864 (9th Cir. 2004). Nor can an agency minimize an activities' environmental impact by adopting a broad scale analysis and marginalizing the activity's site-specific impact. *See, e.g.*, *Pac. Coast Fed'n of Fishermen's Ass'n v. Nat'l Marine Fisheries Serv.*, 265 F.3d 1028, 1036 (9th Cir. 2001). *Protect our Cmtys. Found. v. Lacounte*, 939 F.3d 1029 (9th Cir. 2019) ("This line of precedent makes sense: a site-specific project demands site-specific analysis.").

Resolution #3: Maintain Riparian Reserve widths in the Aquatic Conservation Strategy, do not allow heavy equipment or commercial logging within natural stand RRs. Adequately consider all USFS proposed and future projects in a cumulative effects analysis.

4. **Northern Spotted Owl (NSO) Habitat Removal is inconsistent with Recovery Plan, Northwest Forest Plan and Klamath National Forest Land Resource Management Plan (LRMP) and would harm other species, such as goshawks, fishers and martens.**

The KNF must "seek to conserve E&T species and shall utilize its authorities in furtherance of the Endangered Species Act."

The Klamath LRMP Management Direction for Biological Diversity at IV-6 states, "Emphasize the maintenance or improvement of Endangered, Threatened and Sensitive (TE&S) species habitat, species associations habitat, and game species habitat. Use specific project direction found in the Recovery Plans for individual species to help recover the viability of species currently listed as Endangered and Threatened. Manage to provide "good" habitat conditions for these groups, if that habitat type is within the range of the natural ecosystem."

At a minimum, this prescription should retain sufficient NRF habitat within the provincial core-use area and within the provincial home range to support breeding,

feeding and sheltering. Maintain and restore the older and more structurally complex multilayered conifer forests on all lands. NSO Recovery Plan III-42

"The mixed evergreen forests of the Klamath Province may exhibit stand development pathways that result in different fire susceptibilities. For example, lower fire severities were observed in stands with longer fire-free periods as well as in untreated stands with closed canopies or with larger, more mature forest conditions, when compared to treated stands." NSO Recovery Plan

The Bear Country project proposes to remove, downgrade, or degrade **10,356 acres of NSO habitat** in nest cores, Activity Centers, Critical Habitat, LSRs and Riparian Reserves. There would be a **net loss of 2,763 acres of fisher habitat**. Suitable nesting, roosting, and foraging habitat for northern spotted owls is used as a proxy for potential Northern goshawk, North American wolverine, Pacific fisher, Pacific marten, pallid bat, Townsend's big-eared bat, and fringed myotis habitat in the Bear Country analysis. Our previous comments capture the multiple serious concerns for mature and old-growth dependent species and owls that are nearing extinction. The project fails to protect the *Strix* and its Critical Habitat with a Likely to Adversely Affect determination.

The commercial natural stands in the project around from Mathews Creek, Fourth of July Gulch, Lafayette Point to Black Bear Summit, are within Critical Habitat and provide connectivity for NSO and fishers, which is witnessed by the heavy concentration of NSO Activity Centers, as seen in Figure 3-11 of the Lower South Fork WA. The area from Lafayette Point to Black Bear Summit provide suitable habitat for martens. The NFWA, Figure 3-6, provides a map of areas particularly important for habitat connectivity that would be diminished by the project. It includes the units north of Smith Ridge (also within Shiltos NSO Activity Center KL 0233

All the NSO Activity Centers are deficient in Nest/Roost habitat. In 2001 an interagency team of USFWS and Forest Service personnel produced a habitat-based model to predict the probability of NSO occupancy and their modeling results suggest that the probability of occupancy is highest when the ratio of nesting/roosting habitat to foraging habitat within a NSO core area is 2:1. Thus, according to multiple Biological Assessments and Opinions on the KNF, the USFWS considers the minimum amount of NSO habitat to avoid "take" under the ESA to consist of at least 250 acres of nesting/roosting and 150 acres of foraging habitat within a 0.5-mile core area and at least 935 additional acres of foraging habitat within a 1.3- mile home range outside the core area. With this equation, we are concerned the Bear Country project would include "take" of this endangered (warranted but precluded) denizen of mature and old-growth dependent species.

Given the current status of the owl and its habitat in the Northern California and Southern Oregon Provinces and the multiple threats, all currently suitable habitat,

primarily nest/roost habitat, should be distinguished as RA 32. This is especially true due to the fact that NSOs may be dispersing from recent fire areas.

Even though survey results for did not find goshawks, the agency is still required per the LRMP to maintain habitat within Goshawk Management Areas. This is true until there is sufficient data to assess the distribution this species, and to validate the assumption that goshawks are adequately provided for by large unmanaged reserves. We are concerned to the impact to habitat in Mathews Creek SAR8.

Targeting Large Mistletoe Trees in Riparian Reserves

Endemic levels of disease have probably always been prevalent in these watersheds. Although the EA claims that, *treatments were designed to retain the largest trees on any given site, the actual lower diameter limits of trees designated to be cut is determined by residual basal area and a thin from below treatment. Stands which may experience cutting of large trees, by definition (greater than or equal to 26 inches dbh), are still meeting the treatment objective because the stand retains a high density of even larger residual trees*. However, this is not entirely true. Throughout many of the proposed commercial natural stand units, the basal area is so low, logging would remove a significant amount of large mature trees providing canopy cover and all the Riparian Reserve prescriptions target mature and likely old-growth trees with mistletoe. As seen from the Jess and Petersburg Pines, with photos and best available science provided in previous comments, these trees are usually the largest trees within any given stand.

Mistletoe brooms are important habitat features that support nesting and roosting for NSO and resting areas for Pacific fishers. In fact, the Wildlife BE states, "Marshall et al. (2003) noted that about **90 percent of known northern spotted owl nests** on the Applegate Ranger District of the Rogue River National Forest (Klamath Province, Oregon, 25 miles northwest of the Project area) **were in dwarf mistletoe brooms in Douglas fir trees**."

Roads and Landings

As with other resource impacts, roads and landings have significant impacts to wildlife. These impacts are well documented in our previous comments. We have repeatedly requested, along with the recommendations in watershed analyses and LSRAs, that the district reduce the high road density in the impaired watersheds of the Bear Country project area. The desired future condition is to manage road density at a level that reduces habitat fragmentation and disturbance to wildlife.

Remedy #4: Designate suitable nest/roost habitat as RA32. Retain and do not downgrade nest, roost, forage or dispersal habitat. Forgo targeting mistletoe trees in RRs. Diminish the road re-use, reconstruction and construction of "temp" roads and landings in the project area, particularly those within nest/roost habitat.

5. **The Biological Opinion and EA consideration of impacts to NSO are inadequate.**

Failure to Adequately Consider the Range Wide Status of the Northern Spotted Owl

The Bear Country Biological Assessment (BA) and Biological Opinion (BiOp) failed to adequately consider the current range wide status of the northern spotted owl. This is due to two main factors. First, not enough information concerning the current status of the northern spotted owl has been gathered post fire. Prior to major wildfires across the region, *California's population of Northern Spotted Owls is likely a significant component of, and source to the range-wide population.*[9] The fires have significantly killed, harmed or displaced the species, and no one truly knows its current status. Compounding the problem is the presence of barred owl within the action area. The presence of barred owl is well documented to both impact northern spotted owl behavior (changing nesting location and foraging behavior) as well as to reduce the likelihood of detection from northern spotted owl surveys. Given this lack of information, the project should not be approved unless and until more information regarding the current status across its range, or at least the NSO Provinces of Southern Oregon and California, of northern spotted owl can be gathered.

The second factor causing this failure to adequately consider the current status of the northern spotted owl is a failure to consider concurrent federal projects that would negatively impact the northern spotted owl. The Bear Country project is being considered at the same time as several other large post-fire logging projects including: the Region 5 Hazard Tree Removal Project on the Klamath (KNF), Six Rivers (SRNF), Shasta-Trinity (STNF) and Mendocino (MNF) National Forests; Antelope-Tennant, River Complex on the KNF; and EF7 (MNF). One could also argue to include the multiple post-fire projects across the region that have already gone through NEPA. The Region 5 project biological opinion is completed and determined that the project would likely adversely affect the northern spotted owl. Both the Antelope-Tennant and River Complex projects have not yet completed their biological assessments and the FH7 East project is in scoping.

[9] State Of California, Natural Resources Agency, Department of Fish and Wildlife Report to the Fish and Game Commission *A Status Review of The Northern Spotted Owl (Strix occidentalis caurina) in California.* 2016.

These projects may also likely adversely impact the northern spotted owl by removing, downgrading, or degrading northern spotted owl (if the trend of R5 and Bear Country continues) habitat and Critical Habitat. Despite this, the Bear Country BiOp fails to consider the aggregate impacts of these other projects on the northern spotted owl range wide. There is no mention, for example, of the extensive habitat and Critical Habitat that would be removed (3,048 acres), downgraded, (5,355 acres) and degraded (54,109 acres) by the Region 5 Hazard tree Removal Project. How can the BiOp make an accurate jeopardy determination without considering the impacts of these other federal projects (some of which have not completed a BA or BiOp)? Since the project relies on the BiOp for its NEPA analysis of the impacts to this endangered species, this inadequacy applies to the EA as well. The Forest Service and Fish & Wildlife Service must consider the impact of other current and proposed logging projects on the owl and its habitat and Critical Habitat in order to make an accurate effects determination and to complete an adequate environmental analysis.

The EA and BiOp Fail to Consider the Expansion of Barred Owl Due to NSO Habitat Impacts.

This project would remove, downgrade, or degrade 10,356 acres of northern spotted owl habitat and Critical Habitat. This at a time when the invasive barred owl is quickly invading more and more northern spotted owl habitat across the west coast and competing with the northern spotted owl for scarce resources.

The Final Recovery Plan for the Northern Spotted Owl partially addressed the barred owl issue by adopting Recovery Action 32, which urges the FS to maintain older and more structurally complex multi-layered conifer forests on Federal lands outside of MOCAs. The Final Recovery Plan correctly assumes that "protecting these forests will not further exacerbate competitive interactions between spotted owls and barred owls as would occur if the number of shared resources were decreased". Adequately implementing Recovery Action 32 requires detailed NEPA analysis that considers the full potential of suitable habitat, in terms of both quantity and quality. The BiOp and EA should have considered how the availability of suitable habitat and its location on the landscape contributes to negative barred owl interactions and impacts to NSO populations. Maintaining a small subset of the highest quality habitat is one option, yet the agency must also consider the benefit of protecting all suitable habitat as a means of reducing barred owl competition.

Clearly when less habitat exists for the two species, competition and negative interactions will increase[10]. The Bear Country Project would reduce the amount of

[10] Holm, Samantha R., et al. (2016). Potential Trophic Cascades Triggered by the Barred Owl Range Expansion. Wildlife Society Bulletin; DOI: 10.1002/wsb.714. https://www.researchgate.net/publication/311003685_Potential_trophic_cascades_triggered_by_the_b

available habitat for numerous historic and occupied activity centers within the planning area. The EA and BiOp provides insufficient analysis of barred owl competition and the impact of reducing the overall habitat baseline on the competition and negative interactions between the barred owl and NSO.

Remedy #5: Analyze, consider and incorporate the effects to NSO in the California Provinces. Designate all currently suitable nest/roost habitat as RA 32. Fully analyze the impacts and possible spread of Barred owl invasion as a result of the removal, downgrading and degrading 10,356 acres of NSO habitat.

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arred_owl_range_expansion_Barred_Owl_Trophic_Cascade/link/5b3abf85a6fdcc8506ea4f42/download

From: FS-objections-pacificsouthwest-regional-office
To: Kimberly Baker; FS-objections-pacificsouthwest-regional-office
Subject: RE: [External Email]Bear Country Project Objection
Date: Friday, March 17, 2023 8:43:00 AM
Attachments: image001.png
image002.png
image003.png
image004.png

Hi Kimberly,
I wanted to confirm that we received your objection to the Bear Country Project. We will be in touch soon. Thanks, Jennifer

Jennifer Marsolais
Administrative Review Coordinator

Forest Service
Pacific Southwest Region
Ecosystem Planning

p: 530-651-8848 (cell)
jennifer.marsolais@usda.gov

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Caring for the land and serving people

From: Kimberly Baker <kimberly@wildcalifornia.org>
Sent: Thursday, March 16, 2023 6:33 PM
To: FS-objections-pacificsouthwest-regional-office <objections-pacificsouthwest-regional-office@usda.gov>
Subject: [External Email]Bear Country Project Objection

Dear Regional Forester Eberlein,
Thank you for accepting this objection pursuant to 36 CFR § 218 from the Environmental Protection Information Center (EPIC), lead objector, and the Klamath Siskiyou Wildlands Center (KS Wild) regarding the Bear Country Project on the Klamath National Forest. Our organizations work in the public interest and represent over 20,000 members and supporters who dearly care for the wild and rugged Salmon River watersheds, wildlife and communities.
We appreciate your consideration,

Kimberly Baker
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-It's time to integrate conservation biology with fire strategy and climate refuge-