

United States Senate
WASHINGTON, DC 20510-1304

June 24, 2020

The Honorable David Bernhardt
Secretary
Department of Interior
1849 C Street NW
Washington, DC 20240

Dear Secretary Bernhardt:

We are writing to express our opposition to the Department of Interior's continued efforts to undermine the National Environmental Policy Act (NEPA) by developing categorical exclusions intended to fast-track large-scale mechanical vegetation removal on public lands. We oppose the Department's recently-published rulemaking, which proposes to categorically-exclude vegetation removal projects under 4,500 acres on Bureau of Land Management (BLM) lands, 85 Fed. Reg. 25472 (May 1, 2020), as well as the parallel rulemaking effort currently underway to exclude removal of pinyon pine and juniper forests up to 10,000 acres from NEPA analysis. 85 Fed. Reg. 14700 (March 13, 2020). These categorical exclusions threaten NEPA and its purpose of informed agency decision-making by way of a transparent process involving public review and comment.

Mechanical vegetation removal on western public lands projects involve a high-level of scientific uncertainty and associated risk to both natural and cultural resources. Climate change only heightens these concerns and, done improperly, large-scale mechanical vegetation removal can actually exacerbate climate impacts throughout the West by destroying native ecosystems and fragile biological soil crusts. Given this uncertainty and risk, NEPA is exactly the tool needed to ensure that federal land managers are fully analyzing the potential environmental impacts of mechanical vegetation removal before committing to large-scale, landscape-level projects.

The May 1 rulemaking to exempt vegetation removal projects up to 4,500 acres on BLM-managed public land contravenes a direct congressional directive in the 2018 Farm Bill. This legislation specifically directs that, in developing the recommended categorical exclusions, the Department must comply with NEPA. In this instance, the Department has not conducted a NEPA analysis for the proposed categorical exclusion, and instead simply approved the exclusion through a Federal Register notification with no environmental analysis or public input. By moving forward with this categorical exclusion outside of a full NEPA analysis, the Department is operating outside of the Farm Bill's clear congressional directive to comply with NEPA. The Department has also run afoul of its regulatory responsibility to consult with the public and the Council on Environmental Quality whenever it seeks to amend its NEPA procedures, as it has done here. 40 CFR § 1507.3.

The Department's second vegetation removal rulemaking currently in process also goes beyond the 2018 Farm Bill instructed categorical exclusion for vegetation removal activities—up to 4,500 acres—on BLM-managed public lands. The Department is developing an additional categorical exclusion that would more than double these acreage limit outlined in the Farm Bill, exempting the mechanical removal of native pinyon pine and juniper forests up to 10,000 acres in size from NEPA analysis. Not only is this 10,000-acre NEPA exemption unjustifiable based on size alone, the proposed categorical exclusion contains very few limitations on where, when, and how these removal projects can be conducted. Based on the March 13 Federal Register notice, the proposed 10,000-acre categorical exclusion could apply to projects within national monuments, wilderness study areas, areas of critical environmental concern, and other special-status public lands. The Department's ability to develop categorical exclusions does not extend to exempting activities of this exceptionally broad size and scope from site-specific environmental review, and doing so is legally outside the bounds of NEPA.

Given the controversy, uncertainty, and risk surrounding large-scale mechanical vegetation removal—and the clear regulatory and congressional directives to follow NEPA in developing new categorical exclusions—we urge you to immediately withdraw the 4,500-acre categorical exclusion before it goes into effect, and cease development of the 10,000-acre proposed categorical exclusion.

Sincerely,

Richard J. Durbin
United States Senator