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Comments: Thank you for considering these comments.

Thank you for accepting these brief comments on behalf of the Klamath Siskiyou Wildlands Center (KS Wild), the Environmental Protection Information Center (EPIC) and the Klamath Forest Alliance (KFA) regarding the Harlan Project Environmental Assessment (EA). Contact information for our organization may be found at the conclusion of this document. Please ensure that we are provided timely hard copies of the forthcoming NEPA and decision documents.

As stated in our 2017 scoping comments, our organizations are generally supportive of the proposals to restore beneficial fire effects to fire adapted ecosystems and achieve resilient forest conditions. Thank you for your efforts in this regard. We hope to support the agency efforts to utilize prescribed fire, thinning from below, plantation thinning, juniper reduction and strategic fuel breaks to achieve forest conditions that reflect the fire history and ecology of the project area.

We are perplexed that the Harlan EA did not acknowledge or address the suggestions and concerns expressed in our written scoping comments. Indeed, the Harlan EA reads more like an executive summary or a decision document than like a thorough analysis of project details and impacts. The EA contains only a single inevitable action alternative that is unsupported by data or analysis. Given that the project involves the logging of thousands of acres of forest, off-road motorized firewood gathering on over 10,000-acres, and tree removal and prescribed fire for up to 20 years, the Forest Service should disclose and analyze the impacts of the project. Details like the number of large trees to be removed, the location of streams to be yarded across, the number and impacts of landing construction, and the effects of opening thousands of acres to off-road vehicle use are simply not included in the EA. Without such detail, informed public commenting is precluded and informed agency decision making is undermined.

To be clear, we would like to support many aspects of this project, but we need the Forest Service to substantively engage in meaningful analysis and to head our concerns and suggestions.

As stated in our 2017 scoping comments, we respectfully ask the Forest Service to acknowledge that this is a very large project area and that it is essential for the agency to adopt and implement meaningful conservation sideboards to ensure that forest conditions are maintained or improved across thousands of acres at issue. Specifically, we again request that the Forest Service develop and implement an action alternative that:

1. Retains all large trees and snags where they exist and strictly avoids their removal through harvest, yarding, or landing establishment.
2. Analyzes and implements seasonal protections for migratory bird nesting habitat.
3. Limits the impacts from ground-based equipment by clearly designating where such equipment may and may not operate in treatment units.
4. Addresses and reduces the cumulative impacts of livestock grazing on aquatic and terrestrial forest values in the project area.
5. Reduces the impacts of the transportation system. We are concerned about the proposed temporary road construction.

6. Discloses the historic range of junipers in the planning area and retains junipers with significant wildlife values.
And

7. Incorporates the use of prescribed fire over time to retain project benefits.

We are disappointed that the Forest Service did not respond to most of the requests above. Upon reviewing the Draft EA we also are concerned about the impacts of authorizing odd-road use on approximately 10,000-acres associated with firewood gathering. Additionally, we are very concerned about machine slash piling in tractor yarding units and the utilization of dozer fire lines. Please reduce project impacts through utilization of manual slash piling and fire line establishment.

Review of the PDFs contained in the EA indicates that the project may involve heavy equipment crossings of intermittent and ephemeral streams (WA 13) and cable yarding over streams through Riparian Reserves (WA 15). The significant aquatic impacts associated with these practices could be avoided rather than written into the project.

Tractor Piling

We are concerned about the potential impacts of ground-based slash piling on soil health and productivity and we can identify no pressing need for this practice when the KNF has demonstrated that it has the ability to address activity slash without the use of tractor piling.

Please note that your colleagues in the Six Rivers National Forest concluded:

[ldquo]Machine piling/burn piles would increase ground disturbance and soil displacement when the machine turns.[rdquo]

-Little Doe and Low Gulch Timber Sale DEIS p 110.

No similar analysis or disclosure is present in the Harlan EA nor does the EA address the findings of the Forest Service that machine piling (turns) increase ground disturbance.

We encourage the agency to review the findings of Geppert, R.R., Lorenz, C.W., and Larson, A.G., 1984. Cumulative Effects of Forest Practices on the Environment: A State of the Knowledge. Wash. For. Practices Board Proj. No. 0130, Dept. of Natural Resources, Olympia, Wash.

Manual piling or underburning is far preferable to tractor piling. Manual piling and underburning have none of the negative impacts to soils associated with tractor piling, and they provide an increased opportunity for local employment while significantly reducing long-term damage to soil health and productivity. Hence manual piling or underburning would better achieve the stated purpose and need for the project. Given that these practices can reduce fuels without the negative impacts associated with machine piling, they are reasonable to implement and reasonable to consider and analyze as an action alternative.

The Forest Service has offered no justification for the proposed machine piling (as opposed to manual piling) despite the widely acknowledged impacts to soil resources.

Heavy machine use in timber sale units causes soil compaction and displacement. Soil compaction is an increase in bulk density with a corresponding decrease in soil porosity. Compaction reduces soil productivity through a reduction in root growth, tree height, and timber volume (Greacen and Sands 1980 1; Froehlich and McNabb 1984 2) and may be produced by a single pass of logging equipment across a site (Wronski 1984 3).

Productivity losses have been documented for whole sites (West and Thomas 1981 4) and for individual trees (Froehlich 1979 5, Helms and Hipkin 1986 6). Decreases in important microbial populations have also been observed in compacted soils (Amaranthus et al. 1996.)⁷ Soil compaction may also increase surface runoff because of reducing infiltration (Graecen and Sands 1980.)⁸

Soil displacement from ground-based machine use occurs when the tracked equipment turns on its skids pushing the soil into small piles, or berms, along the skid trails. This displacement of the topsoil removes the organic litter layer and exposes mineral soil. Removal of the loose, organic surface materials promotes surface sealing and crusting that decreases infiltration capacity and may increase erosion (Child et. Al. 1989.)⁹ Soil displacement also results in a loss of important soil biota, such as mycorrhizal fungi, which facilitates nutrient uptake by plants (Amaranthus et al. 1989 and 1996.)¹⁰

Please note how the Medford BLM recently responded to requests from the timber industry to authorize machine piling on federal lands:

Comment 4: We asked that BLM provide some flexibility in how fuels would be treated by focusing on the desired goals. The BLM has restricted fuels treatments to handpiling and burning. Contractors could use light weight equipment to treat fuels without detrimentally compacting soils.

Response: The commenter has not provided details on methodology or supporting science that would support the claim that machine piling could be done without detrimentally compacting soils in excess of RMP standards for percent area compacted by current activities.

Resource management plans call for limiting compaction in harvested areas in order to minimize soil productivity losses. Therefore, no additional use of mechanical equipment for fuels reduction was proposed, as ground-based logging would compact up to 12 percent of the harvest units. This is particularly important in the Cottonwood planning area as the majority of soils contain high rock content. It was identified that ripping the soils in this area would bring rocks and cobbles to the surface. The priority was given to minimizing the soil area compacted instead of trying to mitigate the effects. Additionally, the harvest prescription resulting in relatively few trees per acre being cut minimizes the slash, and consequently, also reduces the need for mechanical fuel treatment.

Medford BLM Cottonwood Project EA Appendix A, Response to Comments Page 3-2.

Please note that the Harlan EA contains no actual site-specific analysis, data or quantified information regarding the impacts of either tractor yarding or tractor piling that is proposed in the project, instead the agency relies heavily on a [ldquo]soil report[rdquo] that is not included in the EA or subject to public comment. Please note that the soils report indicates that [ldquo]standards and guidelines in the Forest Plan require that soil productivity and stability are maintained or enhanced through management activities.[rdquo] Clearly machine piling will not contribute to attainment of this objective of the Forest Plan.

Landbirds and Neotropical Species and the Migratory Bird Treaty Act

It does not appear that the project implements seasonal restrictions in order to protect landbirds and neotropical bird species during their nesting season. This is a common PDF that has been implemented successfully in many vegetation projects. Please note that the Goosenest Adaptive Management Area Guide specifically identifies several bird species of concern around which collaborative conservation measures (such as seasonal restrictions) could be implemented.

Migratory birds are perhaps the most highly valued component of North America[rsquo]s biological diversity, with approximately 1,200 species representing nearly 15% of the world[rsquo]s known bird species. The seasonal movement of migratory birds is one of the most complex and compelling dramas in the natural world. Migratory

birds embark twice each year on long-distance journeys between their breeding areas and their wintering grounds, which are sometimes separated by thousands of miles. State, federal, and international law all recognize the importance of protecting migratory bird species from harm.

Pursuant to the Migratory Bird Treaty Act (MBTA), it is unlawful [ldquo]at any time, by any means or in any manner to . . . take [or] kill . . . any migratory birds, [and] any part, nest, or eggs of any such bird.[rdquo] 16 U.S.C. [sect] 703(a). This prohibition applies to federal agencies and their employees and contractors who may not intend to kill migratory birds but nonetheless take actions that result in the death of protected birds or their nests. *Humane Soc[rsquo]y of the United States v. Glickman*, 217 F. 3d 882 (D.C. Cir. 2000) (holding that federal agencies are required to obtain a take permit from FWS prior to implementing any project that will result in take of migratory birds); see also *Robertson v. Seattle Audubon Soc[rsquo]y*, 503 U.S. 429, 437[ndash]38 (1992) (finding that federal agencies have obligations under the MBTA) and *Center for Biological Diversity v. Pirie* (191 F.Supp.2d 161 (D.D.C. 2002) (allowing injunctive relief against federal agencies for violations of the MBTA. The prohibition on [ldquo]take[rdquo] of migratory birds includes destruction of nests during breeding season. Specifically, [ldquo]nest destruction that results in the unpermitted take of migratory birds or their eggs, is illegal and fully prosecutable under the MBTA.[rdquo] U.S. Fish and Wildlife Service, Migratory Bird Permit Memorandum, from Director Steve Williams dated April 15, 2003.

In a Memorandum of Understanding Between the U.S. Department of Agriculture Forest Service and the U.S. Fish and Wildlife Service to Promote the Conservation of Migratory 6 Birds ([ldquo]MOU[rdquo]), the agencies identified specific actions that, if implemented, would contribute to the conservation of migratory birds and their habitats. The MOU requires the Forest Service to alter the season of activities to minimize disturbances during the breeding season, to coordinate with the appropriate FWS Ecological Services office when planning projects that could affect migratory bird populations, and to follow all migratory bird permitting requirements. Importantly, the MOU [ldquo]does not remove the Parties[rsquo] legal requirements under the MBTA, BGEPA, or other statutes and does not authorize the take of migratory birds,[rdquo] (emphasis added).

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

In addition to the protections afforded by the federal MBTA and outlined above, several bird species within the project area are also protected under state law. Specifically, [ldquo][i]t is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird,[rdquo] and [ldquo]it is unlawful to take or possess a migratory nongame bird.[rdquo] See Cal. Fish & Game Code [sect][sect] 3503, 3513.

The EA should have evaluated the effects of the Project and alternatives on migratory birds protected under the Migratory Bird Treaty Act (MBTA). The MBTA prohibits the destruction of nests and eggs of migratory birds. The EA should have evaluated the impacts of project activities on migratory bird nests, should have considered the breeding season for each migratory bird species found in the project area, and should have proposed measures (such as adjusting the season of use) to avoid destruction of nests.

We suggest the following sideboards for the Harlan project:

- [bull] Beginning thirty days prior to the disturbance of suitable nesting habitat, arrange for weekly bird surveys conducted by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in the habitat that is to be removed and any other such habitat within 300 feet of the project (within 500 feet for raptors).

- [bull] Produce documentation to record compliance with applicable State and Federal laws pertaining to the

protection of native birds.

See: Southern California Association of Governments. 2012. Final Programmatic Environmental Impact Report for the 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), Appendix G: Examples of Measures that Could Reduce Impacts from Planning, Development and Transportation

Opportunity to Work Together

Please note that the Goosenest Adaptive Management Area (AMA) Guide specifically indicates that agency planners should emphasize collaboration in project planning. We are ready to do our part. Our organizations would like to work with agency planners to achieve the project objectives while incorporating the conservation sideboards suggested in these comments. Please consider and address our concerns prior to issuing a decision document. We would welcome a discussion about the suggestions contained in these comments.

Regards,

George Sexton

Kimberly Baker

Tom Wheeler