

Chad Stewart
Forest Supervisor
GMUG National Forests
2250 Highway 50
Delta, Colorado 8141

April 20, 2023

Re: Request for a Meeting to Discuss Reconsideration of the Spruce Beetle Epidemic and Aspen Decline Management Response

Dear Mr. Stewart,

On behalf of High Country Conservation Advocates, Sheep Mountain Alliance, and Wilderness Workshop (collectively “conservation groups”), we request reconsideration of the 2016 Spruce Beetle Epidemic and Aspen Decline Management Response (“SBEADMR”) in light of new information related to impacts that may significantly affect the environment, including impacts to Canada lynx and effects of steep slope logging within the SBEADMR priority treatment areas (“PTA”). After reviewing the records provided in response to our November 2022 Freedom of Information Act request, SBEADMR currently violates the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). Given these legal vulnerabilities, we request that you immediately pause implementation of SBEADMR until the Grand Mesa, Uncompahgre, and Gunnison National Forest (GMUG) completes a thorough NEPA review for the steep slope logging decision and reinitiates formal consultation with the United States Fish and Wildlife Service (USFWS) for impacts to lynx.

I. Impacts to Lynx

Despite significant impacts from SBEADMR to lynx analysis units (LAUs), and an update to the vegetation polygons for calculating lynx habitat, the GMUG has not reinitiated formal consultation with USFWS nor completed any supplemental NEPA analysis to determine impacts to lynx. This is unlawful.

SBEADMR was originally proposed back in 2013. The project covers a massive area and over a hundred thousand acres of treatments, including in high quality Canada lynx habitat. Because Canada lynx is a threatened species under the ESA, the Forest Service prepared a biological assessment (BA) for SBEADMR in 2016 to determine potential impacts to lynx. The BA concluded the SBEADMR decision was likely to adversely affect the Canada lynx. USFWS agreed in their biological opinion (BO), but concluded the decision would not rise to the level of a ‘take.’ USFWS and the SBEADMR decision relied heavily on the Forest Service’s compliance with the Southern Rockies Lynx Amendment (SRLA), which sets forest standards for projects impacting lynx habitat. Specifically, the BO highlighted that: “the design criteria and adaptive management triggers effectively eliminate the possibility of exceeding 30 percent unsuitable conditions within any of the LAUs[.]” BO at 13.

The GMUG should have reinitiated formal consultation at two required points. First, when monitoring for SBEADMR revealed that adaptive management triggers had been surpassed in the Cathedral and Stewart Creek LAUs. These LAUs were well above the SRLA's 30 percent unsuitable condition threshold. Because the BO was predicated on the LAU's unsuitable condition thresholds staying below 30 percent, this constitutes new information that may affect Canada lynx in a manner or to an extent not previously considered. *See* 50 CFR § 402.16(a)(2) (requiring reinitiation of consultation "[i]f new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered").

Second, the agency should have reinitiated formal consultation when the GMUG updated its lynx mapping in 2021. The GMUG updated its Canada lynx habitat mapping to keep up to date with spruce beetle mortality modeling in anticipation of the revised forest plan process. As a result of this project, the environmental baseline of lynx habitat on the GMUG changed, with the updated modeling finding that some of the LAUs identified in the Southern Rockies Lynx Amendment exceeded the 30 percent unsuitable habitat condition.

In addition to reinitiating formal consultation with USFWS, the GMUG should have completed a supplemental NEPA analysis when it remapped the lynx LAUs. *See Native Ecosystems Council & Alliance for the Wild Rockies v. United States Forest Service ex rel. Davey*, 866 F. Supp. 2d 1209 (Dist. Idaho 2012) (stating: "like a house of cards built on an unsound foundation, because the 2005 map was not analyzed under NEPA, the agency's analysis under the ESA — which is based upon the validity of the 2005 map— cannot withstand judicial review."). To remedy this issue, the GMUG must pause SBEADMR and proceed with a supplemental NEPA analysis.

II. Steep Slope Logging

Steep slope logging was never considered or authorized when SBEADMR was approved in 2016. In the original SBEADMR decision, the GMUG solely authorized treatments on slopes over 40 degrees by chainsaw. Areas with steep slopes were excluded from analysis under the SBEADMR EIS because of the difficulties associated with steep slope logging. *See* SBEADMR Appendix H1 Response to Comment Report at 142 (stating: "Topographical features will be factored into the placement of group retention and ridges will be avoided. Moderate to steep slopes have already been filtered out based on suitability."). Now, the Forest Service has changed course and authorized steep slope logging on slopes over 40 degrees within the PTAs, which effectively increases the number of treatable acres by 8,500 acres. Instead of preparing a supplemental NEPA analysis, the Forest Service opted for a supplemental information report (SIR), which does not satisfy the agency's obligations under NEPA. The SIR does not satisfy the NEPA's hard look mandate, nor does it satisfy NEPA's public participation requirements.

An agency is required to supplement an existing EIS when "[t]he agency makes substantial changes to the proposed action that are relevant to environmental concerns" or when "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(d)(1). The decision to prepare a supplemental NEPA document mirrors the decision to prepare one in the first instance: "[i]f there remains major Federal action to occur, and if the new information is sufficient to show that the remaining action will affect the quality of the human environment in a significant manner or to a

significant extent not already considered, a supplemental EIS must be prepared." *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 374 (1989).

Here, the GMUG's decision to authorize steep slope logging constitutes a substantial change to the proposed action. The agency has now expanded the number of treatable acres to include an additional 8,500 acres that were explicitly excluded from the original decision due to the difficulty of logging these areas. There are major Federal actions remaining that will occur over the remaining lifespan of SBEADMR, including authorized timber sales through at least 2025 with the option to treat units with steep slopes. This type of impact that will affect the quality of the human environment was not considered in the original SBEADMR EIS because the project never contemplated logging on slopes over 40 degrees. Accordingly, the Forest Service must pause SBEADMR and carry forth a process to supplement its NEPA.

III. Conclusion and Meeting Request

The USFS must halt implementation of the remaining SBEADMR timber sales pending reinitiation of consultation with USFWS and reconsideration of existing and foreseeable impacts to lynx. In addition to fulfilling its obligations under the ESA and NEPA, the Forest Service must pause SBEADMR until supplemental analysis is undertaken to support a revised decision to log steep slopes.

Thank you for considering our request, and we would appreciate the opportunity to sit down in person or through a video call to discuss the future of SBEADMR. We look forward to hearing back from your office regarding a meeting no later than Friday, May 5th, 2023.

Sincerely,

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File Code: 2400; 2670
Date: July 11, 2023

Oliver Wood, Conservation Advocate
Peter Hart, Attorney
Matt Reed, Public Lands Director
Mason Osgood, Executive Director

Dear Conservation Groups:

I am corresponding in response to your letter dated April 20, 2023, regarding Reconsideration of the Spruce Beetle Epidemic and Aspen Decline Management Response (SBEADMR). You have raised two topical issues: Canada lynx and steep slope logging.

Issue: Despite significant impacts from SBEADMR to lynx analysis units (LAUs), and an update to the vegetation polygons for calculating lynx habitat, the GMUG has not reinitiated formal consultation with USFWS nor completed any supplemental NEPA analysis to determine impacts to lynx. This is unlawful....

Response: We reached out to USFWS on this raised issue and they determined that re-initiation of formal consultation is not warranted.

Management activities were not the driving result in conversion of habitat exceeding Southern Rockies Lynx Amendment (SLRA) Standard VEG S1. Rather, natural disturbance from the spruce-beetle epidemic is the driving cause. The SBEADMR Biological Assessment and USFWS's Biological Opinion (BiOp) dated June 2, 2016, were set up to account for the changed condition resulting from spruce-beetle induced tree mortality. The effects analysis anticipated that LAU conditions would change over time. Tables 1 and 18 in the Biological Assessment addressed the changed condition. Table 1 specifies that vegetation management in lynx habitat would not occur when LAUs exceeded the 30% unsuitable condition, except where overstory mortality exceeded 90% and lacked adequate understory to support snowshoe hares and lynx.

SLRA at Attachment 1-2 to 1-3 **emphasis added:**

Standard VEG S1

*Where and to what this applies: Standard VEG S1 applies to **all vegetation management projects** that regenerate forested stands, except for fuel treatment projects within the wildland urban interface (WUI) as defined by HFRA, subject to the following limitation: ...*

The standard: Unless a broad scale assessment has been completed that substantiates different historic levels of stand initiation structural stages limit disturbance in each LAU as follows: If more than 30 percent of the lynx habitat in an LAU is currently in a stand



*initiation structural stage that does not yet provide winter snowshoe hare habitat, no additional habitat may be regenerated by **vegetation management projects**.*

Beetle outbreaks were considered in the SBEADMR BiOp (p. 9-10, 12) as an event that would cause changes to LAUs and management response.

When the yellow-light trigger for the SRLA Standard VEG S1 is approached, the SBEADMR adaptive management action is to: “Discontinue treatments in suitable lynx habitat. Stands with extensive over-story mortality (>90%) that lack an understory can continue to be treated since they are already considered unsuitable via SRLA.”

Projects had ceased in the Cathedral and Stewart Creek LAUs before 2021, which was when we learned that the yellow-light trigger of 25% of habitat LAU in a stand initiation structural stage condition were reached, in compliance with the SBEADMR FEIS, BA and the terms of the BiOp even though vegetation management projects were not the result of the cause of the habitat conversion. We estimate that 159 acres (or 0.5%) of lynx habitat in the Stewart Creek LAU and 32 acres (or 0.2%) of lynx habitat in the Cathedral LAU of habitat conversion were the result of vegetation management activities from the last salvage sales sold in 2016 and 2017. No other sales have been sold since July 14, 2017 (Cathedral Salvage) within those two LAU’s.

Annual reporting to USFWS occurs under the SRLA BiOp, and to the SBEADMR Adaptive Management Group.

My staff has confirmed with USFWS that mapping/inventorying lynx habitat conditions using the best scientific data available is not a decision or action that requires consultation. A habitat inventory using the best available scientific information is not an activity that may affect listed species or critical habitat. The GMUG’s purpose of updating habitat mapping was to conserve lynx and lynx habitat and to make sure we meet our requirements under the SBEADMR BiOp. See Endangered Species Act Section 7(a)(2).

Since lynx were listed in 2000, there have been multiple habitat mapping iterations and updates within the range of lynx in the United States, informed by what has been learned about lynx biology and habitat use. Forests also periodically update acres of suitable and unsuitable habitat using FSVeg data and treatment data derived from the Forest Service Activities Tracking System (FACTS). Mapping updates are based on best available information in order to manage for lynx habitat conservation, and is a habitat inventory, not a NEPA decision. Habitat mapping accounted for the influence of dead overstory from the spruce-beetle epidemic on lynx habitat, which was anticipated in the SBEADMR Biological Assessment and BiOp.

Our mapping/inventorying efforts have not resulted in authorization or planning of any SBEADMR treatments in areas that were previously considered lynx habitat but are now not. If any SBEADMR treatments are proposed in lynx habitat, a determination of whether or not such actions comply with the analysis in the SBEADMR EIS and decision would need to be made at that time.

Issue: Steep slope logging was never considered or authorized when SBEADMR was approved in 2016. In the original SBEADMR decision, the GMUG solely authorized treatments on slopes over 40 degrees by chainsaw. Areas with steep slopes were excluded from analysis under the

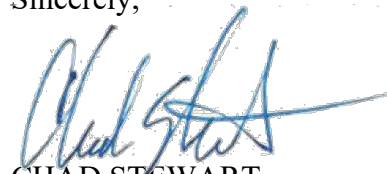
SBEADMR EIS because of the difficulties associated with steep slope logging. See SBEADMR Appendix H1 Response to Comment Report at 142 (stating: “Topographical features will be factored into the placement of group retention and ridges will be avoided. Moderate to steep slopes have already been filtered out based on suitability.”)....

Response: SBEADMR EIS used analysis assumptions based on traditional commercial logging systems and skid trails within the “suitable timber” area identified in the 1993 Amended Forest Plan (Forest Plan). Telski was authorized as a pilot project and as such the only SBEADMR project proposed to use cut-to-length and tethered logging technologies (referred to by Conservation Groups as “steep slope” logging).

This authorization came about after numerous meetings, field trips, consideration of effects analysis in SBEADMR FEIS and coordination with the SBEADMR AMG and interested public which included plans to conduct monitoring if the pilot project were implemented. The AMG recommended that this proposal and associated checklist changes move forward for FLT approval in their April 21, 2022, meeting. Three design criteria associated with tethered cut-to-length technology developed in concert with the AMG recommendation were determined to be consistent with the Forest Plan in the *SBEADMR Supplemental Information Report on Cut-to-length and Tethered Logging Technologies* signed on December 5, 2022, (clarified after the AMG October 24, 2022, meeting to specify that this technology was approved on a pilot project basis only).

As there is no longer consensus among the AMG as demonstrated by participation of AMG members in your letter regarding this pilot project, the project will not occur as proposed at this time under SBEADMR. To meet our commitment to transparency in the implementation of SBEADMR, this letter will be shared with the AMG as notification of cancellation of the Telski tethered cut-to-length pilot project.

Sincerely,



CHAD STEWART
Forest Supervisor

Enclosure: SBEADMRSIRTetheredCTL1Dec2022

cc: SBEADMR AMG; Sean Ferrell; Matt Vasquez; Carlyn Perovich