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January 22, 2018

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*Via email: objections-eastern-region@fs.fed.us
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Re: Mark Twain Forest Health Initiative Project, Project Number 47969

Dear Ms. Atkinson and Mr. Hamel:

Great Rivers Environmental Law Center files these comments on behalf of Angel Kruzen, widow of Tom Kruzen. Mrs. Kruzen lives at 213 E. 3d Street, Mountain View, MO 65548, and she and her late husband have been stewards of Missouri forests and waterways for many decades, including the Mark Twain National Forest (“MTNF”). Mrs. Kruzen objects to the paradoxically named Forest Health Initiative (“FHI”) Project and the FHI Environmental Assessment (“EA”) and Draft Decision Notice (“DN”) and Finding of No Significant Impact (“FONSI”) for many reasons. Ms. Kruzen urges the Forest Service to withdraw its FONSI; to prepare a full Environmental Impact Statement (“EIS”); and to develop and implement a forest health project that relies on selective tree cutting instead of salvage logging and clear-cutting.

I. The EA is Inadequate and the Forest Service Must Prepare an EIS for the Project Because the Project is Significant

This objection is based on new information arising after the designated comment opportunities and, therefore, is not based on a previously submitted timely, specific written comment regarding the Project. 36 C.F.R. § 218.8(c) and 36 C.F.R. §218.8(d)(6). Because the decision to issue a FONSI had not been made at the last opportunity for public comment on the Proposed Action and Preliminary Alternatives, the issuance of the FONSI constitutes new information arising after the designated comment period on the Proposed Action and Preliminary Alternatives. See 36 C.F.R. §218.8(d)(6). The following constitutes “[a] description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project; if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; suggested remedies that would resolve the objection; [and] supporting reasons for the reviewing officer to consider” for this specific Objection under 36 C.F.R. § 218.8(d)(5).

A. The context and intensity of the Project demand preparation of an EIS for the Project

NEPA requires a full EIS to be prepared if the federal action is significant.¹ When determining significance, a two-part test is used based on context and intensity of the proposed federal action. Context requires analysis “in several contexts, such as society as a whole, ... the affected region, the affected interests, and the locality.”² The study area for the FHI Project (the “Project”) covers approximately 900,000 acres and prescribes logging management activities on roughly 45,000 acres. The sheer size and geographical scope of the Project demonstrates that the context of the Project is significant both on a regional, statewide, and local basis and, therefore, requires preparation of an EIS. The Draft DN and FONSI improperly concludes that because the Project is a site-specific action, the Project “by itself does not have international, national, region-wide, or state-wide importance.”³ Moreover, the Draft Decision Notice and FONSI improperly concludes that there is no local significance by categorizing the short-term logging effects contemplated under the Project as “normal activity associated with timber harvesting and other resource projects.”⁴ Clearly, the logging contemplated under the Project is not “normal” and the effects logging of 45,000 acres and associated resource projects is in no way “normal.”

In terms of intensity, NEPA analyzes the “severity of the impact.” NEPA requires consideration of both beneficial and adverse impacts, and “a significant impact may exist even if the Federal agency believes that on balance the effect will be beneficial.”⁵ The sheer size and breadth of the logging management activities proposed for the Project on 45,000 acres

¹ 40 C.F.R. § 1508.27.

² *Id.*

³ Draft DN and FONSI, Page 9.

⁴ *Id.*

⁵ See *supra*, Note 1.

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demonstrate that the project has severe impacts whether beneficial or adverse. The Draft DN and FONSI itself sets forth a laundry list of significant and purportedly beneficial effects the project.⁶ It then pays lip service to the adverse impacts of the project and erroneously concludes that there is not an irreversible or irretrievable commitment of resources when, in fact, 45,000 acres of forest that provide important wildlife habitat for many species will be irretrievably lost. This downplaying of adverse impacts and highlighting of beneficial impacts appears to, indeed, bias [the Supervisor's] finding of no significant environmental effects.”⁷

In *Minnesota Public Interest Research Group v. Butz*, 498 F.2d 1314 (8th Cir. 1974), the Forest Service did not prepare an EIS claiming that the logging project was not significant. The Eighth Circuit found that the Forest Service had acted arbitrarily and capriciously by not preparing an EIS because of the impacts to the existence value of wilderness, impacts from nutrient runoff from logging, erosion, water pollution, and aesthetic impacts caused by the logging. The project at issue in *Butz* consisted of logging contracts and contract extensions that impacted 29,261 acres, roughly 15,000 fewer acres than that contemplated in the proposed Project.

The Draft DN violates NEPA by arbitrarily and capriciously issuing a FONSI when the significance of the project in terms of context and intensity clearly demand preparation of an EIS.

B. The Environmental Assessment itself demonstrates the need for an EIS for the Project

The EA itself is 158 pages and contains 117 pages of Appendices. The size and complexity of the EA demonstrate the need for the preparation of a full EIS. A lengthy environmental assessment cannot, by law, substitute for the preparation of an EIS.⁸ “No matter how thorough, an EA [environmental analysis] can never substitute for preparation of an EIS, if the proposed action could significantly affect the environment.”⁹ In *Curry v. U.S. Forest Serv.*, the Court noted that the length of an environmental assessment prepared for the project in that case undermined defendants’ decision not to prepare an EIS where the environmental assessment covered 49 pages and included 349 pages of appendices.¹⁰ The EA for the FHI is three times larger than the size of the EA found to require an EIS in *Curry*. Furthermore “[NEPA] regulations state, ‘Agencies should avoid preparing lengthy EA’s [environmental assessments] except in unusual cases. . . . [I]n most cases, however, a lengthy EA indicates that an EIS is needed.’”¹¹

⁶ *Id.* at 10.

⁷ *Id.*

⁸ *Anderson v. Evans*, 314 F.3d 1006, 1023 (9th Cir. 2002).

⁹ *Id.* (citing *Sierra Club v. Marsh*, 769 F.2d 868, 874-76 (1st Cir.1985)).

¹⁰ *Curry v. U.S. Forest Serv.*, 988 F.Supp. 541, 551-552 (W.D. Pennsylvania 1997)

¹¹ *Puerto Rico Conservation Found. v. Larson*, 797 F.Supp. 1066, 1069 n.3 (D. Puerto Rico 1992) (citing 46 Fed Reg at 18037 and *Marsh*, 769 F.2d at 874); See also *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 44 n.1 (2008) (Justice Ginsberg dissenting) (“An EA is used for

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The Draft DN violates NEPA by arbitrarily and capriciously issuing a FONSI when the significance of the project as demonstrated by the length and complexity of the EA clearly demand preparation of an EIS.

The inevitable conclusion from the context and intensity of the project as well as the length and complexity of the Environmental Assessment is that an EIS must be prepared for the Project. The remedy that would resolve this specific objection is the preparation of an EIS.

II. The Draft Decision authorizes 21,693 acres of salvage logging, 2,773 acres of clear cutting and 2,791 acres of seed tree cutting, all of which will cause unacceptable impacts to wildlife and endangered species

The following constitutes “[a] description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project; if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; suggested remedies that would resolve the objection; [and] supporting reasons for the reviewing officer to consider” for this specific Objection under 36 C.F.R. § 218.8(d)(5). This objection is connected to prior specific written comments on the FHI Project. 36 C.F.R. § 218.8(d)(6). Specifically, during public scoping in 2016, Ms. Kruzen stated that:

Clear-cutting will destroy the habitat of many animals, birds, amphibians and plants... Clear-cutting also destroys the shady canopy upon which plants depend such as terrestrial orchids (cypripedium), ginseng (panax quinquefolium) and goldenseal (hydrastis Canadensis). All of these plants and other shade dependent species are in decline in Missouri and elsewhere.

This Project will cause an irreplaceable loss of important wildlife habitat from the removal of snags, downed trees, and dead and dying trees on which various wildlife rely. Missouri Department of Conservations estimates that 89 species require snags and den trees for nesting, food and shelter, and an additional 66 species depend on fallen woody material such as rotting logs, limbs, and brushpiles.¹² The magnitude of clear-cut, salvage logging, and seed tree cutting will present unacceptable impacts to wildlife by removing valuable ecological characteristics of the forest present by dead and dying trees.

determining whether to prepare an EIS... By definition, an EA alone does not satisfy an agency's obligation under NEPA if the effects of a proposed action require preparation of a full EIS.”) (internal punctuation and citations omitted); and *Sierra Club v. Marsh*, 769 F.2d at 874 (“To announce that these documents -- despite their length and complexity -- demonstrate no need for an EIS is rather like the mathematics teacher who, after filling three blackboards with equations, announces to the class ‘you see, it is obvious.’”)

¹² Missouri Department of Conservation, *Forest and Wildlife Benefits on Private Land, Snags and Dens* (1994).

Furthermore, Ms. Cruzen stated that, “While the FS will undoubtedly claim that after the stands slated to be clear-cut are removed, a species will not become extinct, that will not be a positive endorsement of a terrible policy.” And that is exactly what the FS says when it admits in the FONSI that the proposed Project “may affect, is likely to adversely affect” the Indiana bat.¹³ This project will cause an irreplaceable loss of important habitat for the Indiana from the removal of snags, downed trees, and dead and dying trees on which they rely for various life functions. Just because the FWS determined that the Project would not jeopardize the continued existence of the Indiana Bat, does not mean that “[c]ritical resources such as threatened and endangered species, ... and sensitive habitats, are protected by proposed activities in Alternative 2.”¹⁴ This conclusion is not supported by the fact that the complete removal of dead and dying roost trees by clear-cut and salvage logging will displace sensitive habitats for endangered bats.

To remedy this problem, the Forest Service should withdraw its FONSI and prepare an EIS which analyzes alternatives which do not rely so heavily on clear-cutting, salvage logging, and seed tree thinning, but rather focuses on uneven-aged management to achieve forest health that also better protects wildlife habitat and endangered species.

III. The EA and FONSI do not address Climate Change in violation of NEPA, CEQ Guidance and Case Law

The following constitutes “[a] description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project; if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; suggested remedies that would resolve the objection; [and] supporting reasons for the reviewing officer to consider” for this specific Objection under 36 C.F.R. § 218.8(d)(5).

The Forest Service’s discussion of climate change is entirely nonexistent. The EA only mentions the notion of climatic changes on the hydrological resource generally, and not specific climate change impacts from the proposed Project. None of Mrs. Kruzen’s concerns raised in her comments of January 19, 2016, are addressed. The FONSI never mentions climate change, and the EA never discusses the effect of the alternatives on climate change. Just because the Forest Service wants to make money by selling timber does not mean it should destroy the future for our children by ignoring the terrible reality of climate change. This objection is directly connected to prior specific written comments on the FHI Project. 36 C.F.R. § 218.8(d)(6). Specifically, due to the fact that these comments were ignored in the Forest Service’s decision-making process for this Project, they will be restated in full:

Climate change is a critical issue and must be examined by the FS before it allows for clear-cutting. The FS should examine the significant cumulative effects of greenhouse gas emissions (“GHG”) from logging before proceeding on this project.

¹³ Draft DN and FONSI, Page 9.

¹⁴ *Id.* Page 4.

Increase in CO₂ will be caused by the cumulative emissions of greenhouse gases from millions of individual human activities distributed across the globe - activities like this timber sale that will transfer tons of carbon from the forest to the atmosphere. The carbon-climate analysis should extend beyond 50 years. CO₂ has a long residence time in the atmosphere so logging will result in long-term carbon overload in the atmosphere. Emissions will occur in the near term, and forest regrowth will occur in the long-term. The FS must consider the full effects of carbon emissions in each time period. Near-term emissions are of particular concern because it is during this period that we must figure out how to decarbonize our economy.

When Mr. Kruzen toured a clear-cut area on the Mark Twain National Forest with Pioneer Forester, Clint Trammel, Kruzen watched as Trammel pulled out a thermometer and stuck it in the soil. The temperature was 15 degrees F. warmer than still forested land nearby. Mr. Trammel explained that the soil temperature increase affects negatively the mycorrhizal fungi in the soil. These fungi are necessary for a healthy forest. http://www.fs.fed.us/psw/publications/documents/psw_gtr151/psw_gtr151_12_molina.pdf.

Logging will reduce canopy, increase solar exposure, and increase the temperature of soil and wood. Logging will increase the rate of decay of carbon in soil and dead wood pools. See PNW Research Station 2012. Science Findings: Logging Debris Matters: Better Soil, Fewer Invasive Plants. Issue 145, August 2012. Mazza, R. *ed.* <http://www.fs.fed.us/pnw/sciencef/scifi145.pdf> (“...cooler soil temperatures led to slower soil respiration, and thus less carbon dioxide was released to the atmosphere...”). The climate effects of regenerative harvest are more significant and long-lasting than the effects of thinning. The FS should **disclose whether the cumulative effects of logging-related GHG emissions are consistent with emissions reduction goals established by state or federal government or international agreements.**

In 2013, President Obama released his Climate Action Plan which includes forest conservation among the “first pillar” of efforts to reduce emissions, saying: “Preserving the Role of Forests in Mitigating Climate Change: America’s forests play a critical role in addressing carbon pollution, removing nearly 12 percent of total U.S. greenhouse gas emissions each year. ... Conservation and sustainable management can help to ensure our forests continue to remove carbon from the atmosphere...” <http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf>.

“[Advancing efforts to protect our forests” is also mentioned in the 6th U.S. Climate Action Report under the United Nations Framework Convention on Climate Change (UNFCCC). The FS should advance this national climate goal by conserving public forests. Carbon emissions from logging public lands directly conflict with this important national goal and indicate potential significant impacts requiring an EIS.

6 U.S. Dept. of State 2013. Draft 6th Climate Action Report <http://www.state.gov/e/oes/climate/ccreport2014/index.htm> (p. 12).

Logging-related GHG emissions (and forgone opportunities for increased storage of carbon in forests) will conflict with federal and international GHG reduction goals. The FS must quantify and disclose the social cost of carbon associated the resulting CO₂ emissions. The EPA and others have developed proxy measures to help the FS consider and disclose the effects of GHG emissions.

GHG emissions from logging (and other land management activities) impose significant costs on society, such as the cost of damage caused by climate change and the costs of adapting to climate change and the cost of sequestering carbon to mitigate emissions. CEQ's draft guidance on NEPA and Climate Change recognizes that the social cost of carbon ("SCC") is a "harmonized, interagency metric that can provide decision makers and the public with some context for meaningful NEPA review." 79 Fed. Reg. 77802, 77827. "The SCC estimates the benefit to be achieved, expressed in monetary value, by avoiding the damage caused by each additional metric ton (tonne) of carbon dioxide (CO₂) put into the atmosphere. Ruth Greenspan and Dianne Callan, World Resources Institute, *More than Meets the Eye: The Social Cost of Carbon in U.S. Climate Policy, in Plain English* (July 2011) at 1, http://pdf.wri.org/more_than_meets_the_eye_social_cost_of_carbon.pdf. The FS should carefully disclose these social costs. The express purpose of SCC analysis is to provide an apples-to-apples basis for comparing a project's economic benefits with GHG pollution impacts (costs). Where SCC is not analyzed and disclosed, these impacts (costs) are hidden from the public and, in fact, often "paid for" by the broader environment and public in the form of degraded ecological resiliency, public health impacts, and more.

Actions that reduce the amount of carbon stored in federal forests contribute to disruption of the global climate by increasing atmospheric concentrations of carbon dioxide. The climate disruption raises the risk of economic harm—locally, nationally, and globally—from extreme weather events, higher temperatures, changes in precipitation, rising sea levels, acidification of oceans, and changes in ecosystems. Laws and executive orders require managers of federal forests to account for these risks.

* * *

None of these comments were addressed by the Forest Service throughout the decision-making process in reaching a FONSI in the Draft DN. The EA and FONSI nowhere acknowledge the role forests play in our survival or providing a livable planet. The EA and FONSI never discuss or analyze the forest's relationship to carbon sequestration or carbon emissions and the effects that logging and timber use can have on climate change. Recent case law demonstrates that when federal agencies completely fail to analyze the climate change

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impacts from a proposed federal action, the agency acts arbitrarily and capriciously and in violation of NEPA. The EA neither discusses the direct effects on climate change from the logging contemplated under the Project, nor does it ever discuss the indirect effects on climate change from carbon emissions from downstream uses of the forest resource that the Project intends to extract. The Forest Service can remedy this violation of NEPA by preparing an EIS that fully analyzes the impacts to climate change from the proposed Project before making a decision to move forward with the Project.

IV. Conclusion

In summary, Ms. Kruzen urges the Forest Service to withdraw its Draft Decision Notice and FONSI for the FHI Project and to reject Alternative 2 and, indeed, this entire plan. The Forest Service should adopt a plan that calls for little to no even-aged management, and instead calls for primarily uneven-aged management to be used on the MTNF to benefit both the health of the forest and the habitat on which many wildlife and endangered species rely. Finally, the Forest Service must prepare a full EIS for such a significant project that impacts such a great extent of the MTNF.

Very truly yours,



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