

14 August 2019

Sent by certified U.S. Mail

Kimberly Nash, Director
Office of Community Planning and Development
US HUD Region 9, Office of Environment and Energy
One Sansome Street, Suite 1200
San Francisco, CA 94104
kimberly.nash@hud.gov

Kathleen McNulty, Environmental Protection Specialist
US HUD Region 9, Office of Environment and Energy
One Sansome Street, Suite 1200
San Francisco, CA 94104
kathleen.a.mcnulty@hud.gov

Larry Wuerstle, Program Manager
Office of Community Planning and Development
US HUD Region 9, Office of Environment and Energy
One Sansome Street, Suite 1200
San Francisco, CA 94104
larry.wuerstle@hud.gov

cc:

Moira Monahan, Operations Branch Chief
California Department of Housing and Community Development
2020 West El Camino Avenue
Sacramento, CA 95833

Patrick Talbott, Contract Manager
California Department of Housing and Community Development
2020 West El Camino Avenue
Sacramento, CA 95833

Re: Rim fire, use of funds for Forest and Watershed Health Program ("FWHP") activities under the United States Department of Housing and Urban Development ("HUD") grant agreement number B-13-DS-06-001, awarded under the National Disaster Resiliency Competition ("NDRC").

Dear Ms. Nash, Ms. McNulty, and Mr. Wuerstle,

HUD is the federal agency with the primary authority and responsibility to ensure compliance with national environmental laws regarding the use and application of HUD grants. In this circumstance, the California Department of Housing and Community Development (HCD) shares responsibility to comply with national environmental laws for the HUD grant at issue here.

Accordingly, we write to request that you ensure that: 1) no portion of the \$28 million subset of the \$70 million HUD NDRC grant referenced above be used to log, remove, or otherwise cut down intact (previously unlogged) post-fire habitat (“snag forest habitat”) on the Stanislaus National Forest in the Rim fire, at least until after an environmental impact statement (EIS) or supplemental EIS has been prepared to fully analyze significant changed circumstances and new information regarding direct, indirect, and cumulative impacts to forest habitat and the climate, as discussed below; and 2) no portion of the \$22 million subset of the NDRC grant referenced above be used to further the planning or construction of a new forest “biomass” energy facility that would incinerate trees to produce energy, at least until after an EIS has been prepared to fully analyze the direct, indirect, and cumulative climate change impacts of carbon emissions from such a facility.

The following is a list of the specific snag forest habitat units in the Rim fire which we request that you avoid and refrain from logging/cutting with the NDRC grant funds: J010; J007; J006 (S and E portions only); L006; J008; L007; L008; R011; R022; R009; T006; Q007; X023; X022; BB059; BB062; BB060; BB047; BB036; BB011; BB010; BB014; BB015; BB008; BB006; AA008; AA010; Z020; Z021; Z024; Z028; and Z029. A project map (created by the Sierra Nevada Conservancy and the U.S. Forest Service) is attached (**Exhibit A** [project unit map]) showing the location of all units. The unlogged snag forest habitat units listed above comprise approximately 3,000 acres out of the approximately 4,400 acres of proposed cutting and planting activities, which are called "Fuel Reduction" units on the map (the remaining 1,400 acres have already been post-fire logged). When the 1,420 acres of noxious weed burning is included (this is also part of the project (see map)), the 3,000 acres of snag forest habitat that we want protected represents only about half of the total acres in the project.

We are asking that these 3,000 acres of snag forest be dropped from the project, and that the remaining funds pertaining to the Rim fire be used for community disaster recovery purposes consistent with the HUD NDRC grant (see below). It is important that direction be given by HUD and HCD to the Forest Service immediately, since the Forest Service plans to begin logging these snag forest habitat acres imminently.

Administrative Background

The HUD grant at issue here was authorized by the Disaster Relief Appropriations Act, 2013 (PL 113-2), which made emergency grant funds available for Hurricane Sandy and other federally declared disasters occurring in 2011-2013. Grant funds under the Act were to be administered and disbursed by the U.S. Department of Housing and Urban Development (HUD). The state of California, in consultation with the U.S. Forest Service (USFS), applied to HUD for a grant. In May of 2017, the state of California announced that a grant of \$70,359,459 was awarded to California, and would be transferred through the California Department of Housing and Community Development (HCD) (**Exhibit B** [HCD Announcement, May 2017]), with technical implementation of the grant to be overseen by another California state agency, the Sierra Nevada Conservancy (SNC). The grant had three components:

- 1) Allocate approximately \$28 million that would be routed through HCD to the U.S. Forest Service to further implement about 25,000 acres of post-fire logging, herbicide spraying, artificial tree planting, and invasive weed eradication activities in the Rim fire on the Stanislaus National Forest – projects that were planned under 2014 and 2016 EISs and Records of Decision from the U.S. Forest Service. Several thousand acres (approximately

6,000) of the planned post-fire logging activities were executed by the USFS in 2014-2016, after which time the USFS determined that the fire-killed trees (“snags”) were no longer merchantable for lumber, due to decay. SNC and USFS determined that the \$28 million subset of the HUD grant would cover costs for implementation of another approximately 5,800 acres of the 25,000 acres of planned activities under the 2014 and 2016 EISs and decisions (**Exhibit A, and Exhibit C** [USFS 2014 and 2016 EISs and decisions]). While the USFS’s 2014 and 2016 EISs were based on analysis and data gathered in the Rim fire in 2014 and 2015, the state of California asserted and assumed that no significant or potentially significant circumstances had changed since that time and that, therefore, no new EIS was required to be prepared (**Exhibit D** [HCD Records of Decision, Fall 2017]). Based on this, HCD stated that it could implement the Forest Service’s 2014 and 2016 EISs without preparing a new or supplemental EIS. However, HCD’s assertion/assumption is contradicted by information submitted by environmental organizations from 2017 to present (see below), and we hereby challenge this portion of the HUD grant to the degree that it is or will be used to log and clearcut intact snag forest habitat on public lands in the Rim fire.

Environmental organizations, in 2017, wrote comments opposing this portion of the HUD grant (**Exhibit E** [comment letter from environmental groups]) and objected to the final approval or release of this portion of the HUD grant. **Exhibit F** (objection to release of funds). Initially, in the fall of 2017, HUD upheld the objection and indefinitely suspended release of the funds, pending further investigation, due to significant new information and changed circumstances raised by the public regarding increased greenhouse gas emissions from this project.

The proposal to log 4,400 acres of the Rim fire runs directly counter to the evidence that shows vigorous new natural post-fire conifer regeneration on these acres. Contrary to fact, decision documents issued by HUD and HCD claim that there is “little or no” natural conifer regeneration. **Exhibit G** (HUD decision to suspend the planned release of this portion of the HUD grant funds). In the winter of 2018, HCD sent a letter to HUD, **Exhibit H**, stating that the USFS represented that it had conducted an entirely new, more recent, round of field plots in the Rim fire (the USFS’s *previous* plots had been conducted shortly after the Rim fire, in 2014 and 2015) and that nothing had changed—i.e., there was no new conifer regeneration. Again, this assertion was and is flatly contrary to the evidence provided by our organizations.

HCD also represented that no additional carbon emissions would result from changing the project from a post-fire logging operation for lumber into a post-fire logging operation that would incinerate nearly all of the trees across the 4,400 acres in question. We have since demonstrated that this is clearly incorrect—see below.

Based on, and relying on, these representations from HCD and USFS, in the winter of 2018 HUD reversed its earlier decision and approved use of the grant funds for activities in the Rim fire. **Exhibit I** (HUD approval of use of funds). Through Freedom of Information Act (FOIA) requests, the environmental groups later learned that the claims by USFS (again as represented in HCD’s letter to HUD) regarding new conifer regeneration surveys in the Rim fire were false. The environmental groups also demonstrated that far more carbon emissions would occur under the changed version of the project, relative to the assumptions in the 2014 and 2016 USFS EISs. **Exhibit J** (supplemental comment letters, and

attachments, from environmental groups).

Previously, the USFS had proposed to remove trees for use as lumber for residential structures. The changed project now proposes to clear-cut these forests and either incinerate the trees in biomass power plants many miles away, or fell the forests, bulldoze the trees and other plants into giant piles, apply huge amounts of accelerant, and incinerate them on site. The additional carbon emissions from the newly proposed incineration were not analyzed by HUD, HCD or the USFS.

We note here that representatives from the environmental organizations opposing the proposed logging in the Rim fire met, in the fall of 2018, with Kimberly Nash, Director of the HUD division in San Francisco that is overseeing this grant. In that meeting, Ms. Nash stated that if the state of California wished to change direction on the use of the HUD grant and avoid logging the approximately 3,000 acres of intact, previously unlogged snag forest habitat at issue in the Rim fire, then HUD would not oppose. All that would be required is simple documentation from the state of its rationale for a change of direction.

- 2) An allocation of approximately \$22 million for the construction of a new forest biomass energy facility, which would incinerate trees for kilowatts. No EIS was conducted to analyze the ensuing climate change, forest habitat, and human health (due to chronic particulate emissions, typically in lower-income communities already suffering from significant air pollution) impacts. We hereby challenge this portion of the HUD grant.
- 3) An allocation of approximately \$20 million for community centers to promote education and to serve as shelters in emergencies. We do not challenge this portion of the HUD grant.

Undersigned environmental organizations opposing the use of this HUD NDRC grant for logging on remote public lands, and construction of a new forest biomass power plant, have appealed repeatedly to the state agencies involved in administering the grant (HCD and SNC), and to the Governor's staff (e.g., California Natural Resources Secretary, Wade Crowfoot), to halt the use of the grant for these purposes. The requests were made over the past two years in the form of multiple letters, action alerts for calls and emails to state officials, and attendance and comments at SNC Board meetings. The environmental organizations have persistently sought a change in direction regarding the use of the grant funds, in the hope that litigation could therefore be avoided.

Thus, about two dozen representatives from environmental organizations spoke in opposition to the current planned use of the HUD NDRC grant funds for Rim fire logging, and construction of a new biomass power plant, at the SNC's December 2018 Board meeting. In light of this strenuous opposition, the SNC Board agreed, at the December 2018 Board meeting, to attend a site visit in late spring of 2019 to the Rim fire with representatives of environmental groups opposing the planned logging. HCD staff also planned to join the site visit. The SNC Board noted that planned logging in the Rim fire with the HUD grant would be postponed pending the site visit. Environmental organizations seeking to protect the snag forest habitat in the Rim fire believed, or hoped, that once SNC Board members and staff, and HCD staff, saw the abundant natural conifer regeneration in the areas that are slated for clearcutting, this would facilitate a change in direction regarding the use of funds, and that the approximately 3,000 acres of snag forest habitat at issue would be protected.



Above: abundant natural post-fire conifer regeneration in high-intensity fire areas in the Rim fire.

That site visit was scheduled for May 30, 2019. However, though SNC promised to visit multiple locations suggested by representatives of the environmental groups opposing the logging, the final itinerary only included one location. Despite the fact that SNC and HCD representatives witnessed abundant natural conifer regeneration in the snag forest habitat that is proposed to be clear-cut, the decision to clear-cut – a decision ostensibly based in substantial part on the claim of little or no natural post-fire conifer regeneration – was not revisited. Instead, at its subsequent meeting, the SNC Board simply failed to consider any such change in direction.¹

¹ The meeting was held on June 6, 2019, in Lake Isabella, California.

Improper Approval of Grant Application by HUD

The Disaster Relief Appropriations Act, 2013 (PL 113-2), at 127 Stat. 36-37, only allows grants, under what later came to be known as the NDRC program, for “Community Development” disaster relief projects that “address long-term recovery and restoration of *infrastructure and housing and economic revitalization* in the most impacted and distressed areas.” (emphasis added). Under any reasonable interpretation of this authorizing statute, the funds may not be spent to subsidize a clear-cut logging project on remote federal public lands. Accordingly HUD did not have the authority to approve the \$28 million, or the \$22 million, components of this NDRC grant (B-13-DS-06-001). Those funds instead should have been used to help recovery of *communities* impacted by a disaster, like the towns of Paradise, Concow and Magalia following the Camp fire of 2018. The funds can and still should be used for recovery and restoration of housing in the area, the rebuilding of damaged water infrastructure, and other projects that will directly benefit the communities.

Reasons an EIS or Supplemental EIS Must Be Prepared to Analyze Direct, Indirect, and Cumulative Effects of Significant New Information and Changed Circumstances

When HCD announced the present project, the agency claimed that the activities that would be carried out under the NDRC grant were the “same activities” that were analyzed in the Forest Service’s 2014 and 2016 EISs, and reflected in the 2014 and 2016 Forest Service decisions. However, as discussed above, it was later established that this statement was incorrect, and that there are now significant changed circumstances and new information which make it a very different project—one for which no EIS or supplemental EIS has been prepared. These changed circumstances include:

a) A large increase in carbon emissions due to planned incineration of wood that was previously assumed would be used as lumber in residential construction (**Exhibit J**), and carbon emissions from the new biomass power plant that is planned to be constructed with the \$22 million portion of the HUD NDRC grant. Those carbon emissions and their associated climate change impacts were never analyzed in any supplemental environmental document, contrary to law;²

² See *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1215 (9th Cir. 2008) (NHTSA failed to take a hard look at the greenhouse gas impacts of its rule, and the effect of such emissions on climate change is the type of cumulative impacts analysis that NEPA requires agencies to conduct); *WildEarth Guardians v. Zinke*, 368 F.Supp.3d 41 (D.D.C. 2019) (BLM's failure to quantify greenhouse gas emissions that were reasonably foreseeable effects of oil and gas development on public land, during the leasing stage of the development process, violated NEPA, and greenhouse gas emissions from downstream use of oil and gas was reasonably foreseeable); *Wilderness Workshop v. United States BLM*, 342 F. Supp. 3d 1145, 1154-56 (D. Colo. 2018) (BLM violated NEPA by not taking a hard look at the indirect effects resulting from the combustion of oil and gas in the planning area and must quantify and reanalyze the indirect effects that emissions resulting from combustion of oil and gas in the plan area may have on GHG emissions); *W. Org. of Res. Councils v. United States BLM*, No. CV 16-21-

b) Impacts to natural conifer regeneration that exists now, but which did not exist at the time the grant was proposed, and resulting carbon emissions from killing and pulverizing (under the heavy logging machinery) the natural conifer regrowth, as well as impacts to forest carbon storage and sequestration potential (**Exhibit J**);

c) Elimination of the prior presumed need for artificial conifer planting, due to new natural conifer regeneration (**Exhibit J**);

d) New recommendations from the Forest Service's own scientists, in a recently-published study, that strongly contradict the current replanting plan and decision that is based on the Forest Service's 2016 EIS;³

e) Higher impacts to soils from much larger quantities of wood being piled and burned on site (after application of large amounts of accelerants) than previously assumed and planned. Outside of the biomass units, HUD and HCD plan to fell and bulldoze the snag forest habitat into giant piles, apply huge amounts of accelerants, and incinerate the trees, conifer saplings, shrubs, and other vegetation in enormous bonfires whereas, previously, it was assumed that only the branches of trees and the smallest trees would be piled and burned;

GF-BMM, 2018 U.S. Dist. LEXIS 49635, at *34-40 (D. Mont. Mar. 26, 2018) (In light of the degree of foreseeability and specificity of information available to the agency while completing the EIS, NEPA requires BLM to consider in the EIS the environmental consequences of the downstream combustion of the coal, oil and gas resources, because, without such analysis, the EIS fails to foster informed decision-making as required by NEPA.).

³ In a very recently-published study authored by ten U.S. Forest Service scientists based in California, North et al. (2019) [**Exhibit J4**], the authors noted that current and longstanding post-fire replanting actions are often unnecessary and planting is much denser than is ecologically advisable. Specifically, these Forest Service scientists recommended that federal land management agencies generally avoid post-fire planting of conifer seedlings in high-severity fire patches within 200 meters of low/moderate-severity edges or "islands" of live trees within high-severity fire patches. They also recommended that, where planting does occur beyond 200 meters from live trees, land managers avoid the current practice of planting 125 to 300 or more trees per acre, which creates dense tree plantations that tend to increase future fire severity, according to North et al. (2019). The Forest Service's 2016 EIS [**Exhibit C4**], at pages 30-38, proposes to plant most areas with an average of 125 to 300 or more trees per acre, and does not avoid or generally avoid planting in areas within 200 meters of live trees, contrary to the current scientific recommendations of the Forest Service's own scientists. Because HUD adopted the Forest Service's 2014 and 2016 EISs for the Rim fire, without change, and because HUD has not conducted a supplemental or new EIS to analyze significant new information and changed circumstances, and any potential changes to the project that may be warranted based on such new information and circumstances, unless HUD suspends funding for this project and conducts new or supplemental NEPA analysis, the project will proceed in accordance with the Forest Service's outdated EISs, which are now directly at odds with the agency's own scientists. The North et al. (2019) study represents significant new information, warranting a new or supplemental EIS (this could be done either by HUD or the Forest Service, but must be done before further HUD funding and implementation of the project occurs).

f) Increased threats to worker safety, as workers attempt to fell dangerously unstable 6-year old snags that have already substantially decayed according to the Forest Service's own statements in their EISs;

g) New information and changed circumstances regarding the toxic and carcinogenic effects of the herbicide glyphosate [**Exhibit J5**], which would be broadly sprayed in the Rim fire units under the Forest Service's existing 2016 EIS as part of the agency's planned replanting activities [**Exhibit C4**, pp. 25, 36, 38].⁴

Early-stage forest habitat with dead trees and young new conifers and shrubs is ecologically valuable and it is utilized by native wildlife. Numerous rare birds depend on this habitat and are associated with it more than any other forest habitat type (**Exhibit K** [DellaSala et al. 2014, Swanson et al. 2014, DellaSala and Hanson 2015]). Historically (generally before fire suppression), forests of the Sierra Nevada were always highly variable in density, averaging about 115 to 120 trees per acre—not including seedlings and saplings—and ranging from densities in the low dozens per acre up to several thousand or more trees per acre (**Exhibit L** [Baker 2014, McIntyre et al. 2015]). Tree seedlings and saplings added another 200 or more trees per acre, and shrub cover was often very high (**Exhibit M** [Hanson and Odion 2016a,b; Baker and Hanson 2017; Baker et al. 2018]). In these historical forests, fires burned with a mix of low, moderate, and high-intensity effects, where high-intensity fire patches killed most or all of the trees, creating snag forest habitat. High-intensity fire patches ranged from fractions of an acre up to several thousand acres in size, and sometimes tens of thousands of acres in size, historically, and forests naturally regenerate over time (**Exhibit K**). Since there is, overall, less fire now in Sierra Nevada forests than there was historically (**Exhibit N** [Mallek et al. 2013]), the probability of a given high-intensity fire area (snag forest habitat area) burning again within 20 years or so (i.e., before the regenerating conifers are old and large enough to survive low/moderate-intensity fire) is very small.

In the unlikely event that a “re-burn” does occur within such a timeframe, high-intensity fire areas re-burn mostly at low/moderate-intensity. **Exhibit O** (Collins et al. 2009, van Wagtenonk et al. 2012). Only a minor portion of the biomass/carbon in snags and downed logs is consumed in such re-burns. **Exhibit P** (Campbell et al. 2007, Donato et al. 2009c, Stenzel et al. 2019). Very little carbon is emitted from decay of snags or downed logs, while post-fire carbon uptake from natural forest regeneration is vigorous. **Exhibit Q** (Donato et al. 2009a,b; Meigs et al. 2009; Campbell et al. 2016; and Law et al. 2019 science synthesis). This is in stark contrast to post-fire logging, and the planned incineration of nearly all trees (in the approximately 3,000 acres at issue), which consumes the great majority of the carbon. Post-fire logging, and artificial tree plantation creation, tends to correspond to faster, more intense, wildland fires. **Exhibit R** (Thompson et al. 2007, Bradley et al. 2016, Zald and Dunn 2018). We saw the tragic consequences of that in the town of Paradise last fall, as the Camp fire burned rapidly and very intensely through thousands of acres that had been

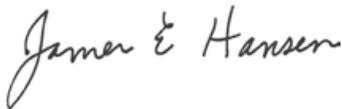
⁴ Glyphosate was listed as "known to the State of California to cause cancer" in 2017. Since then, and following some massive jury verdicts in recent months for plaintiffs who contracted cancer after glyphosate exposure, dozens of California state agencies have banned glyphosate use (<https://www.timesheraldonline.com/2019/07/19/east-bay-park-district-joins-growing-list-of-public-agencies-banning-roundup/>).

previously post-fire logged and planted, on its way toward that city. **Exhibit S** (Camp fire maps and satellite imagery).

Previously the Rim fire project was promoted as a means to “restore” the Rim fire landscape while securing additional saw logs for local mills. Whatever the merits of that proposal, the new project aims to: 1) log and burn snags or incinerate them on site; 2) disturb intact soils and the associated carbon storage those soils provide; and 3) trample and kill the extensive young conifer regeneration and shrubs that are fixing nitrogen. What is clear is that the recent planned activities will do nothing to restore and revitalize the local communities. They will, however, both increase greenhouse gas emissions and set back forest recovery years, if not decades.

We respectfully request that you respond within one week to let us know whether you will ensure that the 3,000 acres of young emerging forests with live young trees and snags will not be logged and disturbed with heavy equipment and further burning. Thank you.

Sincerely,



James E. Hansen, Ph.D., Executive Director
Climate Science, Awareness and Solutions



Chad Hanson, Ph.D., Ecologist
John Muir Project of Earth Island Institute



Amy Moas, Ph.D., Senior Forest Campaigner
Greenpeace USA



Ara Marderosian, Executive Director
Sequoia ForestKeeper