



Northwest
Eugene, Oregon

Southwest
Taos, New Mexico

Northern Rockies
Helena, Montana

Southern Rockies
Durango, Colorado

Defending the West

www.westernlaw.org

Western Environmental Law Center

August 2, 2022

Glenn Casamassa, Regional Forester
Pacific Northwest Region, United States Forest Service
1220 SW 3rd Avenue
Portland, OR. 97204
glenn.casamassa@usda.gov

Dave Warnack, Forest Supervisor
Willamette National Forest
3106 Pierce Parkway Suite D
Springfield, OR. 97477
david.warnack@usda.gov

Darren Cross, District Ranger
McKenzie River Ranger District
Willamette National Forest
57600 McKenzie Highway
McKenzie Bridge, OR. 97413
darren.cross@usda.gov

RE: Significant New Information Regarding the Flat Country Project, Willamette National Forest

Dear Regional Forester Casamassa, Forest Supervisor Warnack, and District Ranger Cross:

I am contacting you on behalf of Cascadia Wildlands and Oregon Wild. I wish to bring to your attention significant new circumstances and information relevant to environmental concerns and bearing on the Flat Country Project (“Flat Country” or “Project”) and its impacts. This significant new information falls into two different categories: 1) significant new law and policy (i.e., Executive Orders, Presidential Memoranda, and Secretarial Memoranda); and 2) significant new circumstances and information pertaining to the 2020 Holiday Farm Fire.

As you are aware, “the purpose of NEPA is to foster better decision making and informed public participation for actions that affect the environment.” *Or. Natural Res. Council Action v. U.S. Forest Service*, 293 F.Supp.2d 1200, 1204 (D. Or. 2003)(“*ONRC*”) (citing 42 U.S.C. § 4321; 40 C.F.R. § 1501.1(c)). “It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees 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.” *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349, 109 S.Ct. 1835 (1989)). “Stated differently, NEPA’s purpose is to ensure that ‘the agency will not act on incomplete information, only to regret its decision after it is too late to correct.’” *Id.*

“In view of this purpose, an agency that has prepared an EIS cannot simply rest on the original document. The agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a ‘hard look at the environmental effects of its planned action, even after a proposal has received initial approval.’” *Friends of the Clearwater*, 222 F.3d at 557 (quoting *Marsh* 490 U.S. at 374); *Blue Mountains Biodiversity Project v. U.S. Forest Service*, 229 F.Supp.2d 1140, 1148 (D. Or. 2002). Indeed, when a “major federal action” remains to occur and the initial NEPA document does not adequately discuss “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts,” then the action agency is required to supplement the existing environmental analysis. 40 C.F.R. § 1502.9(c)(1)(ii); *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371, 374 (1989); *Or. Natural Res. Council Action v. United States Forest Serv.*, 2004 U.S. Dist. LEXIS 59034, at *24 (D. Or. Aug. 9, 2006).

There are two categories of significant new circumstances and information relevant to environmental concerns and bearing on the Flat Country Project and its impacts that require supplementation of the Flat Country Final Environmental Impact Statement (“FEIS”): 1) significant new law and policy (i.e., Executive Orders, Presidential Memorandum, and Secretarial Memorandum); and 2) significant new circumstances and information pertaining to the 2020 Holiday Farm Fire. 40 C.F.R. § 1502.9(c)(1)(ii).

Significant New Law and Policy.

As one of his first acts as President, Joe Biden issued a Memorandum for the Heads of Executive Departments and Agencies titled *Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking*. 86 Fed. Reg. 8,845 (Jan. 27, 2021). The Memorandum states that, as opposed to the prior Administration,

It is the policy of my Administration to make evidence-based decisions guided by the best available science and data. Scientific and technological information, data, and evidence are central to the development and iterative improvement of sound policies, and to the delivery of equitable programs, across every area of government. Scientific findings should never be distorted or influenced by political considerations. When scientific or technological information is considered in policy decisions, it should be subjected to well-established scientific processes, including peer review where feasible and appropriate, with appropriate protections for privacy. Improper political interference in the work of Federal scientists or other scientists who support the work of the Federal Government and in the communication of scientific facts undermines the welfare of the Nation, contributes to systemic inequities and injustices, and violates the trust that the public places in government to best serve its collective interests.

This Memorandum thus clearly established a federal policy of making decisions based on the best available science and not political or other considerations. *Id.*

Also on January 27, 2021, President Biden signed Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (“EO 14008”). 86 Fed. Reg. 7,619 (Feb. 1, 2021). EO 14008 states that

Section 101. Policy. United States international engagement to address climate change—which has become a climate crisis—is more necessary and urgent than ever. The scientific community has made clear that the scale and speed of necessary action is greater than previously believed. There is little time left to avoid setting the world on a dangerous, potentially catastrophic, climate trajectory. Responding to the climate crisis will require both significant short-term global reductions in greenhouse gas emissions and net-zero global emissions by mid-century or before.

It is the policy of my Administration that climate considerations shall be an essential element of United States foreign policy and national security. The United States will work with other countries and partners, both bilaterally and multilaterally, to put the world on a sustainable climate pathway. The United States will also move quickly to build resilience, both at home and abroad, against the impacts of climate change that are already manifest and will continue to intensify according to current trajectories....

It is the policy of my Administration to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure. Successfully meeting these challenges will require the Federal Government to pursue such a coordinated approach from planning to implementation, coupled with substantive engagement by stakeholders, including State, local, and Tribal governments.

Id. at 7,622. EO 14008 goes on to explain that in order to meet the climate crisis,

Sec. 216. Conserving Our Nation’s Lands and Waters. (a) The Secretary of the Interior, in consultation with the Secretary of Agriculture, the Secretary of Commerce, the Chair of the Council on Environmental Quality, and the heads of other relevant agencies, shall submit a report to the Task Force within 90 days of the date of this order recommending steps that the United States should take, working with State, local, Tribal, and territorial governments, agricultural and forest landowners, fishermen, and other key stakeholders, to achieve the goal of conserving at least 30 percent of our lands and waters by 2030.

Id. at 7,627. EO 14008 therefore establishes as policy that federal departments and agencies shall place climate change and actions to address it at the center of their decisionmaking and shall seek to conserve 30% of national lands and waters by 2030. And, in light of the Memorandum *Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking*, such decisions and conservation actions shall be made based on the best available science.

On Earth Day 2022, President Biden signed Executive Order 14072, *Strengthening the Nation's Forests, Communities, and Local Economies*. 87 Fed. Reg. 24,851 (April 22, 2022). This EO explains that

Section 1. Policy. Strengthening America's forests, which are home to cherished expanses of mature and old-growth forests on Federal lands, is critical to the health, prosperity, and resilience of our communities—particularly in light of the threat of catastrophic wildfires. Forests provide clean air and water, sustain the plant and animal life fundamental to combating the global climate and biodiversity crises, and hold special importance to Tribal Nations. We go to these special places to hike, camp, hunt, fish, and engage in recreation that revitalizes our souls and connects us to history and nature. Many local economies thrive because of these outdoor and forest management activities, including in the sustainable forest product sector....

It is the policy of my Administration, in consultation with State, local, Tribal, and territorial governments, as well as the private sector, nonprofit organizations, labor unions, and the scientific community, to pursue science based, sustainable forest and land management; conserve America's mature and old-growth forests on Federal lands; invest in forest health and restoration; support indigenous traditional ecological knowledge and cultural and subsistence practices; honor Tribal treaty rights; and deploy climate-smart forestry practices and other nature-based solutions to improve the resilience of our lands, waters, wildlife, and communities in the face of increasing disturbances and chronic stress arising from climate impacts. It is also the policy of my Administration, as outlined in *Conserving and Restoring America the Beautiful*, to support collaborative, locally led conservation solutions....

Sec. 2. Restoring and Conserving the Nation's Forests, Including Mature and Old-Growth Forests. My Administration will manage forests on Federal lands, which include many mature and old-growth forests, to promote their continued health and resilience; retain and enhance carbon storage; conserve biodiversity; mitigate the risk of wildfires; enhance climate resilience; enable subsistence and cultural uses; provide outdoor recreational opportunities; and promote sustainable local economic development....

Id. at 24,851-52. “To further conserve mature and old-growth forests and foster long-term United States forest health through climate-smart reforestation for the benefit of Americans today and for generations to come,” EO 14072 directs the Secretaries of Agriculture and Interior to “define,

identify, and complete an inventory of old-growth and mature forests on Federal lands” and then to “coordinate conservation and wildfire risk reduction activities, including consideration of climate-smart stewardship of mature and old-growth forests” with federal and nonfederal entities including Tribes, “analyze the threats to mature and old-growth forests on Federal lands, including from wildfires and climate change,” and finally to “develop policies...to institutionalize climate-smart management and conservation strategies that address threats to mature and old-growth forests on Federal lands.” *Id.* at 24,852.

Finally, on June 23, 2022, Secretary of Agriculture Tom Vilsack issued Secretarial Memorandum 1077-004, *Climate Resilience and Carbon Stewardship of America’s National Forests and Grasslands* to meet some of the obligations of the Department of Agriculture imposed by EO 14072. United States Department of Agriculture, *Climate Resilience and Carbon Stewardship of America’s National Forests and Grasslands* (June 23, 2022), <https://www.usda.gov/directives/sm-1077-004>. In addition to recognizing the threat posed to national forests from climate change and the value of and role that forests play in combating the climate crisis, the Secretary directed the Chief of the Forest Service to “carry out immediate actions to accelerate climate resilience and carbon stewardship” on national forestlands. *Id.* at 1, 7. These actions include defining and inventorying mature and old growth forests and then taking action “to protect, maintain, restore, and cultivate old-growth and mature stand characteristics within the National Forest System, grounded in science-based principles of carbon stewardship optimization considering a range of management strategies, and recognizing complementary opportunities and tradeoffs with other ecosystem values including water, wildlife, and biodiversity and social values such as wildfire risk to communities and source-water watersheds.” *Id.* at 7-8.

Taken together, these Presidential Memorandum, Executive Orders, and Secretarial Memorandum are new laws and policies that did not exist when District Ranger Cross signed the Flat Country Record of Decision (ROD) in January 2021. The ROD does not list or evaluate its consistency with these laws and policies, and does not assess the decision to implement the Flat Country Project in light of their clear direction to: 1) make decisions affecting federal lands based on the best available science; 2) make decisions affecting federal lands in light of the climate crisis, which demands the maximization of carbon sequestration in long-lived carbon stores and stocks such as mesic mature and old growth forests, particularly when that sequestration will also maximize other ecosystem values in the McKenzie River Watershed; 3) conserve 30% of the nation’s lands and waters by 2030 to meet the climate and biodiversity crises; 4) manage mature and old growth forests on federal lands to “promote their continued health and resilience; retain and enhance carbon storage; conserve biodiversity; mitigate the risk of wildfires; enhance climate resilience; enable subsistence and cultural uses; provide outdoor recreational opportunities; and promote sustainable local economic development; 5) coordinate conservation of mature and old-growth forests; and 6) institutionalize climate-smart management and conservation strategies for mature and old growth forests on federal lands.

The purpose and need of the Flat Country Project is “to ensure the Willamette National Forest continues to provide a reliable supply of timber products...and contribute[] to the annual

Probable Sale Quantity (PSQ) target of the forest.”¹ FEIS at 1. This purpose and need is antithetical to the foregoing significant new law and policy because rather than conserve older forests,² the Project will harvest 3,115 acres of forest older than 80 years of age. The decision to implement the Flat Country Project is inconsistent with the best available science, memorialized in EO 14008 and Presidential Memorandum *Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking*, which indicates that conserving – and not logging – carbon-rich mature and old growth forests such as those in the Flat Country planning area is the policy of the Administration.

The new information and circumstances represented by these Presidential Memorandum, Executive Orders, and Secretarial Memorandum are significant because they set forth opposing federal law and policy from what existed when the Flat Country ROD was signed. Major federal action remains to occur because the Forest Service has not yet offered for sale any timber approved for harvest by the Flat Country FEIS and ROD. This significant new information is relevant to the environmental concerns and effects of the Flat Country Project because it calls for the protection of the older forests currently scheduled for harvest. Thus, the new law and policy described *supra* is “significant new information and circumstances” for the purposes of NEPA, and supplementation of the underlying analysis is required. 40 C.F.R. § 1502.9(c)(1)(ii); *Marsh*, 490 U.S. at 373-74 (1989); *League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 760 (9th Cir. 2014); *Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006) (requiring the preparation of a supplemental EIS after the agency changed a policy upon which the original EIS had relied).

Significant New Circumstances and Information Pertaining to the 2020 Holiday Farm Fire.

On Labor Day 2020, several wildfires began in western Oregon, driven by high winds and temperatures, low relative humidity, existing drought conditions, and climate change. One of these fires, the Holiday Farm Fire, burned more than 231,000 acres or 27% of the McKenzie River Watershed to the west of the Flat Country planning area. Prior to 2020, approximately 77,190 acres of the Watershed, or about 9%, had experienced wildfire. Collectively, the Holiday Farm Fire and other Labor Day 2020 wildfires burned across millions of acres of federal and nonfederal lands, causing dramatic changes to forest and vegetation composition. In particular, these wildfires burned thousands of acres of mature and old growth forests that otherwise would not have experienced fire for hundreds of years. The quality and arrangement of suitable wildlife habitat has changed significantly as a result of the Holiday Farm Fire and the other 2020 Labor

¹ The Flat Country Project would yield approximately 102 million board feet (MMbf) of timber. FEIS at 1.

² Although the significant new law and policy discussed *supra* directs the Departments of Agriculture and Interior to define and spatially identify mature and old forests across the federal estate, the Forest Ecosystem Management Assessment Team report, to which the Northwest Forest Plan and Willamette National Forest Land and Resource Management Plan refer, has already defined mature forests as 80-100 years old and old growth forests as stands older than 180 years old. Forest Inventory and Analysis and stand exam data also already exist for the Flat Country planning area, thus identifying where on the landscape this older forest is located.

Day Fires.

The Forest Service published the Flat Country FEIS in June 2020, three months before the onset of the Labor Day Fires. There are numerous assumptions and analyses in the FEIS that are no longer valid in light of the extensive change in vegetative conditions as a result of the Holiday Farm Fire in the McKenzie River Watershed, as well as the other large Labor Day Fires that burned adjacent watersheds.³ An accounting of those assumptions and analyses is provided in Attachment A. The significant new information and circumstances presented by the Holiday Farm Fire as outlined in Attachment A require the Forest Service to supplement its environmental analysis. *Connaughton*, 752 F.3d at 760.

In response to the Holiday Farm Fire, nonfederal landowners conducted extensive post-fire salvage logging operations of burned and associated unburned forest. Sarah-Mae McCullough, *After the Fires*, EUGENE WEEKLY, May 28, 2021, available at <https://eugeneweekly.com/2021/05/28/after-the-fires/>; Oregon Wild, *Planned, Completed, and Ongoing Logging of 2020 Fire Landscapes Holiday Farm Fire* (July 12, 2022), <https://oregonwild.org/sites/default/files/pdf-files/PostFireLoggingHolidayFarm4.14.21.pdf>; KTVZ, *Owners of Oregon's fire-hit private forests scramble to remove dead trees, replant*, Jan. 8, 2021, available at <https://ktvz.com/news/-oregon-northwest/2021/01/08/owners-of-oregons-fire-hit-private-forests-scramble-to-remove-dead-trees-replant/>. Federal land managers also proposed and implemented post-fire logging operations on federal lands. Adam Duvernay, *BLM approves 910-acre salvage harvest in Holiday Farm Fire area*, EUGENE REGISTER GUARD, June 3, 2021, available at https://www.registerguard.com/-story/news/2021/06/03/blm-approves-910-acre-salvage-tree-harvest-holiday-farm-fire-area/7498377002/?fbclid=IwAR1zrdMexhwyX3aj-VseikMZFG_f9F2VgPjtQYwcUspdmI-TmDpDnHq3QvSI. As a consequence, local milling infrastructure quickly became flooded, and in some instances could not process the available volume. Amanda Arden, *Oregon timber owners work feverishly to salvage burned wood*, KOIN 6 NEWS, Dec. 21, 2020, available at <https://www.koin.com/-news/special-reports/oregon-timber-owners-work-feverishly-to-salvage-burned-wood/>.

³ While this letter is primarily concerned with the significant new information and circumstances that bear on the effects analysis for the Flat Country Project as a result of the Holiday Farm Fire, other large 2020 wildfires also affect the effects analysis for Flat Country. For example, the Archie Creek, Beachie Creek, Lionshead, and Riverside Fires burned adjacent and proximate watersheds, changing the quality of habitat available to wide-ranging wildlife species such as the northern spotted owl. Because owls can disperse and travel great distances, the composition and quality of dispersal habitat (and other habitat types) determines the success of dispersal and colonization events. And because the quality and arrangement of habitat types has changed greatly as a result of the 2020 wildfires, it is likely that spotted owls are frequently adjusting their home ranges (“shifting”), making remaining unburned habitat even more critical to the persistence of the species. A range-wide analysis of what quality of habitat remains where on the landscape, and whether and how spotted owls are using this habitat (including in light of persistent barred owl competition), is therefore necessary to accurately assess the effects of projects such as Flat Country. Equally significant are the impacts on spotted owl prey species red tree voles, whose habitat across their range has been severely fragmented by industrial logging.

In May 2022, the Forest Service announced that it was lowering the expected PSQ for each National Forest in Region 6, including the Willamette National Forest. United States Forest Service, *2022 AFRC Annual Meeting Breakout Handout – USDA Forest Service: Region 6* (undated [May 2022]). The reason for the regionwide decrease in targets remains unclear.

Since the Labor Day Fires, nonfederal timber volume has flooded local wood processing infrastructure. Coincidentally or not, the Regional Office also reduced the PSQ for the Willamette National Forest. While contributing a sustainable supply of raw wood to support local infrastructure and communities remains a multiple use of the Willamette National Forest, the predicted PSQ from Flat Country – 102 MMbf – far exceeds the new PSQ of 35 MMbf of timber for FY22 and FY23, or even the 50-75 MMbf predicted for outyears. The high volume predicted from Flat Country therefore is simply unnecessary to sustain local industry and communities, prompting a need to supplement the analysis in the Flat Country FEIS. *Tongass Conservation Soc’y v. Cole*, 2009 U.S. Dist. LEXIS 129952, at *20-21 (D. Alaska Dec. 7, 2009); *NRDC v. United States Forest Serv.*, 421 F.3d 797, 811-812 (9th Cir. 2005); *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437 (4th Cir. 1996); *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 235 F. Supp.2d 1143, 1157 (W.D. Wash. 2002); *Cascadia Wildlands v. U.S. Forest Serv.*, 791 F. Supp. 2d 979, 984–87, 991–93 (D. Or. 2011).

The new information and circumstances described *supra* are significant and therefore require supplemental environmental analysis. In the alternative, the Forest Service could issue a new Record of Decision adopting an alternative that only harvests immature forest stands less than 80 years of age. A new administrative objection period would be required, 36 C.F.R. § 218.22(d), but would be consistent with the significant new law and policy and changed circumstances outlined in this letter. Focusing on the restoration of younger forests through active management would be consistent with new law and policy requiring the Forest Service to make evidence-based land management decisions based on the best available science and climate-smart forestry practices. While active management can play a role in creating climate-resilient forests in some ecotypes, the mesic mature and old forests of Flat Country are best conserved by refraining from programming them for harvest.⁴

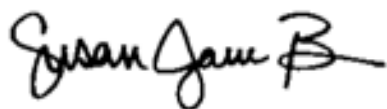
Given the importance of combating the climate and biodiversity crises by conserving mature and old forests on federal lands, we wish to bring these significant new changes in law, policy, and facts pertaining to the harvest of mature and old growth forests on the Willamette National Forest to your attention. We believe this information is directly relevant to the environmental

⁴ We are acutely aware that the Flat Country Project is located in the matrix land use allocation and therefore subject to programmed timber harvest under the Northwest Forest Plan, regardless of stand age. However, there is no *requirement* to schedule older stands for harvest, *Perkins v. Bergland*, 608 F.2d 803, 806 (9th Cir.1979); *Oregon Nat. Res. Council v. Lowe*, 836 F. Supp. 727, 733 (D. Or. 1993), *aff’d*, 109 F.3d 521 (9th Cir. 1997); *California Forestry Ass’n v. Bosworth*, 2008 WL 4370074, at *4 (E.D. Cal. 2008); *Intermountain Forest Indus. Ass’n v. Lyng*, 683 F. Supp. 1330, 1337–38 (D. Wyo. 1988), particularly in light of the significant new law and policy discussed herein.

consequences of the Flat Country Project and may change the effects determinations reached by the Forest Service. To that end, we request that you undertake supplemental environmental analysis regarding the effects of the Flat Country Project on the environment in light of the new law and policy outlined *supra*. *Seattle Audubon Soc. v. Espy*, 998 F.2d 699, 704 (9th Cir. 1993) (an agency must re-examine its decision when the EIS “rests on stale scientific evidence...and false assumptions”).

We look forward to reviewing the Forest Service’s supplemental analysis, and would like to discuss it with you before October 17, 2022. If you have any questions about this letter, please do not hesitate to contact me.

Sincerely,



Susan Jane M. Brown, Public Lands Director & Staff Attorney
Western Environmental Law Center
4107 NE Couch Street
Portland, OR. 97232
503-914-1323
brown@westernlaw.org

CC:

Rep. Peter DeFazio
United States House of Representatives
2134 Rayburn Office Building
Washington, DC 20515
kris.pratt@mail.house.gov
dan.whelan@mail.house.gov

Dr. Jerry Franklin (Ret.)
University of Washington
jff@u.washington.edu

Dr. Norm Johnson (Ret.)
Oregon State University
norm@applegateforestry.com

Randy Moore, Chief
United States Forest Service
Sidney R. Yates Federal Building
201 14th St SW
Washington, DC. 20227
rmoore@fs.fed.us

Chris French, Deputy Chief
United States Forest Service
Sidney R. Yates Federal Building
201 14th St SW
Washington, DC. 20227
cfrench@usda.gov

Sean Babington
Senior Advisor, Office of the Secretary
United States Department of Agriculture
1400 Independence Ave SW
Washington, DC. 20250
sean.babington@usda.gov