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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON

Bark,)	Civ. No. 3:12-cv-01656-AC
)	(Magistrate Judge John V. Acosta)
Plaintiff,)	
)	
v.)	
)	
Bureau of Land Management,)	REPLY IN SUPPORT
)	OF DEFENDANT'S
Defendant.)	CROSS MOTION
)	FOR SUMMARY JUDGMENT

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INTRODUCTION

The Bureau of Land Management ("BLM") fully considered the environmental consequences of the implementation of the proposed Airstrip Thinning Timber Sale ("Project"). BLM's January 11, 2012 decision to approve the Project should be upheld because this decision complies with the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701 *et seq.* and with the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*

Plaintiff Bark's FLPMA challenge to the approval of the Project should be rejected. BLM's experts properly determined that the implementation of the Project will not contribute to the need to list any species because "[s]uitable habitat for all BLM Special Status Species known or likely to be present would be retained in the project area and vicinity." Finding of No Significant Impact ("FONSI") at 6 (AR000630). BLM's determination that the Project will not adversely affect Bureau Special Status Species such as bat species should be accorded an especially high level of deference. *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 377-78 (1989); *see also Native Ecosystems Council v. Weldon*, 697 F.3d 1043, 1051 (9th Cir. 2012).

Defendant has proven that the Project complies with the guidelines of the Northwest Forest Plan and the Salem Resource Management Plan ("Plan"), including those related to snags, bats and other species, and their habitat. Contrary to Plaintiff's allegations, the removal of snags that pose a safety risk will not violate the Plan's guidelines or FLPMA.

Defendant has also shown that BLM's decision to approve the Project should be upheld because the environmental assessment's ("EA") analysis of direct, indirect, and cumulative impacts fully complied with NEPA. In sum, the BLM took a "hard look" at the environmental impacts of the Project in the EA and properly concluded in the FONSI that there are no

significant environmental impacts that require the preparation of an environmental impact statement (“EIS”)

Based on the Administrative Record and the legal memoranda filed, Defendant’s cross motion for summary judgment should be granted. Plaintiff’s motion for summary judgment should be denied. BLM’s decision to approve the Airstrip Thinning Timber Sale Project was not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A); *Citizens to Pres. Overton Park v. Volpe*, 401 U.S. 402, 415 (1971), *abrogated on other grounds, Califano v. Sanders*, 430 U.S. 99 (1977).

ARGUMENT

I. THE PROJECT COMPLIES WITH FLPMA.

A. The Project Complies with the Plan’s Snag Guidelines for the Matrix LUA.

BLM timber sales that conform to the guidelines in the Northwest Forest Plan as integrated into the Salem Resource Management Plan are in compliance with FLPMA. This can include commercial thinning and other timber sale activities that may take place within the Matrix Land Use Allocation (“LUA”). *Or. Natural Res. Council Fund v. Brong*, 492 F.3d 1120, 1126 (9th Cir. 2007) (“*Brong*”). Overall, the implementation of the Project’s timber sales in the Matrix LUA is consistent with “the twin goals of protecting the long-term ecological health of the forests and providing for sustainable timber production. . . .” and therefore, is a ‘balancing act between commercial use and conservation.’” *Conservation Nw. v. Sherman*, No. 11-35729, ___ F.3d ___, 2013 WL 1760807, at *3 (9th Cir. Apr. 25, 2013) (quoting *Conservation Nw. v. Rey*, 674 F. Supp. 2d 1232, 1238 (W.D. Wash. 2009)).

Despite this, Plaintiff Bark continues to assert that the Project violates FLPMA because

BLM allegedly failed to comply with guidelines related to snags in the Plan. *See* Compl. ¶¶ 40-49 (Counts I and II); *see also* Pl. Br. at 13-17 (ECF Doc. 19); Pl. Reply at 3-11 (ECF Doc. 36). Bark contends that commercial timber sales in the Matrix LUA cannot take place unless BLM can prove that the existing conditions on the ground conform with Plaintiff’s “minimum snag-retention standard.” Pl. Reply at 6. This is incorrect. There is no such standard.

Instead, BLM concluded that the Project met all of the applicable Plan standards. *See* Plan at 21-22 (AR012306-07), App. D-1 to D-6 (AR012402-07). For example, the Plan provides guidelines that are applicable to commercial timber sales and related activities within the Matrix LUA. *Id.* It states that these activities should provide “a renewable supply of large down logs well distributed across the Matrix landscape in a manner that meets the needs of species and provides for ecological functions.” *Id.* at 21 (AR012306). It indicates that both green conifer trees and snags should remain in the harvest units.^{1/} *Id.* The Plan specifies that additional green trees should be retained “for snag recruitment in timber harvest units where there is an identified, near-term (less than three decades) snag deficit.” *Id.* Overall, the Plan plainly states that commercial timber sales *may* take place in the Matrix LUA even if the existing conditions on the ground indicate a snag deficit.

^{1/} The Plan’s guidelines state:

Retain snags within a timber harvest unit at levels sufficient to support species of cavity-nesting birds at 40 percent of potential population levels [emphasis added]. Meet the 40 percent minimum throughout the Matrix LUA with per acre requirements met on average areas no larger than 40 acres.

See Plan at 21 (AR012306), 25 (AR012310).

Plaintiff ignores the Plan’s snag guidelines and relies on the findings in *Brong* to support its flawed snag argument. Pl. Reply at 5-6. Bark acknowledges that the Timbered Rock Salvage and Elk Creek Watershed Restoration Project in the Elk Creek Late-Successional Reserve (“LSR”) is *not* analogous to the Airstrip Thinning Timber Sale Project in the Matrix LUA. *Id.* The Plan’s guidelines for the LSR and the Matrix LUA are totally different. *Compare* Plan at 15-20 (AR012300-305) (Plan’s guidelines for LRS) *to* Plan at 20-22 (AR012305-307), App. D-1 to D-6 (AR012402-07). (Plan’s guidelines for Matrix LUA).

Bark argues that in *Brong* the Ninth Circuit rejected “BLM’s ‘some-is-enough’ approach toward snag retention and found it insufficient to comply with the habitat requirements of the [Plan].” Pl. Reply at 5. Plaintiff tries to expand the *Brong* holding beyond the LSRs. *Id.* This expansion is not warranted. In *Brong*, the plaintiffs alleged that BLM’s decision to permit any snag removal from the Elk Creek LSR violated FLPMA because of the Northwest Forest Plan’s (“NFP”) “broad prohibition against logging snags in LSRs. . . .” *Or. Natural Res. Council Fund v. Brong*, No. 04-693, 2004 WL 2554575, at * 7 (D. Or. Nov. 8, 2004). The Ninth Circuit held that BLM’s planned sales violated the applicable NFP’s salvage guidelines because post-harvest too few snags would remain in the LSRs. *Brong*, 492 F. 3d at 1128-31. In other words, under *Brong*, retaining some snags in the LSRs was *not* enough to comply with the Plan’s salvage sales guidelines for snag retention. *Id.*

That holding has no relevance to this case where Bark challenges the thinning of green timber in the Matrix LUA. As noted above, the Matrix snag retention guidelines are different than applicable in the the LRS. Any reliance on *Brong* which relates solely to LSR salvage sales and not to a Matrix LUA green timber sale is totally misplaced. The discussion of snags in

Brong has no application in the instant case.

In sum, Defendant has shown that nothing in *Brong* or the Plan's snag guidelines for the Matrix LUA's timber sales bars the removal of several snags that must be felled to allow the safe harvest of timber under the Project.² See Def. Mem. at 11-15 (ECF Doc. 31). Plaintiff's allegation that Defendant's approval of the Project violated the applicable Plan's snag guidelines and thereby, violated FLPMA is without merit. Plaintiff has failed to meet its burden of proof. Therefore, Bark's FLPMA claim should be rejected and judgment on that claim should be entered in Defendant's favor.

B. The Project Complies with the Plan's Guidelines for Special Species.

The Project complies with FLPMA because BLM considered the Project's potential effects on Special Status Species and their habitats in full conformity with the Plan's guidelines. Compare Plan at 28 (AR012313) to EA at 68-81 (AR000692-705). BLM's experts collected data and information from field surveys and numerous other sources on forest condition, vegetation, hydrology, fisheries and aquatic habitat, soils, wildlife, and other related matters. EA at 35-38 (AR000659-62). In connection with this analysis, the experts prepared a Biological Assessment ("BA") for the Project.³ *Id.* at 99 (AR000723). BLM analyzed the Project's environmental impacts on habitat for the Northern spotted owl (*id.* at 70, 74-75, 78, 80);⁴ Oregon

² Snags may need to be felled for "safety, road construction, skid roads, cable corridors or would fall incidental to logging operations." AR000830.

³ See Biological Assessment of Likely to Adversely Affect (LAA) Projects with the Potential to Modify the Habitat of Northern Spotted Owls, Willamette Planning Province- FY 2011-12 (July 2010).

⁴ BLM also entered into Endangered Species Act ("ESA") Section 7 (16 U.S.C. § 1536) formal consultation with the U.S. Fish and Wildlife Service ("FWS") for the Northern spotted

slender salamander (*id.* at 71, 75, 78-79, 81); bald eagle (*id.* at 71, 76); Peregrine falcon (*id.* at 71, 76); bat species (*id.* at 71, 76);⁵ red tree vole (*id.* at 72, 76, 79, 81); terrestrial mollusk species (*id.* at 72, 76); migratory and resident bird species (*id.* at 72, 76, 79, 81); and big game species (Roosevelt elk and black-tailed deer) (*id.* at 72, 77, 79, 81). AR000694-705. Based on this analysis, BLM's experts concluded that the Project will not contribute to the need to list any species because "[s]uitable habitat for all BLM Special Status Species known or likely to be present would be retained in the project area and vicinity." FONSI at 6 (AR000630).

BLM's determination that the Project will not adversely affect Bureau Special Status Species should be accorded an especially high level of deference. *Marsh*, 490 U.S. at 377-78; *see also Native Ecosystems*, 697 F.3d at 1051. BLM is entitled to rely on its experts' opinions. A deferential approach is especially appropriate where the challenged decision implicates substantial agency expertise in wildlife biology and related fields. "When specialists express conflicting views, an agency must have discretion to rely on the reasonable opinion of its own qualified experts, even if, as an original matter, a court might find contrary views more persuasive." *Marsh*, 490 U.S. at 378.

owl. *See* Biological Opinion Regarding the Effects of Habitat Modification Activities on the Northern Spotted Owl and its Critical Habitat within the Willamette Planning Province- FY 2011-12 (FWS reference # 13420-2010-F-0157). FWS's Biological Opinion ("BO") concluded that "the habitat modification activities described in the BA, . . . are not likely to jeopardize the continued existence of the spotted owl and are not likely to adversely modify spotted owl critical habitat." *Id.* "Furthermore, the proposed project is not likely to diminish the effectiveness of the conservation program established under the [Northwest Forest Plan] to protect [the] spotted owl and its habitat on federal lands within its range including designated spotted owl critical habitat." *Id.*

⁵ BLM considered the environmental impacts of the Project on the habitat for five bat species (silver-haired bat, long-eared myotis, long-legged myotis, Yuma myotis, and fringed bat). AR000821,

Even after it acknowledged these legal principles, Plaintiff still argues that this Court should *not* defer to BLM’s experts allegedly because their “conclusions do not have a basis in fact.”⁶ Pl. Reply at 10 (quoting *Ariz. Cattle Growers Ass’n v. U.S. Fish and Wildlife Serv.*, 273 F.3d 1229, 1236 (9th Cir. 2001) (*ACGA*)). Overall, Plaintiff asserts that BLM failed to adequately explain how its experts came to the conclusions stated in the EA/FONSI. But, here, in contrast to the deficiencies highlighted in *ACGA*,⁷ the Administrative Record amply demonstrates the factual basis for the experts’ conclusions vis-a vis the Project’s effects on Bureau Special Status Species. *See generally* Wildlife Report at 1-3 (AR000809-11), 11-14 (AR000819-22), 16-32 (AR000824-38) Table: Special Status Wildlife Species at 32- 38 (AR000840-46). .

Overall, Plaintiff asserts that the experts’ analysis of the Project’s potential effects on bat species was deficient. Pl. Reply at 6-7. Bark contends without citation to any legal authority that BLM was not permitted to use habitat as a proxy. *Id.* Nothing in FLPMA or the Plan requires presence or absence surveys or the gathering of population data for Special Status Species such as bats. *Klamath-Siskiyou Wildlands Ctr. v. BLM*, No. 06-3076, 2007 WL

⁶ The quoted language is incomplete. The sentence in its entirety states:

“[t]herefore, the reviewing court may set aside only those conclusions that do not have a basis in fact, not those with which it disagrees.” *ACGA*, 273 F.3d at 1236 (citing *Bureau of Indian Affairs v. FLRA*, 887 F.2d 172, 176 (9th Cir. 1989); *Love v. Thomas*, 858 F.2d 1347 [no inside cite stated] (9th Cir. 1988)).

⁷ In that case, BLM’s permittees challenged FWS’s issuance of ESA incidental taking statements (“ITSs”) under 16 U.S.C. § 1536 (b)(4) that effectively barred the ranchers from grazing cattle on their allotments. *ACGA*, 273 F.3d at 1229. Overturning the ITSs issued to the ranchers, the Ninth Circuit stated that they were invalid because of FWS’s “failure to properly specify the amount of the anticipated take and to provide a clear standard for determining when the authorized level of take has been exceeded” *Id.* at 1251.

2688125, at * 2, 6 (D. Or. Sept. 10, 2007).

Instead, the Plan's guidelines state that when appropriate, the experts should "[c]onduct field surveys according to protocols and other established procedures." *See* Plan at 29 (AR012314). However, "[t]he intensity of field surveys will vary" *Id.* Overall, the Plan states that the purpose of BLM's analysis is to "[i]dentify impacts of proposed actions, if any, to Bureau Sensitive Species . . . and clearly describe impacts in environmental analyses." *Id.*

A review of the documents in the Administrative Record shows that BLM actually conducted the required surveys and performed the required analysis of the habitat used by bat species. *See* Wildlife Field Notes (AR000769-775); *see also* Wildlife Report at 1-3 (AR000809-11), 11-14 (AR000819-22), 16-32 (AR000824-38) Table: Mammals at 35- 36 (AR000843-44).

Based on this, BLM's experts concluded:

Bureau Sensitive - Bats

Bat species which use snags or large trees could be directly affected by a loss of up to ten percent of large diameter trees in unit 7A and large snags throughout the project area. Since approximately 90 percent of the large trees and snags would be retained in the project area and since only about one third of the BLM acres in the project vicinity would be treated, forest habitat features would be maintained in the area. An indirect effect of thinning is the resultant structural changes in forest stands may benefit bats by creating habitat structure in young stands that bats are able to use more effectively than structures in unthinned stands (Humes, Hayes and Collopy, 1999). Bat species which are associated with buildings, bridges, cliffs and caves would not be affected.

FONSI at 76 (AR000700) (emphasis in original). BLM's experts concluded that the implementation of the Project will not adversely affect bat species and it will not contribute to the need to [ESA] list any bat species because "[s]uitable habitat for all BLM Special Status Species known or likely to be present would be retained in the project area and vicinity." *Id.* at 6 (AR000630).

Bark disagrees. Bark opines that “habitat loss [will] affect the sensitive bat species to the extent that they will no longer persist on the landscape.” Pl. Reply at 10. This opinion is baseless. Bark just assumes that bat species will be adversely affected by the implementation of the Project. Plaintiff cites to nothing that supports this conclusion.

Defendant has established that BLM’s consideration of the potential effects of project implementation on these species’ habitat fully complied with the Plan’s guidelines. Therefore, Bark’s FLPMA claim related to effects on Bureau Sensitive Species should be rejected and judgment on that claim should be entered in Defendant’s favor.

II. THE PROJECT COMPLIES WITH NEPA.

A. The EA’s Effects Analysis Complied with NEPA.

The Administrative Record shows that to consider the Project’s environmental impacts, BLM assessed the effects on air quality and fire/hazard risk, carbon storage, carbon emissions, and climate change, cultural resources, fisheries and aquatic habitat, hydrology, recreation, visual resources, rural interface, soils, vegetation, forest stand characteristics, and wildlife. AR000625-739. BLM’s analysis of the Project’s effects on wildlife expressly included consideration of threatened and endangered species, Bureau Sensitive Species, survey and manage species, migratory and resident birds, and big game. *Id.* at 68-81 (AR000692-705). Based on the effects analysis, BLM concluded that the approval of the Project’s action alternatives would have no adverse effect on any species including, BLM’s Special Status Species. *Id.* at 78-79 (AR000702-703). On this basis, BLM approved the Project’s FONSI (AR000629-34) and Decision (AR000306-347). Defendant has shown that BLM’s determination should be upheld because it is not arbitrary, capricious or contrary to law. *See*

Def. Mem. at 19-25 (ECF Doc. 31).

In opposition, Plaintiff asserts that BLM's FONSI violated NEPA because the Agency allegedly failed to adequately consider and document in the Administrative Record, the Project's effects on several wildlife species (bats and those described as primary cavity nesters or cavity users). Pl. Reply at 11-15; *see also* Pl. Compl. ¶¶ 50-54; Pl. Br. at 17-22. This is incorrect. Plaintiff insists that the removal of any snags "could have a detrimental impact on cavity nesters – including woodpeckers and bats." Pl. Reply at 12. Bark also insists that the Project will "reduce high value habitat for bats, primary excavators, and cavity users" *Id.* Plaintiff alleges that the Project will have "adverse impacts to snag dependent species, such as woodpeckers and bats" *Id.* at 13. In sum, Bark argues that BLM did not take a "hard look" at the Project's effects on these species. *Id.* at 11.

These contentions are flawed. The Administrative Record shows that BLM took a "hard look" at the Project's effects. Every issue Bark raises will fully considered. Both the experts' analysis and the conclusions are plainly stated in the Wildlife Report, EA and FONSI. *See* Wildlife Report (AR00809-870); *see also* EA (AR000694-705); FONSI at 6, 68-81, 96-100 (AR000630, AR000692-705, AR000720-24). Bark's reliance on *Sierra Club v. EPA*, 346 F.3d 955, 961 (9th Cir. 2003) to challenge BLM's determinations is misplaced. Pl. Reply at 11. In *Sierra Club*, the Ninth Circuit determined that EPA's emissions determinations were contrary to the evidence and directed EPA to classify Imperial County as a "serious" non-attainment area under the Clean Air Act. 346 F. 3d at 963. Here, on the other hand, the Administrative Record fully supports Defendant's factual and legal position. There is no "evidence" to the contrary.

In summary, Defendant has proven that the EA's effects analysis supports the Decision

and the Project's FONSI. Plaintiff has failed to meet its burden of proof to establish that BLM's analysis violated NEPA. Consequently, this Court should find that Defendant's effects analysis complied with NEPA. BLM is entitled to a judgment dismissing Bark's NEPA claim.

B. BLM'S FONSI Complied with NEPA.

The Project's FONSI complies with NEPA because BLM adequately considered and disclosed the direct, indirect, and cumulative effects of the Project. The Administrative Record shows that after public comments were reviewed and the environmental analysis was completed, BLM determined that the Project would not have any significant environmental impacts on the Project Area (EA at Sec. 3.0 at 35-98 (AR000659-722)).[§] See FONSI at 5 (AR000629). BLM concluded that the implementation of the Project will affect less than 1 percent (0.9 %) of the approximately 32,000 acres in the Middle Clackamas River (Helion Creek) Watershed and North Fork Clackamas River Watershed (Fall Creek). *Id.* BLM also found that, although the Project may impact individuals, it is *not* likely to adversely affect any populations of BLM Special Status Species or lead to a species' listing under the ESA (EA, Sec. 2.2.4 at 28-33 (AR000652-57); Sec. 3.3.1 at 43-52 (AR000667-72); Sec. 3.3.5 at 68-81 (AR000692-705)). See FONSI at 6 (AR000630), 7 (AR000631). The FONSI states that "suitable habitat for all BLM Special Status

[§] The Project Area is located in the vicinity of the Mt. Hood National Forest within approximately 791 acres of federal land that is administered by BLM in Clackamas County. FONSI at 5-10 (AR000629-34); see also EA at 11 (AR000635). Most of the Project Area is located in the Matrix Land Use Allocation ("LUA") (280 of 290 acres). See FONSI at 5 (AR000629). The Matrix LUA is approximately 107,300 acres of BLM administered lands in the General Forest Management Area and approximately 27,400 acres in Connectivity/Diversity Blocks. Plan at 21 (AR012306). The remainder is located in the Riparian Reserve LUA (10 of 290 acres). *Id.* The Riparian Reserve LUA is approximately 221,800 acres of BLM administered land in the District. Plan at 10 (AR012295).

species known or likely to be present [will] be retained within the project area and vicinity.” *Id.* at 6 (AR000630). It also states that “[a]ll special status bird species identified in the general vicinity of the project area are nesting far enough away to not be directly affected by the project.” *Id.* Finally, BLM states that the Project is not expected to adversely affect ESA listed species (including Northern spotted owl or ESA Fish) or their critical habitat because the impacts of the Project were confined to the green timber stands which will be commercially thinned (EA, Sec. 5.1. at 99-100 (AR000723-24). *See* FONSI at 9 (AR000633), 10 (AR000634). These conclusions should be upheld—Bark has not identified any direct, indirect or cumulative effect that was not considered in the EA. Therefore, BLM’s FONSI and decision to approve the Project was not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A); *Overton Park*, 401 U.S. at 416.

Bark’s challenge to the FONSI relies on its contention that BLM failed to disclose the effects of the Project on certain species such as bat species in the Administrative Record. Compl. ¶¶ 50-53; Pl. Reply at 11-13 (ECF Doc. 36). Bark opines that BLM’s effects analysis, including the cumulative effects analysis is defective because “it failed to assess the significance of this high quality habitat loss in the context of an already heavily managed landscape.”^{9/} Pl. Reply at 11-13 (ECF Doc. 36). The Administrative Record shows that the factual premises are flawed: there is no evidence of that any loss of habitat for any species is significant and there is no evidence that the implementation of the Project will adversely affect bat species or any other

^{9/} Bark’s reference to a “heavily managed landscape” is apparently a reference to activities on federal lands managed by the BLM or the Forest Service that is located in the vicinity of the Project. Bark fails to identify any public or private project in that landscape which BLM allegedly failed to consider in the EA’s cumulative effects analysis.

species. *See* FONSI at 6, 68-81, 96-100 (AR000630, AR000692-705, AR000720-24).

Bark relies on the Ninth Circuit's ruling in *Or. Natural Res. Council Fund v. Goodman*, 505 F.3d 884, 892-96 (9th Cir. 2007) ("*Goodman*"). Pl. Reply at 14-15. In that Forest Service case, the court found a NEPA violation and rejected the EIS prepared for the Mount Ashland Association's proposal to expand the Mount Ashland Ski Area because the EIS's cumulative impacts analysis was deficient. 505 F. 2d at 887-88. *Goodman* has *no* application in the instant case where Plaintiff challenges the BLM's FONSI.¹⁰ No FONSI was prepared for the expansion of the Mount Ashland Ski Area because an EIS was required. Under the Council on Environmental Quality ("CEQ") regulations, if a major federal action is proposed with significant environmental impacts, the agency must prepare an EIS. 40 C.F.R. § 1502.4. In the alternative, if there are no significant environmental effects of the proposed project, the agency prepares an EA and issues a FONSI. 40 C.F.R. § 1508.13.

To date, Plaintiff has made no showing that the Project's effects analysis or FONSI do not comply with NEPA. Bark has not demonstrated that an EIS is required. Plaintiff has clearly not met its burden of proof. Consequently, this Court should find that Defendant's EA and FONSI complied with NEPA. BLM is entitled to a judgment dismissing Bark's NEPA claim.

¹⁰ In part, Bark opines based on its reading of *Goodman* that the Project's cumulative effects analysis is flawed because the Project's effects when added to the effects of other projects on Bureau Sensitive Species will adversely affect the species. As shown *supra*, there is no support for this contention. Bark's reliance of *Goodman* is misplaced.

CONCLUSION

Defendant's cross motion for summary judgment should be granted and Plaintiff's motion for summary judgment should be denied. There was no violation of FLPMA because the Project fully complies with the guidelines of the Northwest Forest Plan and the Salem Resource Management Plan. Additionally, there was no violation of NEPA because BLM fully considered the Project's environmental impacts in the EA. Overall, Defendant has shown that BLM's FONSI and decision to approve the Project should be upheld. On this basis, Defendant requests the dismissal with prejudice of the Complaint and the entry of judgment in Defendant's favor on all of the claims.

Dated: June 27, 2013

Respectfully submitted,

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v.)	
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)	
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