

**ON BEHALF OF THE ATTORNEYS GENERAL
OF
CALIFORNIA, NEW MEXICO, COLORADO, AND WASHINGTON**

May 6, 2026

Via electronic submission to: <https://eplanning.blm.gov/>

U.S. Department of the Interior
Bureau of Land Management
c/o Wade Salverson, Forestry Lead
Division of Forest, Rangeland and Vegetation Resources
Idaho State Office
1387 S. Vinnell Way
Boise, ID 83709

**RE: Proposed Salvage Harvest Categorical Exclusion, 91 Fed. Reg. 17302
DOI-BLM-HQ-2000-2026-0002-OTHER_NEPA**

Dear Mr. Salverson:

On behalf of the Attorneys General of California, New Mexico, Colorado, and Washington (States), we respectfully submit these comments on the proposed addition to the Department of the Interior's Handbook of National Environmental Policy Act Implementing Procedures of a categorical exclusion exempting from environmental review the salvage harvest of up to 5,000 acres of dead or dying trees on forests managed by the Bureau of Land Management (BLM), 91 Fed. Reg. 17,302 (Apr. 6, 2026).

The States recognize the importance of taking an active role in managing public forest lands to address disturbances and to reduce wildfire risks, especially given the conditions created by past forest management practices as well as climate change, which has resulted in increased drought, insect outbreaks, and longer and more severe fire seasons. However, the proposed categorical exclusion (CE) unnecessarily shortchanges public participation and informed decision-making for timber salvage projects in a way that has no rational relationship to protecting communities or wildlands from these dangers.

In particular, BLM claims that this proposal will "help recover economic value" from public lands, and provide BLM with more flexibility to respond quickly to disturbances across larger areas to provide for public and infrastructure safety. *Id.* at 17,303. Yet BLM's own regulations already contain a CE for timber salvage harvests up to 250 acres in size, and the agency does not provide an adequate justification for this massive increase in size of projects, and the allowance for construction of permanent roads, that will escape public input and environmental review should BLM adopt the CE as proposed. Despite BLM's claim to focus on public and infrastructure safety, the proposal does not limit the areas where it may be used (i.e. no focus on wildland urban interfaces), nor does it limit the number of times the CE may be used or limit it to specific time periods where it can be used to respond to emergencies. BLM's proposal to exempt these larger projects from NEPA review in perpetuity, on land that it

manages across the country, is especially problematic given the potential for significant environmental impacts from salvage harvest projects of the size proposed, including soil disturbance, erosion, and wildlife impacts, as well as cumulative impacts from the implementation of multiple projects.¹

Safeguarding adequate review under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and ensuring full public disclosure of the environmental impacts of large timber projects on our public lands is of paramount importance to the States' interests. In California, BLM administers 15 million acres of public lands, equal to nearly 15% of the State's land area.² BLM-managed forest areas are spread throughout the State, but many of these lands are in the coastal ranges of Northern California, including in the California Coastal National Monument, the King Range National Conservation Area, and the Berryessa Snow Mountain National Monument. BLM also manages areas such as the Fort Ord National Monument near Monterey and the Sand to Snow National Monument outside of Palm Springs. BLM lands in California provide habitat for at least 34 animals and 68 plants listed as endangered or threatened under the federal Endangered Species Act, such as the bighorn sheep and Pacific fisher, as well as numerous other sensitive species that depend on forest habitat, such as the California spotted owl. California submitted comments on BLM's nearly identical proposal for a timber salvage harvest CE in 2020.

In New Mexico, BLM's forestry program manages 2 million acres of forests and woodlands.³ BLM lands in New Mexico are also spread throughout the State and include lands in the Fort Stanton–Snowy River Cave National Conservation Area, Rio Grande del Norte National Monument, the Organ Mountains–Desert Peaks National Monument, lands neighboring the Bosque del Apache National Wildlife Refuge, and others.⁴ Approximately 16 threatened and endangered animals and 11 threatened and endangered plants call New Mexico BLM-administered lands home.⁵ They include the Mexican gray wolf, Aplomado falcon, the Gila trout, southwestern willow flycatcher, the yellow-billed cuckoo, and others.

¹ BLM acknowledges the potential for environmental impacts but relies on the application of design features and Best Management Practices that are not actually required by the CE. Instead, they must only be disclosed and discuss how each of them is addressed. 91 Fed. Reg. 17,302.

² U.S. Dep't of the Interior, BLM, *BLM New Mexico Forests and Woodlands*, <https://www.blm.gov/programs/natural-resources/forests-and-woodlands/forest-resilience/newmexico>.

³ U.S. Dep't of the Interior, BLM, *BLM Salvage Harvest Categorical Exclusion Verification Report* ("BLM Substantiation Report"), <https://eplanning.blm.gov/Documents/?id=228df480-512f-f111-8341-001dd8029ed0&spid=738df480-512f-f111-8341-001dd8029ed0#>.

⁴ BLM, *New Mexico Threatened and Endangered Species*, <https://www.blm.gov/programs/fish-and-wildlife/threatened-and-endangered/state-te-data/new-mexico>.

⁵ *Id.*

BLM manages 3.5 to 4 million acres of forested lands in Colorado. More than 2.5 million of the forested acres are considered woodlands, dominated by piñon, juniper and oak, and the remaining forested acres consist of traditional commercial tree species such as ponderosa pine, lodgepole pine and Douglas fir. BLM Colorado works cooperatively with the U.S. Forest Service, Colorado State Forest Service, and other partners to restore forest health conditions, including mitigating bark beetle-associated impacts. Treatments to address forest health are not one-size-fits-all projects – they must be assessed by foresters and the approach carefully considered even within the same forest types. The proposed expansion of CE coverage to 5,000 acres for both salvage and thinning treatments would sacrifice BLM’s ability to get expert local and state input regarding these larger-scale projects, and increase unnecessary risks to wildlife habitat, sensitive and listed wildlife species, and watershed health and protection.

For the following reasons, the States urge BLM to withdraw the proposed CE.

I. STATUTORY BACKGROUND

A. National Environmental Policy Act

Congress enacted NEPA in 1969 to “establish a national policy for the environment . . . and to create and maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans.” 42 U.S.C. § 4321. NEPA serves two fundamental purposes: (1) to guarantee that agencies take a “hard look” at the consequences of their actions before the actions occur by ensuring that “the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts”; and (2) to ensure that “the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349–50 (1989).

To achieve these purposes, NEPA requires the preparation of a detailed environmental impact statement (EIS) for any “major federal action significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). In taking a “hard look,” NEPA requires federal agencies to consider the direct, indirect, and cumulative impacts of their proposed actions. *Diné Citizens Against Ruining Our Env’t v. Bernhardt*, 923 F.3d 831, 837 (10th Cir. 2019).⁶

⁶ NEPA’s requirement that agencies consider indirect and cumulative impacts of major federal actions remains binding, notwithstanding the U.S. Supreme Court’s holding in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168 (2025), that environmental review of proposed actions need not consider possible projects that are distinct in time or place if the causal connection to the proposed action is overly attenuated, or that an agency has no authority to approve. *Id.* at 187-88. The Supreme Court was careful to note that indirect effects can fall within the scope of a proposed action, for example, water runoff or air emissions from a project that cause impacts many miles from the project. *Id.* at 187. Since the

The process for conducting environmental review was governed for nearly fifty years by implementing regulations adopted by the Council on Environmental Quality (CEQ). *See* 90 Fed. Reg. 10,610, 10,612 (Feb. 25, 2025). In 2008, the Department of the Interior (DOI) adopted NEPA implementing regulations to supplement the CEQ regulations. *See* 90 Fed. Reg. 29,498, 29,500 (July 3, 2025). In 2023, Congress enacted the Fiscal Responsibility Act (FRA), codifying the process for determining the level of environmental review set forth in the CEQ regulations, including the use of categorical exclusions. Pub. L. No. 118-5, 137 Stat. 10 (2023). Specifically, the FRA requires agencies to prepare an EIS for proposed major federal actions having “a reasonably foreseeable significant effect on the quality of the human environment.” 42 U.S.C. § 4336(b)(1). The FRA requires agencies to prepare an environmental assessment (EA) for proposed major federal actions that do not “have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown.” *Id.* § 4336(b)(2). If an EA results in a finding of no significant impact (FONSI), an agency need not prepare an EIS. *Ibid.* The FRA provides that an agency need not prepare an EA or EIS for a proposed action if it falls within a CE, *id.* § 4336(a)(2), which the FRA defines as “a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment.” *Id.* § 4336e(1).

On January 20, 2025, President Trump issued Executive Order 14154, directing CEQ to propose rescinding its NEPA implementing regulations and issue guidance to agencies on NEPA implementation “to expedite permit approvals.” 90 Fed. Reg. 8353, 8355 (Jan. 29, 2025). On February 19, 2026, CEQ issued guidance to agencies on NEPA implementation. Council on Env’t Quality, Memorandum for Heads of Federal Departments and Agencies, <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf>. On February 25, 2025, CEQ published an interim final rule rescinding its NEPA regulations. 90 Fed. Reg. 10,610 (Feb. 25, 2025). CEQ published a final rule on January 8, 2026. 91 Fed. Reg. 618 (Jan. 8, 2026). On July 2, 2025, DOI published an interim final rule rescinding the majority of its NEPA regulations and replacing them with non-APA procedures contained in a “handbook.” 90 Fed. Reg. 29,498 (July 3, 2025). The interim final rule retained, with amendments, DOI’s NEPA regulations governing adoption and application of categorical exclusions. On February 24, 2026, DOI published a final rule, largely retaining amendments in the interim final rule regarding categorical exclusions. 91 Fed. Reg. 8,738 (Feb. 24, 2026).

The current DOI regulations governing adoption and application of categorical exclusions provide that DOI may adopt categorical exclusions for categories of actions that “normally do not significantly affect the quality of the human environment” and for which preparation of an EA or EIS is not required. 43 C.F.R. § 46.205. In adopting a categorical exclusion, DOI must “[d]evelop a written record containing information to substantiate its determination. *Id.* §

Seven County decision, the Ninth Circuit has affirmed that NEPA’s “hard-look” requirement continues to apply, including the required consideration of cumulative impacts. *See Cascadia Wildlands v. U.S. Bureau of Land Mngt.*, 153 F.4th 869, 879 (9th Cir. 2025) (“NEPA . . . requires that a federal agency consider every significant aspect of the environmental impact of a proposed action . . . and establishes action-forcing procedures that require agencies to take a hard look at environmental consequences.”) (citations and internal quotations marks omitted).

46.205(h). Once adopted, categorical exclusions may be applied to actions unless an action, due to “extraordinary circumstances,” may “have a significant environmental effect,” in which case an EA or EIS must be prepared. *Id.* § 46.205(c). “Extraordinary circumstances” are defined to include, inter alia, proposed actions that would have “significant impacts on natural resources and unique geographic characteristics,” would have “highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks,” would “establish precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects,” would “[h]ave significant impacts on species listed, or proposed to be listed on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species,” or would “[s]ignificantly limit access to and ceremonial use of Indian sacred sites on Federal lands . . . or significantly adversely affect the physical integrity of such sacred sites.” *Id.* § 46.215(b)-(e), (g)-(h).

B. Administrative Procedure Act

Under the Administrative Procedure Act, 5 U.S.C. §§ 551–559, courts will set aside an agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). An agency action is arbitrary and capricious where the agency has “relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or offered an explanation so implausible that it could not be ascribed to a difference of view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). When promulgating a regulation, “the agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Id.* (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

These core principles apply to an agency’s decision to change existing policy. *F.C.C. v. Fox Television Stations*, 556 U.S. 502, 513–15 (2009). While an agency need not show that a new rule is “better” than the rule it replaced, it still must demonstrate that “it is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates.” *Id.* at 515 (emphases omitted). Further, an agency must “provide a more detailed justification than what would suffice for a new policy created on a blank slate” when “its new policy rests upon factual findings that contradict those which underlay its prior policy.” *Id.* Any “[u]nexplained inconsistency” between a new rule and its prior version is “a reason for holding an [agency’s] interpretation to be an arbitrary and capricious change.” *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005); *see also Sierra Club v. Bosworth*, 510 F.3d 1016, 1018 (9th Cir. 2007) (finding that U.S. Forest Service promulgation of categorical exclusion for certain fuel reduction projects was arbitrary and capricious where agency failed to demonstrate that it made a “reasoned decision” based on relevant factors and information).

II. HISTORY OF CATEGORICAL EXCLUSIONS FOR SALVAGE HARVEST

BLM has an existing CE, adopted in 2007, that is currently available to be used for salvage harvest projects involving 250 acres or less of disturbance and no more than 0.5 miles of temporary road construction to support the salvage operations.⁷ In 2020, BLM proposed to add a broader CE for salvage harvest projects involving harvest areas of up to 5,000 acres, with up to one mile of permanent roads. 85 Fed. Reg. 33,697 (June 2, 2020). In response to comments regarding BLM’s failure to explain how it had concluded that 5,000 acres was an appropriate limit based on the EAs reviewed, BLM reduced the upper limit of the harvest area size from 5,000 acres to 3,000 acres when it adopted the final CE. 85 Fed. Reg. 79,517, 79,519 (Dec. 10, 2020).

Less than two years later, after “[h]aving evaluated the BLM’s consideration and approval of the proposed salvage harvest actions since that time” and “[t]aking into account the complexity of land management and other factors,” BLM reversed course and directed its field office officials to discontinue use of the 2020 salvage harvest CE (2020 CE).⁸ In 2024, BLM formally proposed removing the 2020 CE “given the complexity of land management, legal frameworks, and other factors.” 38 Fed. Reg. 14,087, 14,088 (Feb. 26, 2024). The CE’s removal was finalized later that year, based on a “consideration of sound land management, legal frameworks, and other factors.” 89 Fed. Reg. 84,928 (Oct. 24, 2024).

Now, less than two years after BLM finalized its determination to *remove* the 2020 CE, the agency is again proposing to adopt the salvage harvest CE it proposed in June 2020—with no explanation of why it has yet again changed its position.

III. THE PROPOSED ESTABLISHMENT OF THE CATEGORICAL EXCLUSION IS ARBITRARY AND CAPRICIOUS

A. The Methodology BLM Used to Substantiate its Conclusion of No Significant Impact is Flawed

To arrive at the determination that the CE would not significantly affect the quality of the human environment, BLM discounts salvage harvest projects that did have significant impacts to the human environment, and states that design features required by land use plans and Best Management Practices are part of the proposed action, thereby creating an erroneous baseline.⁹ This exclusion of evidence and baseline mischaracterization leads to a flawed analysis and

⁷ U.S. Dep’t of the Interior, DOI NEPA Handbook 11.9(C)(8), <https://www.doi.gov/media/document/doi-nepa-handbook>.

⁸ U.S. Dep’t of the Interior, DOI Permanent Instruction Memorandum 2022-010 (Aug. 12, 2022), <https://www.blm.gov/policy/pim-2022-010>.

⁹ U.S. Dep’t of the Interior, BLM, BLM Salvage Harvest Categorical Exclusion Verification Report (BLM Substantiation Report) at p. 10 (Apr. 1, 2026), <https://eplanning.blm.gov/Documents/?id=228df480-512f-f111-8341-001dd8029ed0&spid=738df480-512f-f111-8341-001dd8029ed0>.

conclusion. “A ‘categorical exclusion’ is a ‘streamlined process allowing minor projects to be quickly implemented *so long as they have no significant effect on the environment.*” *Rocky Mountain Peace & Justice Ctr. v. U.S. Fish & Wildlife Serv.*, 548 F.Supp.3d 1042, 1053, n.6 (D. Colo. 2021) (quoting *Utah Env’t. Cong. v. Bosworth*, 443 F.3d 732, 735 (10th Cir. 2006) (emphasis added); *see also* 42 U.S.C. § 4336e(1) (defining categorical exclusion as “a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment.”)).

Here, BLM collected 34 EAs that culminated in FONSI, but excluded EAs that relied on a new commitment to mitigation to result in a FONSI (“mitigated FONSI”). BLM Substantiation Report at 2 and 9-10. By intentionally excluding EAs with mitigated FONSI, BLM appears to admit that there are some salvage harvest projects that result in significant impacts to the environment and thus require mitigation measures. Yet BLM does not describe the specific salvage harvest projects with mitigated FONSI it excluded from its analysis, or how they compare to the types of projects that BLM is proposing to exempt from NEPA analysis. By excluding such projects, BLM is attempting to fashion an analysis that it hopes will lead to the result it desires and completely ignores the real potential of significant impacts.

To further craft an analysis that leads to its desired result, BLM states that design features required by land use plans and standard Best Management Practices represent part of the proposed action. By doing so, BLM fabricates a baseline that will help lead to a finding of no significant impact. BLM explains in the Substantiation Report that some of the design features “*typically* applied to salvage include snag/down-wood retention, riparian buffers/operating restrictions, erosion-control specifications, soil-compaction criteria, seasonal/wet-weather limits, weed hygiene, pile/underburn constraints, road-density limits, and temporary-road revegetation standards.” BLM Substantiation Report at 10 (emphasis added). BLM conveniently ignores the fact that these design features are generally implemented in salvage projects *because* such projects cause significant impacts to the environment. Without them, BLM would be unable to make a finding of no significant impact.

Often, the application of specific “design features” or Best Management Practices is identified through the EA or EIS process, which generally allow the public to participate. For example, for the California Coastal National Monument, Point Arena–Stornetta Unit Comprehensive Fuels Reduction and Habitat Improvement project (DOI-BLM-CA-C050-2024-0017-DNA), which BLM cites in its Substantiation Report, BLM states that “Project Design Features that apply to the proposed action in [the Determination of NEPA Adequacy Worksheet] are analyzed under the [Programmatic Environmental Assessment].” The 30-day public scoping period on the Programmatic Environmental Assessment allowed “200 respondents, with 13 from federal, state, and local agencies; 19 from organizations and businesses; 6 from Native American tribes; and 162 responses from individuals” to comment on the proposed design features, which were identified in BLM’s Determination of NEPA Adequacy Worksheet.¹⁰ As another example,

¹⁰ U.S. Dep’t of the Interior, BLM, Cal. Coastal Nat’l Monument, Point Arena – Stornetta Unit, Comprehensive Fuels Reduction and Habitat Improvement (2024),

the August Complex Salvage Sales project EA (DOI-BLM-CA-N030-2021-0010-EA), also cited in the BLM Substantiation Report, considered an abandoned road that contributes runoff and sediment to an adjacent watercourse.¹¹ The EA stated that project operations would be conducted during the dry season and that the “operations would be suspended if rainfall is sufficient to result in pumping or rutting of skid trails, or if runoff generation is occurring that could transport disturbed sediment into watercourses.” Additionally, the EA discussed that post-operations, waterbars would be installed and mulch applied to reduce the quantity of runoff. The discussion of the abandoned road and the runoff and sediment impacts to the local watercourse is only one part of the EA, but it illustrates that such issues could be overlooked if BLM is not required to consider and analyze them for each salvage harvest project. In applying a CE rather than focusing on potential impacts of individual projects, BLM would not be required to take the “hard look” that NEPA requires.

B. BLM Did Not Properly Assess the Significance of the Proposed CE

As a result of the flawed methodology it uses, BLM fails to assess the true significance of the proposed CE. The “threshold question in a NEPA case is whether a proposed project will ‘significantly affect’ the environment, thereby triggering the requirement for an EIS.” *Bosworth*, 510 F.3d at 1027 (citations and internal quotation marks omitted). Like the Forest Service in *Bosworth*, BLM fails

to consider adequately the unique characteristics of the applicable geographic areas, the degree to which effects on the quality of the environment were controversial or the risks were unknown, the degree to which the CEs might establish a precedent for future actions with significant effects or represented a decision in principle about future considerations, the degree to which the actions might affect endangered species, and whether there existed cumulative impacts from other related actions.

BLM does not adequately consider these factors, as explained further below.

i. BLM Fails to Provide a Sufficiently Reasoned Explanation for the Increase in Project Size it Proposes to Exclude from NEPA Review

As discussed above, the States recognize that fuel reduction projects are necessary and important. Indeed, the States have invested a substantial amount of critical resources to wildfire prevention and preparedness. The responsibility to protect against damaging wildfires is a shared responsibility, and the States encourage BLM to do its part. However, BLM must proceed as required by law. In proposing the salvage harvest CE BLM does not sufficiently explain how it

<https://eplanning.blm.gov/Documents/?id=48E6E4E6-A7F2-F011-8407-001DD80DB62A&spid=71f16492-a8f2-f011-8406-001dd8008d46>.

¹¹ U.S. Dep’t of the Interior, BLM, August Complex Salvage Sales EA (Jul. 21, 2021), <https://eplanning.blm.gov/Documents/?id=af3356cb-a7f2-f011-8407-001dd803d7d3&spid=a5f8437a-a8f2-f011-8407-001dd803dca7>.

reached its decision to propose 5,000 acres as the maximum treatment area that would be exempted from NEPA review, and fails to provide evidence that salvage harvest projects of this size “normally do not significantly affect the quality of the human environment,” 43 C.F.R. § 46.205. BLM’s substantiation for a proposed CE that covers projects of up to 5,000 acres in size relies on the 34 EAs that it selected to support its conclusion. This approach is flawed in and of itself.

The BLM Substantiation Report performed two analyses of total acreage salvaged under the 34 EA/FONSIs included in its dataset of relevant projects. First, the report analyzed the salvaged acreage of all 34 projects, finding an acreage of about 3,900 acres at the 90th percentile and about 9,500 acres at the 95th percentile. BLM Substantiation Report at 21. Second, the report analyzed salvaged acres excluding “a small number of very large projects [that] skewed the distribution,” i.e., projects with salvaged acreage of more than 3,500 acres. *Id.* at 17, 21. Excluding those outliers, the report found an acreage of about 768 acres at the median and about 1,700 acres at the 90th percentile. *Id.* at 17.

The report acknowledged that the 5,000-acre treatment area ceiling under the proposed CE “lies at the upper tail” of the projects analyzed and “functions as an upper bound.” *Id.* at 21. It further acknowledged that the “upper end of the typical range [i.e., excluding outlier projects] falls below” the 5,000-acre ceiling. *Id.* at 21. Nonetheless, the report concluded that a 5,000-acre ceiling was appropriate for a CE because “the EA record shows that the BLM can reach a FONSI . . . on larger acreage values.” *Id.*

The report fails to provide a reasoned explanation for concluding that projects falling well outside the typical range qualify as actions that “normally do[] not significantly affect the quality of the human environment.” 42 U.S.C.A. § 4336e(1). Just because BLM “*can reach a FONSI*” on such larger salvage projects does not mean that such larger salvage projects will *normally* support a FONSI. Indeed, the report fails to cite principles supporting its assumption that data at the far upper end of the data distribution curve are statistically meaningful. Rather, it seems apparent that BLM focused on the upper end of the data distribution curve because it offered the most support for its desired acreage limit; even then, the data does not support its conclusions. A more conservative approach to identify typical salvage projects that do not normally have a significant environmental impact would have been to set a salvage-acreage limit based on the mean or median value of EA/FONSIs analyzed. and would have excluded outlier projects, which the report acknowledges “skewed the distribution.” *Id.* at 17. The BLM Substantiation Report uses the median as the benchmark for setting the limit on salvaged acres as a percentage of disturbance area. The report does not explain why it did not use the median in analyzing total salvage area.¹² The report also does not explain why BLM did not exclude the outlier projects to establish salvage acreage limits. If BLM had used the median and excluded the

¹² In *Colorado Wild, Heartwood v. U.S. Forest Service*, 435 F.3d 1204 (10th Cir. 2006), the Tenth Circuit affirmed the Forest Service’s use of an arithmetic mean to arrive at the CE size of 250 acres for the salvaging of dead and dying trees. Here, the mean for salvage acres is approximately 2,206 with all the 34 EAs considered, 1,468 acres with the largest EA removed, and 923.4 acres with the largest three of the 34 EAs are removed. All three are much smaller acreage limits than the 5,000 proposed.

outlier projects, then the limit on salvage acres would have been 768 acres, far below the 5,000-acre limit proposed.

In the second analysis, the report looked at treated acreage as a percent of disturbance area where the EA dataset reported both figures, finding a median percentage of about 25 percent. BLM Substantiation Report at 17. The report concludes on that basis that limiting salvage to no more than one-third of the disturbance area “tracks the empirical pattern of partial salvage.” *Id.* at 17, 22. The report fails to provide a reasoned explanation for selecting a one-third limit rather than a 25 percent limit. Again, it seems apparent that BLM selected its desired limit and mischaracterizes the data as supporting its decision.

The unreasonableness of the proposed CE is highlighted by the acknowledgment that the 2020 Salvage CE was ultimately reduced to 3,000 acres in response to the comments received, coupled with BLM’s failure to explain what has changed to allow BLM to go back to its original 5,000-acre proposal. A reduction to 3,000 acres would still cover more than 90% of the salvage projects, assuming removal of the outliers. But BLM attempts to explain this prior reduction away by contending that significant impacts are determined by resource conflicts rather than acreage. BLM Substantiation Report at 21, n.10. Yet scale does matter. An environmental impact statement “is of critical importance in a situation . . . where the categorical exclusion is nationwide in scope and has the potential to impact a *large number of acres.*” *Bosworth*, 510 F.3d at 1028 (emphasis added). Like the CE in *Bosworth*, the proposed CE could be potentially applicable to millions of acres of BLM forested woodlands. Despite the potential for major impacts to forestlands across the country, BLM proposes to do away with environmental assessments and environmental impact statements for most salvage projects. While the States recognize the need for and importance of fuel reduction projects, they must be adequately balanced with NEPA’s mandate requiring agencies to take a “hard look” at the significant environmental impacts of their actions and encouraging public participation.

ii. *The Effects of Salvage Harvests are Controversial and Therefore Large Salvage Harvest Projects Should not be Exempt from NEPA Analyses Without Sufficient Justification*

BLM acknowledges that there is controversy about salvage logging on public lands, but proposes to establish the CE anyway. BLM Substantiation Report at 26-28. Although DOI’s 2025 amendments to its NEPA regulations deleted 43 C.F.R. section 46.215(c), which provided that extraordinary circumstances exist where an action “may have highly controversial effects,” DOI’s Interim Final Rule explained that the rescinded “provision is intended only to provide that controversy about the nature and magnitude of the environmental effects of the action constitutes an extraordinary circumstance [and i]n any event, the concept is sufficiently addressed in existing paragraph (d).” 90 Fed. Reg. at 29,501 (rescinding portion of part 46 of title 43 but not 43 C.F.R. § 46.215(d), which was renumbered as 43 C.F.R. § 46.215(c)). The finalized regulations still provide that extraordinary circumstances exist where a project involves “highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.” 43 C.F.R. § 46.215(c). Therefore, case law predating this amendment remains valid. “A proposal is highly controversial when substantial questions are raised as to

whether a project ... may cause significant degradation of some human environmental factor, or there is a substantial dispute [about] the size, nature, or effect of the major Federal action.” *Bosworth*, 510 F.3d at 1030-1031 (citations and internal quotation marks omitted). When there is controversy, uncertainty about the effects or substantial questions about a project’s environmental impact, an EIS is required. *Bark v. U.S. Forest Serv.*, 958 F.3d 865, 870 (9th Cir. 2020) (holding that the Forest Service’s determination that a highly controversial thinning project in a national forest had no significant effects was arbitrary and capricious).

Disputes and controversies are often brought to the fore during the NEPA process. A substantial dispute exists “when evidence, raised prior to the preparation of an EIS or FONSI, casts serious doubt upon the reasonableness of an agency’s conclusions.” *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 736 (9th Cir. 2001). When an agency publishes a notice of intent to prepare an EIS, NEPA requires public comment. 42 U.S.C. § 4336a(c). NEPA also requires consultation with cooperating agencies that have jurisdiction or special expertise with respect to any environmental impact. 42 U.S.C. § 4336a(a)(3). This process helps fulfill NEPA’s mandate to “utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man’s environment[.]” 42 U.S.C. § 4332(A). The importance of this deliberative process is bolstered when there is controversy because it allows all stakeholders to voice their concerns and raise issues that the agency may not have considered. However, if an agency uses a CE, it is not required to go through this process, *see* 42 U.S.C. § 4336(a)(2)); the collective experience and knowledge of stakeholders is ignored; and the agency is robbed of valuable information and analysis that could have resulted in the protection of the environment and an improved project.

Here, BLM acknowledges that salvage harvests do indeed impact the environment. For example, BLM notes that post-fire actions may cause impacts to owl habitats, increased sediment risk, and other adverse impacts. BLM Substantiation Report at 23-26. To explain these away, BLM largely relies on the “bounded scope and design features of proposed actions eligible for CE application.” *Id.* at 26. However, it does not adequately explain how it came to the conclusion that projects as large as 5,000 acres would not suffer from these impacts. And while the CE lists certain design feature categories, it does not mandate their use, instead merely requiring their disclosure. By applying the proposed CE, BLM will not be required to consider the views of members of the public or the expertise of another federal or state agency with respect to the controversies that surround salvage harvest. This is despite the recognition that results from post-disturbance salvage harvest “vary by forest type, weather during later fires, time since disturbance, treatment design, and which resources are evaluated; both supporters and detractors can point to peer-reviewed studies for their position.” *Id.* (citations and internal quotation marks omitted). Because of these complexities, there is no “one-size-fits-all” approach that would allow for use of a CE, and BLM must properly consider and analyze the significant impacts that it knows large salvage harvest projects can, and likely will, create.

iii. *The Proposed CE Includes Actions That May Individually and Cumulatively Have a Significant Impact on the Environment*

The Proposed CE is problematic given the potential for direct, indirect, and cumulative impacts related to soil disturbance, erosion, wildlife impacts, and the spread of non-native and invasive species from salvage harvest activities on such large areas of forest land. For example, salvage logging can remove the most fire-resistant snags and tree trunks,¹³ which provide nesting and feeding habitat for wildlife,¹⁴ and can hinder forest regeneration and restoration by compacting soils and degrading water quality.¹⁵ As stated by the U.S. Forest Service in a synthesis report published in 2014:

Salvage logging is controversial because few short-term positive ecological effects and many potential negative effects have been associated with postfire logging (Peterson et al. 2009), while the potential economic returns from salvaging timber in a timely manner can be very large (Sessions et al. 2004)

[G]eneral ecological concerns associated with salvage harvests include impacts to soils; impacts to understory vegetation and recruitment; potential increases in surface fuel loads; reductions in key structural elements, such as snags and burned logs and their associated habitat values; and other influences on forest development. Reviews of the effects of salvage logging on aquatic systems reflect more general concerns about timber harvest (e.g., increased sedimentation and runoff from roads and logging disturbance, and loss of large trees and coarse woody debris inputs), although effects could be more significant because the timing of salvage

¹³ Leverkus, Alexandro B., et al., “Salvage logging effects on regulating ecosystem services and fuel loads,” *Frontiers in Ecology and the Environment* (June 8, 2020), <https://esajournals.onlinelibrary.wiley.com/doi/full/10.1002/fee.2219>; Dunn, Christopher J., et al., “Modeling the direct effects of salvage logging on long-term temporal fuel dynamics in dry-mixed conifer forests,” *Forest Ecology and Management* 341, 93-109 (Apr. 1, 2015), <https://www.sciencedirect.com/science/article/abs/pii/S0378112715000043>.

¹⁴ See, e.g., Thorn, Simon, *et al.*, “Impacts of salvage logging on biodiversity: a meta-analysis,” *Journal of Applied Ecology* 55:1, 279–289 (Jan. 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5736105/>; Orczewska, Anna, et al., “The impact of salvage logging on herb layer species composition and plant community recovery in Białowieża Forest,” *Biodiversity and Conservation* 28, 3407-3428 (2019), <https://link.springer.com/article/10.1007/s10531-019-01795-8>; Lindenmayer, David B., et al., “From unburnt to salvage logged: quantifying bird responses to different levels of disturbance severity,” *Journal of Applied Ecology* 55:4, 1626-1636 (July 2018), <https://besjournals.onlinelibrary.wiley.com/doi/epdf/10.1111/1365-2664.13137>.

¹⁵ See, e.g., Wagenbrenner, Joseph W., et al., “Effects of post-fire salvage logging and a skid trail treatment on ground cover, soils, and sediment production in the interior western United States,” *Forest Ecology and Management*. 335, 176-193 (Jan. 2015), <https://www.sciencedirect.com/science/article/abs/pii/S037811271400557X?via%3Dihub>.

logging imposes a stress following the disturbance of severe wildfire (Beschta et al. 2004, Karr et al. 2004, McCormick et al. 2010, Peterson et al. 2009).¹⁶

BLM does not dispute that salvage harvest has an impact on the environment. Instead, it contends that there will be no significant impact when the CE is applied because of existing general design features and Best Management Practices, which do not consider the specific characteristics or environmental issues of each project. BLM also attempts to do away with cumulative impacts by selecting certain past projects and “clustering” them for evaluation. By evaluating these clusters, BLM attempts to establish that salvage harvests do not result in cumulative impacts. Instead, the results show that there are indeed impacts to the environment and impacts do not rise to the level of significance under NEPA because of reliance on design feature implementation. In other words, the salvage harvests themselves *do* have impacts that are mitigated by specific design features that were considered and evaluated in the respective EAs. If the proposed CE is established, BLM will only need to disclose design features but will not need to analyze or evaluate the specific design features necessary for each respective salvage harvest project or its foreseeable cumulative impacts. “That an impacts analysis be done is of critical importance in a situation such as here, where the categorical exclusion is nationwide in scope and has the potential to impact a large number of acres.” *Bosworth*, 510 F.3d at 1027.

iv. Road Construction Results in Significant Environmental Impacts

The proposed CE allows for the construction of up to one mile of permanent roads, and up to 2.25 miles of temporary roads, per 1,000 acres of harvest area for each project, which itself creates the potential for significant environmental impacts. Numerous studies demonstrate that roads have the potential to significantly impact the environment.¹⁷ As stated by the Forest Service, “[I]mproperly constructed roads and poor road maintenance can increase the risk of erosion, landslides, and slope failure—endangering the health of watersheds that provide drinking water to millions of Americans and critical habitat for fish and wildlife.”¹⁸ It is

¹⁶ USDA Forest Service, Pacific Southwest Research Station, “Science Synthesis to Support Socioecological Resilience in the Sierra Nevada and Southern Cascade Range” (Sept. 2014) at 195-96, <https://research.fs.usda.gov/treesearch/46776>.

¹⁷ See, e.g., Benítez-López, Ana, et al., “The Impacts of Roads and Other Infrastructure on Mammal and Bird Populations: A Meta-Analysis,” *Biological Conservation* 143:6, 1307-1316 (June 2010), <https://www.sciencedirect.com/science/article/abs/pii/S0006320710000480>; Alisa W. Coffin, “From Roadkill to Road Ecology: A Review of the Ecological Effects of Roads,” *J. Transport Geography* 15:5, 396-406 (Sept. 2007), <https://www.sciencedirect.com/science/article/abs/pii/S0966692306001177>; Trombulak, Stephen C., et al., “Review of Ecological Effects of Roads on Terrestrial and Aquatic Communities,” *Conservation Biology* 14:1, 18-30 (2001), <https://conbio.onlinelibrary.wiley.com/doi/pdf/10.1046/j.1523-1739.2000.99084.x>.

¹⁸ U.S. Forest Serv., Road Management Website, Background Question #8, https://www.fs.usda.gov/eng/road_mgt/qanda.shtml.

unreasonable for BLM to assume that repeatedly allowing new road construction could not, cumulatively, result in significant impacts on the human environment.

One of the reasons identified by BLM for the proposed CE is “[t]he increasing frequency of complex fires on public lands and their threat to human life and property in the wildland urban interface[.]” 91 Fed. Reg. 17,302. While the States acknowledge that proper protection from wildfires is needed and important, BLM fails to properly contend with the vast scientific evidence that points to the role of roads in increasing the threat of wildfires. Extending and expanding roads into forested areas would likely increase the risk of fire ignition.¹⁹ Roads also create pathways for invasive plant species that pose a long-term threat to forest health and may exacerbate fires. A study by the USFS’s Rocky Mountain Research Station found that non-native plants are twice as common within 500 feet of a road as they are farther away.²⁰ The link between roads and invasive species across national forests was definitively established in a survey of nine states, with an apparent envelope of about 500 feet around roads in national forests where the risk of invasive species is significantly higher, posing long-term threats to ecosystem health.²¹ Invasive plant species can impair the regeneration of native plants; invasive grasses typically increase the frequency of fires; and some invasive woody species can increase the risk of high-intensity fires.²²

Despite the significant impacts of roads, BLM fails to properly consider the impacts of the distance of roads it proposes to allow in the CE and fails to sufficiently explain how it concluded that construction of these proposed lengths of roads would not individually or cumulatively have significant environmental impacts. Moreover, the significant impacts created by roads adds to the controversy surrounding the proposed CE. To be compliant with NEPA, BLM cannot adopt the CE as proposed. Instead, it must conduct environmental reviews for the larger projects BLM is contemplating here, which will assist in the identification of specific design features and practices necessary for each project.

v. The Proposed CE Guardrails Are Insufficient

BLM relies on caps to the total acreage limit, the treated share, and caps on road construction to conclude that salvage harvests will not have significant impacts. However, BLM does not adequately explain how these guardrails are sufficient. The establishment of the proposed CE would be permanent and there is no limit to the number of times it can be applied in the future. Similarly, there is no geographical constraint such as limiting the use of the CE to the wildland urban interface. Further, as mentioned above, the design features and Best

¹⁹ Gregory H. Aplet, et al., “Three-Decade record of contiguous-U.S. national forest wildfires indicates increased density of ignitions near roads,” *Fire Ecology*, 22:8 (2026), <https://doi.org/10.1186/s42408-026-00450-2>.

²⁰ Sean P. Healey, *Long-term Forest Health Implications of Roadlessness.*, 15 *Environmental Research Letters* 10, 1-6, 6 (2020), <https://research.fs.usda.gov/download/treearch/61251.pdf>.

²¹ *Id.* at 6.

²² *Id.*

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Management Practices that BLM contends will be applied are not required by the CE. Instead, they must only be disclosed and discuss how each of them is addressed. 91 Fed.Reg. 17,302. While the States recognize the importance of fuel reduction projects, BLM must include guardrails that consider the diversity of the vast landscapes where the CE may be applied in the future.

IV. CONCLUSION

BLM has failed to offer an adequately reasoned explanation for exempting salvage harvest projects up to 5,000 acres and associated roads from the requirements of NEPA. BLM should abandon this proposal and focus on work that will foster public participation so that all stakeholders can participate in the responsible stewardship of our shared environment and resources.

Sincerely,

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