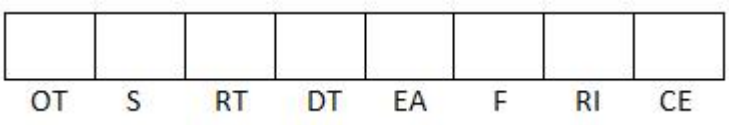
Appendix P – Comments to the Draft PEIS and Proposed Rule from Federal, State, and Local Agencies, Elected Officials, and Tribes



Attributes

Response Type: 1 - Letter

Delivery Type: W - Web-based submission

IP Address: 148.66.58.242

Form Letter:

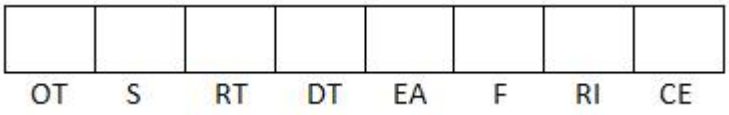
Comments

once again a very important federal agency has neglected what we think and what other tribal intities find of most importance and is sadly missing from your plan is the importance subsistance and its relavince to the over all health of the users but it also promotes positive stewardship in areas deemed important. with a renewed interest in all federal agencies in providing meaningful goverment to goverment consultations as requierd by presidential order. we believe that unless subsistance and the importance tribal stewardship issues are brought forth then the forest service will find it self lost in a quagmire of tribal issues. tim

Individual(s)

Organization Type	American Indian Govt. Agency/Elected Official
Organization	NANWALEK IRA COUNCIL
Email Address	tgreenenanwalek@gmail.com
Title	NANWALEK IRA COUNCIL NATURAL RESOURCES DEPARTMENT HEAD
Name	TIM GREENE
Address 1	PO BOX 8028
City	NANWALEK
State	ALASKA

Zip	99603
Country	UNITED STATES
Created On	2/17/2011 4:15:00 PM



Attributes

Response Type: 1 - Letter

Delivery Type: W - Web-based submission

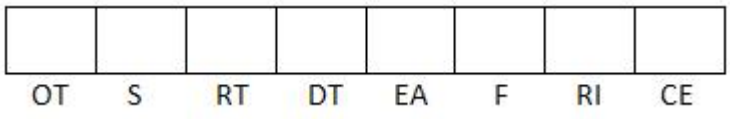
IP Address: 67.117.28.174

Comments

We wish to be certain that the hunting and fishing and recreation needs of our County are considered in the Forest plan

Individual(s)

Organization Type	County Government Agency/Elected Official
Organization	GLENN COUNTY FISH AND GAME COM
Email Address	jsmahays@yahoo.com
Title	COMMISSIONER
Name	JON HAYS
Address 1	P.O. BOX 1202
City	WILLOWS
State	CALIFORNIA
Zip	95988
Created On	3/3/2011 7:27:00 PM



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Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 66.198.212.74
Form Letter:

Comments

I am pleased the USFS is proposing rulemaking and programmatic EIS changes. With over 10 million pine trees dead in the National Forest, I hope the proposed rules will allow for the development of biomass energy projects that can utilitize Forest Service timber as a renewable energy source over the next 20 years. The trees will burn evidentially during a natural wildfire, with out a renewable energy benefit. With forest health management, the forest can return to a diversified stand of age and vegetation type resulting in a more healthy and viberant forest for future generations. Thank you for considering my comment.

Individual(s)

Organization Type	County Government Agency/Elected Official
Organization	TOWN OF VAIL
Email Address	bcarlson@vailgov.com
Title	ENVIRONMENTALIST
Name	BILL CARLSON
Address 1	75 S. FRONTAGE ROAD
City	VAIL
State	COLORADO
Zip	81657
Country	UNITED STATES
Created On	3/18/2011 3:19:00 PM

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 199.131.3.121
Form Letter:

Comments

See Attachments

Individual(s)

Organization Type	County Government Agency/Elected Official
Organization	SISKIYOU COUNTY BOARD OF SUPER
Email Address	kterney@fs.fed.us
Title	CHAIR
Name	JIM COOK
Address 1	POST OFFICE BOX 750
Address 2	201 FOURTH STREET
City	YREKA
State	CALIFORNIA
Zip	96097
Country	UNITED STATES
Created On	3/23/2011 4:26:00 PM

FRD-153
EMC
ERL-11-167

COUNTY OF SISKIYOU
Board of Supervisors

P.O. Box 750 • 201 Fourth Street
Yreka, California 96097
www.co.siskiyou.ca.us

(530) 842-8005
FAX (530) 842-8013
Toll Free: 1-888-854-2000, ext. 8005

March 8, 2011

Chief Thomas L. Tidwell
Chief of the United States Forest Service
Mail Stop 1144
1400 Independence Avenue, SW
Washington, C 20250-1104

Tony Tooke, Director
Ecosystem Management Coordination
United States Forest Service
1400 Independence Avenue, SW
Washington, C 20250-1104

Dear Chief Tidwell and Director Tooke:

At our March 8, 2011, Siskiyou County Board of Supervisors meeting, the Board approved the following statement:

> The Board of Supervisors of the County of Siskiyou hereby approves and endorses the attached statement, report, analysis and comment of Sean Curtis and Fred Kelly Grant regarding the proposed 2011 Planning Rules and finds that it is consistent with our existing policy, resolutions and ordinances and asks that it be considered as our official position and not a mere comment and that the United States Forest Service comply with our coordination policies, resolutions and ordinances.

Along with the attached comments from Mr. Grant and Mr. Curtis, we are enclosing Siskiyou County's Coordination Ordinance #99-08, and Resolution #08-153.

Sincerely,

Jim Cook, Chair
Siskiyou County Board of Supervisors

CHAPTER 12. - COUNTY PARTICIPATION IN STATE AND FEDERAL AGENCIES LAND TRANSACTIONS

Sec. 10-12.01. - Findings.

The Board finds:

(a)

Actions of state and federal agencies to plan, adopt rules or regulations, acquire land or interest in land, in fee or through easements, promulgation of programs, land adjustments, and other activities of these agencies can have significant effects on the customs, culture, economy, resources, and environment of the County of Siskiyou and its citizens.

(b)

In order to protect the customs, culture, economy, resources, and environment of the County of Siskiyou, it is critical that federal and state agencies recognize and address the effects of any actions proposed within the County which may affect matters, including, but not limited to, economic growth, public health, safety and welfare, land use, the environment, conservation of natural resources, such as timber, water, fish, wildlife, mineral resources, agriculture, grazing, and recreational opportunities.

(c)

The coordination and consideration of the County's interest is required by law, such as in those requirements set forth in the National Environmental Protection Act, the National Forest Management Act, the Intergovernmental Cooperation Act, the Federal Land Policy and Management Act, the Federal Administrative Procedures Act, the State of California Public Resources Code, the California Environmental Quality Act, and numerous other federal and state statutes and administrative procedures.

(d)

These various state and federal laws provide for participation by Siskiyou County and the public through opportunities for comment on proposed projects and actions.

(e)

There is general County concern that, in the past, the legally required process of notification, referral, and coordination of activities described above may not have been consistently followed by state and federal agencies, which has led to concerns by the County and its residents that uncoordinated actions may have been adopted contrary to the requirements of law and potentially detrimental to the customs, culture, economy, resources, and environment of the County of Siskiyou.

(f)

There is a clear need to establish an effective and consistent joint procedure for advance notification, referral, coordination, and participation to be followed by all state and federal agencies when undertaking activities or actions affecting the public health, safety, land use, customs, culture, economy, conservation of natural resources and environment of the County of Siskiyou, which procedure provides for a timely advance notice of opportunities for participation which are essential to the integrity of the decisionmaking processes of these state and federal agencies.

(g)

In order for this coordination and consultation to be meaningful, the said notice and opportunity for input shall be given at the earliest possible stage of the federal and/or state governments' contemplation or consideration of a particular course of action with regard to land use plans, actions, or decisions affecting land use in Siskiyou County and such notice shall be given with sufficient specificity and prior to any psychological momentum having been developed with regard to the particular plan, action, or decision.

(§ I(part), Ord. 99-08, eff. May 4, 1999)

Sec. 10-12.02. - Notification, referral, and consultation procedures.

In order to permit timely advance notification, referral, consultation, coordination, and participation in proposed actions of state and federal agencies:

(a)

All federal and state agencies shall inform the County of Siskiyou, or its designee, of all pending, contemplated or proposed actions affecting local communities, citizens, or affecting County policy, and shall, if requested by the County, coordinate the planning and implementation of those actions with the County or its designee(s). Such notification shall include a detailed description of the proposed plan, procedure, rule, guideline, or amendment sufficient to fully inform lay persons of its intent and effects, including the effects on the resources, environment, customs, culture, and economic stability of the County of Siskiyou.

(b)

The Siskiyou County Board of Supervisors shall be consulted in accordance with the laws and regulations of the State of California and the United States regarding any pending, contemplated, or proposed actions affecting local communities and citizens.

(c)

All federal and state agencies shall, to the fullest extent permissible by law, comply with all applicable procedures, policies, and practices issued by the County of Siskiyou.

(d)

When required by law or when requested by the County of Siskiyou, all federal and state agencies proposing actions that may impact citizens of the County of Siskiyou shall prepare and submit in writing, and in a timely manner as soon as is practicable, report(s) on the purposes, objectives and estimated impacts of such actions, including environmental, health,

social, customs, cultural and economic impacts, to the County of Siskiyou. Those reports shall be provided to the County of Siskiyou for review and coordination with sufficient time to prepare a meaningful response for consideration by the federal or state agency.

(e)

Before federal and state agencies can alter land use(s), environmental review of the proposed action shall be conducted by the lead agency and mitigation measures adopted in accordance with policies, practices, and procedures applicable to the proposed action and in accordance with all applicable federal, state, and local laws. Impact studies shall, as needed, address the effects on community and economic resources, the environment, local customs and public health, safety, and welfare, culture, grazing rights, flood prone areas and access and any other relevant impacts.

(f)

For the purposes of this ordinance, each federal and state agency shall, unless specifically authorized otherwise, give the required notices) to the County of Siskiyou and the Board of Supervisors, via certified mail, as follows:

Siskiyou County Board of Supervisors
P.O. Box 750
Yreka, CA 96097

Siskiyou County Planning Director
806 South Main Street
Yreka, CA 96097

Siskiyou County Assessor
County Courthouse, Rm. 108
Yreka, CA 96097

(g)

Not less than five (5) complete copies of the written documents supporting the proposed action shall be provided to the Clerk of the Board of Supervisors at the above referenced address in such a timely manner so that there can be meaningful review and input sufficiently in advance of the action.

(h)

Notification of the availability of related documents shall be available for the minimum time set forth by the federal and state statute for such review or, if none is established by law, for a period of not less than forty-five (45) days prior to the proposed date of action, adoption or approval. This time is necessary to ensure adequate local opportunity for consideration and response.

(§ I(part), Ord. 99-08, eff. May 4, 1999)

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RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SISKIYOU ASSERTING LEGAL
STANDING AND FORMALLY REQUESTING
COORDINATION WITH ALL FEDERAL AND STATE AGENCIES
MAINTAINING JURISDICTION OVER LANDS AND/OR
RESOURCES LOCATED IN SISKIYOU COUNTY

WHEREAS, Siskiyou County is a public unit of local government and a five member elected Board of Supervisors serves as its chief governing authority; and,

WHEREAS, the Siskiyou County Board of Supervisors is charged with supervising and protecting the tax base of the County and establishing comprehensive land use plans (including, but not limited to, the General Plan) outlining present and future authorized uses for all lands and resources situated within the County; and,

WHEREAS, Siskiyou County is engaged in the land use planning process for future land uses to serve the welfare of all the citizens of Siskiyou County; and,

WHEREAS, approximately sixty-eight percent (68%) of lands in Siskiyou County are publicly owned, managed, and/or regulated by various federal and state agencies; and,

WHEREAS, the citizens of Siskiyou County historically earn their livelihood from activities reliant upon natural resources and land which produces natural resources is critical to the economy of Siskiyou County; and,

WHEREAS, the economic base and stability of Siskiyou County is largely dependent upon commercial and business activities operated on federally and state owned, managed, and/or regulated lands that include, but are not limited to, recreation, tourism, timber harvesting, mining, livestock grazing, and other commercial pursuits; and,

WHEREAS, Siskiyou County desires to assure that federal and state agencies shall inform the Board of Supervisors of all ending or proposed actions affecting local communities and citizens within Siskiyou County and coordinate with the Board of Supervisors in the planning and implementation of those actions; and,

WHEREAS, coordination of planning and management actions is mandated by federal laws governing land management, including the Federal Land Policy and Management Act, 43 USC § 1701, and 43 USC § 1712, regarding the coordinate status of a county engaging in the land use planning process, and requires that the "Secretary of

SISKIYOU COUNTY
RESOLUTION
No. 08-153

the Interior [Secretary] shall . . . coordinate the land use inventory, planning and management activities . . . with the land use planning and management programs of other federal departments and agencies and of the state and local governments within which the lands are located"; and,

WHEREAS, the coordination requirements of Section 1712 provide for special involvement by government officials who are engaged in the land use planning process; and,

WHEREAS, Section 1712 sets forth the nature of the coordination required with planning efforts by government officials and subsection (f) of Section 1712 sets forth an additional requirement that the Secretary "shall allow an opportunity for public involvement" (including local government without limiting the coordination requirement of Section 1712 allowing land or resource management or regulatory agencies to simply lump local government in with special interest groups of citizens or members of the public in general); and,

WHEREAS, Section 1712 also provides that the "Secretary shall . . . assist in resolving, to the extent practical, inconsistencies between federal and non-federal government plans" and gives preference to those counties which are engaging in the planning process over the general public, special interest groups of citizens, and even counties not engaging in a land use planning program; and,

WHEREAS, the requirement that the Secretary "coordinate" land use inventory, planning, and management activities with local governments, requires the assisting in resolving inconsistencies to mean that the resolution process takes place during the planning cycle instead of at the end of the planning cycle when the draft federal plan or proposed action is released for public review; and,

WHEREAS, Section 1712 further requires that the "Secretary shall . . . provide for meaningful public involvement of state and local government officials . . . in the development of land use programs, land use regulations, and land use decisions for public lands"; and, when read in light of the "coordinate" requirement of Section 1712, reasonably contemplates "meaningful involvement" as referring to ongoing consultations and involvement throughout the planning cycle, not merely at the end of the planning cycle; and,

WHEREAS, Section 1712 further provides that the Secretary must assure that the federal agency's land use plan be "consistent with state and local plans" to the maximum extent possible under federal law and the purposes of the Federal Land Policy and Management Act and distinguishes local government officials from members of the general

public or special interest groups of citizens; and,

WHEREAS, the Environmental Protection Agency, charged with administration and implementation of the National Environmental Policy Act (NEPA), has issued regulations which require that federal agencies consider the economic impact of their actions and plans on local government such as Siskiyou County; and,

WHEREAS, NEPA requires federal agencies to consider the impact of their actions on the customs of the people as shown by their beliefs, social forms, and "material traits," it reasonably follows that NEPA requires federal agencies to consider the impact of their actions on the rural, land and resource-oriented citizens of Siskiyou County who depend on the "material traits" including recreation, tourism, timber harvesting, mining, livestock grazing, and other commercial pursuits for their economic livelihoods; and,

WHEREAS, NEPA requires federal agencies to consider the impact of their actions on the customs, beliefs, and social forms, as well as the "material traits" of the people; and,

WHEREAS, it is reasonable to interpret NEPA as requiring federal agencies to consider the impacts of their actions on those traditional and historical and economic practices, including commercial and business activities, which are performed or operated on federally and state managed lands (including, but not limited to, recreation, tourism, timber harvesting, mining, livestock grazing, and other commercial pursuits); and,

WHEREAS, 42 USC § 4331 places upon federal agencies the "continuing responsibility . . . to use all practical means, consistent with other considerations of national policy to . . . preserve important historic, culture, and natural aspects of our national heritage"; and,

WHEREAS, Webster's New Collegiate Dictionary (at 227, 1975) defines "culture" as "customary beliefs, social forms, and material traits of a group; the integrated pattern of human behavior passed to succeeding generations"; and,

WHEREAS, In 16 USC § 1604, the National Forest Management Act, requires the Forest Service to coordinate its planning processes with local government units such as Siskiyou County; and,

WHEREAS, federal agencies implementing the Endangered Species Act, the Clean Water Act, the Clean Air Act, and the Outdoor Recreation Coordination Act (16 USC § 4601-1(c) and (d)) are required by Congress to consider local plans and to coordinate and cooperate directly with plans of local government such as Siskiyou County; and,

WHEREAS, the coordinating provisions referred to in the resolution require the Secretary of the Interior to work directly with local government to resolve water resource issues and with regard to recreation uses of the federal lands, and,

WHEREAS, the regulations issued by the federal agencies in this resolution are consistent with statutory requirements of coordination and direct cooperation and provide implementation processes for such coordination and direction consideration and communication; and,

WHEREAS, the California Constitution has recognized Siskiyou County's authority to exercise its local, police and sanitary powers, and the California Legislature has recognized and mandated exercise of certain of those powers in specific statutes; and,

WHEREAS, the California Legislature has mandated in Government Code Section 65300 that each county shall prepare a comprehensive plan, and stated legislative intent in Section 65300.9 that the county planning shall be coordinated with federal and state program activities, and has mandated in Section 65103 that county local plans and programs must be coordinated with plans and programs of other agencies; and,

WHEREAS, the California Legislature has stated its intent in Section 65070 that preparation of state and regional transportation plans be performed in a cooperative process involving local government; and,

WHEREAS, the California Legislature has mandated in Section 65040 that the State Office of Planning and Research shall "coordinate, in conjunction with . . . local agencies with regard to matters relating to the environmental quality of the state"; and,

WHEREAS, in Water Code §§ 8125-8129, the California Legislature has placed planning for non-navigable streams within the authority of county supervisors, and since such planning activities must be coordinated with natural resource planning processes of federal and state agencies; and,

WHEREAS, in Streets and Highways Code §§ 940-941.2, the California Legislature has placed the general supervision, management, and control of county roads and highways - including closing such roads (Section 901) and removing and preventing encroachment of such roads and highways, and since planning and actions with regard to such roads by any federal or state agency must be coordinated with the county; and,

WHEREAS, in Public Resources Code § 5099.3, the California Legislature has mandated coordination by the state with Siskiyou County since it is a county "having interest in the planning, development, and maintenance of outdoor recreation resources

and facilities,"

NOW, THEREFORE, BE IT RESOLVED that the Siskiyou County Board of Supervisors does hereby assert legal standing and formally requests coordination status with all federal and state agencies maintaining jurisdiction over lands and/or resources located within Siskiyou County.

BE IT FURTHER RESOLVED that the Clerk of the Board shall cause a copy of this Resolution to be transmitted annually to local, regional, state, and/or national offices of all federal and state agencies maintaining jurisdiction of lands and/or resources located within Siskiyou County and to all federal and state elected representatives serving Siskiyou County.

BE IT FURTHER RESOLVED that the Clerk of the Board of Supervisors is authorized and hereby directed to publish a copy of this Resolution in the Siskiyou Daily News, a newspaper of general circulation printed and published in Siskiyou County, California.

PASSED AND ADOPTED this 12th day of August, 2008, by the following vote:

AYES: Supervisors Overman, Erickson, Armstrong, Kobseff and Cook
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

Chair, Board of Supervisors
W.R. Overman

ATTEST:
COLLEEN SETZER, CLERK
Board of Supervisors
By
Deputy

G:\Share\RESOLUTN\Coordination with State and Federal Agencies 2008 RES.wpd

FRD-0153

FRED KELLY GRANT, LTD

FRED KELLY GRANT, President
STACI GRANT, Executive Vice President
JONATHAN GRANT, Vice President

PO BOX 1786
Nampa, Idaho 83653
Phone:208-466-1545
Fax 208-467-4213

February 23, 2011

Tony Tooke
Director
Ecosystem Management Coordination
United States Forest Service
1400 Independence Avenue, SW
Washington, DC 20250-1104
(Sent by land mail, fax, and electronically)

Chief Thomas L. Tidwell
Chief of the United States Forest Service
Mail Stop 1144
1400 Independence Avenue, SW
Washington, DC 20250
(Sent by land mail, fax, and electronically)

And

[INSERT NAME OF ADDRESSEE FOR COMMENTS]

Dear Chief Tidwell and Director Tooke:

This is a statement, report, analysis and comment that Sean Curtis and I have prepared regarding our recommendation that the proposed Section 219.4 of the 2011 Planning Rules proposal be replaced with the language of the existing, applicable Section 219.7 of the 1982 Planning Rules.

We propose that the following specific changes be made to Section 219.4 of the Proposed Rules:

Either replace the whole of Proposed Section 219.4 with Sections 219.6 (public participation) and Sections 219.7 (coordination with State, Indian Tribal, and local governments);

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Or, Divide proposed Section 219.4 into two parts, the first setting forth the public participation language of the Section and the second setting forth the language of current Section 219.7 setting forth the protocol for coordination.

Either change would reflect the Congressional mandate that sets local government in a status separate from and more intimately involved than the general public. It is a Congressionally mandated separation that makes sense. Local governments represent the interests of all citizens of their jurisdictions, not just specific interest.

Local governmental officials have the responsibility for maintaining economic stability and the social cohesiveness of their communities. They are responsible for, and have the authority to exercise, protection of the police powers reserved by the Tenth Amendment, the protection of public safety, health and welfare.

If they fail to protect the stability of their jurisdictions, the Forests will suffer as they have near the communities that have died because of loss of the timber business. The Forest Service will suffer from a public credibility standpoint, at a time when the Congress is listening to citizens again.

As you know from our prior talks, I have been working with local governments to implement the "coordination" communication and negotiation process connecting federal agencies with local governments for over two decades. My efforts began with Owyhee County, Idaho, and from a rocky beginning the County and Bureau of Land Management have developed a mutually beneficial dialogue which is continual.

Using the same process, the County has established a successful dialogue status with the Fish and Wildlife Service, the Idaho Department of Environmental Quality (acting for EPA) and other agencies. The Forest Service has no land management responsibilities in the County. Major land use conflicts have been resolved, and the coordination process laid the base for the Owyhee Initiative, as I explained during the Andrus Conference which you, Chief Tidwell, attended.

Sean Curtis began working with Modoc County in California shortly after I began the effort with Owyhee County. Modoc faced problems with the BLM and the Forest Service. He, Carolyn Carey, June Roberts and a courageous Board of Supervisors led by Nancy Huffman, established a coordination protocol which continues today. Sean continues to assist Modoc County in successful communication with the Forest Service, BLM, and Fish and Wildlife.

Sean and I have seen the coordination process as defined by Congress in the Federal Land Policy Management Act and mandated for the Forest Service by the National Forest Management Act work. The Secretary of Agriculture's protocol set forth in the currently applicable Section 219.7 parallels the Congressional definition and has worked in a mutually beneficial manner in every local government where Forest Service personnel have followed the law.

We are engaged in a serious effort to persuade you to resist the temptation to change the Secretary's definition in Section 219.7 which mirrors the Congressional mandate. We have seen

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the 219.7 protocol work. We have also seen the "cooperating agency" status encouraged by the proposed Section 219.4 fail the citizens of local governments. That status benefits only the Service, paid planners, and local government officials who do not believe that they have the authority to stand firm for their citizens who deserve real, meaningful representation at the table with federal agencies.

This report, analysis and comment is a two fold effort. It constitutes Sean and my personal position regarding the effectiveness of the currently applicable Section 219.7 and the interest of many counties and units of local government who seek meaningful representation at the table with your personnel.

I respect the belief in collaboration that you two have, and the fact that you have shown that belief in the national and regional meetings that you have provided. But, the units of local government that have signed on to this report were not specifically represented in those meetings. No local government association can represent the interests of the citizens of specific local governments.

The National Association of Counties does not represent the citizens of the counties that have signed on to this report and analysis. No State Association of Cities or Counties represent the citizens of the local governments that have signed on this report and analysis. Such associations represent the counties and cities who are members, but they do not represent the local citizens. Congress recognizes that fact, thus has specifically qualified local governments for special recognition and representation with the Forest Service and other federal agencies.

The second impact of this report and analysis is that many units of local government have shown interest in signing on to this report as their local plan and policy for the protocol to be followed in the coordination process mandated for your Service by Congress. They will expect that coordination be implemented in accord with their local plan and policy adopted by endorsing replacement of Section 219.4 of the Proposed Rules by Section 219.7 of the 1982 Planning Rules.

It is from that dual standpoint that we submit this report, analysis, comment and statement of local plans and policies as to the protocol for coordination between local governments and the Forest Service.

I. PERSONAL ANALYSIS, REPORT AND COMMENT AS TO SECTION 219.4 OF THE 2011 PROPOSED FOREST SERVICE PLANNING RULES SUBMITTED BY SEAN CURTIS AND FRED KELLY GRANT:

Sean Curtis is a Natural Resource Analyst who is assisting local governments to implement the coordination process with all federal agencies. His work with Modoc County historically has already been discussed; his work with that County continues today. He is knowledgeable regarding management of natural resources as well as the mutually beneficial coordination process. His knowledge and experience with the actual management of land uses and natural

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resources makes him especially effective in implementing coordination not just from a protocol standpoint, but from a management standpoint.

Fred Kelly Grant initiated the first coordination process with the BLM which has continued without interruption for two decades in Owyhee County, Idaho.

Together, based on their personal experiences, they submit this report, analysis and comment requesting that the proposed Section 219.4 be replaced with Section 219.7 of the 1982 Planning Rules for the coordination process, and by Section 219.6 of the 1982 Planning Rules for public participation.

In the alternative, they request and suggest that the Proposed Section 219.4 be separated into two parts: the first containing public participation as set forth in the proposal (removing the governments of States, the Tribes and local entities of government from the public participation language), and the second as to coordination containing all provisions of Section 219.7 of the 1982 Planning Rules.

We urge reconsideration of the text of Section 219.4 of the Proposed 2011 Planning Rules as to coordination. The Section alters dramatically the elements of mutual participation that make up the Congressional requirement that the Forest Service "coordinate" with local governments. We urge that Section 219.7 of the 1982 Planning Rules be substituted for the proposed Section 219.4 as to coordination. Section 219.7 complies with the Congressional mandate of coordination and definition of coordination.

II. LOCAL PLAN AND POLICY REGARDING THE COORDINATION PROCESS SUBMITTED BY SIGNATORY COUNTIES AND LOCAL GOVERNMENTS:

Many counties and local governments have signed on to our report, analysis and comment. The signatory counties and local governments submit this report as their "coordination protocol", their local plan and policy as to the protocol by which coordination is implemented, not as a mere comment such as those submitted by Curtis, Grant and other members of the general public.

III. THE PROPOSED RULES HAVE NOT BEEN DEVELOPED IN COMPLIANCE WITH THE 1982 PLANNING RULES BECAUSE THEY HAVE NOT BEEN DEVELOPED IN COORDINATION WITH THE LOCAL GOVERNMENTS THAT HAVE SIGNED THIS REPORT AND ANALYSIS.

The Secretary of Agriculture served Notice that the 2011 Proposed Planning Rules would be prepared in accordance with the 1982 Planning Rules. Section 219.7 of those 1982 Rules requires that the Forest Service "coordinate" development of the Rules with local governments. That Section must be followed in the final review and adoption of Planning Rules, but it has not been followed to this point---at least as to the local governments signatory to this report and analysis.

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Section 219.7 should have been followed even in the development of the draft Rules, but it was not. Chapter 4 of the Proposed Rules lists hundreds of organizations and individuals who were consulted and involved in the development of the Rules. But, the coordination with individual and specific local governments required by Congress was not implemented.

The specific elements of coordination set forth in Section 219.7 have not been followed with the signatory counties and entities of local government. So, to this point, the Service has failed to comply with the Congressional mandate of coordination and failed to comply with regulatory direction from the Secretary of Agriculture.

Unless the Service remedies its non-compliance by adequately coordinating with the signator counties and local governments with regard to the proposed Planning Rules, they will no doubt suffer the same judicial fate as the prior two sets of proposals that have been rejected for non-compliance with the law.

The counties and local governments signatory to this analysis submit the document as their local policy as to how coordination should be implemented. They submit that Section 219.7 of the 1982 Planning Rules should be substituted for Section 219.4 of the 2011 Proposals. In so doing, they represent to the Chief and to the Secretary that the provisions of Section 219.7 constitute their local plan and policy for implementing coordination. By submitting the language of Section 219.7, they expect that the Service will coordinate with each of them in attempting to resolve the conflict between their 219.7 policy and the proposed Section 219.4.

IV. SECTION 219.4 OF THE PROPOSED 2011 PLANNING RULES SHOULD BE REPLACED BY THE EXACT LANGUAGE OF SECTION 219.7 OF THE EXISTING AND APPLICABLE 1982 FOREST SERVICE PLANNING RULES.

In Section 219.7 of the 1982 Planning Rules, the Secretary of Agriculture carefully set forth all the elements of coordination required by Congress in the only Congressional definition of "coordination" or "coordinate" enacted into natural resource management law.

Section 219.7 of the 1982 Planning Rules closely parallels the Congressional definition of "coordination" and "coordinate" contained in the Federal Land Policy Management Act. FLPMA was enacted one day prior to enactment of the National Forest Management Act which requires the Forest Service to engage in "coordination" with local governments. Until Congress changes that definition, it is the definition that has the force of law.

Counties and other entities of local government throughout the west have utilized the coordination communication process with the Forest Service to the mutual benefit of local officials and Forest Service personnel. Where Forest Service personnel have followed the Secretary's process, management has progressed well without expensive, wasteful litigation.

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Where Forest Service personnel have followed the Rules, the Service has benefitted from having a clear roadmap to successful communication and resolution of conflicts. Section 219.7 very clearly identifies when and how coordination takes place in the planning process. It clearly identifies who is responsible for developing the coordination process, the manner in which the planning documents should display and discuss local government plans and policies, and how the Forest Service should review local plans and policies to find inconsistencies or conflicts with federal plans and assist in resolving such conflicts.

It identifies one major element of coordination as defined by Congress: the need to meet with local officials and communicate with them regarding issues and resolution of conflicts. That element of meeting, of face to face discussions, is sadly missing from the proposed Section 219.4. Whether to meet government to government is left by the Section's language totally to the discretion of the local "responsible officer". Congress never sublimated coordination to the discretion of a local line officer.

The section is the very core of coordination. It sets in place the protocol through which local governments and the Service can find mutually beneficial resolution of conflicts. The Council on Environmental Quality, charged with oversight and control of NEPA planning processes, requires that NEPA processes be put in place "as early as possible" in the planning effort so that conflicts can be identified and resolved early, prior to issuance of a final document that must be challenged through litigation—administrative or judicial. Section 219.7 provides the means for the Service to comply with CEQ's regulations. If it is left in place, and the Service's personnel follow it, there will never be question as to whether the Service has complied with the law as set forth by NEPA and CEQ.

Those counties and entities of local government that have engaged the Forest Service in coordination have proven that the process works to the advantage of both parties. Modoc County in California, Glen Lake Irrigation District in Montana, Custer County in Idaho, and Fremont County in Wyoming, among others, have utilized the 219.7 process to engage the Service in discussions that have so far negated the need for litigation.

Wherever Forest Service personnel are willing to comply with the Congressional mandate and definition of coordination with local government, Section 219.7 presents a clear path to compliance. The proposed Section 219.4 **DOES NOT. THE PROPOSED SECTION 219.4 DOES NOT PROVIDE A PROCESS THAT COMPLIES WITH THE CONGRESSIONAL MANDATE OF COORDINATION.**

Make no mistake, as we demonstrate hereinafter, Congress has ordered that the Forest Service coordinate, in the true sense of that word, with local government. Section 219.7 of the 1982 Rules sets forth the definition of coordination that Congress has provided by statute. The proposed Section 219.4 DOES NOT. If the proposed Section 219.4 is adopted, the signatory counties and entities of local government will still insist on coordination as defined by Congress, not as set forth in 219.4. We will prevail, and the Service personnel will have no clear protocol in their own rules to follow.

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We urge that the Secretary leave in place the provisions of Section 219.7 of the 1982 Planning Rules related to coordination with local governments.

The signatory counties and local governments insist that Section 219.7 of the 1982 Planning Rules, which constitutes their local plan and policy for coordination be substituted for Section 219.4 of the Proposed 2011 Planning Rules.

V. PROPOSED LANGUAGE TO REPLACE SECTION 219.4 OF THE PROPOSED 2011 RULES:

Section 219.7, which should replace proposed Section 219.4, as to coordination with local governments, provides as follows:

Sec. 219.7 Coordination with other public planning efforts.

(a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(b) The responsible line officer shall give notice of the preparation of a land and resource management plan, along with a general schedule of anticipated planning actions, to the official or agency so designated by the affected State (including the Commonwealth of Puerto Rico). The same notice shall be mailed to all Tribal or Alaska Native leaders whose tribal lands or treaty rights are expected to be impacted and to the heads of units of government for the counties involved. These notices shall be issued simultaneously with the publication of the notice of intent to prepare an environmental impact statement required by NEPA procedures (40 CFR 1501.7).

(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include–

(1) Consideration of the objectives of other Federal, State and local governments, and Indians tribes, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the impacts identified; and,

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

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(d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced.

(e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.

[47 FR 43037, Sept. 30, 1982, as amended at 48 FR 29122, June 24, 1983]

Section 219.7 was issued by the Secretary of Agriculture as compliance with Section 219.1 that set forth the principles to guide Forest Service planning. Those principles included the following:

(9) Coordination with the land and resource planning efforts of other Federal agencies, State and local governments, and Indian tribes;

(10) Use of a systematic, interdisciplinary approach to ensure coordination and integration of planning activities for multiple-use management

VI. THE LANGUAGE OF SECTION 219.7 OF THE 1982 PLANNING RULES COMPLIES WITH THE CONGRESSIONAL MANDATE TO COORDINATION AND WITH THE CONGRESSIONAL DEFINITION OF COORDINATION.

A. The Provisions of the Forest and Rangeland Renewable Resources Act, the Federal Land Policy Management Act and the National Forest Management Act, and the Legislative History of Said Acts Makes It Patently Clear That Congress Defined "Coordination" In Terms That Require a Process Such as That Set Forth in Section 219.7 of the 1982 Planning Rules.

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The language of Section 219.7 was intended to, and did, implement the mandate by Congress that Forest planning be performed in "coordination" with local governments. The legislative history of the various Forest Management Acts, beginning with the Multiple Use Sustained Yield Act of 1960 demonstrates that Congress intends that "coordination" be a principle by which Forest planning is conducted—not "cooperation", not "collaboration", but "coordination.

1. The Legislative History Shows Intent of Congress

The Multiple Use Sustained Yield Act of 1960 was enacted June 12, 1960. It was enacted to be "supplemental" to the Organic Act of 1897 (16 U.S.C. 475) by which the National Forests were established.

One of the "supplements" to the Organic Act was the requirement stated in Section 3 of the Multiple Use Sustained Yield Act that the Secretary could "cooperate", not "coordinate", but "cooperate" with local governments. The actual language of Section 3 is as follows:

"In the effectuation of this Act, the Secretary of Agriculture is authorized to cooperate with interested State and local governmental agencies and others in the development and management of the National Forests." (16 U.S.C. 530)

The Multiple Use Sustained Yield Act of 1960 remained the law until the Forest and Rangeland Renewable Resources Act was enacted on August 17, 1974. Section 6 of the new Act made a substantial and significant change to the "cooperation" language of the Multiple Use Act. In Section 6 for the first time Congress directed the Secretary of Agriculture to engage in " coordination".

As pointed out hereinafter, the term "coordination" had first been introduced to natural resource and land use by the terms of the National Environmental Policy Act (NEPA) passed in 1970. Congress then applied the same term and concept to the Forest Service four years later in the Forest and Rangeland Renewable Resources Act.

The provisions of Section 6 (16 U.S.C. 1604) stated:

"(a) As a part of the program provided for by Section 4 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies."

Congress thus changed the Secretary's duty to "cooperate" with local governments to a duty of seeking "coordinated" planning with local governments.

The fact that the change from "cooperate" to "coordination" occurred in 1974 becomes very significant, given the action by the Congress in that year in developing in earnest the

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Federal Land Policy Management Act as the organic act for management of the western rangelands by the Bureau of Land Management.

Passage of the Forest and Rangeland Renewable Resources Act occurred during a flurry of Congressional action resulting from an increased public awareness of environmental concerns as well as the Report issued by the Public Land Review Commission established by Congress. Environmental concerns had led the Nixon administration to spearhead passage of the National Environmental Policy Act of 1970 (NEPA).

In passing NEPA, Congress emphasized the importance of involving local government in federal land and resource planning. In 42 U.S.C. 4331 (a) Congress made it clear that national policy called for "cooperation" with local governments by using "all practicable means" to "improve and coordinate" federal plans. Use of the term "coordinate" here was the first time that Congress had introduced the commonly used term relating to land use, natural resource use and environmental protection.

Congressional use of the terms "cooperation" and "coordinate" in the same section of NEPA makes it clear that it intended to distinguish between the two. The dictionary definitions of the two terms emphasize the unique characteristics of "coordinate" as implying a basis of equality in participating in the process.

After "coordinate" made its entry into law in NEPA in 1970, Congress changed "cooperate" to "coordinate" in the 1974 Forest and Rangeland Renewable Resources Act. Pretty clearly, it knew what it was doing.

In the year following passage of the Forest and Rangeland Renewable Resources Act, as Congress considered the rangelands organic act, FLPMA, Senator Packwood of Oregon introduced the requirement that the federal agency "coordinate" with local government. The Forest and Rangeland Renewable Resources Act had not defined the term "coordinate", so Congress remedied that by including the Packwood definition in FLPMA.

The Packwood language, which is today 43 U.S.C. 1712, included the obligation of the Secretary of Agriculture to "coordinate" Forest plans with the planning and management programs of the Indian Tribes. It then proceeded to define the term "coordinate" for the first time. Packwood's provision, which today is 43 U.S.C. 1712, defined the term as follows:

"The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision

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In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

(c) Criteria for development and revision
In the development and revision of land use plans, the Secretary shall—

(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;
(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;
(3) give priority to the designation and protection of areas of critical environmental concern;
(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;
(5) consider present and potential uses of the public lands;
(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;
(7) weigh long-term benefits to the public against short-term benefits;
(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and
(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 4601–4 et seq.], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs.

In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act. "

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At least the Bureau of Land Management opposed enactment of the "coordination" requirement and definition on the grounds that it would make their job of management more difficult. Obviously Congress believed that if coordination with local government made the management job more difficult, so be it. The coordination requirement and definition became law.

FLPMA, with the coordination requirement and definition in place was enacted on October 21, 1976.

On the very next day, October 22, 1976, the National Forest Management Act (NFMA) was passed as legislation amending the Forest and Rangeland Renewable Resources Act. The NFMA
left intact the requirement that the Secretary of Agriculture "develop, maintain, and, as appropriate, revise land and resource management plans. . .coordinated with the land and resource management planning processes of State and local governments and other federal agencies."

As already noted, the coordination requirement is contained in 16 U.S.C. 1604. The National Forest Management Act amended Section 1604, with amendments replacing language that immediately followed the coordination requirement. Leaving the coordination requirement intact, and beginning the amendments immediately following the requirement makes it obvious to anyone that Congress intended to continue the requirement of coordination.

It would be totally disingenuous to contend that when Congress defined "coordination" in a land and natural resource statute on October 21, 1976, it did not intend that same definition to apply in a land and natural resource statute enacted the very next day---on October 22, 1976.

This legislative history makes obvious why the Courts have ruled hundreds of times that statutes which are "in para materia" must be read consistently. The most noted expert on statutory construction, Professor Sutherland stated in his "Statutory Construction" that statutes are "in para materia" when they relate to "the same class of persons or things, or have the same purpose and object." He points out that the courts have clearly held that such statutes must "be construed together". Section 5202, "Statutory Construction".

FLPMA and NFMA are patently such statutes. They both deal with protective and productive management of the nation's public lands: the rangelands and the National Forests. They were both passed at a time when Congressional attention was focused on newly created management principles to govern multiple uses of the nation's lands in a manner that protects a sound environment. All aspects of the environmental concerns displayed in FLPMA were and are present in NFMA.

It would be ludicrous to think that Congress did not intend the definition of "coordination" contained in FLPMA passed on October 21 to apply to the use of "coordination" in NFMA passed on October 22. To believe that Congress defined "coordination" on October 21, then used the term on October 22 but intended a different, unstated, meaning, would not only

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be ludicrous, it would violate historically and traditionally established "canons of statutory interpretation".

Courts in all states, and in the federal districts, have held that statutes must be interpreted in a way that "avoids an absurd result the Legislature did not intend." Bruce v. Gregory, 65 Cal. 2d 666, 673 (1967). It would certainly be "absurd" to argue that Congress intended two different definitions for the term "coordination" in statutes enacted one day apart.

The Secretary of Agriculture made it patently clear that he so understood the Congressional intent when he defined "coordination" in Section 219.7 of the 1982 Planning Rules. This was the first and only definition of "coordination" styled by the Secretary after enactment of FLPMA and NFMA. The definition set forth hereinabove closely follows the Congressional definition of "coordination" contained in FLPMA.

VII. RATIONALE AS TO WHY PROPOSED SECTION 219.4 DOES NOT COMPLY WITH THE CONGRESSIONAL MANDATE AND THE MEANING OF COORDINATION AS OPPOSED TO PARTICIPATION OR COOPERATION.

Section 219.4 is entitled "REQUIREMENTS FOR PUBLIC PARTICIPATION", and the rule completely minimizes the meaningful coordinated involvement of local governmental officials in a government to government setting with the Forest Service. The rule reduces local government involvement to that of the general public. This approach does not comply with the statutes passed by Congress.

Note that in the 1982 Rules, the Secretary of Agriculture complied with the Congressional mandate by providing for "Public Participation" in Section 219.6 and "Coordination" in Section 219.7.

The comments explaining the proposed section relates that the Service has used the CEQ "Collaboration Handbook" as a base for the rule. That handbook is not law. The Congressional mandate of coordination is law and should be the base for the proposed rule. The proposal manages to diminish the role of local government to that of simply one organization among public organizations. It is a status that defies the will of Congress and defies the simple dictionary definition of "coordination."

The rule defines the "public" as including "local governments". So, all the signatory counties and local governments to this report are reduced by the proposal to the same level as "individuals" and "private organizations". Thus, the proposal gives the same standing to the non-governmental organizations that actively oppose logging, recreation, access, and every other use of the Forests that contributes to the economic stability of local government as it does to the impacted local government.

Every individual and organization that opposes the use of motorized vehicles and all off-road vehicles will have the same standing as the local government. Every organization that seeks shut-down of forest roads will have the same standing as the local government. Every

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organization that seeks to prevent all logging will have the same standing as the local government. Every individual and organization that opposes the concept that a hunter should be able to retrieve his game will have the same standing as the local government.

None of those organizations have the obligation to protect the economic stability of the communities adjacent to the Forests as do the local governments. None of those organizations have the obligation to pay the costs of search and rescue as do the local governments. None of those organizations have to suffer the impact of fire damage, loss of jobs, and loss of revenue from users of the Forests as do the local governments. But they will have the same standing in the planning effort as do the local governments.

The proposal is not in compliance with the Congressional mandates that local governments be accorded the coordinate role compatible with their responsibilities to care for and fund the public health, safety, and welfare.

Subpart (a) of the proposal allows the "responsible official" of the Service to use "collaborative processes" *regarding local governments and all other members of the public only* when he or she determines it "feasible and appropriate". So, whether to even involve local governments in "collaboration" is solely within the discretion of the official. Congress gives no such discretion to the Service; coordination with local governments is mandatory, not discretionary.

Subpart (a) also allows the "responsible official" to take into account "cost, time and staffing" in deciding whether to invoke "collaboration". This further provides the official with an easy excuse to refuse to even "collaborate". When he or she determines that it is too costly, takes too much time, or involves too much staff time to "collaborate", local governments will have no recourse. Congress gives no such discretion to the Service; coordination with local governments is mandatory, not discretionary. Congress recognized long ago that conflict resolution through coordination will in the long run SAVE COST, TIME AND STAFFING.

Subpart (a) allows the "responsible official" to resort to use "contemporary tools, such as the internet" to engage local governments in "collaboration". Such discretion strips away totally the capability of local governments to engage the Service in the meaningful way mandated by Congress. A local governing body cannot meet the public and open meeting laws of any of the 50 states by engaging in "internet coordination." Use of the internet is not the government to government coordination mandated by Congress.

Subpart (a)(1) allows the "responsible official" the "discretion to determine the scope, methods, forum, and timing of" any opportunity for local government to participate in planning. He or she can determine that local governments can participate only by internet, or only in the Forest Service office, which will prevent any participation by the full governing body. He or she can determine that only one member of a Board of commissioners or supervisors, or only the mayor, or only one member of a city council, can participate, thus again depriving the governing body from participation. Congressional mandate of coordination with "local governments" does not contemplate the Service being able to limit participation to one member of a governing body.

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Subparts (a)(2)(3)and (4) provide that the "responsible official" shall "ENCOURAGE" participation by individuals, youth, low-income populations, minority populations, and private landowners. Local governments are not included in the categories of the "public" that are privileged to be ENCOURAGED TO PARTICIPATE. Again, this provision diminishes Service commitment to meaningfully engage local governments in planning as Congress requires.

In fact, subpart (a)(8) provides that the "responsible official" must only "provide opportunities" for local governments to participate in planning—while he or she is to "encourage" other elements of the public to participate, he or she must only "provide opportunities" for local government participation. The Congressional mandate of coordination is not satisfied even in the slightest way by this soft, downplayed role afforded to local governments.

The only thing that the "responsible official" can encourage for local governments is to seek permission for "cooperating agency status in the NEPA process for a plan development, amendment, or revision." The "cooperating agency status" is not even incorporated in any statute passed by Congress. It is a category first suggested in a federal interagency memorandum, and then included in a regulation issued by the Council on Environmental Quality. It is a regulatory category applicable only to and limited to the NEPA process.

As a "cooperating agency" the governing body does not meet government to government with the Forest Service as agent of the United States government. The governing body simply gets to select someone to participate as a member of a planning team, with no governmental authority forming a base for the member. Congress did not mandate "cooperating agency status"; it mandated coordination for local governments, and the entire subpart (a) is non-compliant with that mandate.

Subpart (b) provides for "coordination" with local governments only to the extent that the "responsible official" deems "practicable and appropriate". In other words, when the "responsible official" wants to coordinate. The proposal is so far out of compliance with the Congressional mandate that it constitutes an administrative attempt to evade the law. Such evasion simply cannot be allowed to succeed. If the proposal stands as written, it must be challenged in a federal court.

Even if the "responsible official" graciously decides to "coordinate" with local government, all he or she has to do is review local plans or policies and report his or her review in the environmental impact statement for the plan. There is no requirement, as in the 1982 Planning Rules, for the official to even meet with the local government. There is no requirement that he or she discuss the review with the local government. All that is needed to comply with the "coordination" provision is to: read the "objectives of. . .[the] local governments as expressed in their plans and policies", "consider . . . the compatibility and interrelated impacts" of the plans and policies, consider the "opportunities for the plan to address the impacts", consider the "opportunities to resolve or reduce conflicts", and report his or her considerations in the EIS.

Nothing in the subpart even requires that the "responsible official" meet with the local governing body and discuss the review or considerations. To the contrary, the 1982 Rules

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require that the official to "meet with" local government officials "at the beginning of the planning process to develop procedures for coordination." (Section 219.7 (d)) The Rule further provides:

"At a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced."

The 1982 Rule also requires the Service official to "seek input from . . .local governments . . .to help resolve management concerns in the planning process and identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area."

All the elements of coordination included in the 1982 Rules by the Secretary of Agriculture who was trying to comply with the Congressional mandate have been eliminated in the proposal. A Forest Service official can comply with the coordination requirement in the proposal without ever meeting with or discussing any issue with the local governing body. That is not compliance with the National Forest Management Act that requires coordination as defined by Congress.

VIII. THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA HAS MADE IT CLEAR THAT CONGRESS HAS MANDATED COORDINATION, NOT COOPERATION.

In September, 2009, United States District Judge Marilyn Hall Patel, presiding in the Northern District of California, held in California Resources Agency v. United States Department of Agriculture, that the National Forest Management Act required the Forest Service to "coordinate" with the State of California. The Court's decision cited 16 U.S.C. 1604, the same section that requires coordination also for local governments.

The Court stated:

"Congress plainly recognized and endorsed the respective states' interests in the management of national forests by enacting the provision of the NFMA requiring the Forest Service to coordinate forest planning with state resource management processes. See 16 USC Section 1604(a). In light of this statutory recognition, it would be odd indeed to hold that California has no concrete interest in activities in the national forests. California has a concrete interest in the management of national forests within its borders."

The Court's statement and reasoning applies equally to local governments which are included in 16 USC Section 1604 (a).

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IX. CONCLUSION

For the reasons stated in this report and analysis, we respectfully request and suggest that the proposed Section 219.4 of the 2011 Proposed Planning Rules be replaced as follows:

Either replace it with Sections 219.6 (public participation) and 219.7 (coordination with governments, local and otherwise) of the currently valid and applicable 1982 Planning Rules; or

Separate proposed 219.4 into two parts: the first dealing with public participation as it does (but excluding local government from its terms), the second dealing with coordination in the language of Section 219.7 of the 1982 Planning Rules.

We believe that the Congressional mandate and definition of "coordination" requires the change. Even the common, simple definition of the term "coordinate" or "coordination" requires the change. Even if you do not accept the fact that the FLPMA definition of coordination will be sustained if we must seek judicial enforcement, you have to live with the dictionary definition of the terms. You have to realize that when Congress uses the terms "coordination" and "coordinate" in the same statutes in which it also uses the terms "cooperate" and "cooperation" it knows the difference. We hope that it will not take litigation to point that out.

We will be glad to discuss any of these concepts with you or your designees should you or they decide to do so.

Cordially,

Fred Kelly Grant

Sean Curtis

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I. PERSONAL ANALYSIS, REPORT AND COMMENT AS TO SECTION 219.4 OF THE 2011 PROPOSED FOREST SERVICE PLANNING RULES SUBMITTED BY SEAN CURTIS AND FRED KELLY GRANT:

Working coordinately, Sean Curtis, Natural Resource Analyst, who has helped Modoc County, California implement coordination, and Fred Kelly Grant have prepared and submit this report, analysis and comment regarding the text of Section 219.4 of the Proposed 2011 Planning Rules.

The contents reflect the experiences of the authors gained through two decades of work to establish a process by which the Forest Service and local governments can jointly and meaningfully participate in planning and policy development.

We urge reconsideration of the text of Section 219.4 of the Proposed 2011 Planning Rules. The Section alters dramatically the elements of mutual participation that make up the Congressional requirement that the Forest Service "coordinate" with local governments. We urge that Section 219.7 of the 1982 Planning Rules be substituted for the proposed Section 219.4. Section 219.7 complies with the Congressional mandate of coordination and definition of coordination.

II. LOCAL PLAN AND POLICY REGARDING THE COORDINATION PROCESS SUBMITTED BY SIGNATORY COUNTIES AND LOCAL GOVERNMENTS:

Many counties and local governments have signed on to our report, analysis and comment. The signatory counties and local governments submit this report as their "coordination protocol", their local plan and policy as to the protocol by which coordination is implemented, not as a mere comment such as those submitted by members of the general public.

The Secretary of Agriculture served Notice that the 2011 proposed Planning Rules would be prepared in accordance with the 1982 Planning Rules. Section 219.7 of the 1982 Planning Rules requires that the Forest Service "coordinate" development of the

Rules with local governments. It must be followed in the final review and adoption of the proposed Rules.

Section 219.7 requires the Forest Service personnel It should have been followed even in the development of the draft Rules, but it was not. Chapter 4 of the Proposed Rules lists hundreds of organizations and individuals who were consulted and involved in the development of the Rules. But, the coordination with individual and specific local governments required by Congress was not implemented.

The specific elements of coordination set forth in Section 219.7 have not been followed with the signatory counties and entities of local government. So, to this point, the Service has failed to comply with the Congressional mandate of coordination and failed to comply with regulatory direction from the Secretary of Agriculture.

Unless the Service remedies its non-compliance by adequately coordinating with the signator counties and local governments with regard to the proposed Planning Rules, they will no doubt suffer the same judicial fate as the prior two sets of proposals that have been rejected for non-compliance with the law.

The counties and local governments signatory to this analysis submit the document as their local policy as to how coordination should be implemented. They submit that Section 219.7 of the 1982 Planning Rules should be substituted for Section 219.4 of the 2011 Proposals. In so doing, they represent to the Chief and to the Secretary that the provisions of Section 219.7 constitute their local plan and policy for implementing coordination. By submitting the language of Section 219.7, they expect that the Service will coordinate with each of them in attempting to resolve the conflict between their 219.7 policy and the proposed Section 219.4.

III. SECTION 219.4 OF THE PROPOSED 2011 PLANNING RULES SHOULD BE REPLACED BY THE EXACT LANGUAGE OF SECTION 219.7 OF THE EXISTING AND APPLICABLE 1982 FOREST SERVICE PLANNING RULES.

In Section 219.7 of the 1982 Planning Rules, the Secretary of Agriculture carefully set forth all the elements of coordination required by Congress in the only Congressional definition of "coordination" or "coordinate" enacted into natural resource management law.

Section 219.7 of the 1982 Planning Rules closely parallels the Congressional definition of "coordination" and "coordinate" contained in the Federal Land Policy Management Act. FLPMA was enacted one day prior to enactment of the National Forest Management Act which requires the Forest Service to engage in "coordination" with local governments.

Counties and other entities of local government throughout the west have utilized the coordination communication process with the Forest Service to the mutual benefit of local officials and Forest Service personnel. Where Forest Service personnel have followed the Secretary's process, management has progressed well without expensive, wasteful litigation.

Where Forest Service personnel have followed the Rules, section 219.7 very clearly identify when and how coordination takes place in the planning process. It makes it clear who is responsible for developing the coordination process, the role of the manner in which the planning documents should display and discuss local government plans and policies, and describes how the Forest Service should review local plans and policies to find inconsistencies or conflicts with federal plans and assist in resolving such conflicts.

The section is the very core of coordination. It sets in place the protocol through which local governments and the Service can find mutually beneficial resolution of conflicts. The Council on Environmental Quality, charged with oversight and control of NEPA planning processes, requires that NEPA processes be put in place "as early as possible" in the planning effort so that conflicts can be identified and resolved early, prior to issuance of a final document that must be challenged through litigation---administrative or judicial. Section 219.7 provides the means for the Service to comply with CEQ's regulations. If it is left in place, and the Service's personnel follow it, there will never be question as to whether the Service has complied with the law as set forth by NEPA and CEQ.

Those counties and entities of local government that have engaged the Forest Service in coordination have proven that the process works to the advantage of both parties. Modoc County in California, Glen Lake Irrigation District in Montana, Custer County in Idaho, and Fremont County in Wyoming, among others, have utilized the 219.7 process to engage in discussions that have so far negated the need for litigation.

Wherever Forest Service personnel are willing to comply with the Congressional mandate that the Service coordinate with local government, Section 219.7 presents a clear path to compliance. The proposed Section 219.4 DOES NOT. THE PROPOSED SECTION 219.4 DOES NOT PROVIDE A PROCESS THAT COMPLIES WITH THE CONGRESSIONAL MANDATE OF COORDINATION.

Make no mistake, as we demonstrate hereinafter, Congress has ordered that the Forest Service coordinate, in the true sense of that word, with local government. Section 219.7 of the 1982 Rules sets forth the definition of coordination that Congress has provided by statute. The proposed Section 219.4 DOES NOT. If the proposed Section 219.4 is adopted, the signatory counties and entities of local government will still insist on coordination as defined by Congress, not as set forth in 219.4. We will prevail, and the Service personnel will have no clear protocol in their own rules to follow.

We urge that the Secretary leave in place the provisions of Section 219.7 of the 1982 Planning Rules related to coordination with local governments.

The signatory counties and local governments insist that Section 219.7 of the 1982 Planning Rules, which constitutes their local plan and policy for coordination be substituted for Section 219.4 of the Proposed 2011 Planning Rules.

IV. PROPOSED LANGUAGE TO REPLACE SECTION 219.4 OF THE PROPOSED 2011 RULES:

Section 219.7, which should replace proposed Section 219.4, provides as follows:

Sec. 219.7 Coordination with other public planning efforts.

(a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(b) The responsible line officer shall give notice of the preparation of a land and resource management plan, along with a general schedule of anticipated planning actions, to the official or agency so designated by the affected State (including the Commonwealth of Puerto Rico). The

same notice shall be mailed to all Tribal or Alaska Native leaders whose tribal lands or treaty rights are expected to be impacted and to the heads of units of government for the counties involved. These notices shall be issued simultaneously with the publication of the notice of intent to prepare an environmental impact statement required by NEPA procedures (40 CFR 1501.7).

(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include--

(1) Consideration of the objectives of other Federal, State and local governments, and Indians tribes, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the impacts identified; and,

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

(d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced.

(e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.

[47 FR 43037, Sept. 30, 1982, as amended at 48 FR 29122, June 24, 1983]

Section 219.7 was issued by the Secretary of Agriculture as compliance with Section 219.1 that set forth the principles to guide Forest Service planning. Those principles included the following:

(9) Coordination with the land and resource planning efforts of other Federal agencies, State and local governments, and Indian tribes;

(10) Use of a systematic, interdisciplinary approach to ensure coordination and integration of planning activities for multiple-use management

V. THE LANGUAGE OF SECTION 219.7 OF THE 1982 PLANNING RULES COMPLIES WITH THE CONGRESSIONAL MANDATE TO COORDINATION AND WITH THE CONGRESSIONAL DEFINITION OF COORDINATION.

A. The Provisions of the Forest and Rangeland Renewable Resources Act, the Federal Land Policy Management Act and the National Forest Management Act, and the Legislative History of Said Acts Makes It Patently Clear That Congress Defined "Coordination" In Terms That Require a Process Such as That Set Forth in Section 219.7 of the 1982 Planning Rules.

The language of Section 219.7 was intended to, and did, implement the mandate by Congress that Forest planning be performed in "coordination" with local governments. The legislative history of the various Forest Management Acts, beginning with the Multiple Use Sustained Yield Act of 1960 demonstrates that Congress intends that "coordination" be a principle by which Forest planning is conducted----not "cooperation", not "collaboration", but "coordination.

1. The Legislative History Shows Intent of Congress

The Multiple Use Sustained Yield Act of 1960 was enacted June 12, 1960. It was enacted to be "supplemental" to the Organic Act of 1897 (16 U.S.C. 475) by which the National Forests were established.

One of the "supplements" to the Organic Act was the requirement stated in Section 3 of the Multiple Use Sustained Yield Act that the Secretary could "cooperate", not "coordinate", but "cooperate" with local governments. The actual language of Section 3 is as follows:

"In the effectuation of this Act, the Secretary of Agriculture is authorized to **cooperate** with interested State and local governmental agencies and others in the development and management of the National Forests." (16 U.S.C. 530)

The Multiple Use Sustained Yield Act of 1960 remained the law until the Forest and Rangeland Renewable Resources Act was enacted on August 17, 1974. Section 6 of the new Act made a substantial and significant change to the "cooperation" language of the Multiple Use Act. In Section 6 for the first time Congress directed the Secretary of Agriculture to engage in " coordination".

The provisions of Section 6 (16 U.S.C. 1604) provided:

"(a) As a part of the program provided for by Section 4 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, **coordinated** with the land and resource management planning processes of State and local governments and other Federal agencies."

Congress thus changed the Secretary's duty to "cooperate" with local governments to a duty of seeking "coordinated" planning with local governments.

The fact that the change from "cooperate" to "coordination" occurred in 1974 becomes very significant, given the action by the Congress in that year in developing in earnest the Federal Land Policy Management Act as the organic act for management of the western rangelands by the Bureau of Land Management.

Passage of the Forest and Rangeland Renewable Resources Act occurred during a flurry of Congressional action resulting from an increased public awareness of environmental concerns as well as the Report issued by the Public Land Review Commission established by Congress. Environmental concerns had led the Nixon administration to spearhead passage of the National Environmental Policy Act of 1970 (NEPA).

In passing NEPA, Congress emphasized the importance of involving local government in federal land and resource planning. In 42 U.S.C. 4331 (a) Congress made it clear that national policy called for "cooperation" with local

governments by using "all practicable means" to "improve and **coordinate**" federal plans. Use of the term "coordinate" here was the first time that Congress had introduced the commonly used term relating to land use, natural resource use and environmental protection.

Congressional use of the terms "cooperation" and "coordinate" in the same section of NEPA makes it clear that it intended to distinguish between the two. The dictionary definitions of the two terms emphasize the unique characteristics of "coordinate" as implying a basis of equality in participating in the process.

After "coordinate" made its entry into law in NEPA in 1970, Congress changed "cooperate" to "coordinate" in the 1974 Forest and Rangeland Renewable Resources Act. Pretty clearly, it knew what it was doing.

In the year following passage of the Forest and Rangeland Renewable Resources Act, as Congress considered the rangelands organic act, FLPMA, Senator Packwood of Oregon introduced the requirement that the federal agency "coordinate" with local government. The Forest and Rangeland Renewable Resources Act had not defined the term "coordinate", so Congress remedied that by including the Packwood definition in FLPMA.

The Packwood language, which is today 43 U.S.C. 1712, included the obligation of the Secretary of Agriculture to "coordinate" Forest plans with the planning and management programs of the Indian Tribes. It then proceeded to define the term "coordinate" for the first time. Packwood's provision, which today is 43 U.S.C. 1712, defined the term as follows:

"The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision
In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

(c) Criteria for development and revision
In the development and revision of land use plans, the Secretary shall—
(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;
(3) give priority to the designation and protection of areas of critical environmental concern;
(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;
(5) consider present and potential uses of the public lands;
(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;
(7) weigh long-term benefits to the public against short-term benefits;
(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and
(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 460l-4 et seq.], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs.

In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act."

At least the Bureau of Land Management opposed enactment of the "coordination" requirement and definition on the grounds that it would make their job of management more difficult. Obviously Congress believed that if coordination with local government made the management job more difficult, so be it. The coordination requirement and definition became law.

FLPMA, with the coordination requirement and definition in place **was enacted on October 21, 1976.**

On the very next day, October 22, 1976, the National Forest Management Act (NFMA) was passed as legislation amending the Forest and Rangeland Renewable Resources Act. The NFMA left intact the requirement that the Secretary of Agriculture "develop, maintain, and, as appropriate, revise land and resource management plans. . . **coordinated** with the land and resource management planning processes of State and local governments and other federal agencies."

As already noted, the coordination requirement is contained in 16 U.S.C. 1604. The National Forest Management Act amended Section 1604, with amendments replacing language that immediately followed the coordination requirement. Leaving the coordination requirement intact, and beginning the amendments immediately following the requirement makes it obvious to anyone that Congress intended to continue the requirement of coordination.

It would be totally disingenuous to contend that when Congress defined "coordination" in a land and natural resource statute on October 21, 1976, it did not intend that same definition to apply in a land and natural resource statute enacted the very next day---on October 22, 1976.

This legislative history makes obvious why the Courts have ruled hundreds of times that statutes which are "in para materia" must be read consistently. The most noted expert on statutory construction, Professor Sutherland stated in his "Statutory Construction" that statutes are "in para materia" when they relate to "the same class of persons or things, or have the same purpose and object." He points out that the courts have clearly held that such statutes must "be construed together". Section 2202, "Statutory Construction".

FLPMA and NFMA are patently such statutes. They both deal with protective and productive management of the nation's public lands: the rangelands and the National Forests. They were both passed at a time when Congressional attention was focused on newly created management principles to govern multiple uses of the nation's lands in a manner that protects a sound environment. All aspects of the environmental concerns displayed in FLPMA were and are present in NFMA.

It would be ludicrous to think that Congress did not intend the definition of "coordination" contained in FLPMA passed on October 21 to apply to the use of "coordination" in NFMA passed on October 22. To believe that Congress defined "coordination"

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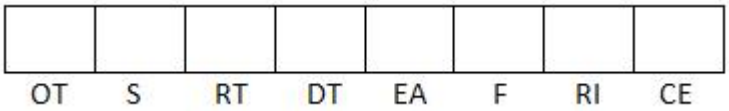
on October 21, then used the term on October 22 but intended a different, unstated, meaning, would not only be ludicrous, it would violate historically and traditionally established "canons of statutory interpretation".

Courts in all states, and in the federal districts, have held that statutes must be interpreted in a way that "avoids an absurd result the Legislature did not intend." **Bruce v. Gregory**, 65 Cal. 2d 666, 673 (1967). It would certainly be "absurd" to argue that Congress intended two different definitions for the term "coordination" in statutes enacted one day apart.

The Secretary of Agriculture made it patently clear that he so understood the Congressional intent when he defined "coordination" in Section 219.7 of the 1982 Planning Rules. This was the first and only definition of "coordination" styled by the Secretary after enactment of FLPMA and NFMA. The definition set forth hereinabove closely follows the Congressional definition of "coordination" contained in FLPMA.



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IP Address: 75.26.177.229
Form Letter:

Comments

With respect to principal 10, contribution to vibrant local economies, consideration should be given to expand the defination of contribution to include the placement of agency offices, staff, resources, and vendors. The placement or removal of a district office within a struggling local economy can be a sigificant event.

My home of Downieville was home to the district office of the Downieville Ranger District until 1981 when it was relocated to Camptonville, off the forest and into a leased facilty. Thirty years later that impact is still felt. This four acre former district office site remains dormant with the exception of a seasonal fire crew presence. The relocation of those former offices and its $4.5 million payroll would be huge to this rural isolated community and would provide a consistent and year round influx of both residents and capital to the rural community. With 70% of Sierra County national forest system lands and 90% of western Sierra County national forest system lands, it is not unreasonable that the Forest Service make such a commitment to the geographical area it serves and one most beholden by the agency's decisions.

In this specific instance, not only would the Forest Service be able to terminate an annual lease of some $100,000 annually, but would also decrease payroll costs with the relocation to an area not currently subject to higher payroll locale stipends, and potentially decrease travel costs in publicly owned vehicles and reducing the agency's carbon footprint.

While I support the idea of healthy forest ecosystems, I honestly question if that alone can provide for healthy local economies. With resource based economies the tradition of many rural economies, those activities for the most part have been heavily diminished in today's world and appear unlikely to have a renaissance soon.

Sierra County's future is more and more tied to a healthy and unspoiled future. The 30% private land holdings in the county have been targeted as conservation easements by a variety of public and private efforts that while good to prevent unchecked development, do little to support and in fact further diminish the local economy.

The location or relocation of district offices to communities most impacted by the decisions of those offices would go far to elevate involvement and collaboration with representatives of the local community and local government. Conversely, decisions that remove agency staff from the local community only causes an estrangement with both the local community and local government.

In my Downieville example above, until the late 1970s the district ranger lived in the local community, was a member of the local community, involved in local service clubs and with children in local schools, an example shared by many district employees. He had daily communication with local government officials in this rural California county seat. Today, the district ranger lives off the forest in a gated community, two counties away. While 59% of the new gerrymandered and enlarged Yuba Ranger District lies within Sierra County, only one district employee lives within the county and the district ranger a rare site with no regular office presence in this rural community. Far from effective involvement and collaboration, such operation only breeds frustration.

I appreciate this opportunity to comment and respect the mission of the Forest Service.

Individual(s)

Organization Type	County Government Agency/Elected Official
Organization	SIERRA COUNTY
Email Address	hangman@sierracounty.ws
Title	COUNTY SUPERVISOR
Name	LEE ADAMS
Address 1	PO BOX 1
City	DOWNIEVILLE
State	CALIFORNIA
Zip	95936
Country	UNITED STATES
Created On	3/24/2011 2:28:00 AM

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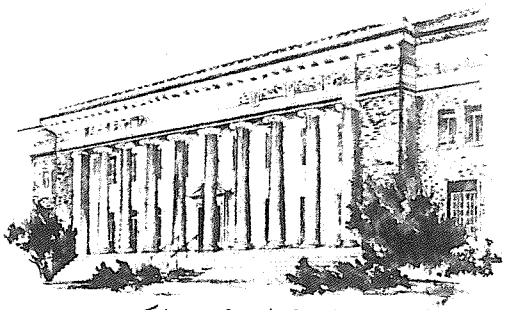
Board of Supervisors

COUNTY OF TEHAMA



Tehama County Courthouse

March 15, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 E. 500 S.
Bountiful, UT 84010

Re: Comments on the 2011 Proposed Forest Planning Rule (76 Fed.Reg. 8480)

Dear Sirs:

The County of Tehama hereby endorses the analysis and concerns expressed by Fred Kelly Grant, LTD and Sean Curtis in the attached comment letter.

Local governments have broad responsibility to protect the public welfare in their jurisdiction, and consequently have a unique interest in the management of National Forest lands located within their community. This special interest is reflected in Congress' mandate that all Forest Service planning decisions must be "coordinated with the land and resource management planning processes of State and local governments . . ." (26 U.S.C. § 1604(a).) The regulations under which the Forest Service has historically operated (Section 219.7 of the 1982 Planning Rule) provide a structured coordination process for Forest Service officials that faithfully implements this Congressional command. This process does not allow local agencies to dictate the Forest Service's final decisions, but does ensure that affected local governments have an active role in Forest Service land management planning, and that any Forest Service planning decision that adversely affects the local government's land use goals is made only after careful coordinated deliberation.

Proposed Section 219.4 discards this process in favor of nebulous "opportunities for the participation of State and local governments." The specific requirements that Forest Service officials meet with local government representatives, and consider alternatives where policy conflict is identified, have been removed or made discretionary. The standardless provisions of the proposed rule not only fail to implement the statutory coordination requirement, but also fail to protect the public interest of the citizens and residents who live in and near the Forests and are most affected by their management. These citizens and residents have elected local officials to represent them, and the federal

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government has a public and legal responsibility to do more than simply "provide opportunities" for participation by these officials. Rather, the Forest Service must coordinate with local governments and actively involve them in the land management process. The County of Tehama therefore supports the suggested revisions proposed by Fred Kelly Grant, LTD and Sean Curtis in the attached comment letter.

Thank you for considering our comments.

Sincerely,

Gregg Avilla
Chairman

cc: Tony Tooke, USFS Ecosystem Management Coordination Director
Thomas L. Tidwell, Chief of the USFS
Congressman Wally Herger
Senator Barbara Boxer
Senator Diane Feinstein
RCRC

Attachment

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FRED KELLY GRANT, LTD

FRED KELLY GRANT, President
STACI GRANT, Executive Vice President
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February 23, 2011

Tony Tooke
Director
Ecosystem Management Coordination
United States Forest Service
1400 Independence Avenue, SW
Washington, DC 20250-1104
(Sent by land mail, fax, and electronically)

Chief Thomas L. Tidwell
Chief of the United States Forest Service
Mail Stop 1144
1400 Independence Avenue, SW
Washington, DC 20250
(Sent by land mail, fax, and electronically)

And

[INSERT NAME OF ADDRESSEE FOR COMMENTS]

Dear Chief Tidwell and Director Tooke:

This is a statement, report, analysis and comment that Sean Curtis and I have prepared regarding our recommendation that the proposed Section 219.4 of the 2011 Planning Rules proposal be replaced with the language of the existing, applicable Section 219.7 of the 1982 Planning Rules.

We propose that the following specific changes be made to Section 219.4 of the Proposed Rules:

Either replace the whole of Proposed Section 219.4 with Sections 219.6 (public participation) and Sections 219.7 (coordination with State, Indian Tribal, and local governments);

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Or, Divide proposed Section 219.4 into two parts, the first setting forth the public participation language of the Section and the second setting forth the language of current Section 219.7 setting forth the protocol for coordination.

Either change would reflect the Congressional mandate that sets local government in a status separate from and more intimately involved than the general public. It is a Congressionally mandated separation that makes sense. Local governments represent the interests of all citizens of their jurisdictions, not just specific interest.

Local governmental officials have the responsibility for maintaining economic stability and the social cohesiveness of their communities. They are responsible for, and have the authority to exercise, protection of the police powers reserved by the Tenth Amendment, the protection of public safety, health and welfare.

If they fail to protect the stability of their jurisdictions, the Forests will suffer as they have near the communities that have died because of loss of the timber business. The Forest Service will suffer from a public credibility standpoint, at a time when the Congress is listening to citizens again.

As you know from our prior talks, I have been working with local governments to implement the "coordination" communication and negotiation process connecting federal agencies with local governments for over two decades. My efforts began with Owyhee County, Idaho, and from a rocky beginning the County and Bureau of Land Management have developed a mutually beneficial dialogue which is continual.

Using the same process, the County has established a successful dialogue status with the Fish and Wildlife Service, the Idaho Department of Environmental Quality (acting for EPA) and other agencies. The Forest Service has no land management responsibilities in the County. Major land use conflicts have been resolved, and the coordination process laid the base for the Owyhee Initiative, as I explained during the Andrus Conference which you, Chief Tidwell, attended.

Sean Curtis began working with Modoc County in California shortly after I began the effort with Owyhee County. Modoc faced problems with the BLM and the Forest Service. He, Carolyn Carey, June Roberts and a courageous Board of Supervisors led by Nancy Huffman, established a coordination protocol which continues today. Sean continues to assist Modoc County in successful communication with the Forest Service, BLM, and Fish and Wildlife.

Sean and I have seen the coordination process as defined by Congress in the Federal Land Policy Management Act and mandated for the Forest Service by the National Forest Management Act work. The Secretary of Agriculture's protocol set forth in the currently applicable Section 219.7 parallels the Congressional definition and has worked in a mutually beneficial manner in every local government where Forest Service personnel have followed the law.

We are engaged in a serious effort to persuade you to resist the temptation to change the Secretary's definition in Section 219.7 which mirrors the Congressional mandate. We have seen

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the 219.7 protocol work. We have also seen the "cooperating agency" status encouraged by the proposed Section 219.4 fail the citizens of local governments. That status benefits only the Service, paid planners, and local government officials who do not believe that they have the authority to stand firm for their citizens who deserve real, meaningful representation at the table with federal agencies.

This report, analysis and comment is a two fold effort. It constitutes Sean and my personal position regarding the effectiveness of the currently applicable Section 219.7 and the interest of many counties and units of local government who seek meaningful representation at the table with your personnel.

I respect the belief in collaboration that you two have, and the fact that you have shown that belief in the national and regional meetings that you have provided. But, the units of local government that have signed on to this report were not specifically represented in those meetings. No local government association can represent the interests of the citizens of specific local governments.

The National Association of Counties does not represent the citizens of the counties that have signed on to this report and analysis. No State Association of Cities or Counties represent the citizens of the local governments that have signed on this report and analysis. Such associations represent the counties and cities who are members, but they do not represent the local citizens. Congress recognizes that fact, thus has specifically qualified local governments for special recognition and representation with the Forest Service and other federal agencies.

The second impact of this report and analysis is that many units of local government have shown interest in signing on to this report as their local plan and policy for the protocol to be followed in the coordination process mandated for your Service by Congress. They will expect that coordination be implemented in accord with their local plan and policy adopted by endorsing replacement of Section 219.4 of the Proposed Rules by Section 219.7 of the 1982 Planning Rules.

It is from that dual standpoint that we submit this report, analysis, comment and statement of local plans and policies as to the protocol for coordination between local governments and the Forest Service.

I. PERSONAL ANALYSIS, REPORT AND COMMENT AS TO SECTION 219.4 OF THE 2011 PROPOSED FOREST SERVICE PLANNING RULES SUBMITTED BY SEAN CURTIS AND FRED KELLY GRANT:

Sean Curtis is a Natural Resource Analyst who is assisting local governments to implement the coordination process with all federal agencies. His work with Modoc County historically has already been discussed; his work with that County continues today. He is knowledgeable regarding management of natural resources as well as the mutually beneficial coordination process. His knowledge and experience with the actual management of land uses and natural

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resources makes him especially effective in implementing coordination not just from a protocol standpoint, but from a management standpoint.

Fred Kelly Grant initiated the first coordination process with the BLM which has continued without interruption for two decades in Owyhee County, Idaho.

Together, based on their personal experiences, they submit this report, analysis and comment requesting that the proposed Section 219.4 be replaced with Section 219.7 of the 1982 Planning Rules for the coordination process, and by Section 219.6 of the 1982 Planning Rules for public participation.

In the alternative, they request and suggest that the Proposed Section 219.4 be separated into two parts: the first containing public participation as set forth in the proposal (removing the governments of States, the Tribes and local entities of government from the public participation language), and the second as to coordination containing all provisions of Section 219.7 of the 1982 Planning Rules.

We urge reconsideration of the text of Section 219.4 of the Proposed 2011 Planning Rules as to coordination. The Section alters dramatically the elements of mutual participation that make up the Congressional requirement that the Forest Service "coordinate" with local governments. We urge that Section 219.7 of the 1982 Planning Rules be substituted for the proposed Section 219.4 as to coordination. Section 219.7 complies with the Congressional mandate of coordination and definition of coordination.

II. LOCAL PLAN AND POLICY REGARDING THE COORDINATION PROCESS SUBMITTED BY SIGNATORY COUNTIES AND LOCAL GOVERNMENTS:

Many counties and local governments have signed on to our report, analysis and comment. The signatory counties and local governments submit this report as their "coordination protocol", their local plan and policy as to the protocol by which coordination is implemented, not as a mere comment such as those submitted by Curtis, Grant and other members of the general public.

III. THE PROPOSED RULES HAVE NOT BEEN DEVELOPED IN COMPLIANCE WITH THE 1982 PLANNING RULES BECAUSE THEY HAVE NOT BEEN DEVELOPED IN COORDINATION WITH THE LOCAL GOVERNMENTS THAT HAVE SIGNED THIS REPORT AND ANALYSIS.

The Secretary of Agriculture served Notice that the 2011 Proposed Planning Rules would be prepared in accordance with the 1982 Planning Rules. Section 219.7 of those 1982 Rules requires that the Forest Service "coordinate" development of the Rules with local governments. That Section must be followed in the final review and adoption of Planning Rules, but it has not been followed to this point---at least as to the local governments signatory to this report and analysis.

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Section 219.7 should have been followed even in the development of the draft Rules, but it was not. Chapter 4 of the Proposed Rules lists hundreds of organizations and individuals who were consulted and involved in the development of the Rules. But, the coordination with individual and specific local governments required by Congress was not implemented.

The specific elements of coordination set forth in Section 219.7 have not been followed with the signatory counties and entities of local government. So, to this point, the Service has failed to comply with the Congressional mandate of coordination and failed to comply with regulatory direction from the Secretary of Agriculture.

Unless the Service remedies its non-compliance by adequately coordinating with the signator counties and local governments with regard to the proposed Planning Rules, they will no doubt suffer the same judicial fate as the prior two sets of proposals that have been rejected for non-compliance with the law.

The counties and local governments signatory to this analysis submit the document as their local policy as to how coordination should be implemented. They submit that Section 219.7 of the 1982 Planning Rules should be substituted for Section 219.4 of the 2011 Proposals. In so doing, they represent to the Chief and to the Secretary that the provisions of Section 219.7 constitute their local plan and policy for implementing coordination. By submitting the language of Section 219.7, they expect that the Service will coordinate with each of them in attempting to resolve the conflict between their 219.7 policy and the proposed Section 219.4.

IV. SECTION 219.4 OF THE PROPOSED 2011 PLANNING RULES SHOULD BE REPLACED BY THE EXACT LANGUAGE OF SECTION 219.7 OF THE EXISTING AND APPLICABLE 1982 FOREST SERVICE PLANNING RULES.

In Section 219.7 of the 1982 Planning Rules, the Secretary of Agriculture carefully set forth all the elements of coordination required by Congress in the only Congressional definition of "coordination" or "coordinate" enacted into natural resource management law.

Section 219.7 of the 1982 Planning Rules closely parallels the Congressional definition of "coordination" and "coordinate" contained in the Federal Land Policy Management Act. FLPMA was enacted one day prior to enactment of the National Forest Management Act which requires the Forest Service to engage in "coordination" with local governments. Until Congress changes that definition, it is the definition that has the force of law.

Counties and other entities of local government throughout the west have utilized the coordination communication process with the Forest Service to the mutual benefit of local officials and Forest Service personnel. Where Forest Service personnel have followed the Secretary's process, management has progressed well without expensive, wasteful litigation.

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Where Forest Service personnel have followed the Rules, the Service has benefitted from having a clear roadmap to successful communication and resolution of conflicts. Section 219.7 very clearly identifies when and how coordination takes place in the planning process. It clearly identifies who is responsible for developing the coordination process, the manner in which the planning documents should display and discuss local government plans and policies, and how the Forest Service should review local plans and policies to find inconsistencies or conflicts with federal plans and assist in resolving such conflicts.

It identifies one major element of coordination as defined by Congress: the need to meet with local officials and communicate with them regarding issues and resolution of conflicts. That element of meeting, of face to face discussions, is sadly missing from the proposed Section 219.4. Whether to meet government to government is left by the Section's language totally to the discretion of the local "responsible officer". Congress never sublimated coordination to the discretion of a local line officer.

The section is the very core of coordination. It sets in place the protocol through which local governments and the Service can find mutually beneficial resolution of conflicts. The Council on Environmental Quality, charged with oversight and control of NEPA planning processes, requires that NEPA processes be put in place "as early as possible" in the planning effort so that conflicts can be identified and resolved early, prior to issuance of a final document that must be challenged through litigation---administrative or judicial. Section 219.7 provides the means for the Service to comply with CEQ's regulations. If it is left in place, and the Service's personnel follow it, there will never be question as to whether the Service has complied with the law as set forth by NEPA and CEQ.

Those counties and entities of local government that have engaged the Forest Service in coordination have proven that the process works to the advantage of both parties. Modoc County in California, Glen Lake Irrigation District in Montana, Custer County in Idaho, and Fremont County in Wyoming, among others, have utilized the 219.7 process to engage the Service in discussions that have so far negated the need for litigation.

Wherever Forest Service personnel are willing to comply with the Congressional mandate and definition of coordination with local government, Section 219.7 presents a clear path to compliance. The proposed Section 219.4 **DOES NOT. THE PROPOSED SECTION 219.4 DOES NOT PROVIDE A PROCESS THAT COMPLIES WITH THE CONGRESSIONAL MANDATE OF COORDINATION.**

Make no mistake, as we demonstrate hereinafter, Congress has ordered that the Forest Service coordinate, in the true sense of that word, with local government. Section 219.7 of the 1982 Rules sets forth the definition of coordination that Congress has provided by statute. The proposed Section 219.4 DOES NOT. If the proposed Section 219.4 is adopted, the signatory counties and entities of local government will still insist on coordination as defined by Congress, not as set forth in 219.4. We will prevail, and the Service personnel will have no clear protocol in their own rules to follow.

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We urge that the Secretary leave in place the provisions of Section 219.7 of the 1982 Planning Rules related to coordination with local governments.

The signatory counties and local governments insist that Section 219.7 of the 1982 Planning Rules, which constitutes their local plan and policy for coordination be substituted for Section 219.4 of the Proposed 2011 Planning Rules.

V. PROPOSED LANGUAGE TO REPLACE SECTION 219.4 OF THE PROPOSED 2011 RULES:

Section 219.7, which should replace proposed Section 219.4, as to coordination with local governments, provides as follows:

Sec. 219.7 Coordination with other public planning efforts.

(a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(b) The responsible line officer shall give notice of the preparation of a land and resource management plan, along with a general schedule of anticipated planning actions, to the official or agency so designated by the affected State (including the Commonwealth of Puerto Rico). The same notice shall be mailed to all Tribal or Alaska Native leaders whose tribal lands or treaty rights are expected to be impacted and to the heads of units of government for the counties involved. These notices shall be issued simultaneously with the publication of the notice of intent to prepare an environmental impact statement required by NEPA procedures (40 CFR 1501.7).

(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include–

(1) Consideration of the objectives of other Federal, State and local governments, and Indians tribes, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the impacts identified; and,

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

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(d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced.

(e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.

[47 FR 43037, Sept. 30, 1982, as amended at 48 FR 29122, June 24, 1983]

Section 219.7 was issued by the Secretary of Agriculture as compliance with Section 219.1 that set forth the principles to guide Forest Service planning. Those principles included the following:

(9) Coordination with the land and resource planning efforts of other Federal agencies, State and local governments, and Indian tribes;

(10) Use of a systematic, interdisciplinary approach to ensure coordination and integration of planning activities for multiple-use management

VI. THE LANGUAGE OF SECTION 219.7 OF THE 1982 PLANNING RULES COMPLIES WITH THE CONGRESSIONAL MANDATE TO COORDINATION AND WITH THE CONGRESSIONAL DEFINITION OF COORDINATION.

A. The Provisions of the Forest and Rangeland Renewable Resources Act, the Federal Land Policy Management Act and the National Forest Management Act, and the Legislative History of Said Acts Makes It Patently Clear That Congress Defined "Coordination" In Terms That Require a Process Such as That Set Forth in Section 219.7 of the 1982 Planning Rules.

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The language of Section 219.7 was intended to, and did, implement the mandate by Congress that Forest planning be performed in "coordination" with local governments. The legislative history of the various Forest Management Acts, beginning with the Multiple Use Sustained Yield Act of 1960 demonstrates that Congress intends that "coordination" be a principle by which Forest planning is conducted---not "cooperation", not "collaboration", but "coordination.

1. The Legislative History Shows Intent of Congress

The Multiple Use Sustained Yield Act of 1960 was enacted June 12, 1960. It was enacted to be "supplemental" to the Organic Act of 1897 (16 U.S.C. 475) by which the National Forests were established.

One of the "supplements" to the Organic Act was the requirement stated in Section 3 of the Multiple Use Sustained Yield Act that the Secretary could "cooperate", not "coordinate", but "cooperate" with local governments. The actual language of Section 3 is as follows:

"In the effectuation of this Act, the Secretary of Agriculture is authorized to cooperate with interested State and local governmental agencies and others in the development and management of the National Forests." (16 U.S.C. 530)

The Multiple Use Sustained Yield Act of 1960 remained the law until the Forest and Rangeland Renewable Resources Act was enacted on August 17, 1974. Section 6 of the new Act made a substantial and significant change to the "cooperation" language of the Multiple Use Act. In Section 6 for the first time Congress directed the Secretary of Agriculture to engage in " coordination".

As pointed out hereinafter, the term "coordination" had first been introduced to natural resource and land use by the terms of the National Environmental Policy Act (NEPA) passed in 1970. Congress then applied the same term and concept to the Forest Service four years later in the Forest and Rangeland Renewable Resources Act.

The provisions of Section 6 (16 U.S.C. 1604) stated:

"(a) As a part of the program provided for by Section 4 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies."

Congress thus changed the Secretary's duty to "cooperate" with local governments to a duty of seeking "coordinated" planning with local governments.

The fact that the change from "cooperate" to "coordination" occurred in 1974 becomes very significant, given the action by the Congress in that year in developing in earnest the

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Federal Land Policy Management Act as the organic act for management of the western rangelands by the Bureau of Land Management.

Passage of the Forest and Rangeland Renewable Resources Act occurred during a flurry of Congressional action resulting from an increased public awareness of environmental concerns as well as the Report issued by the Public Land Review Commission established by Congress. Environmental concerns had led the Nixon administration to spearhead passage of the National Environmental Policy Act of 1970 (NEPA).

In passing NEPA, Congress emphasized the importance of involving local government in federal land and resource planning. In 42 U.S.C. 4331 (a) Congress made it clear that national policy called for "cooperation" with local governments by using "all practicable means" to "improve and coordinate" federal plans. Use of the term "coordinate" here was the first time that Congress had introduced the commonly used term relating to land use, natural resource use and environmental protection.

Congressional use of the terms "cooperation" and "coordinate" in the same section of NEPA makes it clear that it intended to distinguish between the two. The dictionary definitions of the two terms emphasize the unique characteristics of "coordinate" as implying a basis of equality in participating in the process.

After "coordinate" made its entry into law in NEPA in 1970, Congress changed "cooperate" to "coordinate" in the 1974 Forest and Rangeland Renewable Resources Act. Pretty clearly, it knew what it was doing.

In the year following passage of the Forest and Rangeland Renewable Resources Act, as Congress considered the rangelands organic act, FLPMA, Senator Packwood of Oregon introduced the requirement that the federal agency "coordinate" with local government. The Forest and Rangeland Renewable Resources Act had not defined the term "coordinate", so Congress remedied that by including the Packwood definition in FLPMA.

The Packwood language, which is today 43 U.S.C. 1712, included the obligation of the Secretary of Agriculture to "coordinate" Forest plans with the planning and management programs of the Indian Tribes. It then proceeded to define the term "coordinate" for the first time. Packwood's provision, which today is 43 U.S.C. 1712, defined the term as follows:

"The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision

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In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

(c) Criteria for development and revision
In the development and revision of land use plans, the Secretary shall—

(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;
(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;
(3) give priority to the designation and protection of areas of critical environmental concern;
(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;
(5) consider present and potential uses of the public lands;
(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;
(7) weigh long-term benefits to the public against short-term benefits;
(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and
(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 460l–4 et seq.], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs.

In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act. "

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At least the Bureau of Land Management opposed enactment of the "coordination" requirement and definition on the grounds that it would make their job of management more difficult. Obviously Congress believed that if coordination with local government made the management job more difficult, so be it. The coordination requirement and definition became law.

FLPMA, with the coordination requirement and definition in place was enacted on October 21, 1976.

On the very next day, October 22, 1976, the National Forest Management Act (NFMA) was passed as legislation amending the Forest and Rangeland Renewable Resources Act. The NFMA
left intact the requirement that the Secretary of Agriculture "develop, maintain, and, as appropriate, revise land and resource management plans. . .coordinated with the land and resource management planning processes of State and local governments and other federal agencies."

As already noted, the coordination requirement is contained in 16 U.S.C. 1604. The National Forest Management Act amended Section 1604, with amendments replacing language that immediately followed the coordination requirement. Leaving the coordination requirement intact, and beginning the amendments immediately following the requirement makes it obvious to anyone that Congress intended to continue the requirement of coordination.

It would be totally disingenuous to contend that when Congress defined "coordination" in a land and natural resource statute on October 21, 1976, it did not intend that same definition to apply in a land and natural resource statute enacted the very next day---on October 22, 1976.

This legislative history makes obvious why the Courts have ruled hundreds of times that statutes which are "in para materia" must be read consistently. The most noted expert on statutory construction, Professor Sutherland stated in his "Statutory Construction" that statutes are "in para materia" when they relate to "the same class of persons or things, or have the same purpose and object." He points out that the courts have clearly held that such statutes must "be construed together". Section 5202, "Statutory Construction".

FLPMA and NFMA are patently such statutes. They both deal with protective and productive management of the nation's public lands: the rangelands and the National Forests. They were both passed at a time when Congressional attention was focused on newly created management principles to govern multiple uses of the nation's lands in a manner that protects a sound environment. All aspects of the environmental concerns displayed in FLPMA were and are present in NFMA.

It would be ludicrous to think that Congress did not intend the definition of "coordination" contained in FLPMA passed on October 21 to apply to the use of "coordination" in NFMA passed on October 22. To believe that Congress defined "coordination" on October 21, then used the term on October 22 but intended a different, unstated, meaning, would not only

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be ludicrous, it would violate historically and traditionally established "canons of statutory interpretation".

Courts in all states, and in the federal districts, have held that statutes must be interpreted in a way that "avoids an absurd result the Legislature did not intend." Bruce v. Gregory, 65 Cal. 2d 666, 673 (1967). It would certainly be "absurd" to argue that Congress intended two different definitions for the term "coordination" in statutes enacted one day apart.

The Secretary of Agriculture made it patently clear that he so understood the Congressional intent when he defined "coordination" in Section 219.7 of the 1982 Planning Rules. This was the first and only definition of "coordination" styled by the Secretary after enactment of FLPMA and NFMA. The definition set forth hereinabove closely follows the Congressional definition of "coordination" contained in FLPMA.

VII. RATIONALE AS TO WHY PROPOSED SECTION 219.4 DOES NOT COMPLY WITH THE CONGRESSIONAL MANDATE AND THE MEANING OF COORDINATION AS OPPOSED TO PARTICIPATION OR COOPERATION.

Section 219.4 is entitled "REQUIREMENTS FOR PUBLIC PARTICIPATION", and the rule completely minimizes the meaningful coordinated involvement of local governmental officials in a government to government setting with the Forest Service. The rule reduces local government involvement to that of the general public. This approach does not comply with the statutes passed by Congress.

Note that in the 1982 Rules, the Secretary of Agriculture complied with the Congressional mandate by providing for "Public Participation" in Section 219.6 and "Coordination" in Section 219.7.

The comments explaining the proposed section relates that the Service has used the CEQ "Collaboration Handbook" as a base for the rule. That handbook is not law. The Congressional mandate of coordination is law and should be the base for the proposed rule. The proposal manages to diminish the role of local government to that of simply one organization among public organizations. It is a status that defies the will of Congress and defies the simple dictionary definition of "coordination."

The rule defines the "public" as including "local governments". So, all the signatory counties and local governments to this report are reduced by the proposal to the same level as "individuals" and "private organizations". Thus, the proposal gives the same standing to the non-governmental organizations that actively oppose logging, recreation, access, and every other use of the Forests that contributes to the economic stability of local government as it does to the impacted local government.

Every individual and organization that opposes the use of motorized vehicles and all off-road vehicles will have the same standing as the local government. Every organization that seeks shut-down of forest roads will have the same standing as the local government. Every

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organization that seeks to prevent all logging will have the same standing as the local government. Every individual and organization that opposes the concept that a hunter should be able to retrieve his game will have the same standing as the local government.

None of those organizations have the obligation to protect the economic stability of the communities adjacent to the Forests as do the local governments. None of those organizations have the obligation to pay the costs of search and rescue as do the local governments. None of those organizations have to suffer the impact of fire damage, loss of jobs, and loss of revenue from users of the Forests as do the local governments. But they will have the same standing in the planning effort as do the local governments.

The proposal is not in compliance with the Congressional mandates that local governments be accorded the coordinate role compatible with their responsibilities to care for and fund the public health, safety, and welfare.

Subpart (a) of the proposal allows the "responsible official" of the Service to use "collaborative processes" regarding local governments and all other members of the public only when he or she determines it "feasible and appropriate". So, whether to even involve local governments in "collaboration" is solely within the discretion of the official. Congress gives no such discretion to the Service; coordination with local governments is mandatory, not discretionary.

Subpart (a) also allows the "responsible official" to take into account "cost, time and staffing" in deciding whether to invoke "collaboration". This further provides the official with an easy excuse to refuse to even "collaborate". When he or she determines that it is too costly, takes too much time, or involves too much staff time to "collaborate", local governments will have no recourse. Congress gives no such discretion to the Service; coordination with local governments is mandatory, not discretionary. Congress recognized long ago that conflict resolution through coordination will in the long run SAVE COST, TIME AND STAFFING.

Subpart (a) allows the "responsible official" to resort to use "contemporary tools, such as the internet" to engage local governments in "collaboration". Such discretion strips away totally the capability of local governments to engage the Service in the meaningful way mandated by Congress. A local governing body cannot meet the public and open meeting laws of any of the 50 states by engaging in "internet coordination." Use of the internet is not the government to government coordination mandated by Congress.

Subpart (a)(1) allows the "responsible official" the "discretion to determine the scope, methods, forum, and timing of" any opportunity for local government to participate in planning. He or she can determine that local governments can participate only by internet, or only in the Forest Service office, which will prevent any participation by the full governing body. He or she can determine that only one member of a Board of commissioners or supervisors, or only the mayor, or only one member of a city council, can participate, thus again depriving the governing body from participation. Congressional mandate of coordination with "local governments" does not contemplate the Service being able to limit participation to one member of a governing body.

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Subparts (a)(2)(3)and (4) provide that the "responsible official" shall "ENCOURAGE" participation by individuals, youth, low-income populations, minority populations, and private landowners. Local governments are not included in the categories of the "public" that are privileged to be ENCOURAGED TO PARTICIPATE. Again, this provision diminishes Service commitment to meaningfully engage local governments in planning as Congress requires.

In fact, subpart (a)(8) provides that the "responsible official" must only "provide opportunities" for local governments to participate in planning—while he or she is to "encourage" other elements of the public to participate, he or she must only "provide opportunities" for local government participation. The Congressional mandate of coordination is not satisfied even in the slightest way by this soft, downplayed role afforded to local governments.

The only thing that the "responsible official" can encourage for local governments is to seek permission for "cooperating agency status in the NEPA process for a plan development, amendment, or revision." The "cooperating agency status" is not even incorporated in any statute passed by Congress. It is a category first suggested in a federal interagency memorandum, and then included in a regulation issued by the Council on Environmental Quality. It is a regulatory category applicable only to and limited to the NEPA process.

As a "cooperating agency" the governing body does not meet government to government with the Forest Service as agent of the United States government. The governing body simply gets to select someone to participate as a member of a planning team, with no governmental authority forming a base for the member. Congress did not mandate "cooperating agency status"; it mandated coordination for local governments, and the entire subpart (a) is non-compliant with that mandate.

Subpart (b) provides for "coordination" with local governments only to the extent that the "responsible official" deems "practicable and appropriate". In other words, when the "responsible official" wants to coordinate. The proposal is so far out of compliance with the Congressional mandate that it constitutes an administrative attempt to evade the law. Such evasion simply cannot be allowed to succeed. If the proposal stands as written, it must be challenged in a federal court.

Even if the "responsible official" graciously decides to "coordinate" with local government, all he or she has to do is review local plans or policies and report his or her review in the environmental impact statement for the plan. There is no requirement, as in the 1982 Planning Rules, for the official to even meet with the local government. There is no requirement that he or she discuss the review with the local government. All that is needed to comply with the "coordination" provision is to: read the "objectives of. . .[the] local governments as expressed in their plans and policies", "consider . . . the compatibility and interrelated impacts" of the plans and policies, consider the "opportunities for the plan to address the impacts", consider the "opportunities to resolve or reduce conflicts", and report his or her considerations in the EIS.

Nothing in the subpart even requires that the "responsible official" meet with the local governing body and discuss the review or considerations. To the contrary, the 1982 Rules

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require that the official to "meet with" local government officials "at the beginning of the planning process to develop procedures for coordination." (Section 219.7 (d)) The Rule further provides:

"At a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced."

The 1982 Rule also requires the Service official to "seek input from . . .local governments . . .to help resolve management concerns in the planning process and identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area."

All the elements of coordination included in the 1982 Rules by the Secretary of Agriculture who was trying to comply with the Congressional mandate have been eliminated in the proposal. A Forest Service official can comply with the coordination requirement in the proposal without ever meeting with or discussing any issue with the local governing body. That is not compliance with the National Forest Management Act that requires coordination as defined by Congress.

VIII. THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA HAS MADE IT CLEAR THAT CONGRESS HAS MANDATED COORDINATION, NOT COOPERATION.

In September, 2009, United States District Judge Marilyn Hall Patel, presiding in the Northern District of California, held in California Resources Agency v. United States Department of Agriculture, that the National Forest Management Act required the Forest Service to "coordinate" with the State of California. The Court's decision cited 16 U.S.C. 1604, the same section that requires coordination also for local governments.

The Court stated:

"Congress plainly recognized and endorsed the respective states' interests in the management of national forests by enacting the provision of the NFMA requiring the Forest Service to coordinate forest planning with state resource management processes. See 16 USC Section 1604(a). In light of this statutory recognition, it would be odd indeed to hold that California has no concrete interest in activities in the national forests. California has a concrete interest in the management of national forests within its borders."

The Court's statement and reasoning applies equally to local governments which are included in 16 USC Section 1604 (a).

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IX. CONCLUSION

For the reasons stated in this report and analysis, we respectfully request and suggest that the proposed Section 219.4 of the 2011 Proposed Planning Rules be replaced as follows:

Either replace it with Sections 219.6 (public participation) and 219.7 (coordination with governments, local and otherwise) of the currently valid and applicable 1982 Planning Rules; or

Separate proposed 219.4 into two parts: the first dealing with public participation as it does (but excluding local government from its terms), the second dealing with coordination in the language of Section 219.7 of the 1982 Planning Rules.

We believe that the Congressional mandate and definition of "coordination" requires the change. Even the common, simple definition of the term "coordinate" or "coordination" requires the change. Even if you do not accept the fact that the FLPMA definition of coordination will be sustained if we must seek judicial enforcement, you have to live with the dictionary definition of the terms. You have to realize that when Congress uses the terms "coordination" and "coordinate" in the same statutes in which it also uses the terms "cooperate" and "cooperation" it knows the difference. We hope that it will not take litigation to point that out.

We will be glad to discuss any of these concepts with you or your designees should you or they decide to do so.

Cordially,

Fred Kelly Grant

Sean Curtis

Clerk of the Board
County of Tehama
P.O. Box 250
Red Bluff, CA 96080

FRD-0194

Forest Service Planning DEIS
C/O Bear West Company
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Bountiful UT, 84010

FRD-0220

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
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Sacramento, California 95825

IN REPLY REFER TO:

APR - 1 2011

Randy Moore, Regional Forester
Pacific Southwest Region
U. S. Forest Service
1323 Club Drive
Vallejo, California 94592

Dear Mr. Moore:

Thank you for meeting informally with our Forestry Staff at the Sacramento session of the USDA Forest Service Proposed National Planning Rule Public Forum held March 21, 2011. This correspondence is also being provided to the Bear West Company as our formal comments to the Forest Service's planning Regulations. We are requesting that the following language be added to the Regulation in its entirety:

> *Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision. In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.*

Unfortunately our previous comments have not been included in the revised Regulations and may not be included the final approved version. We believe that we can overcome this omission by working together to implement the requirement set forth in the law. It is essential to remember that the Regulations are important as they provide a **pathway** to projects as shown below:

Laws → Regulations → Policy Manuals → Handbooks → Plans → Projects

Although the proposed Regulations (36 CFR Part 219 released under Federal Register/Vol. 76, No. 30) relate to the National Forest System Land Management Planning Act (NFSLMP), the statutory language that we believe is an important **pathway** for National Forest System land management planning is contained in the Federal Land Policy and Management Act (FLPMA). Adding to the confusion, NFSLMP and FLPMA were passed in the same year. Although many public land managers view FLPMA as their guiding law for land management activities, the Forest Service primarily views NFSLMP as guiding their land management activities and projects.

FLPMA: 16 USC § 1712 Land Use Plans

a) Development, maintenance, and revision by the Secretary (shortened).
b) Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision. In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

We believe that it is significant that Congress felt that it was important to place this direction on the *first* page of a 113-page law. This responsibility recognizes the special Indian Trust obligation that the Forest Service has to Indian people and their assets. The statutory requirement listed in 16 USC § 1712(b) crosses over to many of the Indian Trust ideals promulgated in Indian law (Title 25). The Secretary of Interior has delegated Indian land use planning responsibilities to the BIA Regional Directors (25 USC §§ 3101-3120, 25 USC §§ 3701-3120, and 53 IAM chapter 2). In addition, BIA line Officers are responsible as the primary Indian Trustees to work with Indian beneficiaries on a number of tribal land resource management programs.

Some key definitions not listed in FLPMA for the language contained in (16 USC § 1712(b)) are provided in the Indian land use planning law (25 USC § 3101):

(9) "Indian" means a member of an Indian tribe;

(10) "Indian land" means land title to which is held by -

A. the United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe, or

B. an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation;

The BIA promotes tribal resource management programs as Indian fiduciaries through the use primarily of two unique laws; Indian Self Determination Act (25 USC § 450 et. seq.) and through the use of **interagency** project "bank accounts" (25 USC § 3109). We believe that these are superior Indian funding mechanisms to accomplish projects, as they were specifically requested by Indians for Indians compared to the funding mechanisms that are available to your Agency. Our Office believes that by having a partnership with your Agency, we could provide funding that would promote Indian Self Determination more effectively. In addition, the Indian Self Determination Act provides for tribal organizations involvement. Tribal organizations must include federally recognized tribes but may also include "unrecognized tribes," providing for additional Indian involvement.

A prime example in California of why we must ensure a clear pathway from FLPMA to projects is the catastrophic fires that ravaged southern California Indian land in 2003. As a result of the fires, the Inter-Tribal Timber Council, a tribal organization, and several tribes from southern California played a key role in lobbying Congress to ensure the passage of the Tribal Forest Protection Act (TFPA), which was promulgated in the middle the "BIA's" Indian land use planning law (25 USC § 3115a). We believe that this was done to bring attention to BIA land managers to insure that we do a better job as Trustees in coordinating our plans with the US Forest Service and Bureau of Land Management plans. However, FLPMA makes this coordination requirement clearer than any other law. The passage of the TFPA appears to be a symptom of our agencies not effectively coordinating our plans. If our plans were coordinated effectively, they would identify "joint" threat zones that Indian beneficiaries would have the opportunity to implement projects in these areas to reduce the threats to Indian assets. The TFPA is not simply an application process or a funding mechanism. Rather TFPA is a law that promotes Indian involvement in projects in a mutual threat zones that should result from well coordinated planning. If these threats are discovered after our plans are approved, we should jointly revise our plans to provide for the projects to reduce the threats. It is our responsibility as Trustees to ensure that these coordinated partnership opportunities are negotiated with the Indian beneficiaries affected. Our federal obligation, partnership and commitment to reduce these threats can be found in (USFS Agreement # 10-IA-11130206-032 and the interagency forest health agreement of 1978).

The independent assessments of Indian land resource management programs (25 USC § 3111) has shown that we receive far less funds and staffing support than public land management agencies. In an effort to

assist the BIA in becoming a better Indian Trustee and to meet our shared Federal Indian Trust obligation, we need your assistance. The BIA and Indian beneficiaries would greatly benefit from our proactive approach to providing a pathway from the laws to the on the ground projects.

Our coordination efforts should assist in the development of landscape scale management areas as allowed for in the Sustained-Yield Forest Management Act (16 USC §§ 583 et. seq.) and the Forest Landscape Restoration Act (FLR) (16 USC §§ 7301-7304). Millions of dollars in funding may be available for FLR projects and submissions shall be made to the "appropriate Regional Forester" and "Regional Director of the Bureau of Indian Affairs" (16 USC 7303). Indian beneficiaries are in desperate need of these funds offered under the FLR authority. We would appreciate your assistance in developing joint BIA – US Forest Service Regional submissions to manage Indian aboriginal lands on a landscape scale. Funding received under FLR could assist California National Forest System Lands and California Indian beneficial owners. An added benefit would be that these funds would allow us to comply with FLPMA by managing these resources on a landscape scale ensuring our coordinated land management efforts.

In summation, we see this as an opportunity to strengthen the special relationship that the federal government maintains with Indian people, their assets, and their governmental organizations. In performing consultations, the BIA would like to provide the Forest Service and Indian people an added value as an Indian fiduciary broadening the scope of the federal government to tribal government discussions. The resources to be managed under the proposed regulations have been managed by Indian people from time immemorial. Although much of Indian ancestral assets are now managed as "public trust," Indian people should be seen as special stakeholders (beneficial owners) of the "public trust" due to their history and close connection to the land. We will endeavor to improve Indian land use plans to meet the goals and objectives of Indian beneficial owners and improve Indian management programs, but we need your help. **The Pacific Regional Office again strongly recommends that the language in 16 USC 1712(b) be added in its entirety into the planning regulations (36 CFR Part 219).** Including this language in the regulation will provide a clear pathway to projects. However, in the absence of a clear pathway, we expect that the Forest Service will comply with the law requiring meaningful coordination with the BIA and the appropriate Indian beneficial owners. Indian people have much to offer and can assist us in meeting our agencies challenges in managing Federal "Trust" Lands. Our agencies would be well served in seeking Indian council and seeking Indian active involvement in managing these Indian and national assets.

If you have any questions, please call Gerald Jones, Assistant Regional Forester, at (916) 978-6076, or Ron Recker, Acting Chief, Regional Division of Natural Resources, at (916) 978-6065.

Sincerely,

Amy L. Dutschke

Regional Director

cc: Forest Service Planning DEIS. c/o Bear West Company
California Tribal Leaders
Forest Supervisors, USFS (within California aka USFS Pacific Southwest Region)
Regional Foresters, BIA
Agency Superintendents (within California aka BIA Pacific Region)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
PACIFIC REGIONAL OFFICE
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SACRAMENTO, CA 95825

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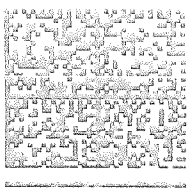

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Forest Service Planning DEIS,
C/O Bear West Company,
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COUNTY OF EL DORADO

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SUZANNE ALLEN DE SANCHEZ
Clerk of the Board

BOARD OF SUPERVISORS

March 22, 2011

Chief Thomas L. Tidwell
United States Forest Service
Mail Stop 1144
1400 Independence Avenue, SW
Washington, DC 20250

Tony Took, Director
Ecosystem Management Coordination
United States Forest Service
1400 Independence Avenue, SW
Washington, DC 20250-1104

Re: Proposed Planning Rule for the National Forest System Land Management
COORDINATION Proposed Section 219.4 vs. 1982 Section 219.7

Dear Chief Tidwell and Director Tooke:

The County of El Dorado is a duly constituted "Local Agency" and, as such, is independent from other local agencies, Regional Organizations and the State of California. We have needs of a local nature, which are very independent and specific to our constituents. We therefore, believe our efforts to coordinate with the United States Forest Service must be separate and independent from others. Our plans and policies are unique and are specific to the needs of our residents and visitors.

While we endorse the efforts illustrated in the letter by Fred Kelly Grant, Ltd. dated February 23, 2011, we make these comments separately and independently.

We desire to maintain the strong and continual relationship we have with our local Forest Supervisor. This relationship can be enhanced with a simple modification to the proposed planning rule.

"We urge reconsideration of the text of Section 219.4 of the Proposed 2011 Planning Rules as to coordination. The Section alters dramatically the elements of mutual participation that make up

FRD-0276

the Congressional requirement that the Forest Service "coordinate" with local governments. We urge that Section 219.7 of the 1982 Planning Rules be substituted for the proposed Section 219.4 as to coordination. Section 219.7 complies with the Congressional mandate of coordination and definition of coordination."

Your consideration and coordination of this revision is appreciated and will lend a way to successful relationships between local governments and the Forest Service in the future.

Respectfully,

Raymond Nutting, Chairman
Board of Supervisors

cc: Thomas J. Vilsack, Secretary, U.S. Department of Agriculture
Randy Moore, Regional Forester, USFS – Pacific Southwest Region 5
Ramiro Villalvazo, Forest Supervisor, USFS Eldorado Forest

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Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 38.118.24.48
Form Letter:

Comments

See Attachments

Individual(s)

Organization Type	Other Organization
Organization	ASSOCIATION OF FISH & WILDLIFE
Email Address	arnelson@fishwildlife.org
Title	PRESIDENT
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Address 2	SUITE 725
City	WASHINGTON
State	DISTRICT OF COLUMBIA
Zip	20001
Country	UNITED STATES
Created On	4/25/2011 11:10:00 AM

ASSOCIATION of FISH & WILDLIFE AGENCIES

The voice of fish and wildlife agencies

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FRD-0308

April 25, 2011

Forest Service Planning DEIS
C/O Bear West Company
172 E 500 S
Bountiful, UT84010

RE: National Forest System Land Management Planning: Proposed Rule (Federal Register Volume 76, No 30, February 14, 2011, 8480-8528)

Dear Forest Service Planning Team:

The Association of Fish and Wildlife Agencies represents the 50 state fish and wildlife agencies, which have statutory authority and responsibility for the conservation of fish and wildlife within their borders, including on most public lands. Congress has repeatedly affirmed that authority in several public land statutes, including the National Forest Management Act. Close and meaningful cooperation between the Forest Service and the state fish and wildlife agencies is critical for achieving Forest Service mandates and obligations and the states' fish and wildlife conservation objectives. We are writing today to provide comment and input on the Forest Service's National Forest System Land Management Planning Proposed Rule. We support development of a new planning rule to guide land managers in developing, amending, and revising forest plans as required by law, and seek a meaningful role for the state fish and wildlife agencies in this endeavor, as reflected in the Association's February 9, 2010 comments on the USFS Notice of Intent.

As a general comment, we note with disappointment the failure to acknowledge anywhere in the Preamble, Section by Section Analysis, or Proposed Regulatory Text, the role and authorities of the state fish and wildlife agencies for the sustainable conservation of fish and wildlife on units of the National Forest System, including National Grasslands. We do not know if this was a deliberate omission for reasons not known to us or inadvertent. Regardless, we feel it very important that the state's authority to manage wildlife resources on Forest Service lands be clearly acknowledged in these rules. The Forest Service Planning team met with several state fish and wildlife agency staff on May 26-27, 2010 in Washington, DC, as the Federal Register notice acknowledges on page 8511, to reflect on this need for state authority affirming language, and to further an exchange of ideas about approaches to monitoring fish and wildlife diversity and sustainability. We further note the appropriate recognition in the proposed Planning Rule of the government to government relationship between the federal government and Indian Tribes and Alaska Natives. The Association respectfully reminds the Forest Service that states possess broad trustee and police powers over fish and wildlife within their borders, and a state government to federal government relationship exists in this area of natural resource management, which relationship should be appropriately recognized and affirmed in the Proposed Rule.

ASSOCIATION OF FISH & WILDLIFE AGENCIES
The voice of fish and wildlife agencies
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From a practical perspective, the state fish and wildlife agencies possess data, other information, and expertise in fish and wildlife science and management. Page 8482 of the Proposed Rule observes that "The Agency needs a planning process that helps units identify their unique roles in the broader landscape and create land management plans to guide proactive contributions of the unit and of management to ecological, social, and economic sustainability". All state fish and wildlife agencies have developed statewide strategies for many individual species (including population objectives); suites of species; and habitats that can inform the Forest Service in meeting the objectives in the statement referenced above. Landscape level initiatives such as State Wildlife Action Plans, National Fish Habitat Partnership projects, etc., can also inform the attainment of this objective. By early coordination with the respective state fish and wildlife agency, the Forest Service and state fish and wildlife managers can determine, in the context of Forest Service's statutory authorities and obligations, the appropriate contribution of that Forest Service unit to fish, wildlife and habitat needs in the broader landscape. The power of that coordinated approach strengthens the basis on which the Forest Service can defend its plan against the appeal of those who want every Forest Service unit to be all things to all species. By acknowledging and affirming in the Planning Rule the authority of the state fish and wildlife agencies and their role in the Forest Service Planning process, the Forest Service would position itself to rely on the professional expertise at the federal and state level to assess the contribution of each unit to landscape level objectives for fish, wildlife and their habitats, and to collaboratively design the appropriate monitoring programs to ensure that these objectives are met. We strongly urge the Forest Service to incorporate that affirmation language in the next iteration of the Proposed Rule.

On page 8492 of the Federal Register in the section by section analysis, "Section 219.9 Diversity of Plant and Animal Communities", the observation is made that "This section of the proposed rule demonstrates agency commitment to meeting the NFMA requirement to provide for diversity of plant and animal communities based on the capability of the plan area". There is a ripe opportunity here to acknowledge the role, authority and expertise of the state fish and wildlife agencies in cooperating with the Forest Service in meeting this objective, and the Association urges the Forest Service to capitalize on that opportunity to affirm this role and authority of the state fish and wildlife agencies. Specifically, language should be added to section 219.9(b) that would require cooperation with state fish and wildlife agencies when developing objectives and monitoring protocols for species conservation.

Further under Section 219.9, under the sub-heading "Integrated Resource Management", the Forest Service espouses its proposed approach that differs significantly from the 1982 rule. Specifically, on page 8495, the Forest Service observes that "The Agency believes that an interdisciplinary process is the best way to achieve integration of all resource concerns, recognizing that ecosystems are complex communities of interconnected and interdependent resources and systems that function as a whole. To be effective, land management strategies must take into account a wide range of resource conditions and values and strive to achieve multiple benefits while managing the risks of adverse effects to interconnected systems." The Association fully endorses this approach and would again remind the Forest Service of the value and merits of engaging early and often the state fish and wildlife agencies in informing and contributing to the success of this approach.

However, we were disappointed to see further under the "Integrated Resource Management" Subheading the statement that "This provision [of giving consideration to certain species as game or sportfish that play a special role in contributing to social, cultural and economic sustainability] is not intended to require that units support the population goals of State

agencies." We suggest that this statement may have been inappropriately drafted, and strongly recommend that it read that "Units are directed to give great weight to the population goals of State agencies in the context of potential unit contribution thereto, and the unit plan should reflect habitat acreage goals that support those population goals. Should that not be possible, alternative population goals and habitat acreage goals for the unit should be mutually agreed to between the unit and the state fish and wildlife agency.".

With respect to actual proposed rule language, the Association strongly recommends the following additional (underlined) language be added in the first sentence of Section 219.9 Diversity of plant and animal communities. To wit, "Within Forest Service authority and consistent with the inherent capability of the plan area, and in cooperation with the respective State fish and wildlife agency, the plan must include plan components to maintain the diversity of plant and animal communities, as follows:". The Forest Service manual and/or a Chief's Directive could be used to amplify the meaning of "in cooperation with the respective State fish and wildlife agency." The Association would be pleased to assist in the drafting of that language.

The Association also strongly recommends that Section 219.3, Role of science in planning, acknowledge the merits and value of fish and wildlife scientific information derived from the state fish and wildlife agencies. To that end, we recommend the addition of the following sentence to the proposed rule language as the new second sentence. Namely, "With respect to fish and wildlife, the Forest Service unit shall give great weight to the scientific information of the respective State fish and wildlife agency". Further, the phrase "best available science" is used throughout the document. This phrase could leave the issue open for debate as to what is the "best" science. Perhaps the words "credible" or "relevant" could be used to head off potential controversies.

Section 219.10 Multiple Uses, should include additional language to more accurately describe management protocols for designated and recommended wilderness. To that end, we recommend adding language that parallels the statute affirming that designated wilderness shall be administered for the use and enjoyment of the American people in such a manner as will leave them unimpaired for future use and enjoyment as wilderness. Further, the rule language should clarify that designated wilderness will be administered for such purposes for which it may have been established and shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use, and managed for these purposes consistent with the Act and Forest Service policy. For example, the Wilderness Act contains language that wilderness designation is "within and supplemental to" the wilderness purposes. This means that any requirements imposed by the Wilderness Act shall be implemented only insofar as they facilitate or enhance the original or primary purpose or purposes for which the federal public lands or federal public land unit was established and do not materially interfere with or hinder such purpose or purposes. An example would be the use of mechanized tools to restore degradation of fish and wildlife habitat. This is vital to the ability of the state fish and wildlife agencies to exercise their management authority.

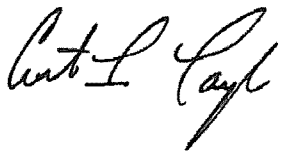
Section 219.12 Monitoring, seems overly burdensome and contradictory. Section 219.12(4) states that the responsible official has the discretion to set the scope and scale of the unit monitoring program, subject to the requirements of 219.12(5) which sets out standards that must be included which make the monitoring at a minimum very expensive, if not unattainable. We are concerned that these new standards would be required on all units with existing plans within 4 years where budgets may not accommodate these increased monitoring and reporting requirements. We are very supportive of a monitoring program that allows evaluation, learning and adaptation of management actions. We are concerned the bar is set too high in this section, which could result in unnecessary negative impacts on other program areas due to an inability of the unit to meet monitoring and reporting requirements.

Finally, the Association suggests that hunting and trapping under certain circumstances is not only recreation, but a management tool necessary to ensure the sustainability of ecological communities. Therefore we suggest that in Section 219.19, definitions, that "Conservation" be defined as such: "The protection, preservation, management including regulated take where appropriate, or restoration of natural environments and ecological communities".

A planning rule that recognizes the state fish and wildlife agencies as a true statutory partner will help guide development of land management plans that protect and restore resiliency of the full range of fish and wildlife habitats, and also ensure their connections with adjacent or downstream habitats on public and private lands. This type of integrated and landscape scale approach to conservation is certainly consistent with Forest Service philosophy, but additionally this approach will ensure that fish and wildlife survive landscape level impacts such as a changing climate. Connecting public land efforts with associated private lands will be essential, as the Forest Service proposal acknowledges.

Thank you for the opportunity to comment on the Proposed Rule. The Association urges that you give great weight to our comments, and those of the many State fish and wildlife agencies which will be submitting individual comments of their own.

Sincerely,



Curtis I. Taylor
President, Association of Fish and Wildlife Agencies
and Chief, West Virginia DNR, Wildlife Resources Section

Tuolumne County
Administration Center
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Sonora, California 95370

Alicia L. Jamar
Clerk of the Board
of Supervisors

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FRD-0309

BOARD OF SUPERVISORS
COUNTY OF TUOLUMNE

April 19, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 South
Bountiful, UT 84010

RE: Tuolumne County's Comments Related to the Proposed Forest Service Planning Rule and Draft Environmental Impact Statement

To Whom It May Concern:

The Tuolumne County Board of Supervisors appreciates the opportunity to participate in developing the new National Forest System Land Management Planning Rule (Rule). We understand that the purpose of the new Rule is to guide land managers in developing, amending, revising and implementing land management plans for the 155 national forests and 20 grasslands in the National Forest System (NFS). The Board offers the following comments relative to the proposed Planning Rule and requests the inclusion of below specified language in the new Rule or an alternative for analysis in the Environmental Impact Statement (EIS).

The County of Tuolumne has great interest in the development of the new Rule because the management of federal lands has tremendous impacts on our communities. Approximately 77% of our County is comprised of lands that are managed by federal agencies, including the Stanislaus National Forest. The United States Forest Service (USFS) alone is responsible for managing 42% of the land in our County; consequently, its decisions affect our economy, our way-of-life, and the identity of our local communities.

FRD-0309

We are pleased to observe that an important principle of the new Rule is "the sustainable use of public lands to support vibrant communities". There can be no better means to achieve this goal than to provide a strong role for local communities in the development of national forest plans. In that respect, we support the overall concept of providing for local government participation in developing and implementing plans to restore and sustain healthy forests.

To ensure such meaningful participation, the Tuolumne County Board of Supervisors supports the clearly defined processes and principles of coordination with local governments contained in the 1982 NFS Planning Rule's Section 219.7 entitled "Coordination with Other Public Planning Efforts".

We propose that the following specific changes be made to Section 219.4 of the Proposed Rules:

Either replace the whole of Proposed Section 219.4 with Sections 219.6 (public participation) and Sections 219.7 (coordination with State, Indian Tribal, and local governments) as contained in the 1982 Planning Rule;

Or, divide proposed Section 219.4 into two parts, the first setting forth the public participation language of the Section and the second setting forth the language of current Section 219.7 setting forth the protocol for coordination.

The Board believes that adherence to such principles and processes should result in:

- Forest plans that are consistent with local land use plans to the maximum extent possible while still being consistent with Federal law.

- Coordination with local government that commences at the earliest possible time and prior to the issuance of a notice of intent to prepare an EIS or other procedure required under NEPA. Local land use plans and policies are evaluated prior to developing a proposed forest plan and the local government reviews and provides input on the proposed plan prior to its release to the public.

- Recognition that local governments are experts on the meaning and application of their local plans. Therefore, Forest officers solicit local government's determination that proposed forest plans are consistent with local plans.

FRD-0309

- Where inconsistencies exist, Forest officers work with local government officers to achieve harmony between plans and attain consistency where possible, subject to existing federal, state, and local laws.

- Attempts by the USFS to achieve harmony and consistency with local government plans reflect consideration of the objectives of local government plans and policies, an assessment of the interrelated impacts of these plans and policies, socio economic impacts to county residents and visitors, a determination of how each forest plan should deal with and where possible mitigate the impacts indentified, and consideration of alternatives to resolve conflicts among the plans.

- Where the Forest plan may not be made consistent with a local plan, the related EIS explains how its plan is not consistent with local plans and why its plan cannot be made consistent with local plans.

These processes will allow local governments to serve as the voice of the communities most affected by the management of the forests. We recognize that there are interests in federal lands beyond those of our local population, but since local communities and citizens bear the significant social and economic impacts of the USFS' decisions, local governments should have significant input into forest plans.

To all of these ends, the Tuolumne County Board of Supervisors requests that:

- If the 1982 Planning Rule's Section 219.7 is not incorporated in the "preferred alternative" for the new Rule, the EIS include: (a) a consistency analysis between the 1982 Rule Section 219.7 and the proposed Rule's provision for involving local governments and justification for why consistency cannot be obtained between them; and (b) an alternative that does contain the 1982 Planning Rule's Section 219.7.

- The EIS contain comprehensive analyses of the social, economic, and environmental justice implications of all alternatives, including those that do not provide for effective coordination with local government.

FRD-0309

Thank you for your consideration of our comments and requests. Please direct any questions concerning these matters to County Administrator Craig Pedro at (209) 533-5511.

Respectfully,

John L. Gray, Chairman

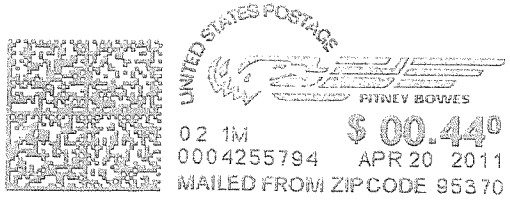
cc: Senator Diane Feinstein
Senator Barbara Boxer
Congressman Jeff Denham
Forest Supervisor Susan Skalski, Stanislaus National Forest
Regional Forester Randy Moore, Pacific Southwest Region
National Associations of Counties
California State Association of Counties
Regional Council of Rural Counties

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

ALICIA L. JAMAR
Clerk of the Board

By:

BOARD OF SUPERVISORS
County of Tuolumne
Administration Center
2 South Green Street, Sonora, California 95370



FRD-0309

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 South
Bountiful, UT 84010

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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, DC 20240

APR 19 2011

IN REPLY REFER TO:
Division of Natural Resources

FRD-0310

Planning Rule
Forest Service Planning, DEIS
c/o Bear West Company
132 E 500 S
Bountiful, Utah 84010

Dear Sir/Madam:

The Central Office of the Bureau of Indian Affairs (BIA) would like to thank you for this opportunity to comment on your proposed rule and Draft Programmatic EIS to guide land and resource management planning for all units of the National Forest System (NFS) under the National Forest Management Act of 1976. Your outreach to Native Americans, as part of this effort, make it clear that the Forest Service recognizes and values the U. S. Government's trust responsibility to Federally-Recognized Tribes, Alaska Natives, and those Individual Indian Allottees (Native Americans) with lands held in trust by the Federal Government.

The BIA understands that The National Forest System Planning Rule (Rule) will provide the overarching framework for individual forests and grasslands in the National Forest System to use in developing, amending, and revising land management plans. Furthermore, we understand that Forest and Grassland Supervisors will use these procedures to develop land management plans that set forth desired conditions and guidance for forest health and resilience, recreational opportunities, protection of threatened and endangered species and their habitats, sustainable communities and other multiple uses. The BIA commends you on this effort and would provide the following comment to help guide you in fulfilling the government's trust responsibility to Native Americans.

Comment: The harvest and collection of forest resources have been an integral part of Native American subsistence and culture since time immemorial. Native American social structure and cultures are intimately connected to the environment and the relationships/connections with local fish, wildlife and plants. As you are aware, many tribes that historically occupied large tracts of land are now confined within a small land base that does not contain resources sufficient to allow continuity of tribal life-ways that are critical to maintaining cultural identity, customs, and social structure. This is particularly true in areas such as California, where most Native Americans exist on a very small land base as compared to their aboriginal or usual and accustomed areas. The BIA is aware that in the past the Forest Service has developed an MOU to allow tribal harvest of plant materials on Forest Service lands. We applaud that accomplishment but would encourage the Forest Service, through the development of this Rule, to allow for greater Native American access to resources occurring on Forest Service lands. The BIA would specifically like to see the Forest Service work with state wildlife management agencies to allow for Native American allocation of large game permits within wildlife management zones/areas where those zones coincide with aboriginal territories of tribes; particularly in areas/zones where large game

tags are a limited commodity. Using California as an example, deer hunting is managed by the State and many deer hunting zones/areas are managed through the issuance of a limited number of yearly permits. Prime deer hunting zones/areas within California are in high demand and your average hunter will only get drawn once every seven to nine years (x-zones of eastern Sierra). Many of these "high demand" zones/areas contain a large component of Forest Service lands as the land base. We request that the Final Rule encourage Forest Supervisors and District Rangers to work with state wildlife management agencies to allow an allocation of large game permits to Native Americans whose aboriginal territories lie within zones containing Forest Service lands.

As stated previously, the Forest Service contains much of the land base in many of these state-managed hunting zones, and we believe that the government's trust responsibility to the tribes would compel you to work with the states to assure aboriginal tribes have a yearly presence in large game hunts within their historic territories. We believe you could arrive at a system whereby you calculated the percentage of Forest Service and Bureau of Land Management lands within a particular hunt zone and use that percentage to demonstrate that the U.S. Government's trust responsibility to Native Americans should show itself within the allocation of permits that utilize resources managed by federal agencies.

An effort to allow for Native American hunting rights on public lands would not be without precedent, as demonstrated by previous efforts by the U. S. Forest Service and the Bureau of Land Management. These efforts include a November 29, 2006, Interagency Traditional Gathering Policy signed by the U. S. Forest Service Regional Forester, Mr. Bernie Weingardt, and the BLM's California State Director, Mr. Mike Pool. This policy ensured that traditional gatherers and basket weavers within California would have free access to gather on lands managed by the two agencies, which encompasses 35 million acres (one third of the state's land base). Also, the 2008 Farm Bill enacted by Congress codifies the U. S. Department of Agriculture's responsibility to ensure free access to tribal members for traditional gathering purposes on lands managed by the Forest Service. This includes harvest of trees used for canoes and other traditional purposes. We ask that you extend this well-founded rationale to allow for consistent participation of Native Americans in the harvest of wildlife on Forest Service lands.

In summary, the BIA believes that tribes who have aboriginal territories within Forest Service lands, should also have a yearly guaranteed presence in the annual large game hunts within those areas. This concept should hold true with any Forest Service resource where access/opportunity is limited by some system of fee, lottery or permit.

The BIA is supportive of your effort and commends you on your outreach and consideration of Native Americans. If you have any questions or need clarification on our comments, please feel free to contact Mr. Ira New Breast, Chief, Division of Natural Resources at (202) 208-4088, or Mr. David Wooten, Chief, Branch of Fisheries, Wildlife, and Parks at (202) 513-0355.

Sincerely,

Director, Bureau of Indian Affairs

FRD-030

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DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
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Dona Ana Soil and Water Conservation District
2507 North Telshor Boulevard - Las Cruces, New Mexico 88011 - Phone (575) 522-8775, Ext. 116

March 15, 2011

Tony Tooke, Director
Ecosystem Management Coordination
United States Forest Service
1400 Independence Avenue, SW
Washington, DC 20250-1104

Chief Thomas L. Tidwell
Chief of the United States Forest Service
Mail Stop 1144
1400 Independence Avenue, SW
Washington, DC 20250

Sirs,

The locally elected Board of Supervisors of the Dona Ana Soil and Water Conservation District, a sub-division of New Mexico State Government, unanimously endorses the attached report and analysis and submits it as the rationale for this adoption of Section 219.7 of the 1982 Planning Rules of the Forest Service as the County plan and policy for the protocol by which coordination between the County and the United States Forest Service shall be implemented.

Adopted and endorsed, March 10, 2011.

Joe Delk, Chairman
Dona Ana Soil and Water Conservation District

cc:
Corbin Newman
Regional Forester, USFS Southwestern Region
333 Broadway Blvd. SE
Albuquerque, N.M. 87102

FRD-0329

March 15, 2011

Tony Tooke
Director
Ecosystem Management Coordination
United States Forest Service
1400 Independence Avenue, SW
Washington, DC 20250-1104

Chief Thomas L. Tidwell
Chief of the United States Forest Service
Mail Stop 1144
1400 Independence Avenue, SW
Washington, DC 20250

Dear Chief Tidwell and Director Tooke:

This is a statement, report, analysis and comment that Sean Curtis and I have prepared regarding our recommendation that the proposed Section 219.4 of the 2011 Planning Rules proposal be replaced with the language of the existing, applicable Section 219.7 of the 1982 Planning Rules.

We propose that the following specific changes be made to Section 219.4 of the Proposed Rules:

Either replace the whole of Proposed Section 219.4 with Sections 219.6 (public participation) and Sections 219.7 (coordination with State, Indian Tribal, and local governments);

Or, Divide proposed Section 219.4 into two parts, the first setting forth the public participation language of the Section and the second setting forth the language of current Section 219.7 setting forth the protocol for coordination.

Either change would reflect the Congressional mandate that sets local government in a status separate from and more intimately involved than the general public. It is a Congressionally mandated separation that makes sense. Local governments represent the interests of all citizens of their jurisdictions, not just specific interest.

Local governmental officials have the responsibility for maintaining economic stability and the social cohesiveness of their communities. They are responsible for, and have the authority to exercise, protection of the police powers reserved by the Tenth Amendment, the protection of public safety, health and welfare.

If they fail to protect the stability of their jurisdictions, the Forests will suffer as they have near the communities that have died because of loss of the timber business. The Forest Service will suffer from a public credibility standpoint, at a time when the Congress is listening to citizens again.

As you know from our prior talks, I have been working with local governments to implement the "coordination" communication and negotiation process connecting federal agencies with local governments for over two decades. My efforts began with Owyhee County, Idaho, and from a rocky beginning the County and Bureau of Land Management have developed a mutually beneficial dialogue which is continual.

Using the same process, the County has established a successful dialogue status with the Fish and Wildlife Service, the Idaho Department of Environmental Quality (acting for EPA) and other agencies. The Forest Service has no land management responsibilities in the County. Major land use conflicts have been resolved, and the coordination process laid the base for the Owyhee Initiative, as I explained during the Andrus Conference which you, Chief Tidwell, attended.

Sean Curtis began working with Modoc County in California shortly after I began the effort with Owyhee County. Modoc faced problems with the BLM and the Forest Service. He, Carolyn Carey, June Roberts and a courageous Board of Supervisors led by Nancy Huffman, established a coordination protocol which continues today. Sean continues to assist Modoc County in successful communication with the Forest Service, BLM, and Fish and Wildlife.

Sean and I have seen the coordination process as defined by Congress in the Federal Land Policy Management Act and mandated for the Forest Service by the National Forest Management Act work. The Secretary of Agriculture's protocol set forth in the currently applicable Section 219.7 parallels the Congressional definition and has worked in a mutually beneficial manner in every local government where Forest Service personnel have followed the law.

We are engaged in a serious effort to persuade you to resist the temptation to change the Secretary's definition in Section 219.7 which mirrors the Congressional mandate. We have seen the 219.7 protocol work. We have also seen the "cooperating agency" status encouraged by the proposed Section 219.4 fail the citizens of local governments. That status benefits only the Service, paid planners, and local government officials who do not believe that they have the authority to stand firm for their citizens who deserve real, meaningful representation at the table with federal agencies.

This report, analysis and comment is a two fold effort. It constitutes Sean and my personal position regarding the effectiveness of the currently applicable Section 219.7 and the interest of many counties and units of local government who seek meaningful representation at the table with your personnel.

I respect the belief in collaboration that you two have, and the fact that you have shown that belief in the national and regional meetings that you have provided. But, the units of local government that have signed on to this report were not specifically represented in those

meetings. No local government association can represent the interests of the citizens of specific local governments.

The National Association of Counties does not represent the citizens of the counties that have signed on to this report and analysis. No State Association of Cities or Counties represent the citizens of the local governments that have signed on this report and analysis. Such associations represent the counties and cities who are members, but they do not represent the local citizens. Congress recognizes that fact, thus has specifically qualified local governments for special recognition and representation with the Forest Service and other federal agencies.

The second impact of this report and analysis is that many units of local government have shown interest in signing on to this report as their local plan and policy for the protocol to be followed in the coordination process mandated for your Service by Congress. They will expect that coordination be implemented in accord with their local plan and policy adopted by endorsing replacement of Section 219.4 of the Proposed Rules by Section 219.7 of the 1982 Planning Rules.

It is from that dual standpoint that we submit this report, analysis, comment and statement of local plans and policies as to the protocol for coordination between local governments and the Forest Service.

I. PERSONAL ANALYSIS, REPORT AND COMMENT AS TO SECTION 219.4 OF THE 2011 PROPOSED FOREST SERVICE PLANNING RULES SUBMITTED BY SEAN CURTIS AND FRED KELLY GRANT:

Sean Curtis is a Natural Resource Analyst who is assisting local governments to implement the coordination process with all federal agencies. His work with Modoc County historically has already been discussed; his work with that County continues today. He is knowledgeable regarding management of natural resources as well as the mutually beneficial coordination process. His knowledge and experience with the actual management of land uses and natural resources makes him especially effective in implementing coordination not just from a protocol standpoint, but from a management standpoint.

Fred Kelly Grant initiated the first coordination process with the BLM which has continued without interruption for two decades in Owyhee County, Idaho.

Together, based on their personal experiences, they submit this report, analysis and comment requesting that the proposed Section 219.4 be replaced with Section 219.7 of the 1982 Planning Rules for the coordination process, and by Section 219.6 of the 1982 Planning Rules for public participation.

In the alternative, they request and suggest that the Proposed Section 219.4 be separated into two parts: the first containing public participation as set forth in the proposal (removing the governments of States, the Tribes and local entities of government from the public participation

language), and the second as to coordination containing all provisions of Section 219.7 of the 1982 Planning Rules.

We urge reconsideration of the text of Section 219.4 of the Proposed 2011 Planning Rules as to coordination. The Section alters dramatically the elements of mutual participation that make up the Congressional requirement that the Forest Service "coordinate" with local governments. We urge that Section 219.7 of the 1982 Planning Rules be substituted for the proposed Section 219.4 as to coordination. Section 219.7 complies with the Congressional mandate of coordination and definition of coordination.

II. LOCAL PLAN AND POLICY REGARDING THE COORDINATION PROCESS SUBMITTED BY SIGNATORY COUNTIES AND LOCAL GOVERNMENTS:

Many counties and local governments have signed on to our report, analysis and comment. The signatory counties and local governments submit this report as their "coordination protocol", their local plan and policy as to the protocol by which coordination is implemented, not as a mere comment such as those submitted by Curtis, Grant and other members of the general public.

III. THE PROPOSED RULES HAVE NOT BEEN DEVELOPED IN COMPLIANCE WITH THE 1982 PLANNING RULES BECAUSE THEY HAVE NOT BEEN DEVELOPED IN COORDINATION WITH THE LOCAL GOVERNMENTS THAT HAVE SIGNED THIS REPORT AND ANALYSIS.

The Secretary of Agriculture served Notice that the 2011 Proposed Planning Rules would be prepared in accordance with the 1982 Planning Rules. Section 219.7 of those 1982 Rules requires that the Forest Service "coordinate" development of the Rules with local governments. That Section must be followed in the final review and adoption of Planning Rules, but it has not been followed to this point---at least as to the local governments signatory to this report and analysis.

Section 219.7 should have been followed even in the development of the draft Rules, but it was not. Chapter 4 of the Proposed Rules lists hundreds of organizations and individuals who were consulted and involved in the development of the Rules. But, the coordination with individual and specific local governments required by Congress was not implemented.

The specific elements of coordination set forth in Section 219.7 have not been followed with the signatory counties and entities of local government. So, to this point, the Service has failed to comply with the Congressional mandate of coordination and failed to comply with regulatory direction from the Secretary of Agriculture.

Unless the Service remedies its non-compliance by adequately coordinating with the signator counties and local governments with regard to the proposed Planning Rules, they will no doubt suffer the same judicial fate as the prior two sets of proposals that have been rejected for non-compliance with the law.

The counties and local governments signatory to this analysis submit the document as their local policy as to how coordination should be implemented. They submit that Section 219.7 of the 1982 Planning Rules should be substituted for Section 219.4 of the 2011 Proposals. In so doing, they represent to the Chief and to the Secretary that the provisions of Section 219.7 constitute their local plan and policy for implementing coordination. By submitting the language of Section 219.7, they expect that the Service will coordinate with each of them in attempting to resolve the conflict between their 219.7 policy and the proposed Section 219.4.

IV. SECTION 219.4 OF THE PROPOSED 2011 PLANNING RULES SHOULD BE REPLACED BY THE EXACT LANGUAGE OF SECTION 219.7 OF THE EXISTING AND APPLICABLE 1982 FOREST SERVICE PLANNING RULES.

In Section 219.7 of the 1982 Planning Rules, the Secretary of Agriculture carefully set forth all the elements of coordination required by Congress in the only Congressional definition of "coordination" or "coordinate" enacted into natural resource management law.

Section 219.7 of the 1982 Planning Rules closely parallels the Congressional definition of "coordination" and "coordinate" contained in the Federal Land Policy Management Act. FLPMA was enacted one day prior to enactment of the National Forest Management Act which requires the Forest Service to engage in "coordination" with local governments. Until Congress changes that definition, it is the definition that has the force of law.

Counties and other entities of local government throughout the west have utilized the coordination communication process with the Forest Service to the mutual benefit of local officials and Forest Service personnel. Where Forest Service personnel have followed the Secretary's process, management has progressed well without expensive, wasteful litigation.

Where Forest Service personnel have followed the Rules, the Service has benefitted from having a clear roadmap to successful communication and resolution of conflicts. Section 219.7 very clearly identifies when and how coordination takes place in the planning process. It clearly identifies who is responsible for developing the coordination process, the manner in which the planning documents should display and discuss local government plans and policies, and how the Forest Service should review local plans and policies to find inconsistencies or conflicts with federal plans and assist in resolving such conflicts.

It identifies one major element of coordination as defined by Congress: the need to meet with local officials and communicate with them regarding issues and resolution of conflicts. That element of meeting, of face to face discussions, is sadly missing from the proposed Section 219.4. Whether to meet government to government is left by the Section's language totally to

the discretion of the local "responsible officer". Congress never sublimated coordination to the discretion of a local line officer.

The section is the very core of coordination. It sets in place the protocol through which local governments and the Service can find mutually beneficial resolution of conflicts. The Council on Environmental Quality, charged with oversight and control of NEPA planning processes, requires that NEPA processes be put in place "as early as possible" in the planning effort so that conflicts can be identified and resolved early, prior to issuance of a final document that must be challenged through litigation---administrative or judicial. Section 219.7 provides the means for the Service to comply with CEQ's regulations. If it is left in place, and the Service's personnel follow it, there will never be question as to whether the Service has complied with the law as set forth by NEPA and CEQ.

Those counties and entities of local government that have engaged the Forest Service in coordination have proven that the process works to the advantage of both parties. Modoc County in California, Glen Lake Irrigation District in Montana, Custer County in Idaho, and Fremont County in Wyoming, among others, have utilized the 219.7 process to engage the Service in discussions that have so far negated the need for litigation.

Wherever Forest Service personnel are willing to comply with the Congressional mandate and definition of coordination with local government, Section 219.7 presents a clear path to compliance. The proposed Section 219.4 **DOES NOT. THE PROPOSED SECTION 219.4 DOES NOT PROVIDE A PROCESS THAT COMPLIES WITH THE CONGRESSIONAL MANDATE OF COORDINATION.**

Make no mistake, as we demonstrate hereinafter, Congress has ordered that the Forest Service coordinate, in the true sense of that word, with local government. Section 219.7 of the 1982 Rules sets forth the definition of coordination that Congress has provided by statute. The proposed Section 219.4 DOES NOT. If the proposed Section 219.4 is adopted, the signatory counties and entities of local government will still insist on coordination as defined by Congress, not as set forth in 219.4. We will prevail, and the Service personnel will have no clear protocol in their own rules to follow.

We urge that the Secretary leave in place the provisions of Section 219.7 of the 1982 Planning Rules related to coordination with local governments.

The signatory counties and local governments insist that Section 219.7 of the 1982 Planning Rules, which constitutes their local plan and policy for coordination be substituted for Section 219.4 of the Proposed 2011 Planning Rules.

V. PROPOSED LANGUAGE TO REPLACE SECTION 219.4 OF THE PROPOSED 2011 RULES:

Section 219.7, which should replace proposed Section 219.4, as to coordination with local governments, provides as follows:

Sec. 219.7 Coordination with other public planning efforts.

(a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(b) The responsible line officer shall give notice of the preparation of a land and resource management plan, along with a general schedule of anticipated planning actions, to the official or agency so designated by the affected State (including the Commonwealth of Puerto Rico). The same notice shall be mailed to all Tribal or Alaska Native leaders whose tribal lands or treaty rights are expected to be impacted and to the heads of units of government for the counties involved. These notices shall be issued simultaneously with the publication of the notice of intent to prepare an environmental impact statement required by NEPA procedures (40 CFR 1501.7).

(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include--

(1) Consideration of the objectives of other Federal, State and local governments, and Indians tribes, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the impacts identified; and,

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

(d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced.

(e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.

[47 FR 43037, Sept. 30, 1982, as amended at 48 FR 29122, June 24, 1983]

Section 219.7 was issued by the Secretary of Agriculture as compliance with Section 219.1 that set forth the principles to guide Forest Service planning. Those principles included the following:

(9) Coordination with the land and resource planning efforts of other Federal agencies, State and local governments, and Indian tribes;

(10) Use of a systematic, interdisciplinary approach to ensure coordination and integration of planning activities for multiple-use management

VI. THE LANGUAGE OF SECTION 219.7 OF THE 1982 PLANNING RULES COMPLIES WITH THE CONGRESSIONAL MANDATE TO COORDINATION AND WITH THE CONGRESSIONAL DEFINITION OF COORDINATION.

A. The Provisions of the Forest and Rangeland Renewable Resources Act, the Federal Land Policy Management Act and the National Forest Management Act, and the Legislative History of Said Acts Makes It Patently Clear That Congress Defined "Coordination" In Terms That Require a Process Such as That Set Forth in Section 219.7 of the 1982 Planning Rules.

The language of Section 219.7 was intended to, and did, implement the mandate by Congress that Forest planning be performed in "coordination" with local governments. The legislative history of the various Forest Management Acts, beginning with the Multiple Use Sustained Yield Act of 1960 demonstrates that Congress intends that "coordination" be a principle by which Forest planning is conducted----not "cooperation", not "collaboration", but "coordination.

1. The Legislative History Shows Intent of Congress

The Multiple Use Sustained Yield Act of 1960 was enacted June 12, 1960. It was enacted to be "supplemental" to the Organic Act of 1897 (16 U.S.C. 475) by which the National Forests were established.

One of the "supplements" to the Organic Act was the requirement stated in Section 3 of the Multiple Use Sustained Yield Act that the Secretary could "cooperate", not "coordinate", but "cooperate" with local governments. The actual language of Section 3 is as follows:

"In the effectuation of this Act, the Secretary of Agriculture is authorized to **cooperate** with interested State and local governmental agencies and others in the development and management of the National Forests." (16 U.S.C. 530)

The Multiple Use Sustained Yield Act of 1960 remained the law until the Forest and Rangeland Renewable Resources Act was enacted on August 17, 1974. Section 6 of the new Act made a substantial and significant change to the "cooperation" language of the Multiple Use Act. In Section 6 for the first time Congress directed the Secretary of Agriculture to engage in " coordination".

As pointed out hereinafter, the term "coordination" had first been introduced to natural resource and land use by the terms of the National Environmental Policy Act (NEPA) passed in 1970. Congress then applied the same term and concept to the Forest Service four years later in the Forest and Rangeland Renewable Resources Act.

The provisions of Section 6 (16 U.S.C. 1604) stated:

"(a) As a part of the program provided for by Section 4 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System,

coordinated with the land and resource management planning processes of State and local governments and other Federal agencies."

Congress thus changed the Secretary's duty to "cooperate" with local governments to a duty of seeking "coordinated" planning with local governments.

The fact that the change from "cooperate" to "coordination" occurred in 1974 becomes very significant, given the action by the Congress in that year in developing in earnest the Federal Land Policy Management Act as the organic act for management of the western rangelands by the Bureau of Land Management.

Passage of the Forest and Rangeland Renewable Resources Act occurred during a flurry of Congressional action resulting from an increased public awareness of environmental concerns as well as the Report issued by the Public Land Review Commission established by Congress. Environmental concerns had led the Nixon administration to spearhead passage of the National Environmental Policy Act of 1970 (NEPA).

In passing NEPA, Congress emphasized the importance of involving local government in federal land and resource planning. In 42 U.S.C. 4331 (a) Congress made it clear that national policy called for "cooperation" with local governments by using "all practicable means" to "improve and **coordinate**" federal plans. Use of the term "coordinate" here was the first time that Congress had introduced the commonly used term relating to land use, natural resource use and environmental protection.

Congressional use of the terms "cooperation" and "coordinate" in the same section of NEPA makes it clear that it intended to distinguish between the two. The dictionary definitions of the two terms emphasize the unique characteristics of "coordinate" as implying a basis of equality in participating in the process.

After "coordinate" made its entry into law in NEPA in 1970, Congress changed "cooperate" to "coordinate" in the 1974 Forest and Rangeland Renewable Resources Act. Pretty clearly, it knew what it was doing.

In the year following passage of the Forest and Rangeland Renewable Resources Act, as Congress considered the rangelands organic act, FLPMA, Senator Packwood of Oregon introduced the requirement that the federal agency "coordinate" with local government. The Forest and Rangeland Renewable Resources Act had not defined the term "coordinate", so Congress remedied that by including the Packwood definition in FLPMA.

The Packwood language, which is today 43 U.S.C. 1712, included the obligation of the Secretary of Agriculture to "coordinate" Forest plans with the planning and management programs of the Indian Tribes. It then proceeded to define the term "coordinate" for the first time. Packwood's provision, which today is 43 U.S.C. 1712, defined the term as follows:

"The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision
In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

(c) Criteria for development and revision
In the development and revision of land use plans, the Secretary shall—
(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;
(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;
(3) give priority to the designation and protection of areas of critical environmental concern;
(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;
(5) consider present and potential uses of the public lands;
(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;
(7) weigh long-term benefits to the public against short-term benefits;
(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and
(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 4601–4 et seq.], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs.

In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the

maximum extent he finds consistent with Federal law and the purposes of this Act.
"

At least the Bureau of Land Management opposed enactment of the "coordination" requirement and definition on the grounds that it would make their job of management more difficult. Obviously Congress believed that if coordination with local government made the management job more difficult, so be it. The coordination requirement and definition became law.

FLPMA, with the coordination requirement and definition in place **was enacted on October 21, 1976.**

On the very next day, October 22, 1976, the National Forest Management Act (NFMA) was passed as legislation amending the Forest and Rangeland Renewable Resources Act. The NFMA
left intact the requirement that the Secretary of Agriculture "develop, maintain, and, as appropriate, revise land and resource management plans. . .**coordinated** with the land and resource management planning processes of State and local governments and other federal agencies."

As already noted, the coordination requirement is contained in 16 U.S.C. 1604. The National Forest Management Act amended Section 1604, with amendments replacing language that immediately followed the coordination requirement. Leaving the coordination requirement intact, and beginning the amendments immediately following the requirement makes it obvious to anyone that Congress intended to continue the requirement of coordination.

It would be totally disingenuous to contend that when Congress defined "coordination" in a land and natural resource statute on October 21, 1976, it did not intend that same definition to apply in a land and natural resource statute enacted the very next day---on October 22, 1976.

This legislative history makes obvious why the Courts have ruled hundreds of times that statutes which are "in para materia" must be read consistently. The most noted expert on statutory construction, Professor Sutherland stated in his "Statutory Construction" that statutes are "in para materia" when they relate to "the same class of persons or things, or have the same purpose and object." He points out that the courts have clearly held that such statutes must "be construed together". Section 5202, "Statutory Construction".

FLPMA and NFMA are patently such statutes. They both deal with protective and productive management of the nation's public lands: the rangelands and the National Forests. They were both passed at a time when Congressional attention was focused on newly created management principles to govern multiple uses of the nation's lands in a manner that protects a sound environment. All aspects of the environmental concerns displayed in FLPMA were and are present in NFMA.

It would be ludicrous to think that Congress did not intend the definition of "coordination" contained in FLPMA passed on October 21 to apply to the use of "coordination"

in NFMA passed on October 22. To believe that Congress defined "coordination" on October 21, then used the term on October 22 but intended a different, unstated, meaning, would not only be ludicrous, it would violate historically and traditionally established "canons of statutory interpretation".

Courts in all states, and in the federal districts, have held that statutes must be interpreted in a way that "avoids an absurd result the Legislature did not intend." **Bruce v. Gregory**, 65 Cal. 2d 666, 673 (1967). It would certainly be "absurd" to argue that Congress intended two different definitions for the term "coordination" in statutes enacted one day apart.

The Secretary of Agriculture made it patently clear that he so understood the Congressional intent when he defined "coordination" in Section 219.7 of the 1982 Planning Rules. This was the first and only definition of "coordination" styled by the Secretary after enactment of FLPMA and NFMA. The definition set forth hereinabove closely follows the Congressional definition of "coordination" contained in FLPMA.

VII. RATIONALE AS TO WHY PROPOSED SECTION 219.4 DOES NOT COMPLY WITH THE CONGRESSIONAL MANDATE AND THE MEANING OF COORDINATION AS OPPOSED TO PARTICIPATION OR COOPERATION.

Section 219.4 is entitled "REQUIREMENTS FOR PUBLIC PARTICIPATION", and the rule completely minimizes the meaningful coordinated involvement of local governmental officials in a government to government setting with the Forest Service. The rule reduces local government involvement to that of the general public. This approach does not comply with the statutes passed by Congress.

Note that in the 1982 Rules, the Secretary of Agriculture complied with the Congressional mandate by providing for "Public Participation" in Section 219.6 and "Coordination" in Section 219.7.

The comments explaining the proposed section relates that the Service has used the CEQ "Collaboration Handbook" as a base for the rule. That handbook is not law. The Congressional mandate of coordination is law and should be the base for the proposed rule. The proposal manages to diminish the role of local government to that of simply one organization among public organizations. It is a status that defies the will of Congress and defies the simple dictionary definition of "coordination."

The rule defines the "public" as including "local governments". So, all the signatory counties and local governments to this report are reduced by the proposal to the same level as "individuals" and "private organizations". Thus, the proposal gives the same standing to the non-governmental organizations that actively oppose logging, recreation, access, and every other use of the Forests that contributes to the economic stability of local government as it does to the impacted local government.

Every individual and organization that opposes the use of motorized vehicles and all off-road vehicles will have the same standing as the local government. Every organization that seeks shut-down of forest roads will have the same standing as the local government. Every organization that seeks to prevent all logging will have the same standing as the local government. Every individual and organization that opposes the concept that a hunter should be able to retrieve his game will have the same standing as the local government.

None of those organizations have the obligation to protect the economic stability of the communities adjacent to the Forests as do the local governments. None of those organizations have the obligation to pay the costs of search and rescue as do the local governments. None of those organizations have to suffer the impact of fire damage, loss of jobs, and loss of revenue from users of the Forests as do the local governments. But they will have the same standing in the planning effort as do the local governments.

The proposal is not in compliance with the Congressional mandates that local governments be accorded the coordinate role compatible with their responsibilities to care for and fund the public health, safety, and welfare.

Subpart (a) of the proposal allows the "responsible official" of the Service to use "collaborative processes" regarding local governments and all other members of the public only when he or she determines it "feasible and appropriate". So, whether to even involve local governments in "collaboration" is solely within the discretion of the official. Congress gives no such discretion to the Service; coordination with local governments is mandatory, not discretionary.

Subpart (a) also allows the "responsible official" to take into account "cost, time and staffing" in deciding whether to invoke "collaboration". This further provides the official with an easy excuse to refuse to even "collaborate". When he or she determines that it is too costly, takes too much time, or involves too much staff time to "collaborate", local governments will have no recourse. Congress gives no such discretion to the Service; coordination with local governments is mandatory, not discretionary. Congress recognized long ago that conflict resolution through coordination will in the long run SAVE COST, TIME AND STAFFING.

Subpart (a) allows the "responsible official" to resort to use "contemporary tools, such as the internet" to engage local governments in "collaboration". Such discretion strips away totally the capability of local governments to engage the Service in the meaningful way mandated by Congress. A local governing body cannot meet the public and open meeting laws of any of the 50 states by engaging in "internet coordination." Use of the internet is not the government to government coordination mandated by Congress.

Subpart (a)(1) allows the "responsible official" the "discretion to determine the scope, methods, forum, and timing of" any opportunity for local government to participate in planning. He or she can determine that local governments can participate only by internet, or only in the Forest Service office, which will prevent any participation by the full governing body. He or she can determine that only one member of a Board of commissioners or supervisors, or only the

mayor, or only one member of a city council, can participate, thus again depriving the governing body from participation. Congressional mandate of coordination with "local governments" does not contemplate the Service being able to limit participation to one member of a governing body.

Subparts (a)(2)(3)and (4) provide that the "responsible official" shall **"ENCOURAGE"** participation by individuals, youth, low-income populations, minority populations, and private landowners. Local governments are not included in the categories of the "public" that are privileged to be **ENCOURAGED** TO PARTICIPATE. Again, this provision diminishes Service commitment to meaningfully engage local governments in planning as Congress requires.

In fact, subpart (a)(8) provides that the "responsible official" must only "provide opportunities" for local governments to participate in planning---while he or she is to "encourage" other elements of the public to participate, he or she must only "provide opportunities" for local government participation. The Congressional mandate of coordination is not satisfied even in the slightest way by this soft, downplayed role afforded to local governments.

The only thing that the "responsible official" can encourage for local governments is to seek permission for "cooperating agency status in the NEPA process for a plan development, amendment, or revision." The "cooperating agency status" is not even incorporated in any statute passed by Congress. It is a category first suggested in a federal interagency memorandum, and then included in a regulation issued by the Council on Environmental Quality. It is a regulatory category applicable only to and limited to the NEPA process.

As a "cooperating agency" the governing body does not meet government to government with the Forest Service as agent of the United States government. The governing body simply gets to select someone to participate as a member of a planning team, with no governmental authority forming a base for the member. Congress did not mandate "cooperating agency status"; it mandated coordination for local governments, and the entire subpart (a) is non-compliant with that mandate.

Subpart (b) provides for "coordination" with local governments only to the extent that the "responsible official" deems "practicable and appropriate". In other words, when the "responsible official" wants to coordinate. The proposal is so far out of compliance with the Congressional mandate that it constitutes an administrative attempt to evade the law. Such evasion simply cannot be allowed to succeed. If the proposal stands as written, it must be challenged in a federal court.

Even if the "responsible official" graciously decides to "coordinate" with local government, all he or she has to do is ***review*** local plans or policies and report his or her review in the environmental impact statement for the plan. There is no requirement, as in the 1982 Planning Rules, for the official to even meet with the local government. There is no requirement that he or she discuss the review with the local government. All that is needed to comply with the "coordination" provision is to: read the "objectives of. . .[the] local governments as expressed in their plans and policies", "consider . . . the compatibility and interrelated impacts" of the plans

and policies, consider the "opportunities for the plan to address the impacts", consider the "opportunities to resolve or reduce conflicts", and report his or her considerations in the EIS.

Nothing in the subpart even requires that the "responsible official" meet with the local governing body and discuss the review or considerations. To the contrary, the 1982 Rules require that the official to "meet with" local government officials "at the beginning of the planning process to develop procedures for coordination." (Section 219.7 (d)) The Rule further provides:

"At a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, **if the opportunity for government officials to participate in the planning process is not thereby reduced."**

The 1982 Rule also requires the Service official to "**seek input from . . .local governments . . .to help resolve management concerns in the planning process** and identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area."

All the elements of coordination included in the 1982 Rules by the Secretary of Agriculture who was trying to comply with the Congressional mandate have been eliminated in the proposal. A Forest Service official can comply with the coordination requirement in the proposal without ever meeting with or discussing any issue with the local governing body. That is not compliance with the National Forest Management Act that requires coordination as defined by Congress.

VIII. THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA HAS MADE IT CLEAR THAT CONGRESS HAS MANDATED COORDINATION, NOT COOPERATION.

In September, 2009, United States District Judge Marilyn Hall Patel, presiding in the Northern District of California, held in **California Resources Agency v. United States Department of Agriculture**, that the National Forest Management Act required the Forest Service to "coordinate" with the State of California. The Court's decision cited 16 U.S.C. 1604, the same section that requires coordination also for local governments.

The Court stated:

"Congress plainly recognized and endorsed the respective states' interests in the management of national forests by enacting the provision of the NFMA requiring the Forest Service to coordinate forest planning with state resource management processes. See 16 USC Section 1604(a). In light of this statutory recognition, it would be odd indeed to hold that California has no concrete interest in activities in the national forests. California has a concrete interest in the management of national forests within its borders."

NAVAJO COUNTY

Board of Supervisors

Jonathan M. Nez • Jesse Thompson • J.R. DeSpain • David Tenney • Jerry Brownlow

"Proudly Serving, Continuously Improving"

FRD-0367

April 22, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 East 500 South
Bountiful, UT 84010

Re: Navajo County Comments for National Forest System Land Management Planning

Ladies and Gentlemen:

This letter will serve as our response to your request for comment on the Proposed Rules contained in Federal Register Vol. 76, No. 30, as it was published on February 14, 2011. Specifically, Part 219 entitled *Planning* and all Subparts contained therein.

After careful review, our comments are as follows:

§219.4 "Requirement for Public Participation." We support the emphasis on collaborative processes as a means for public participation. Navajo County appreciates the language that calls for coordination with the planning efforts of local governments "early and throughout the planning process," and especially the language which states that the USFS "shall review the planning and land use policies...[of local governments]."

§219.5 "Planning Framework." We support the threefold framework for continuous planning, i.e., 1) assessment; 2) plan development, and 3) monitoring. We feel that this promotes feedback in the process.

§219.7 "New Plan Development." This portion is confusing and falls short in detailing actions to achieve the "desired conditions." There are no completion dates associated with the desired conditions. Also, there are no completion dates when discussing the "Optional Plan Components: Goals." The "desired conditions," detailed in this section, are goals which should be organized with dates of completion in mind for measurable progress to be assessed.

§219.8 "Sustainability." This section defines both "ecological sustainability" and "social and economic sustainability." However, the language does not sufficiently connect the two and is anemic at best when discussing the role of industry. There is no mention of how the private sector will play a role in achieving the sustainability described by the "ecological sustainability" section.

It is inconceivable that public funding alone will achieve the sustainability outlined in this section, yet there is no discussion of the role that private industry will play. In section §219.7 it states that "[o]bjectives should be based on reasonably foreseeable budgets." In section §219.9 it states that "the plan must include plan components to maintain or restore the structure, function, composition and connectivity of healthy and resilient...ecosystems and watersheds." There is no way that the USFS will ever have

• 928.524.4000 • Fax: 928.524.4239 • P.O. Box 668 • Holbrook, AZ 86025 •

• www.navajocountyaz.gov •

enough budgeted to restore the national forests to ecological sustainability without the resources and expertise of the private sector. There needs to be additional language which explains the role of industry. There needs to be additional language that discusses contracting, stewardships and other methods at the disposal of the USFS to involve the private sector.

§219.12 "Monitoring." We support the concept of a monitoring program. There is a high emphasis on monitoring and monitoring strategies, and a scientific basis for that monitoring. We believe this language gives more strength for the utilization of private industry to do the work of restoration. Monitoring assures that the USFS-planned restoration goals are being achieved. With private contractors aware that monitoring is taking place, the work will be performed to achieve the desired ends.

Finally, in an effort to cover some general issues with the plan, we have three additional comments:

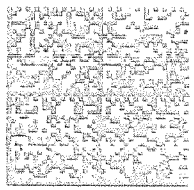
1) No maps were included in the documents. For such a large area to be considered, it would be helpful to include maps which help to explain the scope of the project.
2) The scope of the plan requires a longer time for comment.
3) Given the dynamics of the area included in this plan, we believe every forest should have a public meeting to discuss the plan and how it impacts each forest.

We thank you for your diligent consideration.

Sincerely,

David Tenney Navajo County Board of Supervisors	Jerry Brownlow Navajo County Board of Supervisors

NAVAJO COUNTY
BOARD OF SUPERVISORS
Governmental Center – NC #18
P.O. Box 668
Holbrook, AZ 86025



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132 East 500 South
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Attributes

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Form Letter:

Comments

See Attachments

Individual(s)

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FRD-0431

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May 2, 2011

Forest Service Planning DEIS,
C/O Bear West Company,
132 E 500 S, Bountiful, UT 84010

To whom it may concern:

First of all, the Karuk Tribe would appreciate further analysis of applicable Congressional actions that are applicable to this undertaking. Please cite the Federal Land Policy Management Act (FLPMA), and Indian Self Determination and Education Assistance Act in the appropriate portions of the Planning Rule FEIS. We would also like to ensure recognition that omission of applicable statutes in this analysis potentially poses significant Tribal implications and the burden of inclusion should not fall on Tribes. These are a few examples for inclusion. We unfortunately do not currently have the capacity that a detailed analysis the Planning Rule DEIS deserves from the Tribal perspective.

The Karuk Tribe has approved land management programs of which should be an integral component of coordinated planning and implementation within and adjacent to our Aboriginal Territory. The coordination of National Forest System plans with approved tribal programs within the Karuk Aboriginal Territory for the purposes of development and revision have substantial direct costs associated with such undertaking. The FLMPA requires this coordination and therefore a mechanism for covering Tribal direct costs should be included in the Planning Rule FEIS. The best way for this to occur would be through establishment of interdepartmental compacting mechanisms through the Department of Interior. This will provide a means for maintaining coordinated program integration and recovery of indirect costs through established DOI protocols for Self Governance Compacting. The law provides for this to occur for all or portions of federal programs which are not inherently federal, the only thing lacking seems to be Department of Agriculture compliance and fund transfer process protocols.

The responsible official should actively engage in coordination with tribal land management programs for the purposes of development or revision regarding any such consultation and collaboration endeavor (coordination) with the Karuk Tribe. See

FLPMA : 16 USC § 1712 Land Use Plans (b) ... the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes...

Responsible officials should be working together where practicable and appropriate. However the responsible official may not be the District Ranger or Forest Supervisor for all project level management actions in the situation mentioned above where Tribes assume the responsibility of federal programs under the Indian Self Determination and Education Assistance Act. See Title 25 Chapter 14 subchapter II § 450a (b) which reads:

> The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian Tribes in the development of strong and stable Tribal Governments, capable of administering quality programs and developing the economies of their respective communities.

As such it should not be the responsibility of the tribes to provide information on tribal knowledge, indigenous knowledge or land ethics information to a Forest Supervisor or District Ranger whom is seeking such information for consideration on a project or planning activity just to be reassigned to another area and lose the institutional knowledge locally. It is burdensome for a Tribe to repeatedly have to supply this information for consideration. Instead such information should be maintained as an integral component of Tribal Government, education and community outreach programs as a vital component of the managerial process.

See also Title 25 Chapter 14 subchapter II 450

> (a) (1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities;
>
> (b) (1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

Tribal participation in federal land management actions is not always limited to that of a cooperating agency. For example, our Eco-Cultural Resources Management Planning

Program is currently developing a process for interdisciplinary coordination of collaborative research and monitoring that extends from prepositioning appropriate plans, to project conception (assessment) through implementation to re-assessment and adaptation that extends through all levels of education as a standardized curriculum for local Native American History as required for teaching in California schools. We sincerely hope that this planning rule does not hamper our ability to implement that important programmatic Tribal undertaking. In fact the planning rule should, for example, support such effort by means of the enabling the Tribe to assume a portion of the federal responsibility for research and/or monitoring related programs while covering that portion of the Tribe's direct costs relating to that component of our working relationships.

In consideration of these two Acts and their applicability to EO 13175, the Tribe would consider the need to actually establish the process for interdepartmental funding transfers as a primary objective in the formulation of the planning rule. This may not be needed in areas where Tribes have large land bases held in trust, or have casinos that provide a viable means for participation, but will be critical to the Karuk Tribe's ability to effectively operate Tribal land management programs and ensure the perpetuation of Karuk culture.

Coordination with the Karuk Eco-Cultural Resource Management Planning Program should occur in the promulgation of this regulation. The planning framework should be more of a 5 phase process which would consist of 1) Collaborative Assessment 2) Collaborative Implementation 3) Research/Monitoring 4) Reassessment, and 5) Adaptation. Please see attached Power Point Presentation prepared by the Karuk Tribe for the 2011 Klamath Fire Ecology Symposium for a representative example of the process concerned.

The Tribe believes that the coordination of planning efforts of collaborative partners should provide the information relevant to moving into the new management paradigm everyone wants to achieve. The Tribe would suggest establishing a demonstration landscape in Karuk Territory with CFLR funds which establishes projects that are truly developed in collaboration. We all know that current statutes, regulations, mandates, policies, handbooks and project level plans are currently flawed, and inconsistent with the ability to truly proceed effectively together. The Karuk ECRMP combined with the Orleans/Somes Bar CWPP and coordinated with the Klamath and Six Rivers LRMPs, in partnership with other agencies NGOs and academic collaborative(s), would establish an information overlay assessment that could begin the process of landscape level collaborative implementation while establishing the process for adaptation all the way through identification and revision of regulatory and administrative flaws based on the guidance of Traditional Ecological Knowledge and correlating research/monitoring outcomes.

It appears that this is the direction that the Secretary of Agriculture and Congress wishes to proceed, however I do not see this planning rule in its current form being successful in achieving the intent, in a manner that will be effectively implementable, replicable,

accountable or transparent. Past experience has shown us that we will be provided the opportunity to comment, we may have the capability to participate, and no matter how good the NEPA process is followed or the documentation reads, the implementation outcomes still diminish trust, and violate one law or another. With a progressive Forest Supervisor, the planning rule in its current state may work well for five years or so, then agency turnover will bring in inconsistent views and everything will change subject to individual interpretation.

The Tribe believes that some portions of the draft rule impose direction to line officers to include potentially contentious requirements in the name of congressional acts that are not actually mandated. For example, section 219.7 (e) (iv) states that the plan should contain information regarding "the expected timber harvest levels" as a requirement under 15 U.S.C. 1604 (f) (2). This is not the case and is not consistent with ensuring the ability to make decisions based on what is needed to restore the integrity of landscape processes. All this statement does is perpetuate the "target" management philosophy, not assessment based outcomes, and is not mentioned as a requirement in the section cited. With this in mind the Tribe would recommend that all citations in this document be reviewed for accuracy to ensure that agency preferences are not being imposed as regulatory mandates.

In the interest of all lands all hands concepts, it is important to not limit who can be an integral component of the overall managerial structure. This is done on at least one occasion in the draft rule and may be present elsewhere given the example of 219.9 (b) (3). In the interest of consistency with the remainder of the rule, the responsible official should coordinate with other Federal, State, Tribal and private interests regardless. There may be species of special concern that are not specifically included by definition of terms. Tribes have numerous species of special concern that warrant special focus regardless of land status or management authority.

There are provisions in the draft rule that would preclude remedy to objections made by Tribes that do not or cannot feasibly participate in the public process identified or participates on different scales. The Secretary has a unique obligation to Tribal Governments and much of the interaction involved is done outside the public process. There needs to be a process identified that meets the requirements of interrelated Statutes, Regulations, Policies, and Agreements pertaining to such government to government interaction. There is in many instances, a substantial and undue burden placed on Tribal Governments to work closely with Agencies with no compensation for direct costs.

A section may be warranted that outlines or identifies the need for development of a Tribally specific process for objection, administrative review, and legally enforceable resolution when disagreements occur that can consider interactions within the scope of participation in both the public and government to government arena. Such process should also afford protections for ensuring any interaction with traditional practitioners can also be incorporated into such administrative or legal remedy involving any individual(s) delegated the authority to act on behalf of the affected Tribe, it's membership, descendent, or civilian base.

The Karuk Tribe hopes these comments can be attributed to any and all applicable sections of the Draft Planning Rule. It is critical that we work together to realize the full extent of the federal fiduciary responsibility and we look forward to being a true and equal partner in accomplishing mutually beneficial outcomes in a new era of working together to achieve our respective missions in a manner consistent with multiple mandates.

Yootva,

Arch Super,
Chairman, Karuk Tribe

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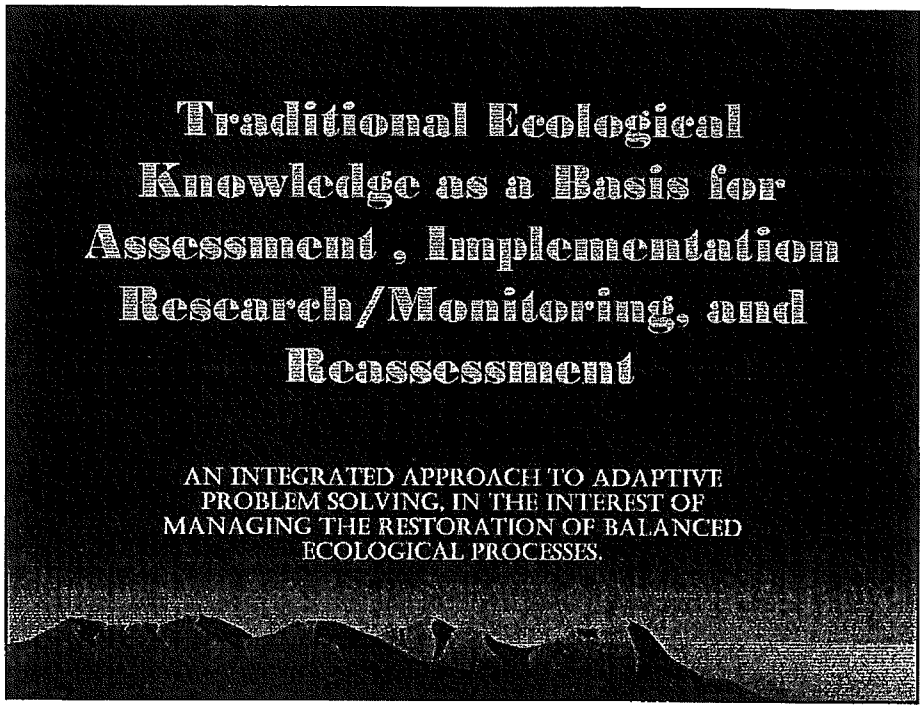
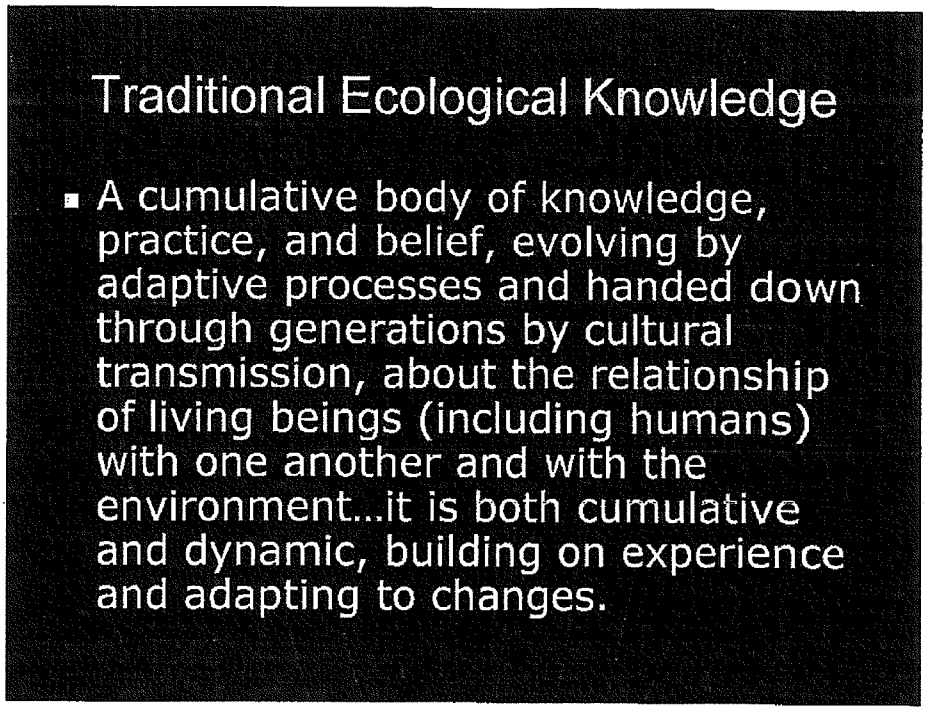


First of all I would like to thank you all for being here today and for providing this opportunity to speak on behalf of the Karuk Tribe regarding Landscape Level Fire Planning Strategies for the Klamath Mountains. This presentation attempts to convey an integrated approach to adaptive problem solving to expand perspectives associated with a new era of land management principals and practices. The Karuk Tribe's current focus in this regard, is the utilization and development of the best available information in the restoration of balanced ecological processes.



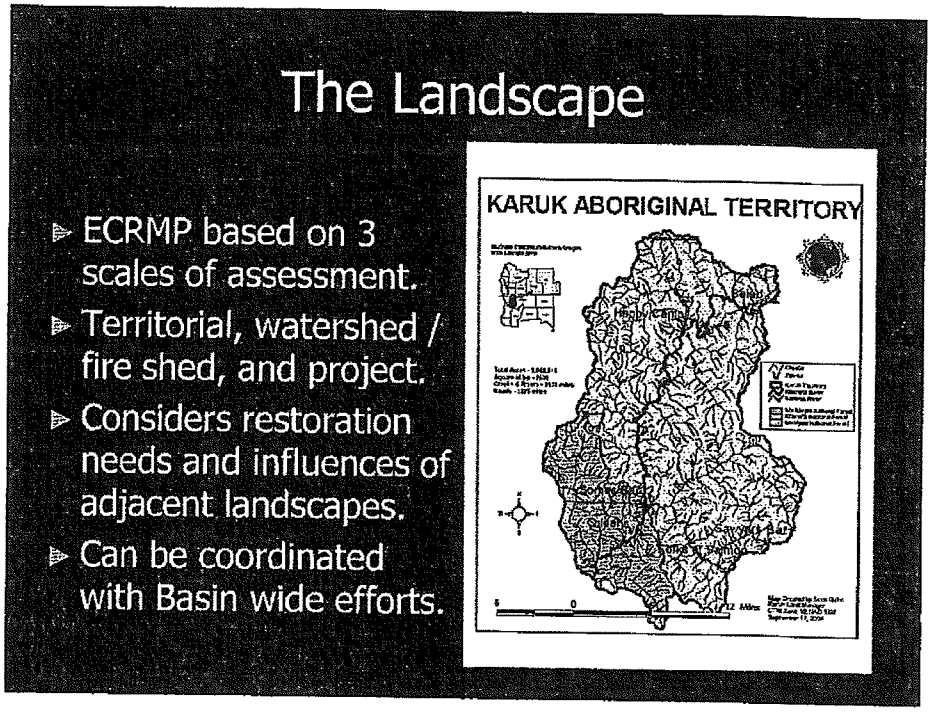
The Tribe believes that Traditional Ecological Knowledge as defined in this slide can not only provide initial information critical to how local reference conditions came to be, but will provide a blueprint for achieving true adaptive management into the future. TEK still holds cumulative knowledge regarding practices once employed upon the pre-European landscape. It also holds information regarding changes that contributed to the alteration of balanced ecological processes. Additionally we believe that Western Science is beginning to identify very important pieces to the puzzle we call landscape restoration.

In partnership with the principals of TEK and Western Science, we can utilize cumulative information to make informed assessments; We can formulate strategic mitigations at the landscape level; We can cooperatively implement such mitigations based on established priorities; We can research unanswered questions and monitor real time results. And we can learn from this collective reassessment, and adapt through constant change.

Karuk Eco-Cultural Resources Management Plan

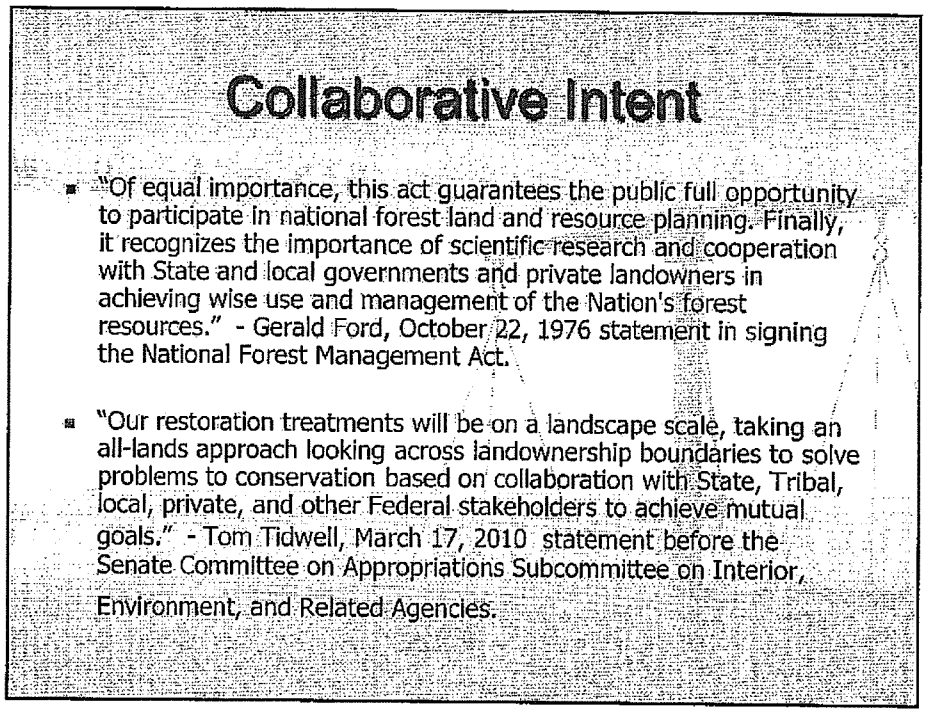
- Integrated Resource Management Plan
- Programmatic and strategic
- Interdisciplinary and collaborative
- Being developed in partnership with Forest Service Pacific Southwest Research Station, EPA, BIA and UC Berkeley

The Tribe has chosen to initiate our participation in this process through the development of an Eco-Cultural Resources Management Plan. In this plan we are attempting to formally establish the Tribes integrated, programmatic, and strategic direction for landscape level management within and adjacent to the Karuk Aboriginal Territory. We have been developing this plan in cooperation with partners such as the US Forest Service Pacific Southwest Research Station, University of California Berkeley, the Environmental Protection Agency, and Bureau of Indian Affairs. Thanks to these expanding partnerships, we have recently completed a final draft Executive Summary and are now ready to enter the assessment stage. This phase will coordinate with other plans to identify and prioritize projects by type and extent, as well as modify and finalize the plan, and attempt achievement of programmatic NEPA coverage.



In order to be successful we need to truly collaborate in the assessment stages. With it being difficult to coordinate funding and establish coordinated understanding of what this effort can achieve across broader landscapes, we have begun to request funds to for these next steps. The logical place for the Tribe to focus our initial attentions is upon a demonstration landscape.

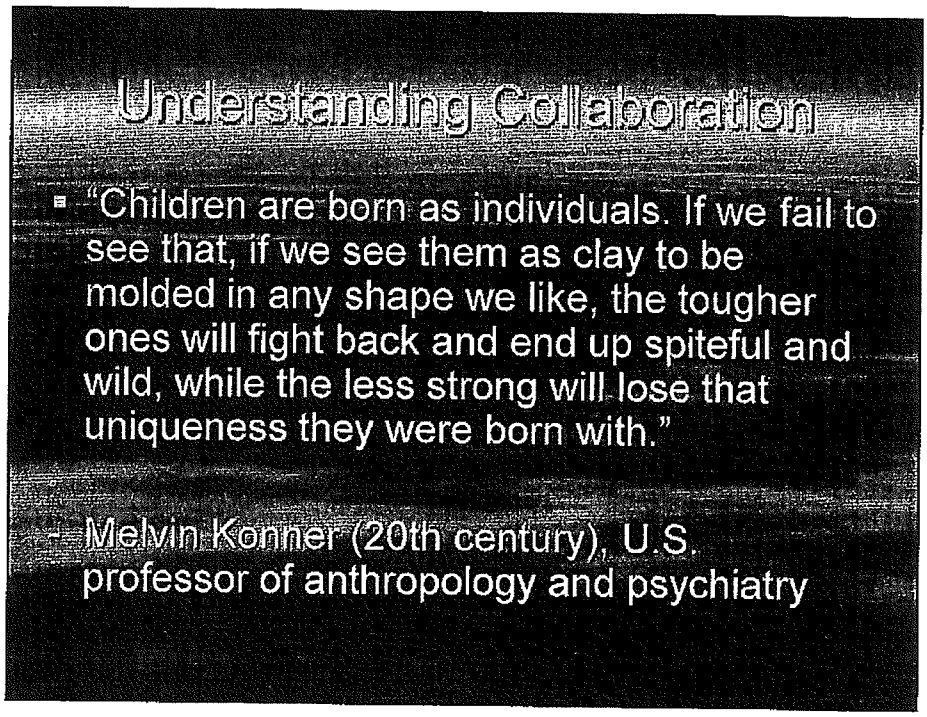
In consideration that we initiated the Ti-Bar Demonstration Project and the Offield Mountain Ceremonial Burn Project in the 1990's; that collaborative efforts to resolve disagreements cumulated in the development of the Karuk Environmental Management Practices Demonstration Area Concept Paper in 2005; the current need to finalize the Orleans/Somes Bar Community Wildfire Protection Plan; the near completion of the MOU for the Katimiin Cultural Management Area; the fires coming out of the Marble Mountain Wilderness being among the most costly in the nation; and the fact that we must achieve common understanding and direction involving all partners; we are proposing a collaborative assessment of the interrelationships of the Draft ECRMP, the Draft Orleans /Somes Bar CWPP, and the current Klamath and Six Rivers Land and Resources Management Plans. The outcome of this assessment should be the identification of project types, treatment areas, research and monitoring needs, priorities, non confrontational programmatic NEPA coverage, as well as the finalization of the ECRMP and Orleans/Somes Bar CWPP, and an example of how we move forward together in development or revision of National Forest Land and Resource Management Plans.



In order to achieve such a substantial undertaking we must first understand "Collaboration". This slide represents the historic and current "collaborative intent". As you can see, President Ford, by making this statement in signing the National Forest Management Act clearly established such intent on October 22nd 1976. It also clearly points out the importance of scientific research and cooperation at the local level to achieve the wise use and management of the nation's forest resources.

This Collaborative intent is reaffirmed in the next statement which was made by Chief Tom Tidwell on March 17th 2010 before the Senate Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies. Statements such as these establish the congressional intent and associated purpose of funding appropriated to implement such an allocation.

The concepts presented here achieve this collaborative intent in a cooperative manner consistent with the intent conveyed, in a much more comprehensive manner than currently being accomplished in the Klamath Mountains today.



Which is why we must work together to first truly understand collaboration. This slide presents a quote of Melvin Konner US Professor of anthropology and psychiatry. In reading his concept for raising children and in the interest of gaining a universal understanding of collaboration, the following analogy presents itself:

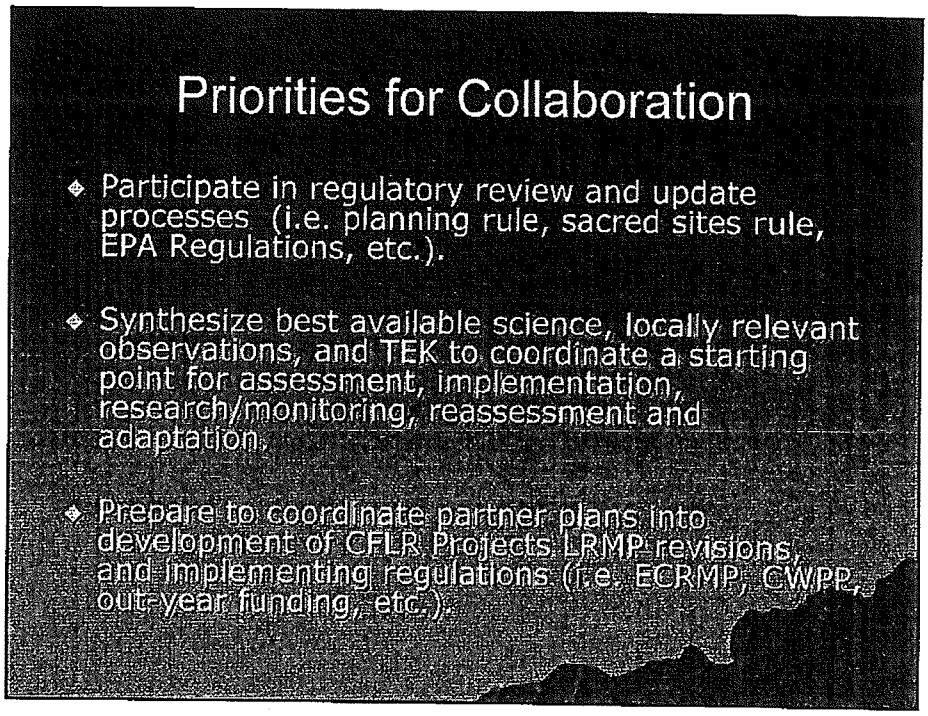
We are all individuals participating in the collaborative concepts before us today.

We all have unique backgrounds with the mutual focus of fire ecology in the Klamath Mountains.

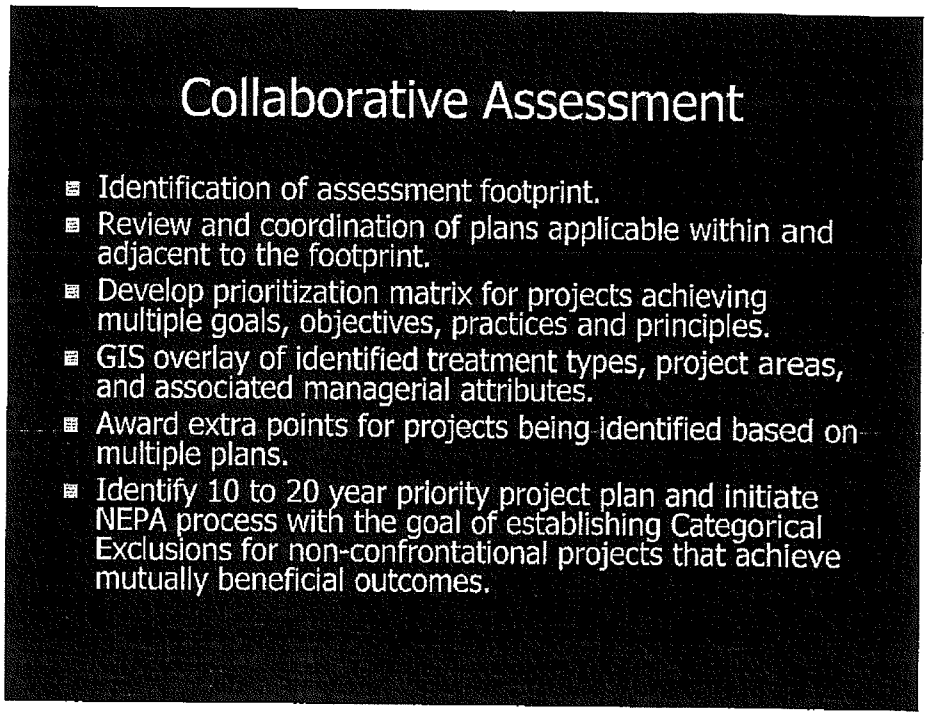
Current actions in the name of collaboration attempt to mold our focus into a shape truly inconsiderate of such collective uniqueness.

If this continues we will perpetually disagree, or lose our identity and subsequently any remaining integrity of social, ecological, and anthropogenic systems.

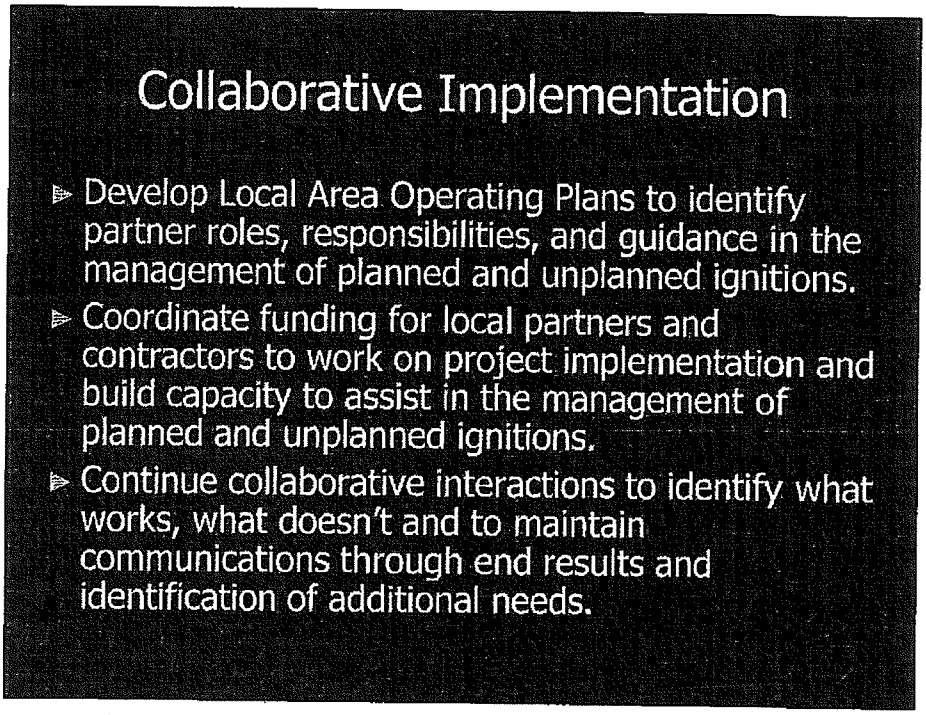
With this in mind we must utilize collaboration, cooperation, and consultation in the context intended. We must to work together and solve problems so we can truly achieve the wise use and management of forest resources and ecological processes of which we all have common interest.



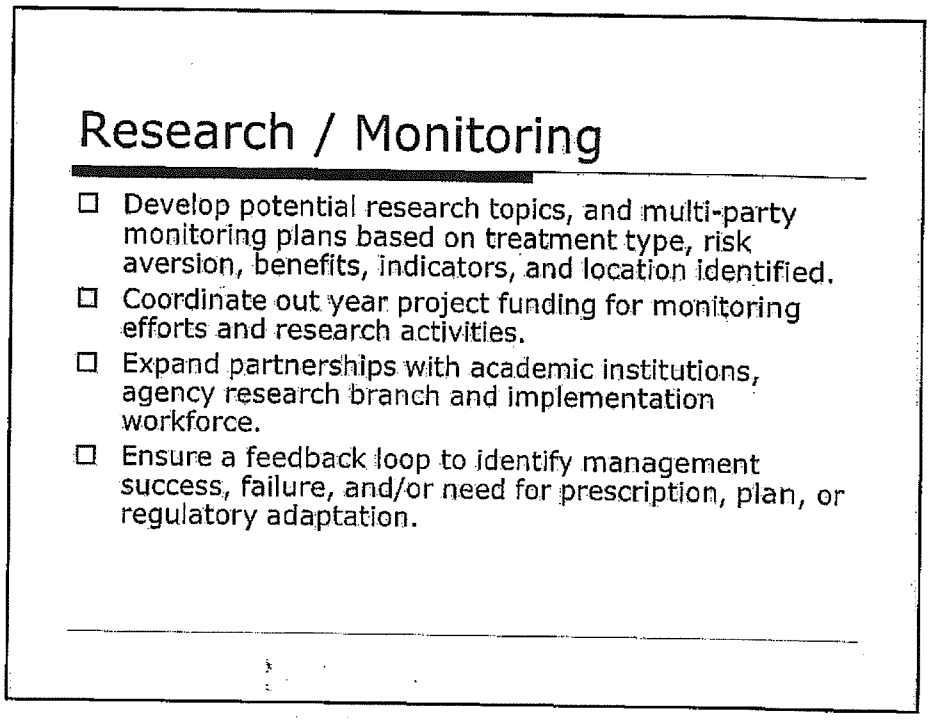
In order for this all to be possible in the coming years, the Tribe envisions the following priorities for collaboration which must be integrated to inform each other and be implemented simultaneously in the interest of achieving a successful future. Many of these things already have deadlines established. How many of you are aware of the current Incident Management Organization Succession Planning efforts that are currently being undertaken? Or knew that you could be nominated for participation on the Cohesive Strategy National Science Team? How many of you have had a an opportunity to participate in these efforts to your satisfaction?



It would seem that implementing regulations currently in development would simply require the interactions displayed in this slide in the interest of truly achieving the collaborative intent while upholding laws and statutes relating to such management actions identified in the collaborative assessment process. The collective outcomes of locally relevant collaborations could then inform revision of implementing regulations as needed and we can achieve national consistency where possible while we maintain unique management characteristics locally. It will be important to ensure that those participating at this stage remain involved for the long term as there currently seems to be a breakdown as NEPA outputs are transferred through implementation mechanisms.

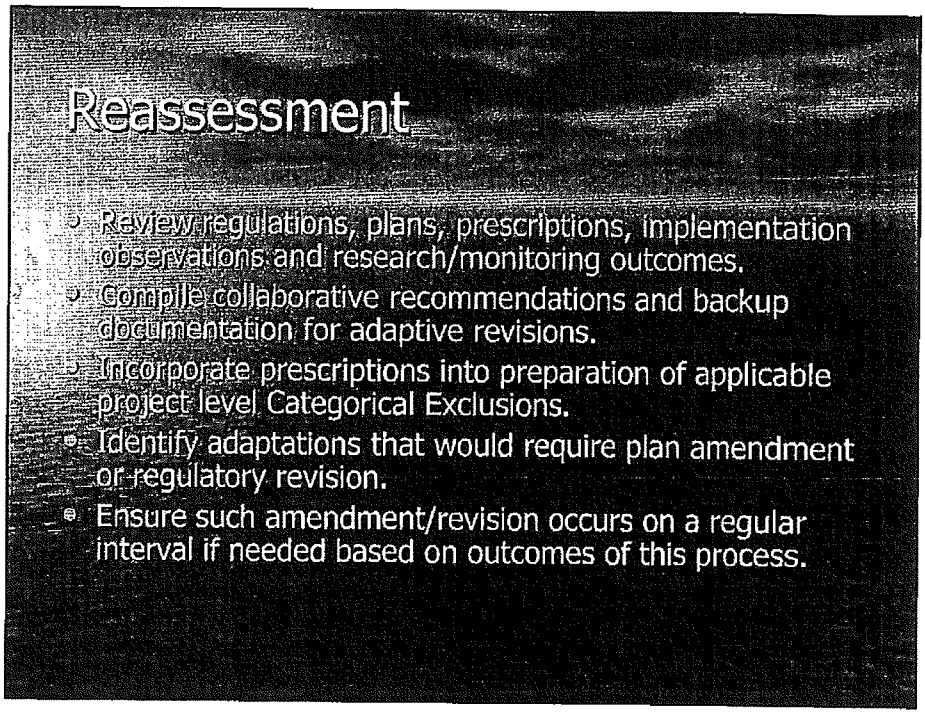


The California Master Cooperative Wildland Fire Management and Stafford Act Response Agreement is one tool that can help outline collaborative implementation. It also provides fund transfer mechanisms, including cost share and assistance by hire protocols. This agreement has been in place for so long now that it is already entering the review and revision process. With this in mind, it is now the time to understand what this agreement can do and how we can make it better serve local partnership capacities. If we don't get involved in the revision it could lose its potential if for no other reason from lack of use. This would help to identify and build tribal and community capacity, while providing additional opportunities for contracted resources.

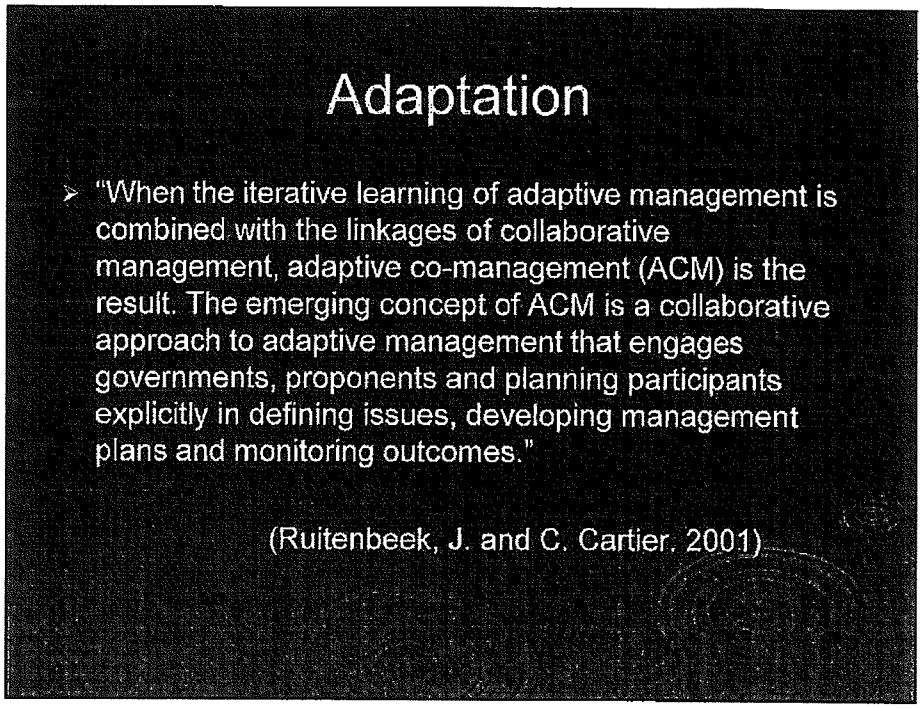


Research and monitoring is a critical component of this overall process. We are currently faced with issues that can only be addressed with detailed scientific study. For lack of a better example, air quality regulations are one of the biggest barriers we currently face in solving the "fire problem" through restoration of it's anthropogenic nature. With the ongoing health concerns associated with this issue, rural areas such as this are a logical place to not only gain an understanding of how we can reduce or mitigate exposure in the long term, but how particulates and charcoal contribute to long term carbon storage in a real world example.

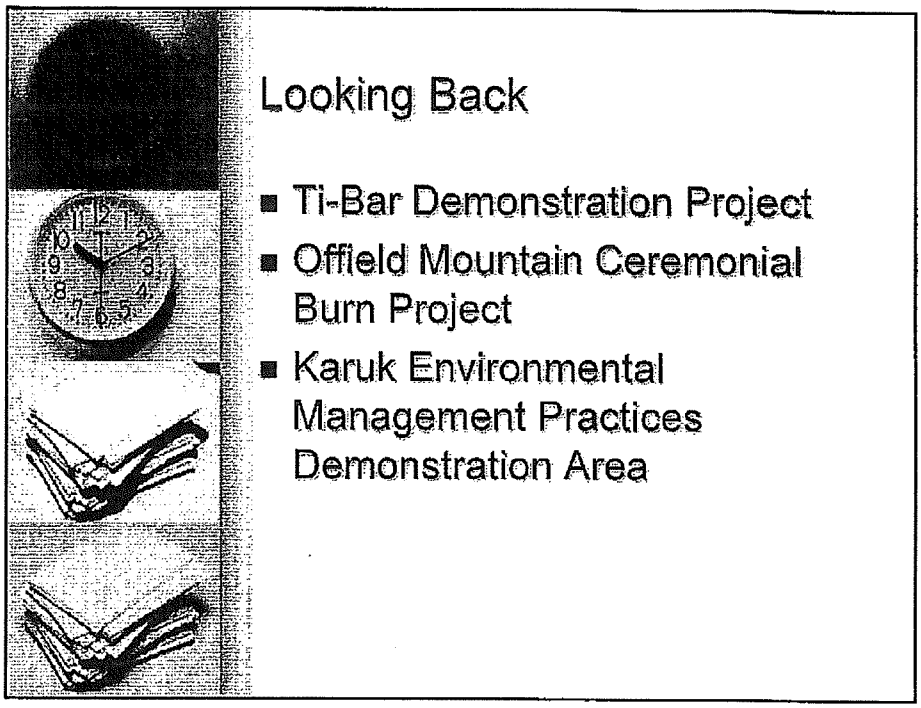
Can we achieve greater benefits overall through changing burning practices to reduce particulate release through less white ash and more surface char? Would this significantly contribute to rainwater purification and expedited long term carbon storage? Do localized smoke events increase carbon intake in vegetation during certain burn periods? There are many questions such as these that are not going to be answered in manner that can effectively inform management decisions unless they are an integral component of planning, practice, review, revision and adaptation. Incorporating a mechanism for teaching the basic principles and results of such cumulative observations can become intergenerational though establishment of curriculum that extends all the way down through the elementary school level.



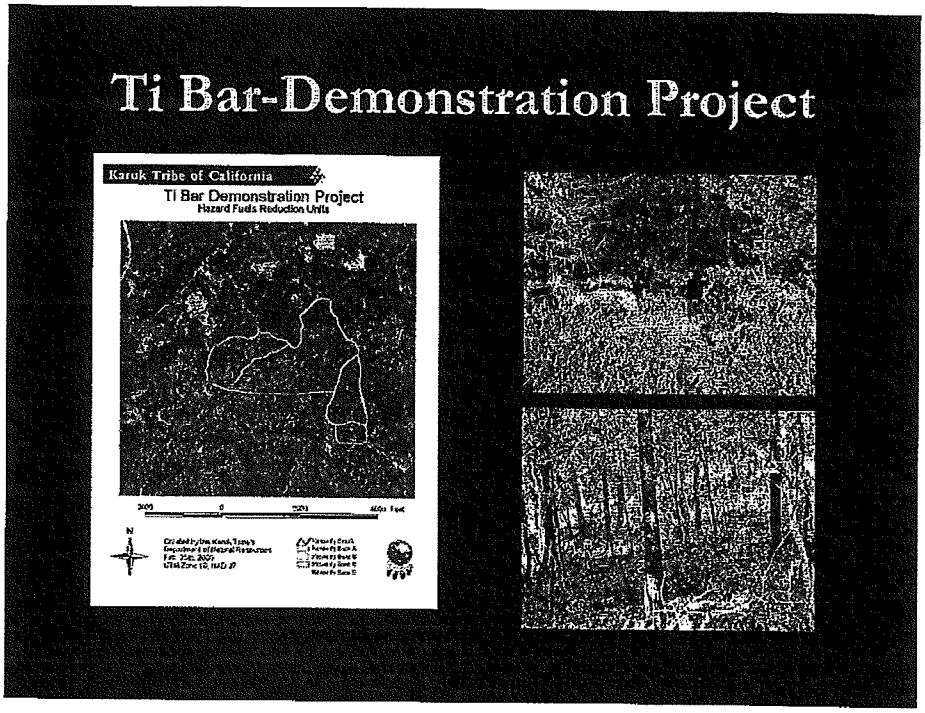
The outputs of research that consider the outcomes of cumulative implementation and monitoring can institutionalize an adaptive feedback loop that improves outcomes overall. Not only does this concept enable a replicable and adaptive process that can re-establish a cumulative body of knowledge, practice and belief, but it can reconnect us with our environment and help to guide us in our anthropogenic responsibilities. The results of such an endeavor combine the principals of TEK and Western Science to formulate the achievement of defensible intergenerational cumulative observations in the interest of managing the restoration of balanced ecological processes, within, and as an integral component of social systems.



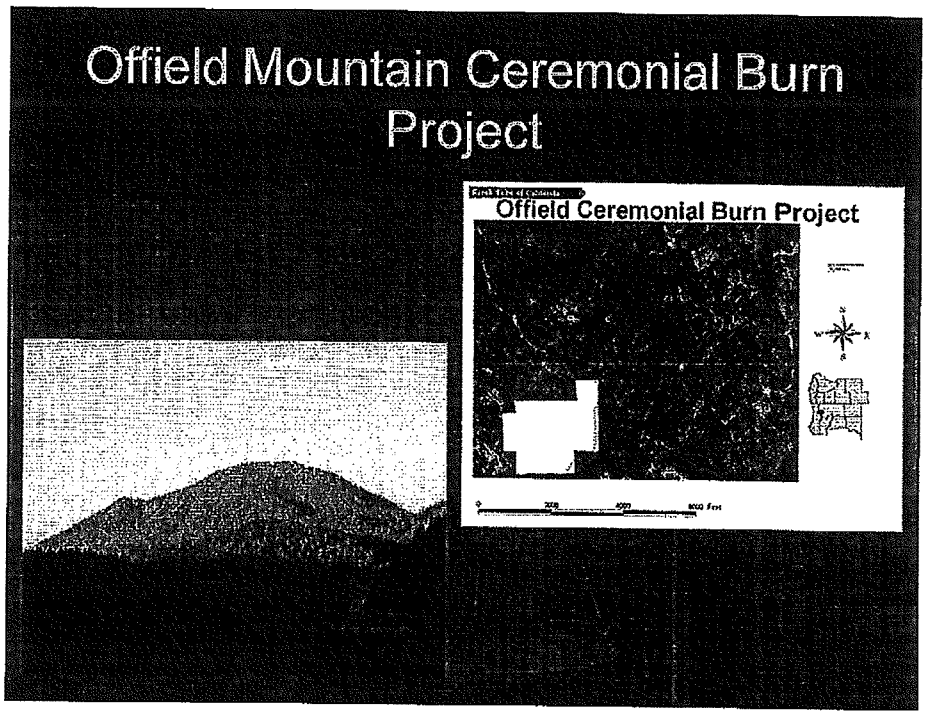
I would like to present you with this quote that provides a basic summary of what the Karuk Tribe has been trying to achieve over the coarse of the past 20 years. I stand here today and sincerely ask that fear of terminology, or singularity in interpretation, not be the determining factor in whether or not we enable the direction needed to find solutions. We have been told repeatedly that there is no authority for co-management. But when you look at adaptive management, collaboration, consultation and coordination as being an integrated mandate and adaptive co-management as being the result, the practice of such is in actuality the most reasonable opportunity to find solutions.



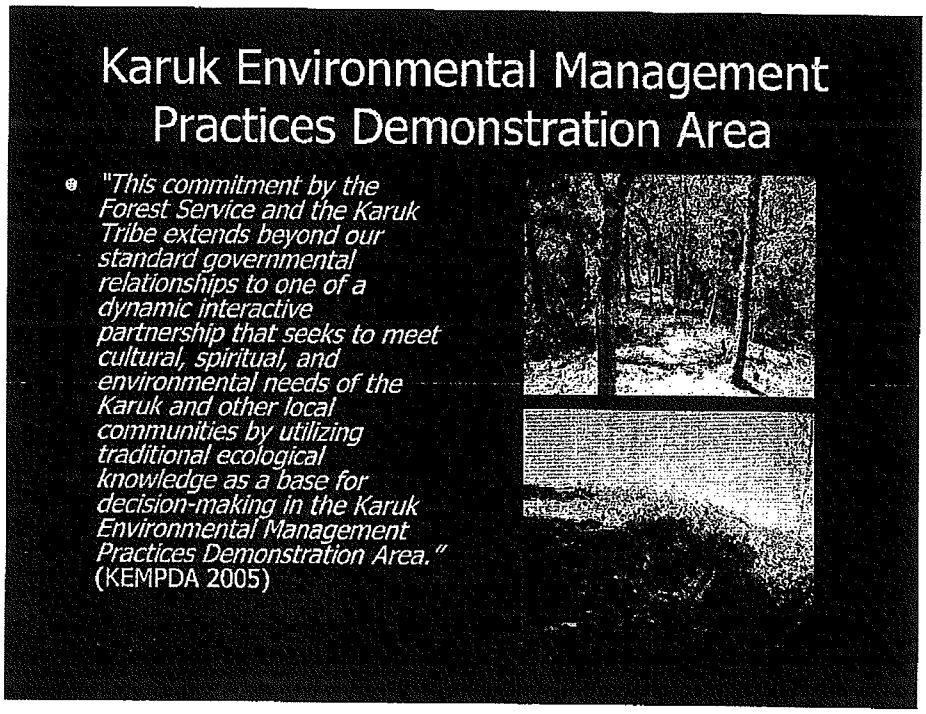
Looking back over the past 17 years of my personal participation in attempting to achieve positive change, there are 3 primary efforts that the I see that are in critical need for follow through. These are the Ti-Bar Demonstration Project, the Offield Mountain Ceremonial Burn Project, and the Karuk Environmental Management Practices Demonstration Area. The Tribe envisions this as a logical place to re-focus our attentions in the interest of ensuring that these integrated efforts carry forward. The following examples provide a background for where we currently are today.



The Ti-Bar Demonstration Project was initiated in the 1990's and initially focused on 4 primary treatment demonstrations. The first was a contiguous fuels treatment down slope of a localized group of mid-slope private properties. Three of the units you see on the map were scheduled for a prescribed burn by the Forest Service. The Tribe recognized the need to protect and enhance subsistence and utilitarian cultural resources in and adjacent to these areas. In partnership with the Forest Service, we re-wrote the Biological Evaluation to include pre-treatment and inclusion of the large plantation unit. These are known as the Kennedy underburn units. The Kennedy units were to be burned following pretreatment and the Carter units were to be burned without pretreatment so a comparison of outcomes could be demonstrated. The Carter units were burned with significant mortality, and the Kennedy units were never burned. There was a suite of additional treatments associated with this Demonstration Project but the collaboration in relation to the others fell apart due to Staff changes and correlating inability to align funding priorities, agree on managerial specifics and/or follow through with long range comparative analysis.



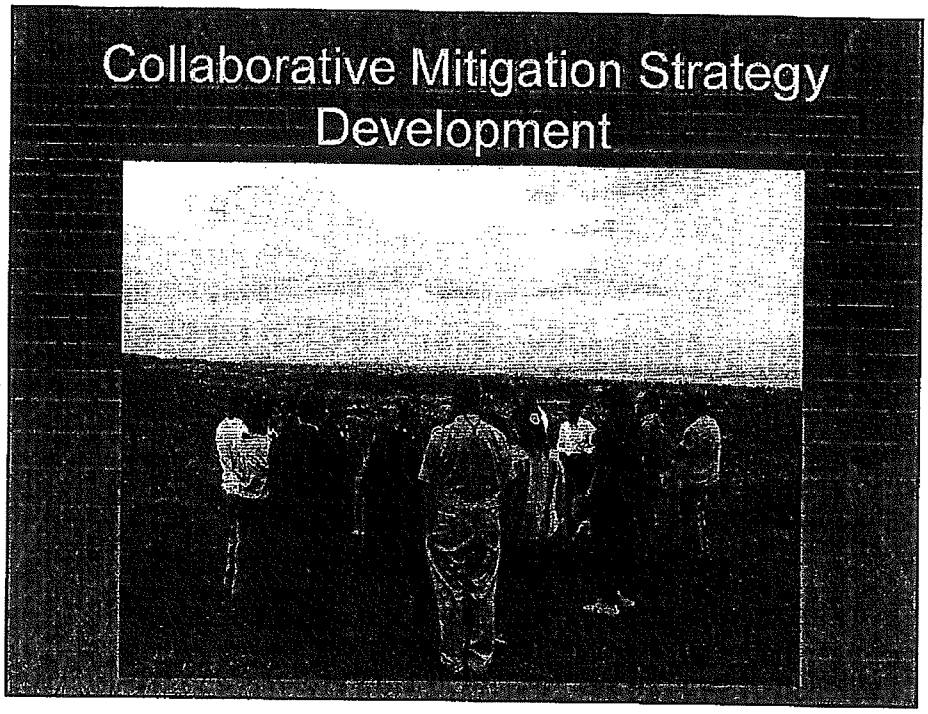
The Ti-Bar Demonstration was intended to show we could implement mutually beneficial management actions prior to actively managing within Cultural Management Areas. The success in securing large amounts of fuels reduction funding and the demonstrated ability to cooperatively plan and implement non-commercial fuels reduction projects, provided a basis for formulating the Offield Mountain Ceremonial Burn Project. Funding was secured from the Bureau of Indian Affairs, and Implementation began. One unit even got burned in partnership with the Tribe, Forest Service, and Northern California Indian Development Council. As mentioned before, the same staff changes contributed to halting the implementation of this important NEPA ready project, because their was no Memorandum of Understanding in place as required by the Klamath National Forest Land and Resource Management Plan. Or as we were told, "the agreements are in the wrong format". No one could however inform us of the right format in the interest of proceeding with this endeavor, instead it was halted and no progress has been made until it was recently noticed that without an MOU in place, no other management actions could occur within the Cultural Management Areas. This MOU is currently in the review stages, and I hope it will serve its intended function of ensuring management occurs in a manner consistent with Karuk Customs and Culture.



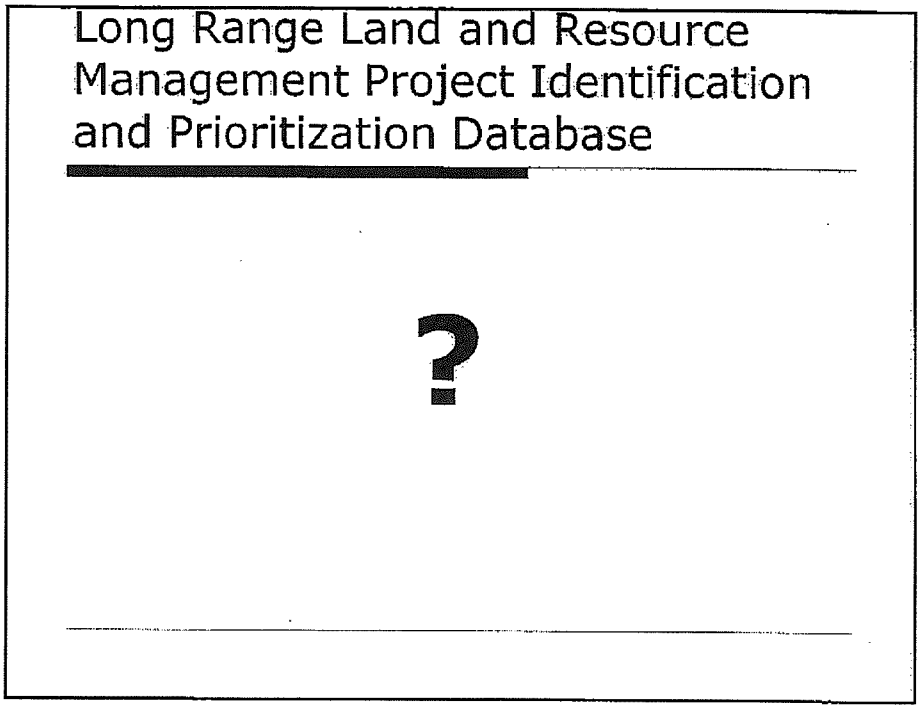
The culmination of outcomes relating to these integrated endeavors, resulted in the development of the Karuk Environmental Management Practice Demonstration Area concept paper, which was co-authored and signed by the Forest Service and the Tribe in 2005. Six years later we are still being told to officially request this project at our Monthly Government to Government project coordination meetings, and it will be incorporated into the program of work and Schedule of Proposed Actions. We continue to do so with every new District Ranger and Forest Supervisor, but timber extraction based projects continue to take priority over managing in a manner consistent with Karuk customs and culture, collaborative agreements, and even in some cases federal statutes. It is at this time difficult for the Tribe to perceive that the future holds anything different than the way we have been treated in the past. There is a disproportionate burden being placed on the Tribe in respect to ensuring that we will even have a living culture left for future generations. We are a people of this land and must uphold our responsibility to it, and the federal agencies have a fiduciary trust obligation to protect and preserve our unique heritage. With that said, I would now like to re-direct our collective focus to moving forward.

In consideration of our past, present, and future, and in accordance with our current Program of Work. The Tribe is proposing to move forward in the following manner. The Tribes vision for the successful development of a Landscape Level Fire Planning Strategy, consists primarily of these three major elements which will be represented in the concluding slides. These are intended to be as inclusive as possible in the interest of the completion and implementation of the Tribe's Eco-Cultural Resource Management Plan, Orleans/Somes Bar Community Wildfire Protection Plan, USFS Land and Resource Management Plans, as well as being prepared for fulfilling our anthropogenic responsibility of properly managing wildland fire in a traditionally guided and contemporary context.

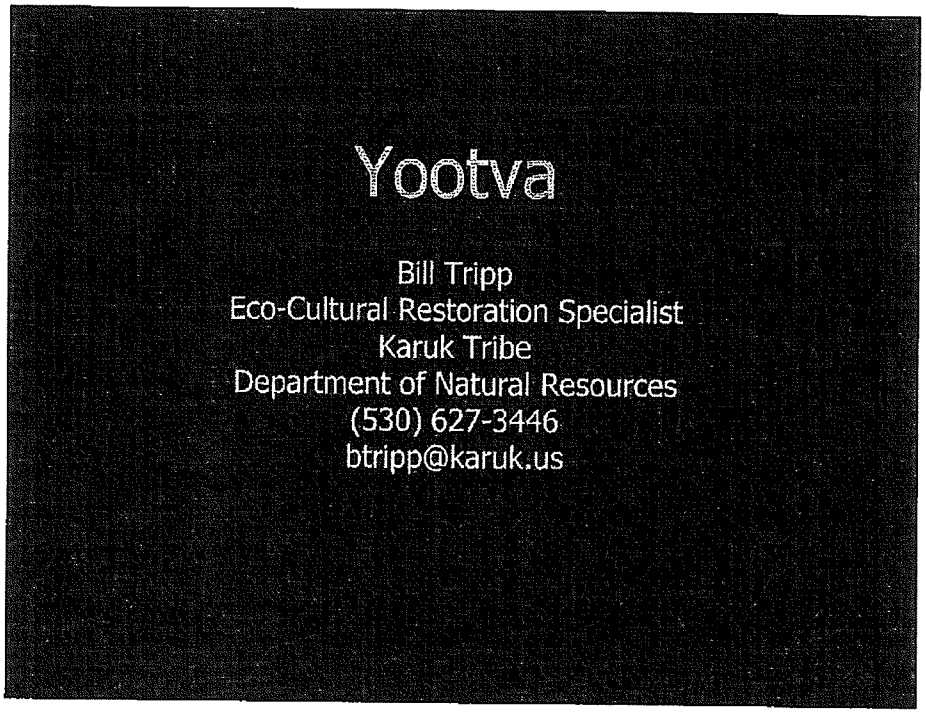
The draft Karuk Eco-Cultural Resource Management Plan establishes baseline Cultural Environmental Management Practices that include but are not limited to the scope of wildland fire management. The Coordinated Plan Component GIS Overlay Assessment would also integrate the Orleans/Somes Bar CWPP treatments and USFS land management designations currently identified. It will correlate potential and complementary on the ground actions based on risk aversion, achievable benefits, and programmatic resource objectives while focusing on site specific indicator sets. For example, There is a tanoak stand on a ridge segment within the Wildland Urban Interface that spans between a plantation, and a spotted owl nest core, with an intersecting road leading to a mid slope residence. In this example, there could potentially be 6 CEMPs, 3 CWPP practices and 15 focal indicators upon which to base the principals of assessment, monitoring, research, and adaptation. These attributes would comprise the initial components for informational overlays regarding that landscape segment.



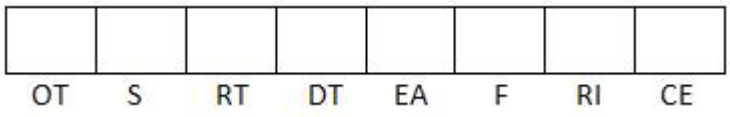
The aforementioned assessment would then go through a collaborative mitigation development stage that would identify baseline descriptions that address identified risks, implement multiple practices, progress programmatic objectives, are best suited for site specific focal indicator sets, are non-confrontational, and are otherwise mutually beneficial and strategic. It is important to remember that multiple treatments and/or entries may be most suitable in any particular location, and the process should be outcome oriented, not production based. It will also be important to consider existing science, data gaps, and other ecological information for variable prescription potential to allow for project specific research and monitoring opportunities. Current community capacity and development of such should also be a contributing element to the overall strategy to mitigate for socioeconomic factors. Socio-culturally relevant jobs for communities in place are a primary means of ensuring institutional knowledge is maintained, and follow though occurs for generations to come.



The output of this planning endeavor would be a living digital base map upon which project areas are designated, treatment descriptions are linked, and research and/or monitoring needs are identified. Programmatic NEPA would be achieved for some projects types while others would still require an EIS or state equivalent. The groundwork would be institutionalized for coordinated out year financial planning, project selection, fine-tuning prescriptions, research and monitoring protocol development, project specific categorical exclusions and applicable scientific data collection regulation and/or policy waivers, as well as diversified integration of wildland fire management principals and practices. This digital information source would concurrently inform the completion of the Karuk ECRMP, CWPPs, development or revision of USFS Land and Resource Management Plans, and incident management actions. Finally, it can serve as a living progression of projects implemented, questions answered, additional needs, real time trends, maintenance interval scheduling, shifting priorities, and sustainable communities, ultimately achieving collaboratively coordinated Adaptive co-management.


Yootva
Bill Tripp
Eco-Cultural Restoration Specialist
Karuk Tribe
Department of Natural Resources
(530) 627-3446
btripp@karuk.us

Thank you,



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Delivery Type: W - Web-based submission
IP Address: 66.62.151.229
Form Letter:

Comments

I agree with the direction of the proposed planning rule amendment. The opportunity for involvement by the County and local citizens is important. The Agency's goal to create a collaborative and science-based review of National Forest Plans is welcome to us in rural Idaho. Having a personal stake in the planning and management of the Clearwater and Nez Perce National Forest is very important to me and my family.
The planning process should support the managment of all the forest ecosystems for watersheds, plants, forests, animals and people. They alll need a resilent forestland to support the growth and develpment of the communities. The Historical input that the local people can provide on the forest lands is necessary to preserve the cultures and activities to sustaining mulitple uses of the public lands.
The agency needs to take into consideration the local perspective in planning the magement of the national forests. That type of input is valuable for the understanding of the local landscape management plans. We should have input since there is an understanding of the conditions, trends, culture, historic use and active management on and off the national forest lands to better manage the local units.
I see the structuring of forest planning in three phases will give local stakeholders the opportunity to be involved in the assesements, planning process and management plan development and implementation. The NFS lands need to proptect cultural and historic resources; contribute to the social and economic stability of local communities. Protect the enire ecosystem. The monitioring of individual units will allow for consideration of the best management in multiple uses for the plan areea. The plan components needs to protect the entire watershed, wildlife and fish; mineral and oil uses; timber harvest, fire hazard reduction, wilderness and protection of all the uses.
I believe the final review process should include the local stakeholders and local scientific and historical review to assist in the implentation of the management of the lands.
Thank you for considering my comments. Cindy Barnett

Individual(s)

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Created On	5/3/2011 2:42:00 PM

FRD - 0454

San Juan County

sanjuancounty.org

SAN JUAN COUNTY COMMISSION

Bruce B. Adams - Chairman
Kenneth Maryboy - Vice-Chairman
Phil Lyman - Commissioner
Rick M. Bailey - Administrator

May 2, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, UT 84010

CAG RECEIVED
MAY 04 REC'D

Re: Comments on Proposed USFS Planning Rule (36 CFR Part 219)

Dear Sir:

San Juan County offers the following comments on the proposed Forest Service (FS) Planning Rule. Section notation corresponds with sections in the proposed rule.

Section 219.4 Requirements for public participation. This section provides for States, counties and local governments the opportunity to participate in Forest Service planning through "cooperating agency status". This is all well and good and should remain in the rule. However, the County, by reason of its select status as an organizational unit of state government, must be afforded preferred status above that afforded by "cooperating agency status". San Juan County believes that "cooperating agency" and "coordination" status are mandated by various laws (National Forest Management Act, National Environmental Policy Act, Endangered Species Act and others) and should be so recognized in this rule.

Section 219.4 (b) Coordination with other public planning efforts. Part (1) of this section states "The responsible official shall coordinate land management planning with the equivalent and related planning efforts of .....State and local governments, to the extent **practicable** and **appropriate**"(emphasis added). Part (2) states that "...the responsible official shall review the planning and land use policies of ...State and local governments...The results of this review shall be displayed in the environmental impact statement for the plan. The review shall include consideration of: (i) The objectives of federally recognized...State and local governments, as expressed in their plans and policies; (ii) The compatibility and interrelated impacts of these plans and policies; (iii) Opportunities for the plan to address the impacts identified or contribute to joint objectives; and (iv) Opportunities to resolve or reduce conflicts, within the Forest Service desired conditions or objectives." Part (3) goes on to state "Nothing in this section should be read to indicate that the responsible official will seek to direct or control management of lands outside of the planning area, nor will the responsible official conform management to meet non-Forest Service objectives or policies." The last phrase of part (3) is too strong a statement for non-conformance of FS plans to local plans. Based on the wording in section (b)(1) stating that FS plans shall be coordinated with local government plans "to the extent practicable and

appropriate" it appears that some qualifying wording should be added to part (3). We recommend that wording such as the following in italics be added to this sentence:: "... nor will the responsible official conform management to meet non-Forest Service objectives or policies" *unless consistent with federal law or FS objectives or policies.* Addition of this phrase would clarify the intent of this section which is to provide for conformance of FS plans with local plans where practicable and appropriate to resolve or reduce conflicts while still being consistent with FS objectives or policies.

San Juan County appreciates this opportunity to comment on proposed rule making that can have a direct impact on the economy of the County and the well-being of its residents.

Sincerely,

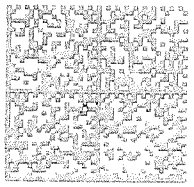
Bruce B Adams

Bruce B. Adams
Commission Chairman

cc: Mark Ward, Utah Association of Counties

San Juan County
P.O. Box 9
Monticello, UT 84535

FRD-0454



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Mailed From 84535
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84010$4921

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Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
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Form Letter:

Comments

See Attachments

Individual(s)

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Country	UNITED STATES
Created On	5/4/2011 2:47:00 PM

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BOARD OF SUPERVISORS
COUNTY OF INYO

P. O. BOX N • INDEPENDENCE, CALIFORNIA 93526
TELEPHONE (760) 878-0373 • FAX (760) 878-2241
e-mail: pgunsolley@inyocounty.us

May 3, 2011

Tom Tidwell, Chief
USDA Forest Service
1400 Independence Ave., SW
Washington, D.C. 20250

Re: **Draft Environmental Impact Statement**
Proposed U.S. Forest Service Land Management Planning Rule

Dear Mr. Tidwell:

On behalf of the Inyo County Board of Supervisors, I wish to thank you for your continued efforts to include the local communities that will be most impacted by the U.S. Forest Service (USFS) in its future planning. In a County such as ours where less than two percent of the land is privately held, the actions of the Forest Service have tremendous impacts.

Since the Planning Rule update currently in process will guide many of the most important decisions in the Inyo National Forest that directly impact us, the Board has been following the update process closely. Individual Supervisors and County representatives attended public meetings on April 6, 2010 in Sacramento and Bishop. The Board participated in a conference call with the Regional Forester and other Forest Service staff on April 22, 2010, and County representatives attended the National Forums in August 2010 and March 2011. Attached is correspondence previously submitted by the Board regarding the update effort.

With this extensive participation in mind, we offer the following comments regarding the proposed Rule and Draft Environmental Impact Statement (DEIS).

1. Actions of the Forest Service have tangible direct, indirect, and cumulative impacts on the communities in the vicinity of the Forests. In Inyo County, these impacts are significant due to the proportional size of the Forest to the local population and privately held land base. Many in our communities rely on the Forest for their livelihood, as well as hold deep spiritual and cultural links to the Forest. Unfortunately, we note that that in many places the proposed Rule to the contrary indicates that the Forest Service has limited influence outside of the Forests. For example, on page 8491 of the Federal Register Notice, it states "...the Agency has more influence over the factors that impact ecological sustainability on NFS lands...than it does for social and economic sustainability...". In Inyo County and many other rural areas these statements are just not true. In our County for example, many communities are stagnant or shrinking due to past efforts to limit access to the Forest.

2. We are concerned that the proposed Rule elevates ecology and science above other considerations. While we support the proper role of science in planning, we encourage the Forest to engage in a comprehensive planning approach that balances ecosystem conservation with social and economic needs. We believe the Rule's emphasis on special status species will further distort the planning process. We strongly believe that through careful balancing of these important objectives, overall environmental benefits can be maximized.

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3. We are encouraged that our previous input regarding coordination has been partially incorporated into the Rule at 219.4(b). However, we are concerned that the proposed Rule does not adequately encompass the obligation to coordinate Forest and local plans. Specifically, Inyo County has the following concerns:

a. The proposed language suggests that coordination with local government will be accomplished "to the extent practical and appropriate." The County believes that coordination is a mandate, and therefore is always appropriate and required. (See 16 U.S.C. § 1604(a), *Calif, Resources Agency v. United States Dept of Agriculture*, Slip Copy, 2009 WL 6006102 (N.D.Cal. 2009).) It is understood that the depth and nature of coordination may change with the situation, but the language as proposed would mean that there may be times when it would not be appropriate to coordinate with local government. The County believes that failure to coordinate is not a lawful option.

b. The proposed language states: "nor will the responsible official conform management to meet non-Forest Service objectives or policies". This statement contradicts the purpose of coordinating with local government, which is to attempt to conform USFS and local management plans to meet each other's objectives (within the legal parameters applicable to each agency). Utilizing federal planning to help achieve local government priorities should be a primary objective of coordinated planning and should not be ruled out from the beginning. At the very least, federal plans should not contradict local plans. Otherwise, coordination becomes nothing more than a paper exercise.

c. A primary goal of coordination should be achieving consistency between federal and local plans within the legal mandates applicable to all entities. This would minimally involve ensuring that USFS plans do not contradict local plans. The attempt to achieve consistency should be an iterative process between the local agency and the USFS. This goal has long been recognized in Bureau of Land Management rules regarding coordination with local government in planning activities. (See 43 CFR 1610.3-1) The 1982 Forest Planning Rule (36 CFR 219.7) was weak in this area and the proposed rule is weaker still. Achieving consistency between plans is inherent in the concept of "coordination." Two inconsistent plans could hardly be considered coordinated planning.

4. The DEIS' economic impact analysis is deficient in that it does not include any analysis of the Forests' negative economic impacts on communities around them. We agree that the Forests have great economic benefits, but we believe that the adverse impacts of the Forest to our community have been minimized in the DEIS. In Inyo County, forest planning practices have resulted in significant socioeconomic impacts to our communities. For example, packing and grazing were eliminated from certain areas of the Inyo National Forest, destroying industries that had existed for generations and significantly altering local society and culture, thereby eliminating the livelihoods of hard working people and decimating our towns. We therefore request that the Rule include a requirement that Forest Plans, revisions, and amendments evaluate and minimize negative socioeconomic impacts to local communities. Multiple uses should be encouraged by the Rule to create vibrant rural economies. Furthermore, we are concerned that the modeling undertaken for the Rule is proprietary, and we cannot access the basic assumptions and inputs in the model for verification. As discussed previously, the Rule's emphasis on ecosystems and special status species will result in adverse socioeconomic impacts, which are not addressed in the DEIS.

5. Based on our participation in the scoping process, we had understood that recreation would be given greater emphasis in the proposed Rule. This has not been the case, and the Rule's recreational components seem focused on minimizing recreational opportunities for purposes of sustainability. Recreation is one of the Forests' greatest contributions to society, especially so in our community, and to minimize recreation's role in the Rule is non-responsive to previous input and contrary to common sense. Recreation should not be a minor issue in Forest planning, but to the contrary, should be one of the central goals to create vibrant

rural economies. Although we agree that the potential adverse impacts of recreation should be addressed in the planning process, the proposed Rule's emphasis on sustainability is misguided; to the contrary, providing accessibility to the Forests should be a primary goal, with objectives to minimize recreational impacts secondary. We are particularly concerned that the potential benefits of motorized access to the Forests is ignored, when in fact, few Forests are easily accessed by other means. Again, the Rule should encourage multiple uses to create vibrant rural economies.

6. The proposed Rule's dependency on adaptive management could result in constant revisions to Forest Plans, thereby creating an environment of uncertainty and potentially adversely impacting local economies. We therefore request that a limit on the number of Plan revisions per a unit of time (or other limitation) be included in the Rule to provide greater assurances that Forest plans will be implemented.

7. We are concerned that the definition of restoration appears to depend on a process that has not concluded (refer to Notice page 8503). Any future alterations to the definition of restoration in the Rule should be properly vetted.

Thank you for your consideration and efforts to create a Rule that will benefit the many communities in and around the Forests, including Inyo County. If you have any questions, please contact the County's Administrator, Kevin Carunchio, at (760) 878-0292 or by email at kcarunchio@inyocounty.us.

Sincerely,

Susan Cash
Chairperson, Inyo County Board of Supervisors

Enclosures

cc: Board of Supervisors
Kevin Carunchio, CAO
Randy Keller, County Counsel
Doug Wilson, Willdan
Regional Council of Rural Counties
California State Association of Counties
National Association of Counties
Bear West Company
Ed Armenta, Inyo National Forest
Randy Moore, Pacific Southwest Regional Forester, Forest Service
Secretary Vilsak, USDA
Sustainable Forest Action Coalition

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COUNTY OF INYO

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April 22, 2010

Mr. Tom Tidwell, Chief
USDA Forest Service
1400 Independence Ave., SW
Washington, D.C. 20250

RE: National Forest System Land Management Planning Rule

Dear Mr. Tidwell:

On behalf of the Inyo County Board of Supervisors, I wish to relay our appreciation that additional outreach to locally elected officials took place on April 22, 2010, regarding the update to the Forest System Land Management Rule. While we were discouraged that the Regional Roundtables were scheduled at a time when most Boards of Supervisors in California conduct their regularly scheduled meetings, it was heartening that our concern was heard and that the conference call was scheduled for April 22nd.

The Inyo County Board of Supervisors cares deeply about the Planning Rule update, and has submitted correspondence in response to the Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the National Forest System Land Management Planning Rule (see attached). Individual Board members also attended the Regional Roundtables on April 6 to make our constituents' voices heard. To summarize, the following points are extremely important to us and need to be considered throughout and, hopefully, incorporated in the update process.

- Federal ownership of land area is concentrated in the western states, including Inyo County where an outstanding 92% of the land area is federally administered on behalf of the American public.

- The development of Inyo County was made possible through the active utilization of federally-administered, publicly-owned lands for mineral extraction, raising livestock, farming, harvesting timber, water storage and conveyance, energy generation, wildlife habitat, and recreational activities.

- Through the years, the use of the federally administered, publicly-owned lands has been constrained by the designation of Wilderness Areas, monuments, roadless areas, and park areas, which has severely reduced the availability of these lands for active utilization.

- Recreation is the only permissible use in many of these designated areas, and the types of recreation allowed are also restricted.

- Other uses that should be considered include mining, logging, grazing, energy development, and water storage. It appears that maintaining the local communities, culture and economy were not considered when making these designations.

- Recreation is an important and vital use in the Forest, and should be given greater importance in the principles or as a standalone principle.

- Similarly, the concept of continued active utilization of the Forest – for mining, timber harvesting, grazing, water storage, and energy production needs to be embodied in the principles or as a standalone principle.

- Restoration needs to be defined, since the term has different meaning to different people. To what level or standard will the Forest be "restored?" Pre-man? Pre-European contact? 19th Century? 18th Century? 17th Century? 16th Century? 15th Century? What does this look like?

- A role for locally elected officials needs to be included in the Forest Planning Rule and the update process. At a time the Forest Service professes to want help in gaining local input, it needs to recognize that locally elected officials represent the broadest spectrum of citizens in a jurisdiction, and have been elected to represent the population of the local jurisdiction.

- This rulemaking is extremely important to the concept of local involvement in forest planning. This rulemaking will essentially define what involvement local government will have in forest planning.

- "Coordination" is not a NEPA term and is not constrained by the NEPA process. It is a separate mandate in the forest planning statutes and regulations. Cooperating agency status is a NEPA concept, and while it may overlap with coordination responsibilities, it does not replace them. There is no requirement for a federal agency to attempt to reconcile its plans with those of a cooperating agency. "Coordination", whatever it is defined to be, should not be allowed to be co-opted by the NEPA process. It is separate and greater than NEPA, even though NEPA is a good platform to fulfill coordination responsibilities.

- Local governments provide a function that no other governmental or "stakeholding" entity can provide. Counties in particular are the smallest level of government that represents all sides to these land use issues and are in the best position to achieve the democratic compromises that can lead to public acceptance of federal land use plans. Only at the county level do neighbors engage neighbors in these contentious decisions. No higher level of government has the ability to engage all segments of the community in the debate and attempt to achieve a consensus. Federal agencies have done a disservice to themselves and the local communities by ignoring the input of local government. Federal agencies actually undercut the democratic function when minority groups at the local level can achieve their objectives by organizing and lobbying at the federal level to achieve their objectives, without having to convince their neighbors and the general community that they are correct. More engagement at the local level should be encouraged, rather than less. The only way to do this is to provide local government a strong voice in planning decisions in their jurisdictions, so that communities within the jurisdiction have reason to engage at the local level.

- The 1982 Forest Planning Rule, as it defines coordination, is insufficient. It allows a federal officer to determine what local plans are applicable to a proposed Forest Plan and allows the federal officer to determine if the proposed Forest Plan is consistent with the local plan. It should be the *local government* that identifies which of its planning rules are relevant to the proposed Forest Plan and it should be the *local government* that determines if the proposed Forest Plan is consistent with local plans. Furthermore, as in the BLM regulations, there should be a requirement that the Forest Plans be consistent with local plans, unless federal law or regulations prohibit such consistency. Additionally, if consistency is not achieved, the decision document should explain why consistency could not be achieved.

- It is critical that future land use planning for the federally owned land consider the impacts on the culture and economy of the surrounding communities (e.g. whole lands approach). The analysis should accurately consider the impacts on individual communities. The stated principle that "the sustainable use of public lands to support vibrant communities" is critical. Inyo County believes that coordination with counties is critical to meeting this principle – Inyo County should have influence, not just input. The following elements are necessary for successful coordination:

    - Forest plans must be consistent with local land use plans to the maximum extent practicable, consistent with federal law.

    - Coordination with local government should commence at the earliest possible time. Ideally, local land use plans will be consulted prior to developing a proposed forest plan, and the local government consulted prior to the proposed plan being released to the public and prior to issuance of a Notice of Intent to prepare an EIS or other procedure required by the National Environmental Policy Act.

- The Forest needs to recognize that local government is the expert on the meaning and application of its local plans. The Forest should solicit the views of local government to determine if the proposed forest plan is consistent with local plans, as interpreted by the local government. Local governments should be given sufficient time to review proposed plans and comment in writing to the Forest official.

- Where inconsistencies are identified by the local government, forest officers should meet with local government officers to achieve consistency. The forest service should create a joint task force with the local government or governments to work toward consistency in their plans.

- The EIS for an individual forest plan should reflect consideration of the objectives of local government plans and policies, an assessment of the interrelated impacts of these plans and policies, a determination of how each forest plan should deal with the impacts identified, and consideration of alternatives to resolve conflicts among the plans.

- Where a forest plan may not be made consistent with the local plan, the EIS prepared for the plan should explain how and why its plan is not consistent with local plans, as determined by local authorities, and explain why its plan cannot be made consistent with local plans.

- In the furtherance of these goals, Inyo County has adopted a Government Element of its General plan that enunciates its land use philosophies and policies for the use of the federally owned lands, and the interrelationship between Inyo County and other levels of government.

- The EIS should include, at a minimum, an analysis of how the Proposed Forest Planning Rule addresses these principles.

- If an "All Lands" approach is to be embodied in the new Planning Rule, it must be constructed in such as a manner so as Forest land use plans are responsive to and yield to adjacent and nearby land uses rather than attempting to impose Forest Service values and policies and neighboring private and public land owners.

Thank you. We will continue to monitor the progress of the Planning Rule Update, and anticipate providing additional input. If you have any questions regarding these matters, please contact the County's Administrative Officer, Kevin Carunchio, at (760) 878-0292.

Sincerely,

Richard Cervantes

Supervisor Richard Cervantes, Chairperson
Inyo County Board of Supervisors

Attachment
cc: Board of Supervisors
Kevin Carunchio, CAO
Randy Keller, County Counsel
Doug Wilson, Willdan
Regional Council of Rural Counties
California State Association of Counties
National Association of Counties
Bear West Company
Randy Moore, Pacific Southwest Regional Forester, Forest Service
Secretary Vilsak, USDA

456

BOARD OF SUPERVISORS
COUNTY OF INYO

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PATRICIA GUNSOLLEY
Assistant Clerk of the Board

January 26, 2010

Forest Service Planning NOI
C/O Bear West Company
172 E 500 S.
Bountiful, UT 84010

RE: Notice of Intent to Prepare an Environmental Impact Statement for the National Forest System Land Management Planning Rule

To Whom It May Concern:

Inyo County appreciates the opportunity to participate in developing the new Planning Rule to guide planning efforts for national forest land. On behalf of the Board of Supervisors, please consider the comments in this correspondence in crafting the new Rule, alternatives for analysis in the Environmental Impact Statement (EIS), and the environmental analysis in the EIS.

Planning efforts for federal land have tremendous impacts on the communities that are surrounded by these lands. A county such as ours, which is 95% federal land, is a prime example. When so much of the environment in which a community exists is controlled by federal land use planning, the culture, way-of-life, and very existence of the community relies on the use allowed of those lands. It can serve no national purpose to plan for the use of federal lands in such a way that symbiotic communities lose their identity as a result.

Inyo County is therefore pleased to observe that an important principle of the new planning rule is "the sustainable use of public lands to support vibrant communities." There can be no better means to achieve this goal than to provide a strong role for local communities in the development of national forest plans. Congress recognized and protected a strong role for local communities when it created mandates for federal officers to coordinate with local governments in the creation of forest plans.

Coordination with county government is particularly important. County government is the one level of government that represents the citizens who are directly affected by federal land use plans. It is county government that is the spokesperson for local populations and which, ideally, can create a consensus around the balanced use of federal lands. A coordinated planning process can strengthen forest plans and the communities that are so dependent on those lands for their economic, social and cultural health.

Recent planning rules, in our estimation, have not sufficiently protected the obligation to coordinate planning efforts with local land use plans. To an important extent, this has led to the disenfranchisement of local governments and the communities they represent in the federal planning process. Inyo County supports collaboration. But, while collaboration is a valuable exercise in public participation, it seldom involves more than a series of bargains struck between various interest groups, none of which represent more than a segment of the population, and the most successful of which are the best organized or best funded rather than best representative of the citizenry.

Collaboration is not governing, and must not replace or overshadow the viewpoints of a local government that represents the variety of groups and points-of-view which comprise an organic and living community. Local governments are not "stakeholders" in a collaborative planning process, they are the voice of the community. Only a governmental entity, elected by the people and responsive to it, is able to incorporate and legitimize the compromises necessary to the common good and only a governmental entity can truly represent its constituents. And only the most local of governments, counties, can speak for the communities that live adjacent to the forest.

Inyo County recognizes that there are interests in federal lands beyond those of its population, but believes Congress has correctly determined that citizens should have extraordinary input into forest plans that directly affect them. It is a matter of providing communities the right of self-determination and the ability to influence, if not control, their destinies.

Inyo County therefore petitions the Department of Agriculture and the National Forest Service to strengthen the coordination mandate in the new Planning Rule, with the objective of providing local populations an effective voice in planning for the national forests. We propose the following principles for effective coordination:

1. Forest plans should be consistent with local land use plans to the maximum extent possible, consistent with federal law.
2. Coordination with local government should commence at the earliest possible time. Ideally, local land use plans will be consulted prior to developing a proposed forest plan, and the local government consulted prior to the proposed plan being released to the public and prior to the issuance of a Notice of Intent to prepare an EIS or other procedure required by the National Environmental Policy Act.
3. The Forest should recognize that local government is the expert on the meaning and application of its local plans. The Forest should solicit the views of local government to determine if the proposed forest plan is consistent with local plans, as interpreted

by the local government. Local governments should be given sufficient time to review proposed plans and comment in writing to the Forest official.

4. Where inconsistencies exist, forest officers should meet with local government officers to achieve consistency. The forest should create a joint task force with the local government or governments to work toward consistency in their plans.
5. The EIS for an individual forest plan should reflect consideration of the objectives of local government plans and policies, an assessment of the interrelated impacts of these plans and policies, a determination of how each forest plan should deal with the impacts identified, and consideration of alternatives to resolve conflicts among the plans.
6. Where a forest plan may not be made consistent with the local plan, the EIS prepared for the plan should justify why its plan is not consistent with local plans, as determined by local authorities, and explain why its plan cannot be made consistent with local plans.

If these principles for coordination are not incorporated into the Planning Rule, then the EIS for the Planning Rule should include alternatives that do. Furthermore, the EIS should evaluate the potential social, economic, and environmental justice implications of any alternatives that do not provide effective coordination with local government.

The proposed principles do not sufficiently address two important characteristics of the forests, and should be expanded. First, founding purposes of the forests are for grazing, timber, mining, and other economic factors. Management of the forests' resources to promote sustained yields should be paramount in the principles. However, these topics are glossed over, despite their relevance, especially to working landscapes in rural communities. It is therefore recommended that a new principle and associated questions be added in regards to managing natural resources to serve the American people and local economies in a sustainable manner.

Secondly, the forests provide opportunities for recreation that are of utmost importance to visitors and local economies alike. Indeed, most forest visitors' purpose is recreation, and the local communities in the vicinity of the forests depend on these visitors for their livelihood. The principles proposed seem to delegate this reality to secondary consideration. Therefore, it is recommended that another new principle and associated questions be crafted to promote diverse recreational opportunities, including but not limited to hiking, camping, off-road vehicle use, and dispersed recreation.

In addition to coordination issues, the following concepts should be included in the guiding principles when crafting the new Rule:

- Founding purposes of the forests are for grazing, timber, mining, and other economic factors. These topics should be taken into account to a greater degree, and are integral components to creating vibrant, working, rural communities.
- Permitting processes should be streamlined.
- The financial and economic burden of Forest Service bureaucracy should be reduced.

- Restoration and conservation do not necessarily enhance the resilience of ecosystems.
- Flexibility should be allowed for land managers to address actual observed impacts, rather than speculative issues such as climate change, if not applicable.
- Water supply issues should be more focused on forest lands.
- Alternative and hydroelectric energy siting and transmission should be specifically evaluated and included in the analysis.

Thank you. If you have any questions regarding these matters, please contact the County's Planning Department staff at (760) 878-0263.

Sincerely,

Richard Cervantes

Richard Cervantes, Chairperson
Inyo County Board of Supervisors

cc: Board of Supervisors
Kevin Carunchio, CAO
Randy Keller, County Counsel
Doug Wilson, Willdan
Regional Council of Rural Counties
California State Association of Counties
National Association of Counties

FRD 0466

WEBER COUNTY

County Commission
Weber Center
2380 Washington Blvd.
Ogden, Utah 84401
(801) 399-8402
FAX (801) 399-8305

May 2, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 E 500 S
Bountiful, UT 84010

RE: Forest Service Planning Rule

To Whom It May Concern,

Thank you for the opportunity to review and comment on the proposed Forest Service Planning Rule and Draft Environmental Impact Statement (DEIS).

Weber County requests that the adopted Forest Service Planning Rule require notice and an opportunity for comment to local governments when there are any changes to a Forest Service Land Management Plan or allied projects. In the Process Requirements and Public Notification sections it appears that such a requirement to notify and give an opportunity to comment to state and local government agencies is included on the intent to develop, amend, or revise a Forest Service Land Management Plan. Weber County supports the language requiring notification and an opportunity to comment for local governments.

In the Plan components section it is a positive that the Forest Service is considering other issues like sustainability, social, economics, climate, and ecology.

Again, thank you for the opportunity to review the proposed Planning Rule. Weber County looks forward to collaborating with the Forest Service on public lands planning and projects in the future.

Sincerely,

Jan M. Zogmaister

Jan M. Zogmaister, Chair
Weber County Commission

WEBER COUNTY
COUNTY COMMISSION
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Ogden, Utah 84401

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Forest Service Planning DEIS
C/O: Bear West Company
132 E. 500 S.
Bountiful, UT 84010

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Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 12.71.44.210
Form Letter:

Comments

Please see attached letter.

Individual(s)

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FRD-0566

BOARD OF SUPERVISORS

May 10, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, UT 84010

Dear Sir or Madam:

Please accept the following comments from the County of Plumas regarding the new forest planning rule proposed by the United States Forest Service.

Water and Timber: It has been said from time to time that for today's Forest Service "water is the new timber." In Plumas County, there is a high level of public recognition of the water supplies that flow from National Forest lands to meet local needs and to feed into California's State Water Project, which provides water to 25 million people from Northern California to as far away as San Diego. We applaud the steps taken by the Forest Service in recent years to elevate its mission of ensuring "favorable conditions of water flows" (one of the two forest purposes established in 1897) and to seek to establish better connections between our relatively remote forest lands and the people downstream who benefit from the abundant water supplies that come off the forests.

However, the other fundamental purpose for establishing the National Forests was to provide a "continuous supply of timber for the use and necessities of citizens of the United States." From the broadening of recognized forest uses in the Multiple-Use Sustained-Yield Act of 1960, to today's interest in monetizing an array of ecosystem services, the fact must not be lost that the primary purposes of the National Forests are to supply water and timber. This concept must be stated explicitly in the planning rule to provide context for the ambitious inventory of spiritual sustenance, wilderness designations, sustainable recreation facilities, and many other things the proposed rule seeks to advance.

As clearly stated in the Multiple-Use Sustained-Yield Act and reinforced by the United States Supreme Court, uses of the forest for purposes such as grazing, aquatic habitat, or recreation are to be supplemental to, and not in derogation of, the purposes for which the national forests were established in 1897, which are the twin pillars of water and timber. (*United States v. New Mexico*, 438 U.S. 696, 714 (1978).) We are pleased that water is receiving a renewed level of appreciation and attention, but only as a complement to timber and not as a replacement. In that vein, the new planning rule should seek to resurrect an effective level of active forest management, not only to restore the continuous supply of timber, but also in recognition of the

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many attendant benefits, such as biomass, fire resiliency, and long-term habitat preservation and species conservation.

Forest Receipts: When the National Forests were reserved by the federal government and taken off the local property tax rolls, a commitment was made for a mechanism to generate revenue and pay for local public services. New forest plans should include proactive planning that will increase economic activity and fulfill the promise of that compact with the forest counties. In addressing economic sustainability, as the new rule requires in section 219.8(b)(3), forest plans should recognize the local economic benefits and impacts of the National Forest and address the relationship between trends in forest management/forest receipts and payments to support local roads and schools. Instead, and unlike the 1982 Planning Rule, the new rule eliminates any reference to forest receipts, which is an unfortunate reflection of the abandonment of forest counties.

Coordination: In 2008, the Plumas County Board of Supervisors adopted Resolution 08-7514, implementing Coordinated Agency Status and notifying federal and state agencies of Plumas County's expectation that other agencies coordinate their plans and projects with the County as required by various federal and state laws. In particular, the National Forest Management Act (NFMA) requires that forest plans be coordinated with the land and resource management planning processes of state and local governments. The provisions of the 1982 planning rule that address coordination (§219.7) provide an appropriate framework for coordination with other public agencies, and those provisions should be carried forward in the new planning rule without alteration. Areas of particular concern include the following:

- §219.7(b) of the current planning rule requires county governments to be given direct notice of forest plan revisions and schedules of anticipated planning actions. Providing a mechanism for direct notice is a vital means of ensuring engagement in planning processes, and we are strongly opposed to the elimination of the county notice requirement in the proposed rule.
- §219.7(e) of the current planning rule requires the Forest Service to seek input specifically from local governments to help resolve management concerns in the planning process. This requirement for direct consultation stems from NFMA's mandate for coordination with local agencies and confers a status in planning processes that acknowledges the contributions and responsibilities that are in many ways unique to local agencies, including representation of the local electorate, institutional memory, and planning responsibilities for the private lands that fall under the "all lands" umbrella.
- §219.4(b) of the proposed rule states that the Forest Service will comply with the local government coordination requirements of the National Forest Management Act (16 U.S.C. section 1604) "to the extent practicable and appropriate" (emphasis added). The proposed rule adds no such qualifying language where reference is made to the requirements of the Endangered Species Act, Clean Water Act, Clean Air Act, or Wilderness Act. It is inappropriate to graft that qualification onto the clear

statutory language of NFMA, as if to encourage the responsible official to look for excuses to circumvent the statute.

- §219.4(b)(3) of the proposed rule states that the Forest Service will not conform resource management to meet non-Forest Service objectives or policies. That approach is completely backwards. Forest Service planning and actions should strive to be consistent with the plans and priorities of local agencies for forest management, recreation, fire safety, transportation, and ecological and economic sustainability, among other things. If the plans and priorities of the Forest Service and local governments cannot be reconciled, there must be adequate analysis to document that there is no superior alternative to a proposed plan or action. This analysis is already required by the implementing regulations of the National Environmental Policy Act (40 CFR 1506.2(d)).
- §219.7(e)(2) of the proposed rule provides that "coordination activities" are among the optional content of a forest plan. Forest-specific coordination protocols should be included in §219.7(e)(1) as part of the required content in a forest plan.

As a general matter, the rule should be proactive in encouraging and requiring better coordination with local governments. The statutory mandate of NFMA is only a starting point, and the intent of Congress in mandating "coordination" is reflected in the Federal Land Policy and Management Act (FLPMA). The Forest Service should embrace the positive lessons of successful coordination that have come out of the FLPMA process rather than attempt to hide behind a narrow interpretation of NFMA. And, as explained in the February 2011 letter to Chief Tidwell from Fred Kelly Grant and Sean Curtis, there is a strong case to be made that the Forest Service is legally compelled to acknowledge and apply the FLPMA coordination process.

The elected officials in our national government represent the broad interests of the American people in how our National Forests are managed, but the consequences of Washington, D.C. management decisions are felt most immediately and directly by the citizens of forest communities. Local governments and locally elected representatives bring a reservoir of knowledge and institutional memory to assist often-transient Forest Service staff, and they must continue to have input into forest planning and management decisions. The recent decisions under the Travel Management Rule and the ensuing wave of appeals and pending lawsuits are just the latest example of the chaos created when national policy directives are imposed without any meaningful local coordination.

Finally, while we support the coordination provisions of the 1982 rule over the newly proposed structure, we also support the provisions of the new rule that seek to provide earlier and greater opportunities for public input and to give greater discretion to local Forest Service staff to determine what forms of outreach and interaction are appropriate for a particular planning process. Unfortunately, these improved opportunities for the public are proposed at the expense of local government coordination. There is no need for such a trade-off; the public can be given the opportunities that are included in the new rule, while the role of local government can be respected by retaining §219.7 of the 1982 rule.

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Pace and Scale of Fuel Treatment: Pacific Southwest Regional Forester Randy Moore has called for an increase in the pace and scale of fuel treatment to 500,000 acres per year in California to reestablish fire-resilient forest ecosystems and help offset climate change impacts on the forests. Unless fuel treatment efforts are increased dramatically, the size, number, and intensity of catastrophic wildfires will continue to grow, progressively destroying the Sierra Nevada. Each forest plan should be required to quantify acreage progress and timelines that will be achieved to restore healthy forest conditions and maintain those conditions on a sustainable basis. Given the state of the federal budget and the unlikelihood that the pace and scale of necessary fuel treatment will be supported with appropriated funds, forest plans should include contingency financing plans that show how fuel treatments can be made financially self-supporting.

Other Comments: We also offer the following comments with respect to particular areas of the proposed rule:

- §219.2(b)(3) – We fully support the change from the 1982 rule that shifts primary decision-making authority from the Regional Forester to local forest supervisors. This new approach will produce a superior product at the end of the planning process.
- §219.7(e)(1)(i) – In addition to the required plan content that identifies watersheds that are a priority for maintenance or restoration, the plan should identify water users who rely upon favorable conditions of water flows and address how water rights relate to watershed maintenance and restoration.
- §219.9(b) – In supporting species conservation, a forest plan should not establish any requirements that exceed those of the Endangered Species Act. Forest management activities directed toward ecological sustainability and resiliency have been significantly constrained over the past two decades by single-species management resulting from lawsuits or threats of lawsuits. The planning rule should not include any requirements that impose species conservation burdens on the Forest Service in excess of existing statutes.
- §219.10(a)(1) – In developing integrated resource plans, the Forest Service should consider surface and subsurface water <u>supply</u> in addition to water quality.
- §219.10(b)(1)(i) – New plans are required to address sustainable recreation and desired conditions for scenic "landscape character," which is defined as a "sense of place" and used "to determine scenic attractiveness and to measure scenic integrity." The concept of "landscape character" should not be so narrowly limited. Evidence of <u>working</u> landscapes and <u>historic</u> landscapes are familiar and welcome sights that go to a "sense of place" that also envelops community, ancestry, productivity, and resource stewardship.
- Subpart B – For the pre-decisional administrative review process, standards should be included to specify when a decision or proposed action needs to be recirculated for additional public review following a decision by the responsible official to

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> significantly alter the decision or project as a result of the administrative review process. At a minimum, recirculation should be required when significant new information is incorporated in a revised decision or when a plan or proposed action is significantly changed. A revised decision should not need to be recirculated as long as the revision has not deprived the public of meaningful opportunity to review the final decision and provide comments or raise objections.

As a final note, we are disappointed by the last-minute release of the Science Review as the comment period nears its end. The timing of the release of that document has created confusion as to whether it too needs to be reviewed and commented upon. The purposes of this agency-sponsored review are not entirely clear, but it should not be a basis for decision-making given the point at which it has been interjected in the NEPA process.

Sincerely,

Lori Simpson

Lori Simpson
Chair, Board of Supervisors

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Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 216.64.18.251
Form Letter:

Comments

See Attachments

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NACo National Association of Counties

The Voice of America's Counties

May 15, 2011

Forest Service Planning DEIS
C/O Bear West Company
172 E 500 S
Bountiful, UT 84010

RE: Planning Rule

To Whom It May Concern:

On behalf of the National Association of Counties (NACo), please accept the following comments related to the proposed National Forest System Land Management Planning Rule (Rule). We understand the objective of the proposed rule is to guide the collaborative and science based development, amendment, and revision of land management plans that promote healthy, resilient, diverse, and productive national forests and grasslands.

NACo is the primary representative of the 3,068 individual county governments in the United States and works to create partnerships between local county governments and the Federal Government. There are over 700 counties nationwide with National Forest System land within their boundaries. These counties are, therefore, vitally concerned about the present and future management of these lands. The following comments are provided to foster that partnership in the management of the nation's national forests and grasslands.

§219.2 – Levels of planning and responsible officials

NACo supports the designation of the unit supervisor as the responsible official for unit level plans. Experience has shown that early and regular face to face meetings with the governing bodies of the affected counties is the best way to initiate and maintain appropriate local-level collaboration. Elected county officials are the only legally accountable representatives of the "public" at the local level.

§219.2(b)(3) states that the local unit supervisor is the responsible official for development and approval of a plan, unless a regional forester, Chief, under secretary, or the Secretary acts as the responsible official. NACo recommends adding addition language clarifying under what circumstances higher officials would be able override the unit supervisor as the responsible official.

§219.3 – Role of science in planning

NACo supports the requirement that the responsible official shall consider science throughout the planning process. However, this section should additionally recognize that scientific data is one of many factors influencing a plan decision. Sound science has an important role in Forest Service planning and management. Proving what science is "best" is likely to be time consuming and of little value, but will undoubtedly lead to litigation which will further delay the planning process.

While due diligence on behalf of the responsible official should be required, counties are concerned that the strict procedural requirements imposed on the responsible official to document in detail the identification, interpretation, and application of scientific findings and conclusions threaten to drain agency resources, elevate consideration of science above other considerations, and have the potential to allow for increased litigation (specific to compliance).

§219.4 – Requirements for public participation

The Federal Land Management and Policy Act (FLPMA), as well as other regulations, requires that planning efforts undertaken by the federal government consider existing state and local plans and ordinances. This level of coordination ensures a more comprehensive plan that incorporates many of the issues affecting communities located adjacent to public lands.

Under the existing rule (36 CFR 219.7) the planning process took so long that effective public participation by the affected county governments was prohibitively complex and resulted in extreme "process-fatigue" without yielding commensurate benefits. NACo supports early and thorough collaboration with local government officials in the planning process [§219.4(a)], but suggest clarifying when collaborative efforts will be determined not "feasible and appropriate." NACo maintains that Federal law requires agencies to coordinate with local governments and suggest that thorough collaborative efforts (with local governments) are always feasible and appropriate.

NACo supports active public participation and encourages the agency to give increased weight to local communities most directly impacted by the plan.

NACo supports the requirement to provide opportunities for other government agencies to participate in planning on NFS lands [§219.4(a)(8)], specifically the requirement for the responsible official to encourage local governments to seek cooperating agency status.

The National Environmental Policy Act (NEPA) requires the federal government cooperate with local governments when developing environmental documents. The white House Council on Environmental Quality (CEQ) has also provided guidance to federal agencies on granting Cooperating Agency Status to State and local governments. The Forest Service Handbook, provides additional guidance to agency managers about inviting local governments to participate in the preparation of environmental documents.

§219.4 will provide for much needed consistency across Forest Service Regions in county participation as cooperating agencies. Currently, much regional disparity exists in the use and acknowledgement of cooperating agency relationships by the Forest Service.

NACo supports the requirement that the responsible official review county planning and land use policies and document results of the review in the draft Environmental Impact Statement, including how the forest plan will address the impacts identified and how the plan will contribute to joint goals. [§219.4(b)(3)]

NACo recommends striking "to the extent practicable and appropriate" from §219.4(b)(1) and replace with "with a view toward achieving consistency between the proposed forest and local plans." As mentioned before, NACo believes it is always appropriate and practicable for the agency to coordinate with local governments. Additionally NACo recommends adding the following requirement: "Where the forest plan may not be made consistent with local plans, the responsible official shall document how and why its plan is not consistent with local plans, as determined by local officials, and explain why its plan cannot be made consistent with local plans."

The language in §219.4(b)(3) states "the responsible official will [not] seek to direct or control management of lands outside of the planning area, nor will the responsible official conform management to meet non-Forest Service objectives and policies." NACo is concerned that this language may contradict the earlier stated objective to coordinate with local governments. In addition, NACo is concerned that this section may create conflict with established Community Wildfire Protection Plans (CWPP) which include planning on both Federal and non-Federal lands.

§219.7 – New plan development or plan revision

NACo requests that future planning efforts require the responsible official to consider the reduction of Fire Regime Condition Class (FRCC) in consideration of desired conditions [§219.7(d)(1)(i)]. NFS lands should be actively managed to reduce the threat of wildfire and the release of greenhouse gases. Reduction of FRCC 3 to FRCC 2 and FRCC 1 will insure a sustainable economic and environmental legacy for future generations. Each year catastrophic wildfires throughout the nation contribute to climate change, jeopardize the national treasury, threaten fish and wildlife habitat, degrade both water and air quality, and cause devastation to forest dependent communities through loss of life, property, jobs, and the nation's timber resource.

§219.8 – Sustainability

NACo appreciates that the proposed rule considers the ecological, social, and economic systems as interdependent and without ranking in importance. Nevertheless, the rule requires the unit to take affirmative actions under the plan to maintain and restore elements of ecological sustainability, but merely guides the unit's contribution to social and economic sustainability. Counties recognize that the agency has more influence over factors that impact ecological sustainability on its lands. They also acknowledge that the rule makes a presumption that land is suitable for timber production unless identified in the plan as not suitable.

We have concern over how the proposed rule broadly defines "ecosystem services" and recreation as the principal contributions of national forests toward the social and economic well-being of nearby communities. Given the sheer size of these national forests, their contributions to surrounding communities must be more tangible, substantial, and sustainable for their contributions to be appropriately significant. §219.8 should be amended to emphasize the profound role that a national forest plays in the vitality of local communities, and direct the responsible official to embrace that role through meaningful and productive coordination with elected county officials.

§219.8 (b)(4) should be clarified to provide a clear understanding of how the agency defines "sustainable," understanding that local interpretation of economic sustainability may differ from the perspective of the responsible official. All efforts should be made by the responsible official to achieve consistency between agency and local definitions of sustainability.

§219.9 – Diversity of plant and animal communities

NACo is concerned that §219.9 will provide increased process and litigation by diverting scarce agency resources to expand the obligation to demonstrate that a plan will maintain ecosystem diversity and viable populations of plant and animal species. The agency is assuming a burdensome responsibility, not required by statute, to maintain the viability of "species of conservation concern within the plan area", and to extend the viability requirement to native plants and invertebrates, about which the agency has "very minimal biological information on their life histories, status, abundance, and distribution". Wildlife viability is not the only consideration of the agency when developing site-specific plans.

NFMA does not mention "viable populations" but instead the Act only requires the Forest Service to "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives and within the multiple-use objectives of the land management plan." 16 U.S.C. 1604 (a)(3)(b). In contrast, the regulation treats national forests as biological preserves rather than forests managed for the use and necessities of the people United States as required by the Organic Act. 16 USC 476.

The current planning rule makes it extremely difficult for the Forest Service to demonstrate that it is maintaining viable populations of wildlife species. One of the most frequent legal claims in national forest litigation is that the Forest Service is not maintaining viable populations. The Forest Service should use the revision of the planning regulation as an opportunity to eliminate this fertile ground for litigation. There is no consensus on the population level that achieves a "viable" population so the regulation imposes a legal obligation on the Forest Service to ascertain what is not ascertainable. Measuring and proving that a forest plan will "maintain" or is "maintaining" a viable population is nearly impossible, leaving the Forest Service highly vulnerable to lawsuits.

The forest planning regulation should not make the protection of candidate species a legal obligation when Congress has not imposed such a legal obligation in either the Endangered Species Act or the National Forest Management Act. The Forest Service has higher planning priorities than to devote its scarce resources to providing a conservation strategy in the forest plan to conserve every species for which someone has filed a petition to list or for which the listing agency has not yet determined whether listing is even warranted.

§219.9 and §219.10 Multiple uses / Timber requirements based on the NFMA

This section fails to recognize that per the National Forest Management Act (NFMA), ecological factors (as referenced in §219.9) are not elevated above any other multiple-use nor does it require that national forest land use plans be contingent upon such considerations. NACo is concerned that the responsible official will be influenced to consider superfluous and relatively undefined "ecosystem services" above the statutory requirements of multiple use.

The agencies multiple use mandate, a mandate imposed by Congress, codified in agency regulations and affirmed by the courts, seems to be circumvented in the proposed rule. The multiple use sustained yield statutory mandate is a viable and credible planning blueprint for managing forest lands. The current proposed rule fails to adequately uphold the statutory requirements of NFMA (16 U.S.C. §1600) and MUSYA (16 U.S.C. §§528-31).

§219.19 – Definitions

The proposed rule defines ecosystem services too broadly and improperly elevates ecosystem services to the same level of importance as multiple uses under MUSYA.

The plan must provide for "ecosystem services" but the term is very broadly defined such that if a plan does not provide one of the services it will violate the regulation. Ecosystem services are defined as: "Benefits people obtain from ecosystems, including: (1) Provisioning services, such as clean air and fresh water, as well as energy, fuel, forage, fiber, and minerals; (2) Regulating services, such as long term storage of carbon; climate regulation; water filtration, purification, and storage; soil stabilization; flood control; and disease regulation; (3) Supporting services, such as pollination, seed dispersal, soil formation, and nutrient cycling; and (4) Cultural services, such as educational, aesthetic, spiritual, and cultural heritage values, as well as recreational experiences and tourism opportunities." 36 C.F.R. 219.19. The regulation states that "the plan must provide for multiple uses and ecosystem services" 36 C.F.R. 219.11. To the extent that ecosystem services trump the multiple uses in the MUSYA, the regulation is an end run around MUSYA without an act of Congress.

§219.53 – Who may file an objection

NACo supports language that would limit filing of an objection to those who have submitted "formal comments" related to a plan, plan amendment, or plan revision during public participation opportunities provided in the planning process. We also support the requirement that objections be based on the substance of the objector's formal comments, unless the objection concerns an issue that arose after opportunities for formal comment. It is appropriate that the burden falls on the objector to demonstrate compliance with these requirements.

With increased opportunities to participate and comment, objectors have no reasonable arguments against these requirements. A plan, after the exercise of a reasonable process, must be adopted and implemented to let appropriate management begin.

NACo looks forward to continuing our close working relationship with the Forest Service in an effort to ensure that the public is involved in forest planning at the appropriate level and in truly meaningful ways.

As proposed, we believe the proposed rule is overly long and encumbered with inflexible mandatory requirements that preclude it from being a workable, affordable, and enduring Planning Rule. We believe that the adoption of the above recommendations into the planning rule will better enable the agency to plan for wise stewardship of the Nation's forest resources as well as to provide for the long-term stability of the forest communities we represent.

Sincerely,

Larry E. Naake

Larry E. Naake
Executive Director
National Association of Counties

The National Association of Counties (NACo) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,068 counties. NACo advances issues with a unified voice before the federal government, improves the public's understanding of county government, assists counties in finding and sharing innovative solutions through education and research, and provides value-added services to save counties and taxpayers money.

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 208.81.155.26
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Comments

See Attachments

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Kootenai Tribe of Idaho

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10 May 2011

U.S. Department of Agriculture
U.S. Forest Service
36 CFR Part 219
National Forest System Land Management Planning; Proposed Rule

Re: Kootenai Tribe of Idaho Comments on Proposed Planning Rule

Submitted via: http://www.govcomments.com/

Kootenai Tribe elders pass down the history of the beginning of time, which tells that the Kootenai people were created by Quilxka Nupika, the supreme being, and placed on earth to keep the Creator-Spirit's Covenant – to guard and keep the land forever. The Kootenais have never lost sight of their original purpose as guardians of the land.

Bands of the Kootenai Tribe have inhabited Kootenai Territory, which includes portions of Idaho, Montana, Washington, British Columbia and Alberta, since time immemorial. The Kootenai Tribe of Idaho is one of two bands in the United States[1]. Headquartered near Bonners Ferry, Idaho, the Kootenai Tribe of Idaho possesses federally reserved fishing, hunting and gathering rights within Kootenai Territory.

The Kootenai Tribe and the Forest Service enjoy a close working relationship and collaborate often on issues of common concern to protect the National Forest System lands within our Territory, which includes the Idaho Panhandle and Kootenai National Forests. Management of the National Forests within Kootenai Territory is important to the Tribe to fulfill our Covenant with the Creator to keep and guard the land forever.

General Comments:

The Agency must be commended for its careful consideration of all viewpoints and its efforts to ensure a balanced approach to meeting local and national needs. The Agency must also be

[1] The other United States band is one of the constituent bands of the Confederated Salish and Kootenai Tribes of the Flathead Reservation. There are also four Kootenai bands in British Columbia. Although each band is governed separately, collectively the bands may be referred to as the Ktunaxa or Kootenai Nation.

commended for its recognition of Tribal rights and interests in National Forest System resources and management of those resources.

Specific Comments:

§219.3 (Role of science in planning) –

The Proposed Planning Rule provides an important framework that allows for flexible management in this era of rapidly changing circumstances. The Proposed Planning Rule also rightfully recognizes that science is informative and necessary, but not the only factor that must be considered when planning for the National Forest System. Instead, Tribal, federal and state agencies must work closely to weigh the different policy issues inherent to land management toward an outcome that meets federal requirements to Indian tribes, meets local needs and reflects national values.

The Tribe believes, however, that additional explanation in § 219.3 would be beneficial to make clear that the intent is not to create a best available science standard or switch the burden of proof to the Agency. Instead, the Proposed Planning Rule should make clear that deference to Agency interpretation of the science and weighing of the competing demands and interests of the National Forest System and multiple-use objectives remains the legal standard.

§219.4 (Requirements for public participation) –

Thanks to early Agency-Tribal discussions, the Proposed Planning Rule sets forth a practical and respectful approach to Tribal participation, consultation, cooperation and coordination. The National Forest System is an integral part of Tribal life and provides many of the resources Tribal members continue to rely on in the same manner as their ancestors. Working together, as the Kootenai Tribe does with its Forests, is essential to proper management and effective co-management of the resources.

We make special note of the incorporation of Native knowledge, indigenous ecological knowledge and land ethics into the Proposed Planning Rule in §219.4(a)(7). This provision is an important recognition of the expertise of indigenous peoples in regard to the lands they have managed, used and survived on since time immemorial.

§219.8 (Sustainability) –

Specific comments were requested concerning whether to include cultural sustainability along with ecological, economic and social sustainability. The Agency proposes to require responsible officials to take into account cultural conditions when developing plan components for social and economic sustainability. An alternative was also mentioned that would require responsible officials to develop plan components for cultural resilience, described as the "ability of cultural knowledge and expression to adapt to social, economic, and ecological change in ways that continue the core meanings of that knowledge and expression."

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The term "culture" is used in myriad ways. It can be used broadly, in which case it necessarily includes ecological, economic and social components. When used thus, culture is part and parcel of ecological, economic and social sustainability. The term can also be used, however, to include specific cultural practices. Both these uses and the many other uses of the term are equally important and must be addressed.

Rather than precisely defining culture or cultural sustainability and risk narrowing the term, we suggest the Proposed Planning Rule provide management flexibility so all the different uses of the term can all be addressed. Thus, responsible officials should be required to take into account cultural conditions, uses and practices when developing plan components for ecological, social and economic sustainability[2]. In this manner, forest plans can be developed that ensure traditional ways of life (culture and cultural practices) are sustained for the future.

Recognizing that circumstances change and culture at times must adapt, we also suggest that responsible officials be required to develop plan components for cultural resilience. It is important to note here, however, that adapting culture to changed circumstances does not mean Tribal cultural practices such as the exercise of Treaty-reserved fishing, hunting and gathering rights can be abrogated or amended. Instead, development of plan components for cultural resilience should ensure that the core meanings of cultural knowledge and expression are continued while striving when possible to recover specific cultural practices that may have been changed or lost due to social, economic and ecological change.

Last, we reiterate the importance of recognizing that culture, social and economic sustainability are inherently intertwined. The Tribe incorporates this policy through its multifaceted holistic Fish and Wildlife Department programs that integrate Tribal, economic, social and scientific values. We recommend the Proposed Planning Rule reflect a similar approach.

§219.9 (Diversity of plant and animal communities) –

Kootenai Territory is fortunate in that it contains intact habitat inhabited by a number of species the Kootenai people have relied upon since time immemorial. Unfortunately, though, many of those species are endangered, threatened or functionally extinct. The status of those species brings along with it a higher level of management responsibility to protect Kootenai resources and restore Kootenai ability to exercise reserved rights to hunt, fish and gather within Kootenai Territory.

Such management cannot be directed solely at endangered or threatened species, but must be done through a multi-faceted holistic approach that integrates Tribal, economic, social and

[2] We note that in the Section by Section Explanation of the Rule only social and economic sustainability were listed. We believe this may have been an inadvertent error as ecological systems and functions are critical components of traditional ways of life and, therefore, Tribal culture, as well as inherently intertwined with social and economic components.

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scientific values. Section 219.9, when read in light of the entire Proposed Planning Rule, appears to set up just such an approach.

We suggest, however, that §219.9(c) could be interpreted narrowly to foreclose restoration of native tree and plant species that may not currently exist in the plan area, but were historically present. We recommend that this subparagraph be amended to read "[t]he plan must include plan components to preserve, where appropriate, and to the degree practicable, the diversity of native tree and other native plant species similar to that existing currently or which historically existed in the plan area."

We also caution that §219.9(b)(3)'s use of the term "viable" may lead to future conflict. Forests Plans are not recovery plans and the National Forest System is only one portion, albeit a critical portion, of the ecosystem. Thus, this section should be further clarified to ensure it does not create a fixed requirement or impose additional burdens on the National Forest System that it alone cannot fulfill.

§219.10 (Multiple Uses) –

The Agency has done a good job of identifying the multiple uses of the National Forest System that must be provided for in plans. We especially commend the Agency for its inclusion of cultural and historic resource protection and management of areas of tribal importance. We suggest however, that exercise of Treaty and other reserved hunting, fishing and gathering rights should be specifically mentioned in subsection (b)(1). This can be accomplished by amending (b)(1) to include a new sub-subsection that requires plan components for a new plan or plan revision to provide for: "Protection and enhancement of the exercise of Treaty and other federally reserved hunting, fishing and gathering rights."

The Tribe agrees with protection of wilderness areas designated by Congress as described in § 219.10(b)(iv). Extension of such protections to recommended wilderness areas, however, should be done so carefully and on a case-by-case basis to ensure de facto wilderness areas are not created without Act of Congress. Protections included in Forest Plans should also ensure management flexibility to respond to the changing conditions of the National Forest System due to climate change and other factors.

§219.13 (Plan amendment and administrative changes) –

The Proposed Planning Rule's approach to plan amendments, revisions and administrative changes is a good balance of flexibility and process that should lead to efficient planning for National Forest System management. We are concerned though, that the term "administrative change" may lead to increased litigation over its meaning as it remains somewhat vague. We suggest that it may be useful to provide additional examples through policy guidance to flesh out what is and what is not intended to be considered an administrative change.

§219.15 (Project and activity consistency with the plan) –

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We recognize the importance of ensuring project and activity consistency with forest plans. Section 219.15, however, will require a lot of scarce resources to be spent on review of past projects and activities rather than looking to the future. An alternative suggestion is to establish a presumption that previous projects and activities are consistent with the plan.

We are also concerned with the blurring of guidelines and standards in §219.15(d). Standards are fixed requirements that are legally mandated. Guidelines, on the other hand, are discretionary. We recommend this section be modified accordingly.

§219.19 (Definitions) –

The Tribe suggests modifying the definitions of economic systems and ecosystems to make clear that ecosystem, social, economic and cultural components are inherently intertwined. For example, economic resources such as forest products are important ecosystem services that are used to support cultural activities and services, which in turn create social interactions. You cannot have one without the other.

Conclusion:

The Proposed Planning Rule represents an important step for management of the National Forest System that continues to be of critical importance to the Kootenai Nation, the United States and citizens of each. The Kootenai Tribe of Idaho looks forward to continuing its work with the Forest Service to manage the forests within Kootenai Territory.

Sincerely,

Tribal Chair Jennifer Porter,
Kootenai Tribe of Idaho

OT	S	RT	DT	EA	F	RI	CE

Attributes

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IP Address: 70.99.133.34
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Comments

See Attachments

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Created On	5/11/2011 4:59:00 PM

0642

May 16, 2011

Forest Service Planning DEIS
C/O Bear West Company
172 E 500 S, Bountiful, UT 84010

RE: Proposed National Forest System Land Management Planning Rule, Docket Number FS-2011-0002

To Whom It May Concern:

The California State Association of Counties (CSAC) and Regional Council of Rural Counties (RCRC) appreciate this opportunity to offer comments on the proposed National Forest System Land Management Planning Rule (Planning Rule). Land management planning is one of the most important functions of local governments, and ensuring that federal plans are consistent with local plans is imperative to our communities, particularly in counties with significant amounts of National Forest System land.

Counties are not just another group of stakeholders in the planning process. We are governmental bodies comprised of elected officials working to promulgate the best possible land management decisions to maximize the health, safety, economic stability, and quality of life of our citizens. A cohesive, coordinated effort between regional U.S. Forest Service representatives and local officials is crucial to guarantee the implementation of the best possible final forest plans, and these efforts begin with the adoption of the Planning Rule. Our comments and recommendations follow.

The final Planning Rule must reinstate and strengthen coordination language included in Section 219.7 of the 1982 National Forest System Land and Resource Management Planning Rule.

CSAC and RCRC are disappointed that the coordination language in the proposed Planning Rule was not made more prescriptive for responsible line officers, and are concerned that it was in fact softened from the coordination requirements contained in Section 219.7 of the 1982 Rule currently in effect.

The proposed Planning Rule completely omits the 1982 Rule coordination requirements, which are consistent with requirements in 36 CFR 219.9, effectively removing

many of the mandated steps the forests must take in coordinating with other governmental agencies. And while Section 219.4 (Requirements for Public Participation) of the proposed Planning Rule states that forests are required to coordinate planning efforts with tribes, federal agencies, and state and local governments "to the extent practicable and appropriate," the Rule lacks definitions for what is practicable and appropriate, effectively leaving it up to the interpretation of the individual responsible line officer. Inconsistencies from one forest to the next in how counties are involved and considered in the planning process already is fostering frustration among local government officials. The omission of the 1982 coordination language will only exacerbate those inconsistencies and further strain relations between counties and forests.

Not only do we recommend restoring the 1982 coordination language, but we also recommend strengthening the language to ensure that counties are involved in the planning process as early and often as possible. The most important part of coordination is ensuring that forest plans are consistent with local land use plans to the maximum extent practicable. As we commented during the scoping process, regional staff should be required to consistently begin coordination with local governments at the earliest possible time. Local land use plans should be reviewed prior to developing a draft forest plan in direct consultation with the local agency. Once the initial draft of the plan is complete, the responsible line officer should immediately consult the local agency to determine the level of consistency with local plans.

In cases where a forest plan is inconsistent with local land use planning efforts, the regional officer should be mandated to meet again with local government officers and, if necessary, form a joint task force to work towards achieving consistency. If the region finds, after exhausting all methods of coordination, that the forest plan cannot be made consistent with local plans, the inconsistencies should be justified in the Environmental Impact Statement.

Economic and social impacts should be weighed equally with ecological concerns.

In Sections 219.7 and 219.8 of the proposed Planning Rule, the way ecological concerns are to be considered in forest plans is fairly detailed and prescriptive. In contrast, social and economic impacts are only described in general terms, and consideration in plans is often optional. While we appreciate that the proposed Rule includes social and economic data in its considerations during the Assessment phase, we don't feel the Rule goes far enough in mandating social and economic considerations in the actual plans. Many California counties are in economic crisis and the social landscapes of many rural areas have been greatly affected by previous plan adoptions. If those communities are to ever recover and thrive, each forest must carefully consider the impacts of their planning efforts on social and economic sustainability. CSAC and RCRC recommend that those sections be revised to include more detailed requirements for social and economic considerations in planning efforts.

Wildland fire should be a higher priority in ecosystem plan components.

In Section 219.8, wildland fire and opportunities to restore fire adapted ecosystems is the last in the list of required ecosystem plan components. CSAC and RCRC believe that there is truly no way to move forward with the other ecosystem plan components until fire-

ravaged forest land is properly managed and wildfires are mitigated at a higher level. We recommend that this be moved to Section 219.8 (a) (1) (i).

The Pre-Decisional Administrative Review Process in Subpart B will be a valuable addition to the final Planning Rule and should be retained.

During the planning process, counties have often felt like they have no viable recourse to appeal unsatisfactory components of a plan once the responsible line officer has made the final decision. On many occasions, local governments have found line officers to be unresponsive to their requests for meetings to work out differences of opinions on proposed plans and the plans are adopted - seemingly without consideration of county comments. The Pre-Decisional Administrative Review Process, or objection process, gives stakeholders the valuable opportunity to request an independent review by higher level USFS staff to resolve issues before a plan is finalized without counties feeling like costly lawsuits are the only way to have their comments heard. We recommend the objection process be retained in the final version of the Planning Rule.

Ultimately, while the proposed Planning Rule has many positive elements, CSAC and RCRC are concerned that the issues that most profoundly affect the local communities associated with national forest lands are treated with less significance than others. Our comments and suggested changes are intended to ensure a more balanced and equitable planning process. We also support and concur with the comments submitted by the National Association of Counties (NACo). We thank you for your consideration of our comments and look forward to providing more input as the rulemaking process progresses.

Sincerely,

Karen A. Keene

Staci Heaton

Karen A. Keene
Legislative Representative
California State Association of Counties
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Regulatory Affairs Advocate
Regional Council of Rural Counties
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Crook County Land Use Planning & Zoning Commission
P.O. Box 37
Sundance, WY 82729

FRD-0644

May 9, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S
Bountiful, UT 84010

Dear Planners:

The proposed new planning rule and its effect on the ability of the Forest Service to effectively manage our Forests are very important to Crook County. We have followed very closely and have continued to participate in the planning process for the Black Hills National Forest.

In its 1998 Land Use Plan for Crook County, the County recognizes "the critical tie between the use of the private, federal and state natural resources and the economic stability of the County" and supports continued multiple use of National Forests and Bureau of Land Management land. Through its Land Use Plan, Crook County identifies its intent to, and means by which it will, "cooperate in the planning for federally and state managed land as well as the consideration of the County in any federal or state natural resource regulations."

Since 2000, Crook County has submitted three letters of comment regarding proposed changes to the planning rule (2000, 2003, 2010). At this time we wish to submit comment on the February 2011 Draft Programmatic Environmental Impact Statement for National Forest System Land Management Planning.

We agree with the proposed alternative's designation of the forest or grassland supervisor as the responsible official. We also applaud the proposed use of a pre-decisional objection process to administratively challenge a plan decision. This would require the Forest Service to consider changes before a final decision is made, and would hopefully be a more efficient and economical process than is the current appeals process.

We, however, have serious concerns about the following aspects of the proposed action, Alternative A.

- Assessments – A new addition to the planning process, assessments are not explicitly covered under nor do they conform to NEPA procedures and should, therefore, not be an integral part of the planning process.
- Climate change – The inclusion of climate change as a specific consideration when assessing conditions, revising and amending plans, and identifying monitoring requirements is particularly problematic as the effects of climate change are virtually impossible to single out and quantify; there exists little certainty or consistency in measuring it. Identifying climate change as one of the significant issues to address in the planning rule sets up the entire process to become so costly, time-consuming and complicated that forest planning could become irrelevant and ineffective when it comes to addressing the resource issues that can realistically be managed.

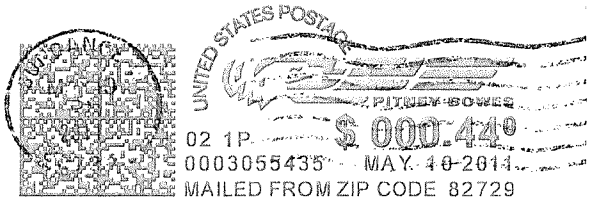
- Requirement to conserve candidate species – If a species is not listed under the ESA, the same mandates to develop recovery-like plans for listed species should not be applied to candidate species.
- Equal protection for recommended wilderness as there is for Congressionally designated wilderness - The status of protection for "recommended" wilderness should not be the same as officially designated wilderness.
- Ecologic sustainability is required, social/economic sustainability is suggested – Language within the new rule should put these goals on the same par; social/economic sustainability should also be required.
- "Ecosystem Services" are broadly defined and considered more important than multiple uses – The new rule must not usurp the principles and requirements already put into place by the National Forest Management Act (NFMA) of 1976 and the Multiple-Use Sustained Yield Act of 1960.
- The proposed rule repeatedly refers to a planning requirement that the Forest Service rely on "best available scientific information" – Sound science is definitely important to Forest Service planning and management, but the burden of establishing and proving what is "best" will be a costly, uphill legal battle that should be avoided.
- Maintaining the diversity of plant and animal communities and viable populations of species of conservation concern is identified as a requirement within the plan area – According to NFMA, forest plans must "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives." A number of forest plan decisions, including the one for the Black Hills National Forest, were reversed on the appeal issue of "species viability"; it is virtually impossible to measure and prove that a forest plan will maintain a viable population.

We do not believe that the proposed action, as presented in the planning DEIS, will improve upon existing planning processes or help the Forest Service to reach and implement decisions more effectively. Considering the many concerns raised in addition to those set out above, that the proposed rule arguably exceeds statutory requirements and that the proposed rule is of unprecedented volume and complexity, the Crook County Land Use Planning and Zoning Commission requests that the proposed rule be withdrawn in is entirety and that the drafting process begin anew. To amend the existing proposal into a functional rule is a practical impossibility.

Sincerely,

Nels J. Smith
Crook County Land Use Planning & Zoning Commission
Chairman

After Ten Days Return to:
Crook County Land Use
Planning & Zoning Commission
P.O. Box 37
Sundance, Wyoming 82729-0037
Address Correction & Forwarding Request



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Forest Service Planning DEIS
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Bountiful, UT 84010

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Converse County, Wyoming

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Mike Colling, Chair • Jim Willox, Vice-Chair • Dave Edwards • Tony Lehner • Major Brown

FRD-0645

May 5, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, UT 84010

Fax: 1-801-397-1605

Re: Department of Agriculture, Forest Service
36 CFR Part 219 RIN-0596-AC94
Comments: National Forest System Land Management Planning

Dear Sir or Madam;

Upon review by the Converse County Commissioners and in conjunction with our Converse County Natural Planning Resource Committee, we would like to offer our formal comments on this Plan. Please find those comments listed below.

Para. 219.4 Requirements for Public Participation

(a)The stated intent to involve the public, including local government and individuals, early and throughout the planning process is commendable.

(a) (4) Early notification, and involvement in the planning process, is very important to potentially impacted private landowners.

(b) (1) Delete "to the extent practicable and appropriate". (FLPMA, NFMA, MUSYA and other statutes require coordination with these entities).

(b) (2) Insert ", amendment" after development.
The review process should include comments of the local planning and land use groups on the results of the review.

(b)(3) The responsible official should conform management to resolve inconsistencies with the objectives or policies of State and local governments.

Para. 219.7 New plan development or plan revision

(c) (1) Economic effects should be considered as an integral part of environmental effects. (NEPA).

(c)(2) (iv) Only Congress can designate Wilderness Areas. (Wilderness Act of 1964) Forest Service should not designate areas as "potential wilderness" and then manage as de facto wilderness pending a possible Congressional approval, which may not happen for years, or ever. Multiple use is adversely impacted by this management.

(c) (2) (v) Wild and Scenic River eligibility- Similar to previous comment.

Para. 219.8 Sustainability

(a) (3) Standard default width is not a good idea- recommend using best available scientific information to determine appropriate widths.

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Para. 219.9 Diversity of plant and animal species

(b) (1) Add after species "where the population currently exists"

(2) Same as previous comment

(3) Add after area "where the population currently exists"

Include local governments in the list of entities.

Para. 219.10 Multiple uses

(b)(iv) Forest Service should not be prescribing recommended wilderness areas and then managing as de facto wilderness, thus preventing some multiple uses until, and if, Congress acts to officially designate these areas as Wilderness.

Para. 219.11 Timber requirements based on the NFMA:

This paragraph does not apply to the National Grasslands and should so state.

Para. 219.12 Monitoring

(a) (7) Monitoring should be required for projects and activities so that success or failure will be documented.

Para. 219.19 Definitions.

Designations. Same comment as above with respect to wilderness or wilderness study areas.
Proposed new definition- Grasslands. Land populated primarily by annual and perennial grasses and suitable for grazing.
Landscape. Ownership is not an artificial boundary. Private property has real boundaries, often delineated by fences in the West. Private property is the cornerstone of the United States' thriving economy over the last two hundred plus years.
Participation. "Such as" should include coordination.
Productivity. Economics should be included rather than excluded.

Para. 219.56 Objection time periods and process

(a) Thirty day response period is too short- recommend ninety (90) days. Also in

Para. 219.62 Definitions

(e)The reviewing officer shall always be at least one level higher than the responsible official. A reviewing officer on the same level is very likely to routinely reject objections.

Thank you for the opportunity to make these comments.

Very truly yours,

Michael F. Colling, Chairman

FRD – 06646

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May 10, 2011

Forest Service Planning Rule
C/O Bear West Company
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RE: National Forest System Planning Rule

Dear Comment Analysis Team:

Thank you for the opportunity to comment on the effort to develop a "new" Planning Rule to help our land managers develop and revise currently outdated Forest Plans.

Mineral County, Montana, for which we are the chief elected officials, is comprised of approximately 83% federal forest land (Lolo National Forest) and the customs and culture of our citizens and our communities developed over time in lock-step with the active management and utilization of that vast expanse of federal forest. These forests within Mineral County became the "essence" of our communities over the past century. Currently, however, because of a lack of active, adaptive, management resulting from changing internal philosophies, pressure from anti-use environmental organizations, and a myriad of appeals and litigation, our customs and culture are being threatened and our economic health is in disarray. Hence we are encouraged to see recognized the need and obligation for the Agency to support "vibrant local economies", a goal not achieved in recent years.

We recognize the need for an updated rule and appreciate your extensive efforts in public engagement during its long and torturous promulgation. However, we feel the result is too complex and detailed (as evidenced by an "explanation" more than twice as voluminous as the rule itself) and will invite a morass of litigation. We had hoped for something more streamlined. This complexity and lack of comprehensiveness, along with the potential for on-going litigation, will surely cause the gobbling of huge chunks of USFS time and budgets -- of particular concern during a difficult time for federal funding – and for every dollar consumed, a dollar will not be available for resource level or project level analysis – resulting in less beneficial action on the ground.

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We are pleased that the new Rule proposes to make the Forest Supervisor the responsible official, rather than the Regional Supervisor. This change will help assure more responsiveness to local needs and concerns – a good thing, the recognition and empowerment of local choices. We actually prefer the language in Alternative C which allows increased flexibility on the part of the responsible official; the stated fear that "greater flexibility provides less assurance that all units would follow best practices" is merely justification for central control which disallows local managers from addressing the unique consistency of their units. Past "top-down" planning for what are, essentially, local choices usually resulted in less than satisfactory management. We regularly note among our constituency an adversarial attitude toward USFS planning and management which is due largely to their perceived failure to affect decisions. Until the planning process more strongly conceptualizes that local citizens, and their customs and culture, have the priority position of influence on decisions, this attitude will persist. After all, it is the local citizens and communities that bear the brunt of decision outcomes and are most affected by forest management.
Also, in this regard, we would like to see a strengthening of the section on collaboration (or perhaps a separate and distinct section) to include stronger and more specific language more in line with Section 219.7 of the 1982 Rule reflecting mandated requirements to coordinate and cooperate with state and, most particularly, local governments whose elected leaders are most representative of their community needs. All too often the interests and needs of forest adjacent and dependent citizens and communities are subsumed by purported "national interests" that are cleverly created and promulgated by strong special-interest organizations with, in reality, quite narrow and subjective goals.

Section 219.10 of the earlier 2005 version appeared to require that a Plan **contribute to the sustainability of the social and economic systems within the plan area on a level equal to sustaining ecological systems**, whereas this new Rule seems to command that managers **must** maintain sustainable ecological resources, while it only offers "guidelines" for social and economic stability. We prefer the former. The proper management of our forests is critical; the Planning Rule must help insure that environmental needs, social needs, and economic needs are balanced and working together.

We are pleased with the Administrative Review process in the new Rule. We believe that a pre-decisional objection process is preferable to a post-decisional appeals process. The objection process must be and open transparent. Any party not having attempted to mitigate concerns by pre-decisional objection should not be allowed to file any post-decision appeal, nor be given any standing in any ensuing litigation.

Finally, we are disappointed that the Rule does not require Plans to emphasize the recovery and utilization of excess biomass as a potential renewable energy benefit – material that will otherwise burn or be wasted.

0646.

Once again, thank you for this opportunity to comment on a hugely important issue.

Sincerely,

Mineral County Commissioners

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Clark Conrow, Member

Roman Zylawy, Member

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FRD-0647

May 10, 2011

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Idaho County has reviewed the Notice of Proposed Rulemaking 36CFR Part 319. We appreciate the update and summary provided by the local Forest Service officials.

Land and resource management planning which results in implementation is extremely important and critical to Idaho County. Our county is in excess of 85 percent Federal ownership which without forest revenues drastically affects public services such as road maintenance, schools, and law enforcement.

We are especially interested in 219.8 sustainability and discussion of social and economic sustainability and will participate as this is developed. Sections 219.10 and 219.11 will hopefully provide the opportunity to look at Forest Service Lands in Idaho County to reduce fire threats to communities and an economically viable product.

Increased efficiency and the stated commitment to enhance jobs and income opportunities for local communities would be a welcome change.

Please keep Idaho County informed as you move forward.

Sincerely,

Jim Chmelik

R Skipper Brandt, Chairman — Jim Chmelik — James Rockwell

Cc Gene Meinen
Kathy Ackerman
Mike Cook

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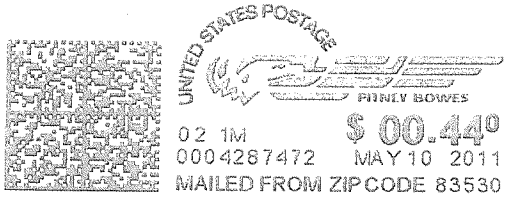

FRD-0947

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FRD-0048

Wyoming State Forestry Division

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May 9, 2011

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Re: Proposed Planning Rule

The Wyoming State Forestry Division appreciates the opportunity to provide comments on the draft of the proposed new planning rule. We believe there is still an opportunity to craft a rule that improves upon the 1982 planning rule by making planning more efficient and the resulting plans easier to implement. Having participated in forest plan revisions as a cooperator, we have experienced the process under the 1982 rule firsthand. When a forest plan with a shelf life of 10–15 years takes 5 years or more to revise, and - more importantly - when the resulting forest plan cannot be effectively implemented by the agency staff, then the current process is obviously broken.

We would like to take this opportunity to briefly re-state a portion of our comments in response to the Notice of Intent for development of a new planning rule which we submitted in February, 2010:

> A new planning rule should result in forest plans that provide overall strategic direction, not specific on the ground management recommendations or decisions. Forest plans produced under a new rule should be implementable and easily amended or updated to allow resource managers to respond to changing conditions.
>
> A new planning rule should result in forest plans that direct management towards desired future conditions – developed during the plan revision process – that are appropriate for particular areas and the resources involved. Management towards desired future conditions will result in sustainable outputs of goods and services while achieving the desired objectives.
>
> A new planning rule should carefully address the issue of habitat and/or species diversity. The chosen language should not burden the agency with requirements that it cannot meet. The "species viability" language from the 1982 rule should be avoided. The new rule should result in plans that focus on maintaining diverse habitat over the long term while recognizing that the forest resource must be managed to provide long term habitat.

Caution should be utilized if standards and/or guidelines are included. In the past, those terms became synonymous. The language should be simple and clearly defined to avoid confusion.

Finally, we believe that a new planning rule should direct that decisions regarding management allocations for inventoried roadless areas be made when forest plans are revised.

We believe these few basic principles remain critically important to the ultimate success of a new planning rule, with that success determined by an efficient plan revision process with a reasonable timeline and by the ability of agency staff to implement the resulting forest plans to achieve desired natural resource management objectives. Unfortunately the draft planning rule falls short of likely success and moves policy in the wrong direction in a number of areas. Our specific comments are included below.

First, a general comment based on review of the proposed rule from the Federal Register and discussion at a forum for state and local governments held by the agency in Cheyenne, WY: When questioned about specific parts of the rule, agency staff typically referenced information in the preamble to the rule that provided clarification as to the intent or the appropriate interpretation of the rule. This could result in confusion over what the preamble says, what the rule says, and how the courts could someday interpret the rule, the preamble, or both. If information in the preamble is critical to effective interpretation of the rule then that information should be included in the rule itself.

219.1 Purpose and applicability

This section describes how the rule should guide development of land management plans and, basically, what the objectives of land management plans should be. There is discussion of resilient, diverse, and productive forests that provide a range of social, economic, and ecological benefits. Interestingly, benefits such as forest products and forage for grazing animals are not listed among the benefits.

It appears that the range of benefits that forest plans should ensure that national forests provide emphasizes the expected ecological benefits. It is important to remember that promoting healthy, resilient, diverse, and productive national forests often requires forest management practices that in turn produce a portion of the range of social, economic, and ecological benefits. If the agency, through a new planning rule, discusses and defines a range of benefits while listing a subset of those benefits, then the list of benefits should be broad and inclusive rather than limited to ecological benefits.

219.2 Levels of planning and responsible officials

The proposed rule makes the supervisor of the national forest or other unit the responsible official for forest plan development and revision. We support this effort to have decision-making occur at the lowest level possible and we encourage the agency to take a similar approach whenever possible.

We are uncomfortable with the expectation that "A plan reflects the unit's distinctive roles and contributions to the local area, region, and Nation, and the roles for which the unit is best suited, considering the Agency mission unique capabilities, and the resources and management of other lands in the vicinity". That concept is very similar to the concept of "niche", which has

previously been discussed in relation to forest planning. The concept of niche could be used to highlight ecological contributions above social and economic contributions. The importance of the local contributions from a particular national forest logically outweighs the importance of the national contributions from the forest, though the proposed rule appears to make them equal. The concept is flawed and should be revised or deleted from this section along with other similar references in the proposed rule.

Section 219.3 Role of science in planning

The proposed planning rule requires consideration and documentation of "best available scientific information" while putting the burden on the responsible official to determine what is "best". Using scientific information to inform resource management decisions can certainly be helpful to managers. However, the direction in the proposed rule puts the responsible official in the position of deciding which science is "best" – often the subject of considerable debate, even among scientists. The proposed rule fails to adequately define "best available scientific information", thereby leaving considerable room for interpretation by the responsible official, interested parties, and the courts.

Science often seeks answers about natural resource issues affecting relatively small areas of land. The applicability of such scientific information outside of the study area is typically questionable at best. For example, a study about the response of a forest stand in the Pacific Northwest to some disturbance may or may not have relevance in Wyoming.

The agency will have to prove that it considered the "best" science and interpreted and applied it appropriately. This is likely to be a time consuming process that will provide a fairly easy target for appeals and litigation. The agency should not put itself in the position of having to prove that it did everything absolutely correctly when challenged legally, rather than forcing the challenger to prove that something was done incorrectly.

The agency must be able to exercise professional discretion when making natural resource management decisions. The agency staff consists of trained professionals many of whom are experts in a particular field. The courts have affirmed the agency's role as an expert in natural resource management to meet complex objectives. The agency shouldn't relinquish its role as scientists with decision-making authority.

219.4 Requirements for public participation

State and local governments should have a special place in forest planning. The proposed rule weakens the requirement to consider the plans of state and local government in several ways. First, it combines public participation requirements together with the section on coordination with other public planning efforts into one section which dilutes the importance of coordination with other public planning efforts. Second, the rule compels the Forest Service to "encourage" public participation from all segments of the public except state and local government. Finally, the 1982 planning rule clearly required that "the responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes", but the proposed rule is softened by adding "to the extent practicable and appropriate." This changes coordination with state and local governments from a requirement to a discretionary decision of the forest supervisor. If

increasing the agency discretion is the objective, then the phrase "to the extent practicable and appropriate" should be used in many other places in the proposed rule, not just regarding state and local government participation.

State and local governments have been key players in forest plan revisions in Wyoming. In some cases, the participants from state and local governments have provided consistent direction as federal agency participants change through attrition, promotion, etc. State and local governments often bring natural resource expertise that is unparalleled within the planning area. Legitimate state and local government involvement in a planning process can eliminate legal challenges later. We encourage the agency to emphasize coordination with state and local governments in the proposed rule.

219.6 Assessments

The proposed rule specifically identifies Statewide Assessments of Forest Resources and Statewide Resource Strategies ("State forest assessments and strategies") as sources of information to consider when completing assessments during the planning process. These documents were developed by State Foresters working together with federal agencies, non-governmental organizations, other state agencies, advisory committees, and many others. These documents should be useful to the agency and we are pleased to see them specifically included in the proposed rule.

219.7 New plan development or plan revision

We are pleased to see "desired conditions" included as a component of forest plans developed under the proposed rule. Desired conditions provide a direction for management and something to measure existing condition against. Well developed desired conditions help make clear the intent of forest plans and define the activities and resources needed to move in the appropriate direction. Desired conditions are critical to a good forest plan and should be emphasized during forest plan development.

As part of the description of "objectives", it is stated that they should be based on reasonably foreseeable budgets. While we understand the need to plan based on some expected funding level, that should not become a constraint on objectives. For example, if the objective for the suitable timber on a portion of a national forest is to increase age class diversity to a desired level as described by a desired future condition, then budgets should not constrain the objective. Budgets might constrain progress towards achieving the objective, but the objective is the desired amount of progress toward the desired condition, not the funded amount of progress. The agency should make sure that objectives set the bar for national forest management.

The proposed rule states that "every plan must contain information reflecting proposed and possible actions that may occur on the unity during the life of the plan including the planned timber sale program." This seems to go beyond the establishment of an allowable sale quantity and may intend inclusion of a list of timber sales to occur during the life of the plan. Forests are dynamic and observation of the current status of national forest system lands in Wyoming would indicate that major events can change any planned program. If a list of planned timber sales is included, will the plan have to be amended if that list changes? The other obvious point about this part of the proposed rule is that only the planned timber sale program is specifically

mentioned. Why include timber sales but not planned prescribed fire, wildlife habitat manipulation, road maintenance, recreation projects, etc.?

Standards and guidelines will be interpreted as being identical under the proposed planning rule. Standards should be included only where necessary. Guidelines should provide management flexibility and should be easily distinguished from standards. The definitions in the proposed rule appear to be the same for all practical purposes. Courts could interpret them as being identical.

Standards and guidelines should not always be constraints that limit activities. They should be used to promote certain management actions as well. For example, managing suitable timber lands towards the desired future condition could be included as a standard or guideline that promotes action. Similarly, reducing fuels around wildland-urban interface areas could be a standard or guideline mandating or promoting action.

Section 219.8 Sustainability

The proposed planning rule places ecological sustainability above economic and social sustainability. For ecological sustainability, the language is very affirmative and action oriented. For social and economic, the language is softer and more non-committal. The explanation from the Federal Register is that while ecological, social, and economic sustainability are interdependent and cannot be ranked in order of importance, the agency has more control over ecological sustainability.

In the West, and specifically in Wyoming, national forest system lands historically played a key role in social, economic, and ecological sustainability and should do so again. For example, in Wyoming the national forest system manages over 60% of the forest resource that is suitable for or not administratively withdrawn from timber harvest. If the national forest system fails to actively manage its forest resource for multiple benefits then it becomes difficult to sustain a forest products industry without which state and private lands cannot be actively managed for multiple forest related benefits. If the forest products industry cannot be sustained then all landowners lose a critical tool for managing forested lands for multiple resource benefits with resulting - and fairly obvious - social and economic impacts in communities surrounding the national forests and throughout the state. This is one simple – but very real - example of how ecological, social, and economic sustainability are in fact intertwined.

The agency should remember the phrase "interdependent and cannot be ranked in order of importance" related to economic, social, and ecological sustainability when developing the new planning rule and the subsequent forest plans. The agency should not shun but rather should embrace and return to its role as a leader in providing for social, ecological, and economic sustainability on national forest system lands and in surrounding communities.

Section 219.9 Diversity of plant and animal communities

The proposed planning rule fails to fix the problems resulting from the "species viability" provision in the 1982 rule, thereby missing an opportunity to improve national forest planning and management. In the overview of the proposed planning rule published in the Federal Register the agency details the numerous problems associated with a requirement to maintain

viable populations, yet the requirement remains in the new rule in a modified and potentially more damaging form.

The National Forest Management Act (NFMA) provides the following direction for forest plans on the subject of diversity of plants and animals: "Provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan;". Maintaining viable populations is clearly not mentioned. NFMA provides an explicit mandate to provide for diversity within overall multiple-use objectives. The 1982 Planning Rule seriously diverged from NFMA direction. The agency should not continue or exacerbate that departure from NFMA in the new planning rule.

The agency has included plants and native invertebrates in the new rule, thereby creating additional problems, including a complete lack of data on status, population, and distribution for many of those types of species. This has the potential for a "survey and manage" situation which would consume significant agency resources with limited benefits.

The agency should re-evaluate Section 219.9 and develop new language to reflect the clear intent of NFMA regarding diversity of plant and animal communities.

The agency should focus its efforts related to wildlife management on providing diverse habitat over the long term, such as over 100 years or more, rather than concerning itself with wildlife populations. Managing populations is a state responsibility.

Because most of the agency's management responsibility involves forested land, managing for diverse habitat over the long term requires actively managing forests. Past forest plans have placed too much emphasis on current habitat conditions and current species populations and providing habitat in the near term. While implementing habitat manipulation projects is useful and should continue, habitat can't be produced, enhanced, or modified on any meaningful scale over the short life of a forest plan. Management decisions that affect habitat in the short term without a long term vision may result in negative long term impacts on habitat.

It is better to develop forest plans that focus on desired conditions and direct management that looks forward to provide for the long term needs of species. While forest plans have a 10–15 year shelf life, the management resulting from those plans needs to focus on the desired condition 100 years or more in the future for Rocky Mountain region forests. We strongly urge the agency to revise the proposed rule to produce forest plans that focus on habitat and forest management issues over the long term rather than the brief life of the forest plan.

219.11 Timber requirements based on the NFMA

The proposed rule provides the agency with the flexibility to increase the size of even-aged regeneration harvest units beyond the maximums listed in the rule. This is positive since regeneration of some species on some sites may be more appropriate when done on a scale that mimics historic disturbances. One example would be regeneration of lodgepole pine in

Wyoming where historic disturbances could easily be hundreds of acres or more. Where consistent with other resource objectives, silvicultural treatments that produce a similar effect on the landscape may be appropriate and should be an option for resource managers.

Regarding limits on timber harvest, we believe the intent of NFMA and the proposed rule is that the allowable sale quantity is established as a decadal limit that may be exceeded on an annual basis. We also assume that, consistent with NFMA, the proposed rule will allow for salvage harvest over and above the established limits. If our assumptions are incorrect we strongly urge the agency to adjust the wording and intent in the proposed rule to match clear NFMA direction.

219.12 Monitoring

This section appears to describe a two year monitoring cycle. This is a potentially large commitment of time and resources to attempt to monitor changes that often happen slowly. One obvious example of a questionable use of agency time and resources would be attempting to monitor "measurable changes on the unit related to climate change..." Without debating the climate change issue, it would clearly be hard to measure change in the climate over a monitoring cycle or even over the life of a forest plan. Monitoring climate change over such a short term is likely to result in simply measuring changes in weather rather than climate.

Determining measurable changes on the unit related to climate change would be difficult at best. Typically, forests change quite slowly and those changes are difficult to measure in the short term of a forest plan or monitoring cycle. It is even more difficult to determine that a change occurring in a forest is directly related to climate change, which itself is difficult to determine. The agency should carefully reconsider the monitoring section to avoid unnecessary and unproductive expenditure of agency resources in a time of declining budgets.

The proposed rule gives the responsible official the discretion to "set the scope and scale of the unit monitoring program", but limits that discretion "subject to the requirements of paragraph (a)(5)." We recommend revising this section to truly give discretion to the responsible official, and specifically, we recommend deleting requirements to monitor status of focal species, changes "related to climate change and other stressors", carbon stored in vegetation, and "progress toward fulfilling the unit's distinctive roles and contributions to ecological, social, and economic conditions of the local area, region, and Nation". We recommend adding requirements to monitor accomplishment of forest plan objectives, plus progress toward achieving forest plan "desired conditions".

Roadless Area Management

For many years the management of roadless areas has seriously impacted forest planning in Wyoming by allocating large parts of national forests to inactive management scenarios often in direct conflict with forest plan direction. During development of forest plans parts of each forest are supposed to be allocated to a certain basic management strategy such as general forest, backcountry non-motorized, or many others. Those decisions should be made based on local knowledge using high quality data about conditions on the ground to allow management to progress towards a future condition that is appropriate for the particular area.

Since the 2001 Roadless Area Conservation Rule (RACR) was created the management of roadless areas in Wyoming has become a major issue. The RACR has limited management of 3.257 million acres of Wyoming's national forests to managing only for roadless characteristics. The result is that the management direction for about 35% of Wyoming's national forests has been determined outside of the forest planning process.

There are two major problems with roadless area management in Wyoming: 1) The inventory used for the RACR and subsequent roadless area management is seriously inaccurate; and, 2) The RACR and subsequent roadless area management controls management of significant portions of national forest system lands outside of the forest planning process and often in conflict with existing forest plans.

There are numerous examples of the inaccurate roadless inventory in Wyoming. During the revision of the Bighorn National Forest's forest plan, roadless areas were inventoried by local agency staff with about 494,000 acres fitting the definition of roadless at that time (the number was reduced to about 377,000 acres when the agency applied logical boundaries such as topographic features to the roadless inventory). With the RACR including about 623,000 acres of the Bighorn National Forest as roadless the data used to develop the RACR was flawed by about 129,000 acres, meaning that about 20% of the RACR roadless was not inventoried as roadless during the plan revision process. We can think of no situation where an acknowledged inaccuracy of that level is consistent with sound natural resource management. The inaccuracy exists throughout Wyoming and cannot be allowed to stand. The best way to improve the inventory data, and thereby improve management of Wyoming's national forests, is to use high quality, locally developed data to make land management allocations during the forest plan revision process under a new planning rule.

As one example of the conflict between roadless area management and forest plans, the 2005 Bighorn National Forest Land and Resource Management Plan included management areas, developed cooperatively during the plan revision process, that reflected conditions on the ground and desired management for each area, whether "inventoried roadless" or not. Subsequently, the 2001 Roadless Area Conservation Rule (RACR) was reinstated, resulting in direct management conflicts with the revised forest plan. Despite a federal court ruling that prohibited implementation of the RACR in Wyoming, the agency has continued to manage "inventoried roadless" areas as roadless. As a result, areas allocated to a more active management type under the forest plan are being managed for roadless characteristics, contrary to forest plan direction.

The agency is operating under conflicting court decisions related to the RACR, although we believe the federal court direction for Wyoming is clear. The Secretary of Agriculture holds decision-making authority over management in roadless areas. As forest plans are revised – the Shoshone National Forest plan revision process is underway – the management of roadless areas is a cloud that hangs over the process. For example, a forest could produce a plan that allocates certain roadless areas to a management area category such as backcountry non-motorized recreation while allocating other roadless areas to a management area category allowing for active management. Those decisions can be made in a better way at the forest plan level using high quality, locally developed data. However, the agency continues to consider roadless area management separately from forest plan direction, resulting in conflicts and inactivity.

Unfortunately, the proposed rule does not address the disposition of roadless areas. The agency has the authority and the opportunity to include management direction for all national forest system lands in this new planning rule, thereby ending the separation of roadless area management from forest plan direction. The end result could be an accurate inventory of areas with "roadless" characteristics and clear management direction for all national forest system lands provided, appropriately, by the forest plan for the particular unit. We strongly urge the agency to include provisions for inventory and allocation of roadless areas to appropriate management area categories as determined during the forest plan revision process.

Sincerely,

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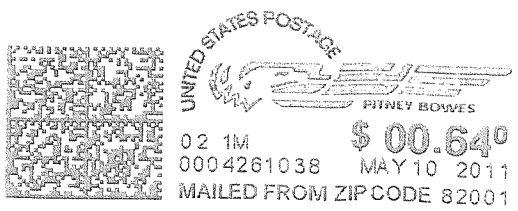

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FRD-0650

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May 10, 2011

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Bountiful, UT 84010.

Re: The County of Shasta, California's Comments to the Proposed Forest Service Land Management Planning Rule

To the United States Forest Service:

The County of Shasta, California submits the following comments to the proposed new planning rules designed to guide land and resource management planning for all units of the National Forest System under the National Forest Management Act of 1976 (the "Planning Rules"). The County of Shasta has a particular interest in the development of the Planning Rules in that several National Forests fall within Shasta County's borders.

The County's comments are directed at proposed sections 219.4, 219.7, and 219.8 of the Planning Rules. Each shall be taken in turn.

1. **Proposed section 219.4 is Inconsistent with the "Coordination" Requirements Imposed Under 16 U.S.C. § 1604.**

16 U.S.C. § 1604(a) provides as follows:

> As a part of the Program provided for by section 1602 of this title, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, *coordinated with the land and resource management planning processes of State and local governments* and other Federal agencies. [Emphasis added].

This statute obligates the Forest Service to coordinate its development, maintenance, and revision of land and resource management plans for units of the National Forest System with the

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land and resource management planning processes of local governments, such as Shasta County. Coordination with local governments is not optional.

Proposed section 219.4 contradicts this express congressional mandate by making coordination optional. Proposed section 219.4(b)(1) states:

> The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, *to the extent practicable and appropriate.* [Emphasis added].

The above referenced italicized language in proposed section 219.4 contradicts the statutory mandate in 16 U.S.C. § 1604. Coordination is not a discretionary option for the Forest Service. It must engage in coordination as stated in 16 U.S.C. § 1604.

In addition, proposed Section 219.4 fails to adequately distinguish between (1) public participation and (2) coordination with other governmental entities. Proposed section 219.4 appears to combine these two independent obligations under a general rubric of "public participation."

However, 16 U.S.C. § 1604 establishes that coordination with other governmental entities and public participation opportunities are separate concepts. They are addressed in separate subsections in that statute. Coordination is addressed in 16 U.S.C. § 1604(a), while public participation is addressed in 16 U.S.C. § 1604(d). Public participation activities cannot be used to reduce the Forest Service's coordination obligation.

In order to address these concerns, Shasta County requests that the entirety of proposed section 219.4 be deleted. *It should be replaced with two new sections that express verbatim the language from sections 219.6 (public participation) and section 219.7 (coordination) of the planning rules previously adopted by the Secretary of Agriculture in 1982. Copies of those sections from the 1982 Planning Rules are attached.* These two separate sections are more consistent with the unique status Congress intended to convey on other units of government when it established the concept of "coordination."

In particular, section 219.7 of the 1982 Planning Rules imposes the following obligations on the Forest Service which should be included in the proposed Planning Rules:

1. Section 219.7(a) of the 1982 Planning Rules requires the responsible line officer to engage in coordination. The responsible line officer does not have the discretion to decline to engage in coordination if the officer believes it to be impractical or inappropriate. Proposed section 219.4 removes this mandatory obligation and makes it discretionary.

2. Section 219.7(b) of the 1982 Planning Rules requires the responsible line officer to give notice of the preparation of a land and resource management plan, along

with a general schedule of anticipated planning actions to the heads of units of government for the counties involved. No such requirement exists in proposed section 219.4.

3. Section 219.7(c) of the 1982 Planning Rules requires the responsible line officer to review the planning and land use policies of local governments and display the results of this review in the environmental impact statement for the plan. The review shall include:

   a. Consideration of the objectives of local governments, as expressed in their plans and policies;

   b. An assessment of the interrelated impacts of these plans and policies;

   c. A determination of how each Forest Service plan should deal with the impacts identified; and

   d. Where conflicts with Forest Servic e planning are identified, consideration of alternatives for their resolution.

   While proposed section 219.4 also contains a similar review, it does not require the same level of effort to achieve consistency with local government plans and policies as section 219.7(c) of the 1982 Planning Rules requires.

4. Section 219.7(d) of the 1982 Planning Rules requires the responsible line officer to meet with representatives of local governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. *Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced.*

   The proposed section 219.4 eliminates the requirement for such meetings with local government representatives and also fails to recognize that coordination is separate from general public participation requirements.

5. Section 219.7(e) of the 1982 Planning Rules provides that the responsible line officer shall seek input from local governments to resolve management concerns in the planning process and to identify areas where additional research is needed. The proposed section 219.4 eliminates this requirement.

6. Section 219.7(f) provides that a program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National

> Forest being planned and the effects upon National Forest management or activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments. The proposed section 219.4 eliminates this requirement.

Therefore, Shasta County requests that the entirety of proposed section 219.4 be deleted. *It should be replaced with two new sections that express verbatim the language from sections 219.6 (public participation) and section 219.7 (coordination) of the planning rules previously adopted by the Secretary of Agriculture in 1982.*

2. Proposed section 219.7 is deficient in that it makes "coordination activities" optional content in a forest plan

Proposed section 219.7 provides procedures for new plan development or plan revisions. In that regard, proposed section 219.7(e)(2) provides that a plan "may include additional items" including "coordination activities" as an optional component.

However, as previously explained, coordination with local government entities is not optional. In order to comply with its ongoing mandatory obligation to coordinate with the land and resource management planning processes of local governments, coordination activities with local governments should be a required component of a plan.

3. Proposed sections 219.7 and 219.8 fail to ensure that economic considerations are placed on an equal footing with environmental considerations in developing and revising forest plans.

16 U.S.C. § 1604(g)(3)(A) provides that, in adopting regulations that establish the process for the development and revision of land management plans, the regulations shall specify guidelines for land management plans which:

> Insure consideration of the *economic and environmental aspects* of various systems of renewable resource management, including the related systems of silviculture and protection of forest resources, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish. [Emphasis added].

As indicated by this statute, economic concerns are placed on equal footing with environmental concerns. Therefore, the proposed regulations should not indicate an established preference for environmental concerns over economic concerns. However, language in proposed section 219.7 and proposed section 219.8 indicate such a preference.

For example, proposed section 219.7(c) establishes the process for plan development and revision. In that regard, proposed section 219.7(c) states that the process for developing or revising a plan includes, among other things, "considering the environmental effects of the proposal." *However, proposed section 219.7(c) does not state that the process also includes*

consideration of the economic effects of the proposal. Shasta County proposes that such language be added to proposed section 219.7(c).

Also, proposed section 219.8 identifies the principles for sustainability that will guide land management planning. In that regard, proposed section 219.8 states that the plan must provide for social, economic, and ecological sustainability.

In the comments concerning proposed section 219.8, the Forest Service stated that "the proposed rule considers the ecological, social, and economic systems as interdependent systems, which cannot be ranked in order of importance."

Despite this statement, the Forest Service went on to state that there is an important difference in the wording between (1) ecological sustainability requirements and (2) social and economic sustainability requirements.

The requirements for ecological sustainability in proposed section 219.8(a) require responsible officials to provide plan components to "*maintain or restore elements*" of ecological sustainability.

As for social and economic sustainability in proposed section 219.8(b), the responsible official only must provide plan components to "*guide*" the forest unit's contribution to social and economic sustainability.

This language difference establishes a preference for ecological sustainability (the plan components must "maintain and restore" elements of ecological sustainability) over social and economic sustainability (the plan components serve as a "guide" to contributing to social and economic sustainability).

The Forest Service explains this distinction by saying the Forest Service has more influence over factors that impact ecological sustainability than it does for social and economic sustainability. This is a questionable conclusion in that Forest Service decisions involving timber harvesting and off road vehicle use have obvious economic impacts.

The distinction is inconsistent with 16 U.S.C. § 1604(3)(g)(A). This statute does not mandate that environmental concerns take precedence over economic concerns. They are both to be considered. In balancing these competing interests, the proposed Planning Rules should not place a foot on the scale in favor of environmental concerns.

In that regard, Shasta County proposes that the "maintain or restore"[1] language in the ecological sustainability requirements of proposed section 219.8(a) be deleted and replaced with the same "guide" language that currently exists under the social and economic sustainability requirements of proposed section 219.8(b).

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1 The reference to "maintain or restore" also includes the areas in proposed section 219.8(a)(ecological sustainability) where the phrase "maintain, protect, or restore" is used.

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Thank you for the opportunity to comment on the proposed Planning Rules. Shasta County looks forward to establishing an ongoing productive relationship with the Forest Service in its management of forests within Shasta County's boundaries.

Sincerely,

Les Baugh
Chairman
Shasta County Board of Supervisors

Attachment: Sections 219.6 and 219.7 of the 1982 Planning Rules

1982 Planning Rule
36 C.F.R. PART 219 PLANNING
SUBPART A National Forest System Land and Resource Management Planning

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Sections 219.6 and 219.7

219.6 Public participation.

(a) Because the land and resource management planning process determines how the lands of the National Forest System are to be managed, the public is encouraged to participate throughout the planning process. The intent of public participation is to-

(1) Broaden the information base upon which land and resource management planning decisions are made;

(2) Ensure that the Forest Service understands the needs, concerns, and values of the public;

(3) Inform the public of Forest Service land and resource planning activities; and

(4) Provide the public with an understanding of Forest Service programs and proposed actions.

(b) Public participation in the preparation of environmental impact statements for planning begins with the publication of a notice of intent in the Federal Register. Public involvement in the preparation of draft and final environmental impact statements shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations and Forest Service Manual and Handbook guidance (hereafter, "NEPA procedures"). Public comments shall be analyzed according to NEPA procedures.

(c) Public participation activities, as deemed appropriate by the responsible line officer, shall be used early and often throughout the development of plans. Formal public participation activities will begin with a notice to the news media and other sources which includes, as appropriate, the following information:

(1) A description of the proposed planning action;

(2) A description and map of the geographic area affected;

(3) The issues expected to be discussed;

(4) The kind, extent, and method(s) of public participation to be used;

(5) The times, dates, and locations scheduled or anticipated, for public meetings;

(6) The name, title, address, and telephone number of the Forest Service official who may be contacted for further information; and

(7) The location and availability of documents relevant to planning process.

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(d) Public participation activities should be appropriate to the area and people involved. Means of notification should be appropriate to the level of planning. Public participation activities may include, but are not limited to, requests for written comments, meetings, conferences, seminars, workshops, tours, and similar events designed to foster public review and comment. The Forest Service shall state the objectives of each participation activity to assure that the public understands what type of information is needed and how this information relates to the planning process.

(e) Public comments shall be considered individually and by type of group and organization to determine common areas of concern and geographic distribution. The result of this analysis should be evaluated to determine the variety and intensity of viewpoints about ongoing and proposed planning and management standards and guidelines.

(f) All scheduled public participation activities shall be documented by a summary of the principal issues discussed, comments made, and a register of participants.

(g) At least 30 days' public notice shall be given for public participation activities associated with the development of regional guides and forest plans. Any notice requesting written comments on regional planning shall allow at least 60 calendar days for response. A similar request on forest planning shall allow at least 30 calendar days for response. Draft regional guides and forest plans and environmental impact statements shall be available for public comment for at least 3 months. See also 219.8(c) and 219.10(b).

(h) The responsible line officer shall attend, or provide for adequate representation at, public participation activities.

(i) Copies of approved guides and plans shall be available for public review as follows:

(1) The RPA Assessment and the RPA Program shall be available at national headquarters, The Northeastern Area State and Private Forestry Office, and all Regional offices, Research Stations, Forest Supervisors' offices, and District Rangers' offices;

(2) The regional guides shall be available at national headquarters, the issuing regional office and regional offices of contiguous regions, each Forest Supervisor's office of forests within and contiguous to the issuing region, and each District Ranger's office in the region;

(3) The forest plan shall be available at the regional office for the forest, the Forest Supervisor's office, Forest Supervisors' offices contiguous to the forest, District Rangers' offices within the forest, and at least one additional location, to be determined by the Forest Supervisor, which shall offer convenient access to the public. These documents may be made available at other locations convenient to the public.

(j) Documents considered in the development of plans shall be available at the office where the plans were developed.

(k) Forest planning activities should be coordinated to the extent practicable with owners of lands that are intermingled with, or dependent for access upon, National Forest System lands. The results of this coordination shall be included in the environmental impact statement for the plan as part of the review required in 219.7(c). The responsible line officer may individually notify these owners of forest planning activities where it is determined that notice provided for the general public is not likely to reach the affected landowners.

(l) Fees for reproducing requested documents shall be charged according to the Secretary of Agriculture's Fee Schedule (7 CFR Part 1, subpart A, appendix A).

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219.7 Coordination with other public planning efforts.

(a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(b) The responsible line officer shall give notice of the preparation of a land and resource management plan, along with a general schedule of anticipated planning actions, to the official or agency so designated by the affected State (including the Commonwealth of Puerto Rico). The same notice shall be mailed to all Tribal or Alaska Native leaders whose tribal lands or treaty rights are expected to be impacted and to the heads of units of government for the counties involved. These notices shall be issued simultaneously with the publication of the notice of intent to prepare an environmental impact statement required by NEPA procedures (40 CFR 1501.7).

(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include-

(1) Consideration of the objectives of other Federal, State and local governments, and Indians tribes, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the impacts identified; and,

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

(d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced.

(e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.

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[47 FR 43037, Sept. 30, 1982, as amended at 48 FR 29122, June 24, 1983]

FRD- 0651

DIVISION OF NATURAL RESOURCES
Wildlife Resources Section
324 Fourth Avenue
South Charleston, West Virginia 25303-1228
Telephone (304) 558-2771
Fax (304-558-3147
TDD 1-800-354-6087

Earl Ray Tomblin
Governor

Frank Jezioro
Director

May 11, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 East 500 Street
Bountiful, Utah 84010

RE: National Forest System Land Management Planning: Proposed Rule (Federal Register Volume 76, No. 30, RIN 0596-AC94, February 14, 2011, 8480-8528)

Dear National Forest System Planning Team:

The West Virginia Division of Natural Resources (WVDNR), Wildlife Resources Section, hereby offers comments on the Proposed Rule for National Forest System Land Management Planning. Our agency cooperatively manages land on three National Forests that includes 14 National Forest Wildlife Management Areas encompassing 1.1 million acres within the State of West Virginia.

The WVDNR supports the Forest Service in its endeavor to develop the proposed planning rule and alternative planning rules that establish procedural requirements whereby National Forest System (NFS) land management plans are developed, revised and amended. We have a long-standing, established record of outstanding cooperation with the Forest Service in West Virginia. This ongoing relationship, made possible through a Memorandum of Understanding (MOU) since the 1940s, has produced substantial benefits to the citizens of West Virginia, the state's wildlife resources and their associated habitats on NFS lands.

General Assessment of Proposed Rule

In the initial Overview assessment of the proposed rule (pages 8480-8483), we are concerned with many of the changes in contextual wording (e.g., forest restoration and conservation, preservation, resilient ecosystems, spiritual sustenance and management to ecological, social and economic sustainability). These phrases form the structure and theme of the entire proposed rule. This type of change or shift in major forest plan wording places a negative, preservationist slant on active forest management, timber cutting, wildlife population management, wildlife

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habitat management and wildlife habitat development. Within the deciduous and mixed-pine-deciduous forests on NFS lands in West Virginia, our research and experience have shown that active forest management and effective wildlife habitat management are inextricably woven together. Without silvicultural treatments and timber harvesting to produce a balance of dispersed mast-producing forest age classes across the landscape, viable wildlife populations cannot be properly managed. Unfortunately, we have seen a declining trend in active forest management on NFS lands in West Virginia. This failure to actively manage NFS lands in West Virginia has contributed to population declines in certain game species (e.g., wild turkey, ruffed grouse, white-tailed deer, etc.) and many non-game species.

The WVDNR is concerned and disappointed that the initial Overview section did not mention the role of state fish and wildlife agencies which are the most important cooperative partners in managing wildlife resources and wildlife habitat on NFS lands across the country. Most National Forests and state fish and wildlife agencies operate under MOUs or cooperative agreements; whereby, the state fish and wildlife agencies are responsible for maintaining wildlife populations and the National Forests are responsible for managing forest resources and associated habitats. In West Virginia, the vast majority of mowed and/or seeded herbaceous wildlife habitat on NFS lands is maintained by WVDNR personnel. The WVDNR is mandated by law to maintain viable populations of fish and wildlife species on all lands within the state, including National Forests. We are also responsible for natural resource law enforcement on these federal lands in partnership with Forest Service law enforcement officials. The Planning Team needs to strongly emphasize and recognize the historic role of state fish and wildlife agencies in the development and management of NFS lands. The Planning Team also needs to recognize and acknowledge the current role of state fish and wildlife agencies throughout the proposed rule, especially within Section 219.9 – Diversity of Plant and Animal Communities and Section 219.10 – Multiple Uses. One of the primary reasons that NFS lands are so attractive to hunters, anglers and other wildlife-associated user groups relates to the cooperative working relationships that have developed among state fish and wildlife agencies and the Forest Service. Working together, our agencies have been able to provide outstanding opportunities for hunting, fishing, trapping and types of wildlife recreation on NFS lands. The MOUs or cooperative agreements that exist among state fish and wildlife agencies and the various National Forests support strong partnerships and allow for effective wildlife management on NFS lands throughout this country.

Specific Comments

Pages 8480-8484, Section 219.1: We are very familiar with the Multiple-Use Sustained-Yield Act of 1960 (MUSYA). The National Forest Management Act of 1976 (NFMA) requires the NFS to have a planning rule that operates within the principles of the MUSYA. The Act codified what the Forest Service was already doing and named a set of multiple uses, including recreation, range, timber, watershed, wildlife and fish. Managing timber and providing a reliable supply of fiber was an important objective; providing recreational opportunities for hunting and fishing were primary objectives; providing opportunities for scenic driving was also noted. These objectives were drafted to be harmonious, and there was very little conflict. Unfortunately, there is a prevailing theme in the proposed rule that leans strongly toward preservation and restoration. Even the word conservation is depicted as "limited or leave alone."

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Words such as preservation, protect, spiritual sustenance and ecological, social and economic sustainability can be taken out of context, and their meanings can be misinterpreted. We are concerned the proposed rule may have misrepresented the precepts set forth more than 50 years ago under the MUSYA. Interpreting the MUSYA to mean all things to all user groups on NFS lands dilutes the principles of the original Act.

Page 8483, Section 219.1, Purpose and Applicability: The WVDNR continues to be engaged in the "collaborative and science-based planning process" with various interest groups, individuals and other state fish and wildlife agencies on NFS lands within and adjacent to our state border. We have a vast background in the development of National Forest Plans and Plan Revisions. We realize it often requires a collaborative approach to produce effective solutions, especially when dealing with diverse groups and opinions.

Page 8489, Section 219.7, Plan Components: We are familiar with the various levels of planning (Section 219.2), including national strategic planning, National Forest unit planning (Forest Plans) and project or activity planning. We are also familiar with the five plan components, including desired conditions, objectives, standards, guidelines and suitability of areas. These plans should contain goals as an optional plan component, and we strongly suggest that "Goals" be inserted after desired conditions and as an important requirement for Plan Components.

Page 8491, Section 219.8, Sustainability, Ecological Sustainability, first paragraph, second sentence: Within this section, a sentence states ". . . the first two elements would require the responsible official to develop plan components for aquatic and terrestrial areas, including lakes, streams, wetlands, forest stands, meadows and other habitat types." We strongly recommend the phrase "wildlife habitat developments or early successional habitat (ESH) developments" be inserted following the word "meadows" in the above-referenced sentence. We find it disconcerting that the Planning Team has not specifically identified "maintained wildlife habitat developments or ESH developments" as important elements for ensuring the health and resilience of ecosystems and/or watersheds. ESH and herbaceous opening within forest ecosystems are critical to many wildlife species in the eastern United States. For example, within the region covered by the Appalachian Mountains Woodcock Initiative (i.e., MD, OH, PA, VA and WV), more than 80 species wildlife have been identified that require young forest stands and/or shrubland habitat for survival.

Pages 8492-8494, Section 219.9, Diversity of Plant and Animal Communities: In regard to forest planning at the unit level (i.e., individual National Forest), the proposed rule does not provide for a diversity of plant and animal communities. The WVDNR strongly supports the goals and objectives of the Endangered Species Act, NFMA, and actions that address candidate species and species of concern. We are also familiar with the "Coarse Filter and Fine Filter" approach to biological diversity and the maintenance of habitats for wildlife species. We are, however, concerned that when a Threatened or Endangered species is provided with vast tracts of suitable NFS land and specific standards and guidelines for habitat management, other important wildlife species and their associated habitat may receive limited or no active habitat management that they may actually require for sustainability. We ask that under Section 219.9 (Diversity of Plant

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and Animal Communities) the Planning Team address this very important species and habitat issue as it relates to individual National Forest unit planning and prescription development.

Pages 8495-8496, Section 219.10, Multiple Uses, Recreation: The WVDNR strongly believes hunting is one of the most common and important recreational activities taking place on NFS lands in West Virginia. The challenge is maintaining high values of recreational hunting by managing habitat to sustain viable populations of wildlife within each National Forest. We are experiencing problems addressing the habitat needs for certain wildlife species in semi-primitive back-country prescriptions that allow virtually no active forest management or wildlife habitat development. Although the Forest Service recognizes and promotes recreational hunting as an important use of these semi-primitive back-country areas, the Forest Service does not allow the development of wildlife habitat to enhance or sustain certain wildlife populations. This is an essential aspect of forest unit planning and prescription development, especially in the National Forests of the eastern United States. We are not recommending large scale timber harvesting operations that would negatively impact management prescription; rather, we suggest timber removal operations that would allow for the development and maintenance of herbaceous wildlife openings within selected areas. This action is not proposed for sites covered by the Roadless Area Rule.

Page, 8496, Section 219.10, Multiple Uses, Wilderness, Wild and Scenic Rivers and Other Designated Areas: Wilderness areas are not refuges for wildlife species, and no wildlife species is solely dependent upon wilderness for its life cycle or survivability.

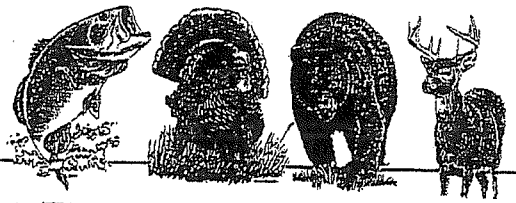
Thank you for the opportunity to comment on this important Proposed Rule that will guide future National Forest System Land Management Planning.

Sincerely,

Curtis I. Taylor, Chief
Wildlife Resources Section

CIT:SGH:jc

FRD-0051



FAX TRANSMISSION

WV DNR - WILDLIFE RESOURCES

324 Fourth Avenue
South Charleston, WV 25303
(304) 558-2771
Fax: (304) 558-3147

To: Forest Service Planning DEIS Date: 5/12/11

Fax #: 801 397 1605 Pages: 5, including this cover sheet

From: Paul Johansen

Subject: Planning Rule

COMMENTS:

Attached, please find comments from the West Virginia Division of Natural Resources relating to National Forest System Land Management Planning: Proposed Rule (Federal Register Volume 76, No. 30, RIN 0596-AC94, February 14, 2011, 8480-8528). Hard copy of letter mailed today.

Thanks!

Paul Johansen

FRD- 0052

BOARD OF SUPERVISORS
COUNTY OF MONO
P.O. BOX 715, BRIDGEPORT, CALIFORNIA 93517
(760) 932-5538 • FAX (760) 932-5531

Lynda Roberts
Clerk of the Board
lroberts@mono.ca.gov

Linda Romero
Assistant Clerk of the Board
lromero@mono.ca.gov

May 3, 2011

Senator Mark Leno
State Capitol
Sacramento, CA 95814

RE: Support for SB 184

Dear Senator Leno:

The Mono County Board of Supervisors strongly supports your SB 184, which would reinstate local government's ability to include rental housing within its inclusionary housing program.

Mono County works with Mammoth Lakes Housing to implement our inclusionary housing policies. These policies have requirements for low income rental units, which have been brought into question.

Inclusionary housing policies are an important tool for the generation of homes affordable to our low income households. Inclusionary policies all over the State are being reconsidered, revised and some are even being eliminated due to the constraints of the Palmer case. Creating a fix for this important land use tool will help to bring clarity to local jurisdictions and reinstate these important policies throughout California.

Thank you for authoring SB184.

Sincerely,

Duane "Hap" Hazard
Chair

cc: Brian Augusta, California Rural Legal Assistance Foundation, 1107 9th Street, Suite 801
Sacramento, CA 95814

FR12-0652

COUNTY OF MONO
CLERK-RECORDER

Lynda Roberts
Mono County Clerk/Recorder/Registrar- Clerk of the Board of Supervisors
lroberts@mono.ca.gov

Linda Romero
Assistant Clerk/Recorder/Registrar-Clerk of the Board
lromero@mono.ca.gov

FAX TRANSMITTAL

DATE: 5-5-11

TO: _____ **FAX NO:** 801-397-1605
_____ **PHONE:** _____

FROM: Linda Romero
Assistant Clerk/Recorder

NUMBER OF PAGES, INCLUDING COVER SHEET: 2

PHONE: 760-932-5534

FAX: (760) 932-5531

NOTICE

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COMMENTS:

PLANNING RULE

FRD-0053

CROOK COUNTY BOARD OF COMMISSIONERS
P.O. BOX 37
SUNDANCE, WYOMING 82729-0037
(307) 283-1323

May 4, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S
Bountiful, UT 84010

Dear Planners:

The proposed new planning rule and its effect on the ability of the Forest Service to effectively manage our Forests are very important to Crook County. We have followed very closely and have continued to participate in the planning process for the Black Hills National Forest.

In its 1998 Land Use Plan for Crook County, the County recognizes "the critical tie between the use of the private, federal and state natural resources and the economic stability of the County" and supports continued multiple use of National Forests and Bureau of Land Management land. Through its Land Use Plan, Crook County identifies its intent to, and means by which it will, "coordinate in the planning for federally and state managed land as well as the consideration of the County in any federal or state natural resource regulations."

Since 2000, Crook County has submitted three letters of comment regarding proposed changes to the planning rule (2000, 2003, 2010). At this time we wish to submit comment on the February 2011 Draft Programmatic Environmental Impact Statement for National Forest System Land Management Planning.

We agree with the proposed alternative's designation of the forest or grassland supervisor as the responsible official. We also applaud the proposed use of a pre-decisional objection process to administratively challenge a plan decision. This would require the Forest Service to consider changes before a final decision is made, and would hopefully be a more efficient and economical process than is the current appeals process.

We, however, have serious concerns about the following aspects of the proposed action, Alternative A.

- Assessments – A new addition to the planning process, assessments are not explicitly covered under nor do they conform to NEPA procedures and should, therefore, not be an integral part of the planning process.
- Climate change – The inclusion of climate change as a specific consideration when assessing conditions, revising and amending plans, and identifying monitoring requirements is particularly problematic as the effects of climate change are virtually impossible to single out and quantify; there exists little certainty or consistency in measuring it. Identifying climate change as one of the significant issues to address in the planning rule sets up the entire process to

become so costly, time-consuming and complicated that forest planning could become irrelevant and ineffective when it comes to addressing the resource issues that can realistically be managed.

- Requirement to conserve candidate species – If a species is not listed under the ESA, the same mandates to develop recovery-like plans for listed species should not be applied to candidate species.
- Equal protection for recommended wilderness as there is for Congressionally designated wilderness - The status of protection for "recommended" wilderness should not be the same as officially designated wilderness.
- Ecologic sustainability is required, social/economic sustainability is suggested – Language within the new rule should put these goals on the same par; social/economic sustainability should also be required.
- "Ecosystem Services" are broadly defined and considered more important than multiple uses – The new rule must not usurp the principles and requirements already put into place by the National Forest Management Act (NFMA) of 1976 and the Multiple-Use Sustained Yield Act of 1960.
- The proposed rule repeatedly refers to a planning requirement that the Forest Service rely on "best available scientific information" – Sound science is definitely important to Forest Service planning and management, but the burden of establishing and proving what is "best" will be a costly, uphill legal battle that should be avoided.
- Maintaining the diversity of plant and animal communities and viable populations of species of conservation concern is identified as a requirement within the plan area – According to NFMA, forest plans must "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives." A number of forest plan decisions, including the one for the Black Hills National Forest, were reversed on the appeal issue of "species viability"; it is virtually impossible to measure and prove that a forest plan will maintain a viable population.

We do not believe that the proposed action, as presented in the planning DEIS, will improve upon existing planning processes or help the Forest Service to reach and implement decisions more effectively. Our expectation is that the Forest Service will work to make the necessary revisions to the proposed rule that will bring an end to excessive, costly planning at the national level and provide individual Forests with the resources and authority to plan and fully implement their forest plans.

Sincerely,

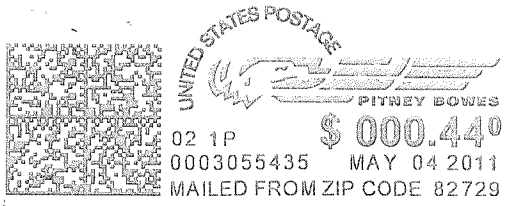
J. W. Hadley, Chairman

Kelly B. Dennis, Vice-Chairman

Jeanne Whalen, Member

After Five Days Return to
Board of Crook County Commissioners
P.O. BOX 37
SUNDANCE, WY 82729-0037

FRD-0053



Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S
Bountiful, UT 84010

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DUCHESNE COUNTY COMMISSION

Kirk J. Wood, Chairman; Ronald Winterton, Member; Kent R. Peatross, Member
P.O. Box 270

Duchesne, Utah 84021-0270

Phone (435) 738-1100

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May 2, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 South
Bountiful, UT 84010

RE: Comments on Proposed Planning Rule (36 CFR Part 219) and Draft Programmatic EIS

Dear Reader:

Duchesne County, Utah contains 718,710 acres of land (in the Ashley National Forest) that are managed by the USDA Forest Service, which constitutes one third of the land area within the county. Of this acreage, 289,311 acres are located within the High Uintas Wilderness Area. The county is a major stakeholder in the forest planning process and is frequently a Cooperating Agency. Because of the significant impact that the Ashley National Forest has on the lifestyle and livelihood of citizens in our county, we take great interest in the proposed planning rule and offer the following comments:

Subpart A. National Forest System Land Management Planning

Section 219.1 Purpose and Applicability.

Throughout the draft rule, beginning in subsection (b) of this section, the terminology *"multiple uses, including ecosystem services"* is used in an attempt to shift the focus of forest management from that of multiple use and sustained yield of natural resources to ecosystem restoration.

This shift of focus runs contrary to Congressional policy set forth in the Organic Administration Act of 1897, which states that *"No national forest shall be established, except to improve and protect the forest within the boundaries, or* ***for the purpose of securing favorable conditions of water flows and to furnish a continuous supply of timber for the use and necessities of citizens of the United States"*** (see DEIS, page 30).

This shift of focus also runs contrary to Congressional policy set forth in the Multiple-Use Sustained-Yield Act of 1960 (MUSYA), which defines multiple use as *"management of all the various renewable surface resources of the national forests so that they are* ***utilized in the combination that will best meet the needs of the American people"*** (see DEIS, page 30).

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MUSYA goes on to state that *"It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed and wildlife and fish purposes."* The act does not give authority for management for ecosystem services. Duchesne County requests that all references to this term be deleted from the proposed rule.

Section 219.2 Levels of Planning and Responsible Officials.

Duchesne County supports the omission of forest planning at a regional or district level. Given the federal budget deficit, it makes sense to limit planning to national strategic planning, NFS unit planning and project or activity planning. There are simply not enough resources available to plan at the regional, district or watershed level.

Duchesne County supports the designation of the unit supervisor, rather than the regional forester as the responsible official for unit level plans. This makes sense since the regional forester typically won't be directly involved in the unit planning process. This procedure also helps to ensure that local needs and concerns receive their proper consideration during the approval process.

Section 219.3 Role of Science in Planning.

What constitutes the *"best available scientific information"* is a matter of opinion. Scientists cannot agree on which science is best. We concur that the unit supervisor should be the official responsible to make such judgment calls during forest planning, rather than some official far removed from the unit. We agree with the requirement to document which scientific information was deemed best available as part of the planning process.

The preamble to the rules notes that best available scientific information will be *"used to inform, but not dictate, decisions"* and that *"local and indigenous knowledge, public input, agency policies, results of monitoring and the experience of land managers must also be taken into account."* Duchesne County requests that these statements from the preamble be incorporated into the rule to make it absolutely clear that science is an integral part of but not the sole influence on planning. We also suggest that the rule make it clear that the responsible official is not required to engage in new scientific studies when there are gaps in the science, as such studies would be costly and time-consuming. Failure to address this could open the door to lawsuits from persons or groups seeking to delay decisions until scientific data gaps are filled.

Section 219.4 Requirements for Public Participation.

Duchesne County appreciates that the rule requires forest planning to be coordinated with local government *"to the extent practicable and appropriate."* We prefer the wording in the Federal Land Policy Management Act, which states: *"Land use plans of the Secretary under this section shall be* ***consistent with State and local plans to the maximum extent*** *he finds consistent with Federal law and the purposes of this Act."* We request that the proposed rule be amended to require not only coordination with local government planning, but consistency to the maximum extent possible, while still recognizing federal laws and policies.

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Section 219.5 Planning Framework.

The planning framework, consisting of a cycle of assessment, plan revision or development, followed by monitoring, is acceptable to the county.

Section 219.6 Assessments.

We agree that the responsible official should be given discretion to determine the scope, scale and timing of an assessment and to document the findings of an assessment. We agree that an assessment should use existing information rather than generate the need for new scientific studies, as such studies would be costly and time-consuming. We suggest that the rule make it clear that the responsible official is not required to engage in new scientific studies when there are gaps in the science, in order to complete an assessment. Failure to address this could open the door to lawsuits from persons or groups seeking to delay the completion of assessments until scientific data gaps are filled.

Section 219.7 Plan Development or Plan Revision.

Section 219.7 (c) (2) (v) requires that a new plan or revision of an existing plan *"identify the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System, unless a systematic inventory has been previously completed and documented and there are no changed circumstances that warrant additional review."* However, under Section 219.7 (c) (2) (iv), there is no such exception associated with the identification of potential wilderness areas. Duchesne County requests that the rule, in Section 219.7 (c) (2) (iv), be amended to require identification of potential wilderness areas and consider whether to recommend any such areas for wilderness designation ***"unless a systematic inventory has been previously completed and documented and there are no changed circumstances that warrant additional review."***

Further, on the subject of Wild and Scenic Rivers and Wilderness, Duchesne County urges the Forest Service to include in this rule and agency policies a time limit for Wild and Scenic River or Wilderness recommendations to be acted upon or withdrawn. The lack of a time limit has resulted in many recommendations languishing in Congress for decades (because they are politically unacceptable); while such lands or rivers continue to be managed to preserve their characteristics that led to the nomination. This leads to "de-facto" wilderness or wild and scenic rivers that have not been designated; thereby thwarting the multiple use mission of the Forest Service. A ten year time period to act on such recommendations should be more than adequate.

We concur with the five plan components: Desired Conditions, Objectives, Standards, Guidelines and Suitability of Areas. We agree that the responsible official should be given flexibility in how to meet the intent of guidelines in the plan.

Section 219.8 Sustainability.

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The proposed rule is flawed in that, when it comes to social and economic sustainability, the rule only requires that plan components *"**guide the unit's contribution**"* to social and economic sustainability. However, when it comes to ecological sustainability, the rules require plan components to *"**maintain or restore** the structure, function, composition, and connectivity of health and resilient terrestrial and aquatic ecosystems and watersheds in the plan area..."*. If there really is no order of importance when it comes to ecological, social and economic systems (see page 8491 of the preamble), then social and economic sustainability should also be maintained or restored, to the degree possible given Forest Service authority and the inherent capability of the plan area. We disagree with the argument that the Forest Service has much more influence over ecological conditions than socio-economic conditions. The Forest Service cannot control "Mother Nature" any better than it can control socio-economic factors at work in a plan area.

Section 219.9 Diversity of Plant and Animal Communities.

This section of the rule calls for ecosystem diversity, species conservation and diversity of tree and other plant species consistent with Forest Service authority and the inherent capability of the plan area. Such requirements should also be explicitly subject to the multiple use policies of Multiple- Use Sustained-Yield Act of 1960 (MUSYA) and the Congressional policy set forth in the Organic Administration Act of 1897, which declares the major reason national forests were established were for ***"the purpose of securing favorable conditions of water flows and to furnish a continuous supply of timber for the use and necessities of citizens of the United States"*** The needs of the human population should always be given proper consideration when considering the needs of plants and animals. Such diversity requirements should also be **subject to the fiscal capability of the unit**, just as is stated for multiple use management in Section 219.10 of the proposed rule.

Section 219.10 Multiple Uses.

This section of the proposed rule requires that plan components must provide for sustainable recreation, including the protection of wilderness areas and wild and scenic river segments, along with the protection of *recommended wilderness areas and eligible wild and scenic river segments.* Again, Duchesne County urges the Forest Service to include in this rule and agency policies a time limit for Wild and Scenic River or Wilderness recommendations to be acted upon or withdrawn. The lack of a time limit has resulted in many recommendations languishing in Congress for decades (because they are politically unacceptable); while such lands or rivers continue to be managed to preserve their characteristics that led to the nomination. This leads to "de-facto" wilderness or wild and scenic rivers that have not been designated; thereby thwarting the multiple use mission of the Forest Service. A ten year time period to act on such recommendations should be more than adequate.

As stated on Page 8494 of the preamble, the Multiple Use and Sustained Yield Act (MUSYA) requires the Forest Service to *"administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom."* Note that there is no requirement in the Act for the Forest Service to manage the surface resources for *"ecosystem services."* It is quite a stretch of the wording of the

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Act to create a new term (ecosystem services) when the intent of the Act was to refer to products and services obtained from the forest for human use rather than restricting the use of products and services to promote non-human interests. Further, the MUSYA requires the Forest Service to ensure that surface resources are *"utilized in the combination that will best meet the needs of the American people, making the most judicious use of the land for some or all of these resources or related services."* Note that the needs of the American **people** are to be considered first and foremost. This section of the proposed rule should be amended to reflect that.

Section 219.10 (b) (ii) of the proposed rule requires that plan components provide for the protection of cultural and historic resources. On page 8496 of the preamble, it states that *"The intent is not to create a preservation mandate; rather, where actions might impair the resources or use, the responsible official would seek to avoid or minimize potential harm to the extent practicable. In some cases, damage may occur if necessary to achieve a different multiple use objective."* This guidance from the preamble must be built into the rule before Duchesne County will support it.

Section 219.11 Timber Requirements Based on the NFMA.

We request that the introductory paragraph of this section of the proposed rule be amended as follows:

"In meeting the requirements of Sections 219.8 through 219.10 and within Forest Service authority, the capability of the plan area, and the fiscal capability of the unit, the plan must provide for **the management of** ~~*multiple uses and ecosystem services, including*~~ *timber* **resources**, *as follows:"*. This amendment properly focuses the section on the timber requirements of the NFMA rather than other multiple uses and services that are addressed elsewhere in the rule.

In Section 219.11 (c), provisions are made for timber harvest for salvage, sanitation or public health or safety, where consistent with the plan. We concur with this provision; however, this section fails to specify whether such harvest can occur on lands suitable for timber harvest or also on lands deemed not suitable for timber harvest. The section also fails to specify which official makes the decision to allow such harvest.

In Section 219.11 (d) (3) (i), provisions are made for the permitting of cut openings larger than specified by rule; however, the rule does not specify which official makes such decisions. The rule provides for public notice and review by the regional forester but does not provide clear decision-making authority.

Section 219.12 Monitoring.

Monitoring must occur within the fiscal capability of the unit. Consequently, the introductory paragraph of Section 219.12 (a) (1) should be amended to read: *"The responsible official* shall**, within the fiscal capability of the unit,** *develop a unit monitoring program for the plan area and include it in the plan."*

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Section 219.13 Plan Amendment and Administrative Changes.

No comments.

Section 219.14 Decision Documents and Planning Records.

No comments

Section 219.15 Project and Activity Consistency with the Plan.

Duchesne County supports the provisions in Section 219.15 (c) (4) allowing flexibility to amend a plan contemporaneously with the approval of a project as a means to accommodate exceptions and allow a reasonable project to continue without unnecessary delay.

Section 219.16 Public Notifications.

No comments.

Section 219.17 Effective dates and transition.

No comments.

Section 219.18 Severability.

No comments.

Section 219.19 Definitions.

The definition of Ecosystem Services should be deleted along with any rules mentioning this term (see comments associated with Section 219.1, Purpose and Applicability).

Subpart B. Pre-Decisional Administrative Review Process

Section 219.50 Purpose and Scope.

No comments.

Section 219.51 Plans, Plan Amendments, or Plan Revisions Not Subject to Objection.

While it makes sense that decisions made by the Secretary of Agriculture would not be subject to administrative review, because there is no official at a level above the deciding official in that case, it does not make sense that decisions of the Under Secretary for Natural Resources be exempted from administrative review.

This section should specify what objection mechanisms are available to those who may disagree with a decision of the Secretary or Under Secretary. While the preamble notes that plans, plan amendments and plan revisions proposed at this level would be rare occurrences, the

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opposite has been true in the Department of Interior, where the Secretary has been making such decisions regularly without public involvement, to the detriment of local socio-economic conditions.

Section 219.52 Giving Notice of a Plan, Plan Amendment, or Plan Revision Subject to Objection Before Approval.

Section 219.52 (c) (6) requires that objections to plan, plan amendment or plan revision decisions must be filed within thirty (30) days of publication of the notice. Although we agree with the need to reduce delay, we suggest that cooperating agencies (only) be given an opportunity to ask for an extension of time not to exceed an additional thirty (30) days.

Section 219.53 Who May File an Objection.

Duchesne County supports these provisions as a means of reducing the endless stream of litigation that the Forest Service is subjected to from environmental activists.

Section 219.54 Filing an Objection.

Duchesne County supports these provisions; especially those that eliminate the incorporation of documents by reference and requiring that objections provide a basis for potential remedy to the objection. These provisions remove common tactics used by environmental activists to delay decisions that they disagree with.

Section 219.55 Objections Set Aside from Review.

Duchesne County supports these provisions as a means of reducing the endless stream of litigation that the Forest Service is subjected to from environmental activists. We hope that these provisions can be amended to discourage environmental activists who attempt to influence or delay decisions by inundating the Forest Service with form letters from persons who have no knowledge of local conditions.

Section 219.56 Objection Time Periods and Process.

Section 219.56 requires that objections to plan, plan amendment or plan revision decisions must be filed within thirty (30) days of publication of the notice and subsection (d) provides that no extensions of time are available. Although we agree with the need to reduce delay, we suggest that cooperating agencies (only) be given an opportunity to ask for an extension of time not to exceed an additional thirty (30) days.

Section 219.57 Resolution of Objections and Section 219.58 Timing of a Plan, Plan Amendment, or Plan Revision Decision.

Duchesne County supports these provisions as a means of reducing the delays associated with endless stream of litigation that the Forest Service is subjected to from environmental activists.

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Sections 219.59 Use of Other Administrative Review Processes.

No comments.

Section 219.60 Secretary's Authority.

No comments.

Section 219.61 Information Collection Requirements.

No comments.

Section 219.62 Definitions.

No comments.

We appreciate the opportunity to comment on these proposed rules and request that our comments, as a frequent cooperating agency and major stakeholder, be given the consideration that they deserve. Please notify the county of the Forest Service's response to our comments.

Sincerely,

DUCHESNE COUNTY COMMISSION

Mike Hyde, AICP
Community Development Director

pc: Uintah County Commissioners, 152 E 100 North, Vernal, UT 84078
Kevin Elliot, Ashley National Forest, 355 N Vernal Avenue, Vernal, UT 84078

DUCHESNE COUNTY COMMISSION
Kirk J. Wood, Chairman
Ronald Winterton, Member
Kent R. Peatross, Member
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Duchesne, Utah 84021-0270

FRD 0454

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FRD-0655

COUNTY OF EL DORADO

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Placerville, CA 95667
(530) 621-5390
(530) 622-3645 Fax

SUZANNE ALLEN DE SANCHEZ
Clerk of the Board

BOARD OF SUPERVISORS

May 3, 2011

Forest Service Planning DEIS
C/o Bear West Company
132 East 500 South
Bountiful, UT 84010

RE: Proposed Planning Rule for the National Forest System Land Management "Coordination" Proposed Section and 219.4 vs. 1982 Section 219.7

To Whom It May Concern:

The Board of Supervisors for the County of El Dorado, as a duly constituted "Local Agency", wishes to offer comment on the new National Forest System Land Management Planning Rule (Planning Rule) and express concerns regarding Section 219.4 of the Proposed 2011 Planning Rules as to "coordination".

This Board has sent its concerns to Chief Thomas Tidwell and Director Tony Took, however, would like these comments entered into the record during the formal public comment period.

The County of El Dorado has very unique and local needs, specific to its interfacing, usage, residents and visitors. It is imperative that, as a local agency, the county is allowed, independent and separate from others, to coordinate directly with the United States Forest Service. We desire to maintain continual coordination with our local Forest Supervisor. This can best be achieved through a simple modification to the proposed Planning Rule:

We urge reconsideration of the text of 219.4 of the Proposed 2011 Planning Rules as to coordination. This section dramatically alters the elements of mutual participation that make up the Congressional requirement that the Forest Service "coordinate" with local governments. We urge that Section 219.7 of the 1982 Planning Rules be substituted for the proposed Section 219.4 as it applies to coordination. Section 219.7 complies with the Congressional mandate of coordination and definition of coordination.

Thank you for this opportunity to offer important input in your Planning Rule process.

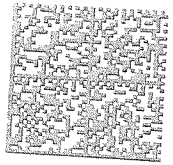
Sincerely,

Raymond Nutting, Chair
Board of Supervisors
County of El Dorado

County of El Dorado
Board of Supervisors
330 Fair Lane
Placerville, CA 95667-4197

FRD-0055

FIRST CLASS



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Bountiful, UT 84010

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To:
Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, UT 84010

http://www.govcomments.com/

NATIONAL FOREST SYSTEM

LAND MANAGEMENT PLANNING

"PLANNING RULE"

COMMENTS

5/6/2011

From:

Bayfield County Economic Development Corporation
Rick Geisen, President
P. O. Box 278
Washburn, WI 54891

We have carefully read the proposed new rule for NFS Planning and believe it takes several important steps in the right direction, and also needs some additional work in some places. The recognition that things change on Forests over time and Forest Plans need to change to "adapt to the changes as appropriate" is very appropriate and we support this new emphasis. We have 2 National Forests in Wisconsin, the Chequamegon and the Nicolet which are managed as one Forest. The Forests had individual Plans from 1986 until they were revised into a single Plan in 2004. During the time from the original Plans until the current time there was never a single plan Amendment even considered by either the individual or the combined forests. The Forest Service (FS) people verbally expressed that they would not consider doing any Amendments. There were instances where we believed Amendments should have been put on the table, evaluated, and decisions made but the CNNF would not.

The text is partly correct, "Instead of updating plans as conditions on the ground change, units often wait and make changes all at once during required revision process every 15 years." But very often the specified 15 year revision process has been ignored by the Forest Service and Forests, including the Chequamegon/Nicolet (CNNF), went well beyond the specified 15 years.

This does, "...result in a drawn-out, difficult, and costly revision process." The CNNF took 8 years and $8,000,000 to make their revision. This type of management results in Forests having plans that, "...no longer reflect reality on the ground." The Forest Service needs to create good plans for the time and make Amendments as needed to keep them current. They have not been able to or unwilling to do Amendments.

If, as this Rule states, monitoring, or other information shows a need for a plan Amendment, it should be made so the plan is current and working to properly serve the public. The new Rule gives the NFS the tools and push to make needed Amendments and implement them timely.

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We appreciate statements like, "Planning would consider the full suite of multiple uses..." and, "Plan components would be required to provide for multiple uses..." and, "Plans would include plan components to contribute to social and economic sustainability." The previous 2 planning efforts here and elsewhere didn't treat multiple uses with equal fairness and appropriately recognize and address the Forests potential for benefiting the social and economic sustainability of local and other communities.

We are skeptical that a new Planning Rule will do a lot to resolve the Forest Service's problems implementing many of its proposed and potential on-the-ground projects that could be accomplished under currently approved plans. Even though huge amounts of time and money go into creating Forest plans that define the permissible management activities and their implementation standards and guidelines so they would be done in sustainable quantities and ways, Forests have to repeat the complex planning process for many projects, at very great costs in time and money. Many projects approved for implementation are appealed and a lot are litigated costing additional large amounts of additional FS time and money and ultimately costing the taxpayers. The delays and costs keep the FS from accomplishing other needed work on Forests and negative socio/economic impacts on people.

A far better management approach would be to create a process that would allow the Forest Service to develop and approve Forest plans then allow them to put their time and taxpayer dollars into plan implementation, via projects, and monitoring. Forests could then actually implement their plans in timely and effective ways and thereby putting scarce dollars to work effectively on-the-ground and not make them do 2 complex planning processes to do projects. Even simple recent projects on the CNNF such as 70 foot and ¼ mile bike trail segments, improving 2 Forest road intersections with a County Highway and a trail bridge require significant professional time and cost.

We were very pleased to see the added emphasis for the social and economic impacts of National Forest (NF) management on communities. Because these 2 areas are joined closely, our comments will address them as socio/economic impacts.

The text states that "...the Agency has reached out to the science community in developing this proposed rule." It further says, "Additionally, scientists have been involved in the development and review of the proposed rule from the beginning and will continue to be involved throughout the rule making process." There are not any similar direct statements saying that there has been and will be the same type of intensive involvement from socio/economic experts. Communities on and near NF lands have significant daily socio/economic impacts from what is done or not done by Forests. Professional socio/economic input at the same level needs to be specified in the new Rule.

During the plan revision for the CNNF they only did the same IMPLAN type of analysis similar to what was done in the 1980s. They had a FS PhD do a Social Analysis in which she reported that she interviewed a series 0f 40+ people, some FS and some public. She took their responses and wrote a Social Analysis for use in the plan revision.

We requested the questions she used for the interviews, the names of the people she interviewed, their individual responses to the questions, and any additional comments they may have made to make our determination about the appropriateness of her people selection, the questions asked, and the people's responses. She said that she had shredded the material and it was not available to us. The CNNF did not have a project file, as they should have had on record, for us to review.

The proposed rule talks about making **all** of the information used to develop the plan available. We believe this requirement applied to the first planning process in the 1980s as well as the CNNF's 2004 plan revision. The draft Rule says, "...themes arose during public participation included the importance of public involvement..." For the public to be able to be meaningfully involved the analysis work needs to be on file and available to the public. It should not be shredded and unavailable to the public.

Our economy in Northern Wisconsin is a lot like rural economies in other rural areas with significant acreages of NF. Wages and benefits are much lower than the Southern part of the State. Our socio/economic situation is very much dependent on recreation and resource uses.

We depend to large degree on the CNNF lands for hunting; fishing; camping; access roads; trails for hiking, skiing, biking, ATVing, snowmobiling, etc.; boat launches; berry picking; trapping; etc. We too want to see "sustainable recreation" for these purposes, provided and well managed for the public's enjoyment and to draw people to our area to help our economy. Recreation related jobs are usually not high paying and most are seasonal but they are a very valuable part of the socio/economic fabric for our and other communities near NFs.

We also depend upon the wood from the CNNF for our mills in the State. As is well known, Wisconsin is the leading paper producing state in the US. In addition we have many other facilities needing wood resources. These industries work throughout the year, support families, and pay higher wages.

The Regional Forester in R-9 in the early 1990's recognized the importance of both scientific and socio/economic information for Forest planning. He arranged for the formation of 2 groups, one of scientists and one of people

with socio/economic and scientific interests and knowledge to each meet, to discuss, and report on information needs for quality Forest planning.

The science group met conducted their discussions and issued their report which contained a lot of agreement.

The socio/economic group composition was much more diverse than the science group. It included people from a variety of disciplines including some of the scientists that had participated in the science group. This group did not reach agreement on most items and adjourned without resolution of them. The differences were clearly defined. However, unfortunately the group was not reconvened to continue their discussions to attempt to reach a better understanding of the individual differences and to seek to resolve them. Instead a report was written that, if we remember correctly, only summarized the areas where there was some agreement. Had this very insightful process been followed to conclusion there would have been the opportunity to bring science and socio/economics together productively in the planning process at a much earlier time.

The proposed Rule needs to be expanded to require comprehensive, publicly available socio/economic analysis information including such things as impacts on jobs; payrolls; business; business expansion opportunities; families and potential families; tax bases; declining school enrollments; lost revenues, taxes, pay, business opportunities because the CNNF and other Forests do not sell their Allowable Annual Sale Quantity (ASQ); lost tree growth from not treating stands when they need it; potential for lesser ASQs in the future because of late or not accomplished treatments which slow growth; etc.

We have an aging population in the US and very much so in Northern Wisconsin. This results in a lot of people who enjoy using the CNNF and

other NFs, for a wide variety reasons, that have limited mobility, (handicapped) and cannot access the Forests as most people can. They need good motorized access to enjoy the Forest as other can. The State of Wisconsin has a very good hunter program for handicapped people.

Language needs to be added to the Rule to include direction for Forests to supply reasonable motorized access for people, like the Wisconsin handicapped hunters, to be able to drive and park on little used but drivable primitive roads when the roads are not causing excessive resource damage. The FS Rule needs to address this important need with a large degree of understanding and commitment.

The Rule document states, "One point of tension was how to balance the need for national consistency with the need for local flexibility." At one time the FS did not have a significant problem with this. It provided broad national direction and required the Regions and Forests to supplement the national policy to fit local conditions. The FS has gone towards much more controlling "national consistency" policies rather than trusting the field people to do a quality job for their areas of responsibility. The "Road Rule" is strong recent example of this.

We are very much in favor of returning to the WO providing broad management direction to the field and requiring field people close to the ground supplement the directions to fit the on-the ground conditions. The FS includes lands and resources of many types across the US. It needs to provide the field broad direction and the flexibility and trust to professionally fit management to local conditions then do monitoring to help determine effectiveness.

Timber harvest is one of, maybe the most argued parts of NF planning. We recognize that there are organizations and individuals that would like to stop

all tree cutting on NFs and they are often well funded. Our Northern Wisconsin communities are not well funded and use of the timber resource is economically very important to us. It is a renewable resource that has major benefits to society. The proposed rule goes well beyond where it should in limiting flexibility in planning and implementing timber harvest. For example: (1) It doubles down by stating, "require interdisciplinary review of the harvest proposal." The whole planning process is interdisciplinary. (2) "require cutting to be blended with the natural terrain;" We have a lot of experience managing our 2.3 million acre, certified by SFI and FSC, County Forests in Wisconsin and it is not possible to always blend in cutting with the natural terrain. To put this statement in invites unreasonable appeals and litigation. (3) "Establish maximum size limits of areas that may be cut." This would preclude examining the soil types, timber types, topography, access and etc. then determining how to designate the timber for harvest. Instead, for example, if there is a stand of 73 acres ready for harvest for a variety of professionally determined reasons a Forest could be limited to a lesser predetermined number of acres and not be able to do what is right on-the ground.

The Rule document includes a statement that there were no issues raised about default size limits for timber cuts. This is an issue here and the wording in the proposed Rule recognizes the need for flexibility in size in the statement, "The agency believes that the procedure for varying from these limits may be particularly justifiable in the future..." We agree and the Rule needs to be revised so these decisions are based on local conditions evaluated by interdisciplinary professionals, not a set of fixed numbers.

The requirement to designate lands as either suitable or unsuitable for timber harvest should incorporate wording that considers timber equal to other resource considerations when making suitability determinations. Our experience has been that land planning designations have tended to be

for all other uses first that would preclude timber harvest and what is left is designated for timber use. This is a decision process that has not equally considered the socio/economic effects of the timber resource when making land use designations. In the 1980s planning effort the timber producing potential of lands was determined and that potential benefit was then considered in conjunction with other potential use resource benefits so there was an equal evaluation. The new Rule should again be written to achieve this equality.

As noted above, Wisconsin has a very significant wood processing industry and leads the nation in paper production. The CNNF and NFs in adjacent states are very important for supplying raw materials for this industry. We want the Rule to better recognize the importance of the timber industry and to respond with much more balance between timber and other resources than is in this draft.

One of the reasons, maybe the key reason, that timber has not gotten appropriate attention from the FS is that they have resisted doing quality evaluations of the NFs timber program socio/economic impacts as we have noted above. It is a very important program for us and many others who live on and near NFs, to adjacent states in many instances, and even for exports.

The current FS budgets have a very large proportion of the money in the Fire program. There also is Wildland Urban Interface direction that defines Urban in very liberal terms, certainly unlike any other definition of rural we have seen. The CNNF has plans that would allow them to spend money to treat forest fuels where there is one structure on 40 acres. A current project plan has over 4,000 acres of fuel treatments in an area with a very low fire occurrence history and very few people, i.e, very rural.

When asked about the costs to do this much work they did not have a figure and said when they receive dollars they will do some of the work. The Rule needs to include language that requires the FS to evaluate this type of work in detail including what are the structures, what is their value, are they lived in full or part time for recreation, what has the owner done for fire protection, what are the proposed work costs, and what is the cost/benefit ratio. There is not enough money in the FS budget to provide fire protection for low population rural situations because the initial cost is only the first cost. There would need to be dollars for future treatments as the forest grows.

We have read and reread 219.52 and referenced sections and are not certain that we fully understand the Objection process. It appears that it is about the same as is being practiced now. Currently the FS sends out a project proposal and gives you a specified time to respond with an Appeal. If there are multiple Appeals they offer a joint meeting to try to reach a compromise.

If there is not a compromise the FS makes a decision to implement as proposed or with some modification(s). When this decision is made the appellants can either accept the decision or litigate. Does the Objection process replace the Appeal?

We sincerely hope the public involvement process improves with the new Rule. During the CNNF plan revision process all the key public meetings were held in Wausau, WI. They began at 9 AM and for interested citizens in the Northern part of the State it was a 3 hour drive each way. They only began meetings in local areas near the end of the process. It made it very difficult for locals to participate when they so severely limited the meetings. There needs to be a requirement in the Rule to spread these public input meetings over Forests throughout the planning process.

The process for this Rule effort too has favored large urban areas and few people. When the video conference for this Rule was held recently we asked that it be shown at the CNNF Great Northern Great Lakes Visitor Center, a very nice large facility near Ashland, WI and our request was denied.

Monitoring needs to expanded to include socio/economic effects of each Forests management of their timber program, including the cumulative effects and effects of not selling sales on a reasonably uniform annual basis. Failure to sell the full ASQ annually prevents industry from being able to plan their operations based on knowing that Forests ASQ will be produced every year. Mills we've talked to say they cannot plan for any NF timber because of the uncertainty of what will, if any, be sold each year. We fully understand that the FS is subject to the will of Congress appropriations but without quality socio/economic monitoring the Congress is not being fully informed about the impacts. The US is in tough economic times. The timber resource can help provide many jobs in the US now and in the future.

Some people and organizations say that the NFs are threatened with serious harm by the actions of the FS. We believe that the FS has produced plans that do protect the lands it manages and have opportunity to allow for more to be produced from them for the public good sustainably. In the 1930s the Regional Forester in Region 9 sold the local people on creating the 2 National Forests by telling them that their creation would lead to a sustained series of products and services from the lands that would benefit the local people if placed under FS management. This promise has not been honored.

We believe good and fair planning as it affects locals as well as others across the US is the key to good management. We believe also, that locals deserve some special attention because they live there and are affected very much more directly by the actions of the Forests.

Science does need to play a very valuable part in Forest planning. And science needs to keep learning more to help land management. However, there is not and will not be a proven scientific answer for every question that FS land managers will need to respond to in the course of their work. There is not and will not ever be enough money to fund scientific study of all things affected by land management decisions. Much decision making will continue to depend on the knowledge field professionals have gained from their, and other professionals, land management experiences on specific land

areas. Applying their local knowledge combined with the available science to planning and project implementation then doing quality monitoring of the effects of their actions and making appropriate adjustments, as this proposed Rule recommends, is appropriate.

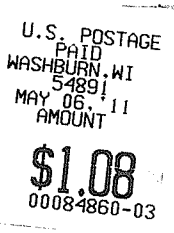
If you have any questions please e-mail me at: RMGeisen@bremer.com

Sincerely.

R. M. Geisen
President
Bayfield County Economic Development Corporation

Bayfield County EDC
P.O. Box 278
Washburn, WI 54891

FRD-06SP



CAG RECEIVED
MAY 09 REC'D

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, UT 84010

PITKIN COUNTY

FRD-0057

Forest Service Planning DEIS
c/o Bear West Company
123 E. 500 S.
Bountiful, UT 84010

RE: U.S.F.S Draft Planning Rule

May 5, 2011

To Whom It May Concern,

Pitkin County appreciates your consideration of the following comments regarding the proposed U.S Forest Planning Rule published on the Federal Register on February 14, 2011.

The intention of the Draft rule is commendable and we particularly support the direction for science based management plans that consider the dynamic role of National Forests in climate change, as well as the role of Forests in watershed protection, wildlife conservation, sustainable recreation and the broader landscape of ecological, social and economic balance. Conservation and protection of natural resources on Forest lands are inextricably linked, and critical to support of our tourist based economy and agriculture in our region. We also appreciate the implementation of a feedback loop that will allow for assessment of conditions on the Forest, monitoring to test assumptions of management decisions, and the ability to more readily revise or amend plans based on changed conditions or erroneous assumptions. Furthermore, we support the proposed revision to give the decision-making authority regarding District Plans to the District Supervisor rather than the regional forester, though we recognize the need to coordinate local planning efforts with regional offices to ensure that local needs are also cognizant of national needs and/or regional consistency.

That said, we respectfully request consideration of the following concerns regarding the Proposed Rule:

Watershed/Riparian Areas As a headwater area, Pitkin County has been diligent at a local, regional and State level, in protecting watersheds as a means of maintaining water quality and quantity to sustain wildlife, agriculture and our tourist economy. To ensure the protection of our watersheds, we recommend that the Planning Rule add clear and enforceable standards specifically providing criteria on how to identify watersheds that need protection and restoration; and regarding what management activities can or cannot occur within buffer zones and watershed areas.

As an example, the Draft Rule requires plans to establish a "default width" for protecting riparian areas, but is unclear about the types of protection required. We recommend that the default protection be no surface disturbance in these protected zones, (with an exception for permitted uses such as stream restoration;) and that a minimum buffer zone of at least 100 feet from high water line be required along riparian areas, streams and other waterways. The rule could also be

FRD 0657

improved by providing specific guidance for how to manage and remove logging roads within watershed and riparian areas, since roads continue to be a critical threat to water quality in National Forests.

Wildlife

With respect to wildlife, we recommend that the Draft Rule be improved by setting standards to maintain healthy, sustainable populations of species that are well-distributed and connected across the landscape, rather than limiting wildlife standards to maintain survival of species in decline. Furthermore, enforceable, mandatory wildlife conservation standards should include monitoring protocols, and clear accountability measures in order to ensure protection of fish and wildlife populations, as well as recreational opportunities and other important benefits provided by lands within our Forests.

Timber Suitability

We concur with the following statement: "The draft rule contains several problematic provisions or omissions concerning timber resource planning and management based on the National Forest Management Act (NFMA). For example, the draft rule states that forest plans "may" determine that certain lands are not suitable for timber production (Draft Sec. 219.11(a)), whereas the NFMA states that forest plans "shall" identify lands which are not suited for timber production (16 USC 1604(k)). Second, the draft rule categorically states, "All lands not identified in the plan as not suitable for timber production are suited for timber production" (Draft Sec. 219.11(a)(2)). However, the NFMA only requires plans to identify lands that are unsuitable for timber production; it does not require or assume that all other lands must be considered suitable for timber production. Furthermore, the draft rule correctly states elsewhere, "Suitability does not need to be determined for every multiple use or activity, but every plan must identify those lands not suitable for timber production" (Draft Sec. 219.7(d)(1)(v)). The planning rule need not – and should not – impose a requirement to designate lands as suitable for timber production."[1]

Sustainability

Climate Change To the extent possible, we recommend that the Rule provide more specific direction and focus on the need to assess climate change impacts on ecosystem and watershed health and resilience, and species viability;

Wildland Fire We support the Rule direction to maintain the sustainable function of watersheds by considering the role of wildland fire and opportunities to restore fire adapted ecosystems.

Multiple Uses

The requirement that plans account for "multiple uses ... that contribute to local, regional and national economies in a sustainable manner...should be revised to reflect the statutory requirement from the Multiple Use Sustained Yield Act that forest resources be managed so that they can be sustained in perpetuity."[2] Furthermore the term, "multiple use"

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[1] Mike Anderson, the Wilderness Society, RE: Forest Service Draft Planning Rule, February 23, 2011

[2] "*A First Look at the Draft Forest Planning Rules*," Feb 18, 2011 post on Redlodge Clearinghouse Blog by Mark Squillace, Director, Natural Resources Law Center, University of Colorado at Boulder

FRD-0057

should be defined to clarify that it is not intended to accommodate all uses in one area at the same time.

Wilderness, Wild & Scenic & Other Designated Areas

We emphatically support the Planning Rule direction for Plan components to "provide for the protection of designated wilderness areas and wild and scenic rivers, and for the protection of recommended wilderness and eligible or suitable wild and scenic rivers in order to protect the ecologic and social values and character for which they may at some point be included in the system." We agree that, "Wilderness areas provide important places for recreation, solitude and renewal; are refuges for species; and, like cultural and historic sites, can attract tourism that benefits rural economies." (Section 219.10) Given proposed federal legislation under H.R. 1581, the "Wilderness and Roadless Area Release Act," we believe it's particularly important that this aspect of the Proposed Rule remain intact.

Roadless Rule

While the legal status of the Roadless Rule is currently in dispute, management direction regarding the Roadless Rule is currently absent in the Planning Rule, and should be addressed.

Assessment/Monitoring

The Rule should be revised to clearly state that the assessment process must be ongoing and dynamic – to ensure that assessments are revised on a regular basis to reflect new information and data. Subsequent monitoring will be most meaningful if data is regularly gathered and analyzed to determine wildlife population trends (including trends of key forest species that indicate forest health,) changes in ecosystem health, etc.; and to reflect better access to new information regarding forest resources that may be available over time. Furthermore, the Rules should explicitly require Districts to address problems identified in monitoring reports within a reasonable timeframe; to determine whether changes should be made to the District Plan, assessment, management activities and/or the monitoring program.

Using Best Science

While we support the Planning Rule requirement that Forest Service decisions be based upon the best science, we recommend that the Rule be revised to require that best science not only be considered, but *required* to support the decisions the agency makes; or that at a minimum, the agency be required to offer a rational explanation for making a decision that is not supported by the best science. The intent is to encourage decisions based upon science rather than politics.

Public Process/Objections

The draft rule includes a "pre-decisional administrative review process" in which citizens may request changes to a forest plan before it is finalized. While intended to make the planning process operate more efficiently, the proposed objection process includes two features that place unreasonable burdens on the commenting public. For example, the draft rule would generally only allow someone to raise an issue in an objection if that person raised the same issue in "previously submitted substantive formal comments" on the proposed plan (Draft Sec. 219.55(b). We recommend that rules be revised to allow an individual or agency to submit additional comments in the event that they obtain pertinent information subsequent to their initial submittal.

FRD-00507

Also, the objection period is limited to 30 days following publication of a pre-final plan, with no allowance for time extensions. While recognizing the intent to shorten the overall planning process, we recommend that the rules allow for a 60 day time-frame for comment, with the opportunity for the reviewing officer to extend the timeframe, as necessary. We concur with the Draft Rule's proposal to give the Forest Service reviewing officer 90 days to respond to the objection, and discretion to extend that deadline, but believe that a more reasonable timeframe should also be provided for public response.

Plan Implementation

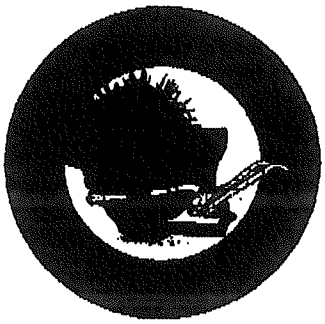
We recommend that the Draft Rules be revised to require plans to identify financial, personnel and/or other resources needed to implement plans, including monitoring programs and management activities; and how these resources will be obtained.

Thank you again for the opportunity to comment. Please contact Ellen Sassano, Senior Long Range Planner, at 970-920-5098 or ellens@co.pitkin.co.us if you have any questions regarding our comments.

Sincerely,

Rachel Richards, Chairwoman
Pitkin County Board of County Commissioners

FRD-0 0658



COUNTY OF COLUSA
BOARD OF SUPERVISORS
Board Chambers
547 Market Street, Suite 102
Colusa, CA 95932
(530) 458-0508/0509
cocolusa@countyofcolusa.org

May 12, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S.
Bountiful, UT 84010

Subject: Comments regarding Forest Service Planning Rule Collaboration

Dear Sir or Madam:

Below are the following concerns of the Colusa County Board of Supervisors regarding Forest Service Planning Rule Collaboration.

Section: 219.4 Coordination with other Public Planning Efforts

- Forest service should be required to coordinate with local governments when planning activities or rules that could have an effect within said local government's jurisdiction.
- Comments or recommendations submitted by the local Board of Supervisors on planning activities or rules should be given equal consideration to those comments received State and Federal agencies.
- We are due this consideration because we are State constitutional officer's elected by a majority of our local population.

Sincerely,

Gary Evans,
Supervisor, District IV

FRD-0058

May 12, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S.
Bountiful, UT 84010

Subject: Comments regarding Forest Service Planning Rule Collaboration

Dear Sir or Madam:

The following comments are my comments and or concerns regarding the proposed rule.

Section 219.4 Coordination with other Public Planning efforts

Comments received from individuals who reside or work within a particular planning area should be given greater weight because they are the true "stakeholders" i.e. comments from Georgia or New York regarding a plan in the Pacific Northwest should not be held in as high a regard as one from a citizen f rom Redding or Portland.

Section: 219.7 Plan development or revision

Plan development must not only include environmental effects but social and economic effects as well.

219.10 Multiple Uses

Plans should never be required to provide wilderness or wild and scenic river protection to areas or rivers which are "not" so designated. This would do nothing more then propagate those areas and reduce "multiple use" in fact plans should be required to "not" provide wilderness or wild and scenic protection to areas not so designated.

Section: 219.11 Timber Requirements

Lands suitable for timber production needs to be scenic based, i.e. soil type, elevation ect., not based on economic, emotion or political agendas just because land may be suitable for timber production does not mean it must be logged. This would also eliminate the need to re-evaluate every 10 years as soils do not change that rapidly.

The "desired conditions" in timber production lands should be established at the most local levels with the responsible official coordinating with local government.

Sincerely,

Gary Evans

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 74.43.144.76
Form Letter:

Comments

See Attachments

Individual(s)

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State	MONTANA
Zip	59923
Country	UNITED STATES
Created On	5/11/2011 6:47:00 PM

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Created On	5/13/2011 2:04:00 PM

Organization Type	County Government Agency/Elected Official

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Zip	59923
Country	UNITED STATES
Created On	5/13/2011 2:05:00 PM

BOARD OF COUNTY COMMISSIONERS

LINCOLN COUNTY

STATE OF MONTANA

ANTHONY J. BERGET, Commissioner
DISTRICT NO. 1, LIBBY

RON DOWNEY, Commissioner
DISTRICT NO. 2, TROY

MARIANNE B. ROOSE, Commissioner
DISTRICT NO. 3, EUREKA

TAMMY D. LAUER
CLERK OF THE BOARD AND COUNTY RECORDER

May 11, 2011

Forest Service Planning Rule
C/O Bear West Company
172 E 500 S
Bountiful, UT 84010

FAX: (801) 397-1605
Elect. Comment link: http://www.govcomments.com/

RE: National Forest System Planning Rule

Dear Comment Analysis Team:

Thank you for the opportunity to comment on the effort to develop a "new" Planning Rule to help our land managers develop and revise currently outdated Forest Plans.

Lincoln County, Montana, for which we are the chief elected officials, is comprised of approximately 75% federal forest land (Kootenai National Forest) and the customs and culture of our citizens and our communities developed over time in lock-step with the active management and utilization of that vast expanse of federal forest. These forests within Lincoln County became the "essence" of our communities over the past century. Currently, however, because of a lack of active, adaptive, management resulting from changing internal philosophies, pressure from anti-use environmental organizations, and a myriad of appeals and litigation, our customs and culture are being threatened and our economic health is in disarray. Hence we are encouraged to see recognized the need and obligation for the Agency to support "vibrant local economies", a goal not achieved in recent years.

We recognize the need for an updated rule and appreciate your extensive efforts in public engagement during its long and torturous promulgation. However, we feel the result is too complex and detailed (as evidenced by an "explanation" more than twice as voluminous as the rule itself) and will invite a morass of litigation. We had hoped for something more streamlined. This complexity and lack of comprehensiveness, along with the potential for on-going litigation, will surely cause the gobbling of huge chunks of USFS time and budgets -- of particular concern during a difficult time for federal funding – and for every dollar consumed, a dollar will not be available for resource level or project level analysis – resulting in less beneficial action on the ground.

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We are pleased that the new Rule proposes to make the Forest Supervisor the responsible official, rather than the Regional Supervisor. This change will help assure more responsiveness to local needs and concerns – a good thing, the recognition and empowerment of local choices. We actually prefer the language in Alternative C which allows increased flexibility on the part of the responsible official; the stated fear that "greater flexibility provides less assurance that all units would follow best practices" is merely justification for central control which disallows local managers from addressing the unique consistency of their units. Past "top-down" planning for what are, essentially, local choices usually resulted in less than satisfactory management. We regularly note among our constituency an adversarial attitude toward USFS planning and management which is due largely to their perceived failure to affect decisions. Until the planning process more strongly conceptualizes that local citizens, and their customs and culture, have the priority position of influence on decisions, this attitude will persist. After all, it is the local citizens and communities that bear the brunt of decision outcomes and are most affected by forest management.

Also, in this regard, we would like to see a strengthening of the section on collaboration (or perhaps a separate and distinct section) to include stronger and more specific language more in line with Section 219.7 of the 1982 Rule reflecting mandated requirements to coordinate and cooperate with state and, most particularly, local governments whose elected leaders are most representative of their community needs. All too often the interests and needs of forest adjacent and dependent citizens and communities are subsumed by purported "national interests" that are cleverly created and promulgated by strong special-interest organizations with, in reality, quite narrow and subjective goals.

Section 219.10 of the earlier 2005 version appeared to require that a Plan contribute to the sustainability of the social and economic systems within the plan area **on a level equal to** sustaining ecological systems, whereas this new Rule seems to command that managers **must** maintain sustainable ecological resources, while it only offers "guidelines" for social and economic stability. We prefer the former. The proper management of our forests is critical; the Planning Rule must help insure that environmental needs, social needs, and economic needs are balanced and working together.

We are pleased with the Administrative Review process in the new Rule. We believe that a pre-decisional objection process is preferable to a post-decisional appeals process. The objection process must be and open transparent. Any party not having attempted to mitigate concerns by pre-decisional objection should not be allowed to file any post-decision appeal, nor be given any standing in any ensuing litigation.

Additional Concerns:

- Proving use of the "best science" will be time-consuming and litigious. We trust our Forest Supervisors and their field experts to be able to distinguish between good science and bad science. Merely referencing what science was used should remain acceptable.

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- We are concerned that the language in Section 219.4(b)(3) may conflict with the local Community Wildfire Protection Plans which include planning on both federal and private lands.
- In Section 219.4(b)(1) which refers to consistency between Forest Plans and local plans, we would like to see a requirement that, in any case where such consistency is deemed "not practicable" or "not appropriate", the responsible official must document the in-consistency, and document the reasons for not being able to achieve consistency.
- The language in Section 219.9 relating to ecosystem diversity and viable populations seems excessively expansive and burdensome, and goes beyond the requirements of the National Forest Management Act, and invites objections and litigation aimed to delay and diminish suitable management activity.
- The elevation of the nebulous and ill-defined "ecosystem services", which seems to include just about everything, to the same level as multiple uses as described in the Multiple Use-Sustained Yield Act is unacceptable.
- We are disappointed that the Rule does not require Plans to emphasize the recovery and utilization of excess biomass as a potential renewable energy benefit – material that will otherwise burn or be wasted.

Once again, thank you for this opportunity to comment on a hugely important issue.

Sincerely, Lincoln County Commissioners

Marianne B. Roose

Marianne B. Roose, Chairman

Anthony J. Berget

Anthony J. Berget, Member

Ron Downey

Ron Downey, Member

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 168.177.233.114
Form Letter:

Comments

See Attachments

Individual(s)

Organization Type	State Government Agency/Elected Official
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State	UTAH
Zip	84114
Country	UNITED STATES
Created On	5/12/2011 1:53:00 PM

State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

Office of the Governor
PUBLIC LANDS POLICY COORDINATION

JOHN HARJA
Director

0407

May 12, 2011

Tom Tidwell
Chief, U.S. Forest Service
1400 Independence Avenue, S.W.
Washington, D.C. 20250-0003

Re: Proposed Planning Rule – U.S. Forest Service
76 FR 8480

The State of Utah has reviewed the proposed revisions to the basic planning rules for the units of the National Forest System published in the Federal Register on February 14, 2011 (76 FR 8480) ("Proposed Rule"). The state has been involved in the discussions leading up to the Proposed Rule publication and participated in the federal roundtables held in Washington, D.C. The state also has reviewed the Draft Environmental Impact Statement, which accompanies the Proposed Rule. We look forward to meeting with the Forest Service to discuss the state's concerns with the Proposed Rule, with the goal of assisting in drafting a rule that addresses the myriad planning factors, yet is simple in operation.

After careful and thorough review, it is apparent that the Proposed Rule has serious defects and fails to significantly improve the existing Planning Rule that was adopted in 1982. In recent years, the Forest Service has proposed a series of revisions to the Service's planning rules, all of which have foundered for one reason or another. The current proposal shares many similarities with the Planning Regulation proposed in 2000. Many of the concerns expressed about the unworkable nature of that proposal are directly applicable to the current proposal. This series of unsuccessful rule-making efforts raises the question of whether the problem is the existing Planning Rule or the implementation of the Rule. In the interim, many of the National Forests in Utah have seen plan after plan go by the wayside, and the Forests are managed by *ad hoc* decisions. The State of Utah therefore recommends the Forest Service simply engage in planning under the provisions of the existing Planning Rule, with perhaps some focused, small amendments and revamped procedures in order to update the efforts.

General Thoughts

The Forest Service asserts that the Proposed Rule has been drafted essentially in response to the hue and cry alleging various and sundry deficiencies with the existing planning rule Yet it

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is apparent from the public comments received that the direction to be taken by the Proposed Rule is deeply divided. Therefore, the Proposed Rule must, first and foremost, provide the means and direction for making the admittedly hard choices required of a line officer.

Unfortunately, the Service has piled planning feature upon planning feature upon a fragile framework to satisfy all concerns and meet all objections that were expressed. By so doing, the Proposed Rule eliminates the processes that result in sound management decisions and instead adopts superfluous wording related to the resources themselves. The Proposed Rule is simply too heavy on definitions and definitional connections between resource conditions to provide any clear path for a line officer to make a management choice that can be measured against known planning criteria.

The 1982 Planning Rule, in contrast to the Proposed Rule, lays out an effective and logical process for the development of forest plans, plan revisions, and plan amendments. It clearly states that plans shall (1) provide for multiple-use and sustained-yield of goods and services in a way that maximizes long term net public benefits in an environmentally sound manner; and (2) determine resource management practices, level of resource production and management, and the availability and suitability of lands for resource management. It then lists 14 succinct and specific principles that form the basis for forest planning. Conversely, the Proposed Rule "sets out the requirement for plan components and other content in land management plans," which provides no specificity, only vague references creating the expectation that more specific information will follow somewhere in the Rule. *See* section 219.1.

The 1982 Rule has been criticized as lacking flexibility and failing to provide for either updating information or prosecuting amendments in a timely manner in response to changed conditions. Indeed, the Service's own explanation of the need for a new planning rule identifies this as the chief failure of the 1982 Rule. (76 FR 8480, Part 2, Overview). In addition, the Forest Service asserts that the 1982 Rule is unduly complex, costly, lengthy, and cumbersome. Of course, these adjectives are employed to make the rule appear inadequate. While the current rule may be cumbersome, a certain amount of deliberative review is the result of a process that requires review under the provisions of NEPA and allows for full public participation.

At the core, both the existing planning process and the process envisioned by the Proposed Rule encompass the normal adaptive management process underway in many parts of the nation. As stated in proposed section 219.5, the Forest Service (and any other land management agency) will assess resource conditions, devise a plan to deal with the necessary response, monitor what happens, and then start again. According to research, in 2002, 40% of the work at the national forest level is for planning and assessment at a cost of more than $250 million annually. (See Fretwell, *Who is Minding the Federal Estate,* (Lexington Press, 2009) 77) Unfortunately, the degree of planning (assessment, monitoring, and revising) outlined in the Proposed Rule is far beyond current practice. Given the budget reductions presently in place, and with more anticipated, priority should be given to fully amending or revising plans as needed under the 1982 planning rule. Planning should not increase the workload at the forest or national level while reducing the amount of time and funds available for on-the-ground implementation.

The adaptive management process works well under the existing planning rule, and certainly does not need to be enshrined as individual, separate parts of a new planning rule. Enshrining the obvious nature of the resource management process will only provide hooks for process paralysis, thereby handicapping the line officer with office procedure rather than providing a tool for on-the-ground management issue resolution.

Authority of and Coordination with the State of Utah

The Proposed Rule does not acknowledge the authority of the State of Utah to manage wildlife and water resources and to have an equal place at the planning table with the Forest Service to represent the direct impact of Forest Service decisions on Utah's economy and social fabric. The trust authority the state has over water, wildlife, and forest resources, and the state's right to engage in federal land planning processes should be provided greater recognition in the Proposed Rule. Of course, the Forest Service should seek the input of all members of the public, but the Service should not forget—and indeed should explicitly recognize—the constitutionally-framed responsibilities of the state.

Specifically, the Proposed Rule should establish requirements to obtain the policy advice of the Governor concerning all facets of forest planning, including the timing, scope, and coordination of plan components; definition of planning areas; scheduling of public involvement activities; and the multiple-use opportunities and constraints on public lands. To facilitate coordination with the state, the Forest Service should adopt language similar to the BLM language in the Code of Federal Regulations at Title 43, Section 1610.3-1.b.

In addition, section 291.4 of the draft Planning Rule provides that the responsible official "should encourage" states to seek cooperating agency status in the NEPA process for a plan development, amendment, or revision. The State of Utah will always consider Cooperating Agency status in the preparation of NEPA documents. The proposed Planning Rule must be revised to direct the responsible official to "offer cooperating agency status to state and local governments in all instances."

Water is a vital resource to the citizens of the State of Utah. The Planning Rule must recognize the preeminent role of the states in adjudicating and allocating rights to the use of water for federal and non-federal purposes. In addition, water supply should be treated not just as an "ecosystem element" (section 219.8 (a)(2)(iv)), but as a critical resource with significant economic and community values, and the important role of state and local water resource managers should be explicitly acknowledged.

Multiple-Use

The definition of multiple-use in the Proposed Rule is not in accordance with the law. The proposed section 219.10 provides that "the plan must provide for multiple uses, including ecosystem services, outdoor recreation, range, timber, watershed, wildlife and fish." In contrast, the Multiple-Use Sustained Yield Act of 1960 (16 U.S.C. §528) ("MUSYA") provides "[t]he national forests are established and shall be administered for outdoor recreation, range, timber,

watershed, and wildlife and fish purposes," and that "[n]othing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands."

Multiple-use and sustained yield are thereafter defined as follows (16 U.S.C.§531):

> "Multiple use" means the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.
>
> (b) "Sustained yield of the several products and services" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.

The statement in the Proposed Rule (section 219.10) that forest plans "must provide for multiple uses, including ecosystem services, [and] outdoor recreation" is outside the clear Congressional definition of the purposes for the national forests with the inclusion of ecosystem services. The definition of "multiple use" also incorrectly treats each multiple use as a discrete resource, rather than recognizing the statutory philosophy of the balance of resources and resource uses amongst each other. This misunderstanding of the nature of the statutory definition of multiple use leads to a vague and arbitrary blurring of uses and processes in the sections of the proposed rule that follow. For example, section 219.10(a)(1) lists a plethora of national forest resources, i.e., forage and recreational settings, while section 219.10(a)(4) references process, i.e., opportunities to coordinate. This vague and arbitrary blurring of definitions, aside from being unauthorized, will only lead to confusion by the public and the line officer regarding his or her duties under the Proposed Rule.

In addition, section 219.10 provides in subsection (a) that the plan must only consider the multiple uses (as improperly blurred above), while subsection (b), mandates provisions be adopted for recreation, cultural resources, wilderness, and wild and scenic rivers, thus relegating all other uses to the catch-all category in subsection (b)(2). This structure is completely misleading and improperly elevates the recreational resources above the other Congressionally-mandated purposes – timber, range, etc. – and perpetuates the illusion that multiple uses are distinct, various resources, rather than recognizing the guiding philosophy of management as set forth in MUSYA.

The state strongly urges the Forest Service to completely rewrite this section of the Proposed Rule to properly account for the statutory purposes of the national forests, define

multiple-use within its statutory framework, and remove the concept of ecosystem services from this part of the regulatory framework.

Ecosystem Services

The State of Utah has serious concerns about the Forest Service's attempt to employ the concept of ecosystem services as a resource, rather than as the desired outcome of use of the forest in a sustainable yield manner. The state also questions whether this concept can provide any real guidance in decision-making by line officers.

As an initial point, the state also has concerns about the definition proposed for an ecosystem in the Proposed Rule. The state strongly recommends the Forest Service use a standardized definition of this commonly understood biological concept. The proposed definition for an ecosystem is overly complex compared to the standard biological definitions employed by other federal agencies and which are readily available and easily understood by diverse audiences and consumers of environmental policies. For example, the U.S. Fish and Wildlife Service definition provides that an ecosystem is a "[d]ynamic and interrelating complex of plant and animal communities and their associated nonliving (e.g. physical and chemical) environment."

As discussed above, ecosystem services are not one of the statutorily-enumerated purposes for the national forests. The concept of ecosystem services has its beginnings in the last decade from the efforts to account for the value of "goods and services" provided by natural systems during the review of proposed projects requiring federal permitting. This has been most developed in the arena of review overseen by the Environmental Protection Agency.

By definition, ecosystem services cannot be defined independently from human values. Healthy ecosystems do provide important benefits to overall ecological health and well-being, but any use of risk-benefit calculations without a connection to human values and benefits is inaccurate. In work reported by the EPA, the calculation of benefits (which have been the traditional means to assess value) have been limited to the willingness to pay for goods and services and the willingness to accept compensation for loss. Both of these methods of valuation are fraught with scientific uncertainty.

The Proposed Rule attempts to employ the concept of ecosystem services out of its proper context. The Forest Service may not, by simple *fiat*, redefine ecosystem services—a concept derived from risk-benefit analysis– into an object (resource) subject to management prescriptions. That is, the risk-benefit calculation involved with resource development analysis does not successfully translate into a substantive "resource" which can be utilized in planning allocations.

In addition, the term today is fraught with multiple, mutually confusing meanings. The term is sometimes used to describe a process, sometimes an outcome, and sometimes a value. It is treated as both a verb and a noun. With so much inherent uncertainty of meaning, and given its genisis as a risk-benefit calculation, the term is an extremely poor choice of a word for the necessary clarity and simplicity of a planning rule.

The concept of managing resources to protect their long-term viability or sustainability is already encompassed in the current 1982 Planning Rule. There is no fundamental need to invent a new phrase in order to make an attempt to "modernize" the standard and viable concept of sustainable yield in this manner. Again, the desired outcome is to manage natural resources employing the concepts of sustainable yield, the statutorily authorized process, not combine a risk-benefit calculation in with other resources which are the subject of planning. The state requests the Forest Service rewrite the relevant sections of the Proposed Rule to reflect these comments.

The Role of Social and Economic Sustainability

The Proposed Rule reduces the role of forests in creating social and economic sustainability to an unquantifiable "contribution"—a concept that has a lower expectation of planning attention than that of ecological sustainability. The Proposed Rule emphasizes ecological sustainability over multiple uses and stresses ecology over the social and economic benefits provided by the forest. The ranking of social and economic interest as secondary to ecological interest is unacceptable to the state, as it relegates local communities that depend on the forest to expendable consequences of the alleged superiority in planning for ecological sustainability.

In the Proposed Rule, in section 219.9, attention to the diversity of plant and animal communities is subsumed under the term "ecosystem diversity," which is then cross-referenced to the definition of "ecological sustainability" in Section 219.8(a). The structure of this part of the Proposed Rule can be interpreted to identify "ecological sustainability" as a tangible use of the forest. Ecological sustainability should not be viewed as a use or resource, but should be addressed as a desired outcome. Thereafter, if ecological sustainability is defined as a desired outcome, the elements of economic and social sustainability become equivalent to ecological sustainability, as the law requires. In addition, the Proposed Rule must utilize clear definitive economic indicators when developing plan standards and when making project-level decisions.

Further, as described in section 219.8, social and economic sustainability are improperly centered upon recreational opportunities. The Proposed Rule provides no guidance concerning these recreational opportunities, nor any other contribution of the forest to the local economy. The state requests an explanation of the practical application of sustainability in the development of a forest plan, especially in relation to the total economic picture of an area.

In 1998, the National Association of State Foresters and the U.S. Forest Service jointly agreed that the Montreal Process Criterion and Indicators could provide a clearer vision for the management of the nation's public and private forest lands. The Proposed Rule makes no mention of using these criteria to measure sustainability. It is unclear how the U.S. Forest Service will establish consistency among these three components and measure social, economic and ecological sustainability.

The state also requests a definition of "ecosystem diversity" that does not include the redundant use of "ecological sustainability" or "ecosystem sustainability."

Public Participation

The Forest Service proposes changes to the process for public participation both in the preparation of a plan and throughout plan implementation. The Proposed Rule requires collaborative processes "where feasible and appropriate," thereby essentially advocating for front-loading participation on a proposed project (within a completed plan), seeking collaboration amongst all the stakeholders on a plan of action, and then issuing a decision consistent with the collaborative solution by the line officer. *See generally* sections 219.4 and 76 FR 8485 – 8487. However, adding more opportunities for participation does not necessarily equate to a more efficient process or a better product. The expectation that more participation early in the process will lead to a more efficient decision-making process is based on a definition of collaboration that involves all the stakeholders working towards a common goal. That scenario unfortunately is not the case for line officer decisions at a number of strategic and tactical levels, particularly as written in the planning documents themselves.

The line officer, by law, must retain the final decision-making authority. The officer must be free to make decisions which comport with the law and local forest needs and conditions. A collaborative process can be, and certainly has been in the past, a valuable tool when reviewing project-scale decisions. The process is, however, unlikely to assist with the creation of strategic planning decisions themselves.

Further, collaborative processes are helpful at project-level decisions only if managed by line officers with appropriate training or through hired facilitators. Recent research points out increased costs associated with attempting to avoid litigation through collaborative efforts. (*See* Fretwell, *Who is Minding the Federal Estate?*, 2009). For example, for the Wallowa-Whitman National Forest in 1992, aggregate timber management costs were $125 per thousand board feet. Comparable cost to produce 1,000 board feet of lumber for industrial producers was $53; for the Bureau of Indian Affairs it was $25; and for the Idaho Department of Lands, just $9.

Collaborative processes must be well-managed or litigation will result. Indeed, the outcome of a group process is largely dependent on the method employed. A consensus process will yield a different outcome than a majority rule scenario, and the use of a Delphi method could produce yet another outcome. The method employed can also lead a group in a direction not intended by the Forest Service when convening the stakeholders. Input that does not become policy usually leads to legal action.

The rewrite of the Proposed Rule must provide criteria for management of the collaborative process and there must be sufficient funding to provide the necessary skill set to control expectations. Contrary to assurances from the Forest Service, it is not likely that existing untrained staff in their existing roles will be able to manage the level of participation described in the proposed Planning Rule. Further, the cost of hiring outside facilitators will be at the expense of other forest management functions.

For these reasons, it is doubtful that the expectation concerning budget efficiencies and gains can be achieved through collaborative processes on a regional or forest unit scale, leaving

the other costs of implementing the Proposed Rule subject to the difficulties of future Congressional appropriations.

The Role of Science in Decision-Making

There are many types of information available to the line officer during the process of promulgating a forest plan and thereafter during the plan's implementation. This information includes what the Proposed Rule delineates as scientific information; that is, what it considers to be "science." The Proposed Rule correctly notes that science and scientific analysis and information include "social, economic and ecological sciences." *See* section 219.3(b). However, the Proposed Rule goes on to state that the line officer (responsible official) shall determine "what [scientific] information is the most accurate, reliable and relevant to a particular decision," and further, to describe how this information was "used to develop plan components." *See* sections 219.3 and 219.3(c).

As with the difficulties managing a collaborative process mentioned above, the Proposed Rule does not provide any useful guidance, criteria, or sidebars regarding the acquisition or use of scientific evidence, scientific analysis, or scientists themselves. The line officer will need to make management decisions, weighing all the factors, including social, economic, and ecological scientific information, as well as other information not labeled science or scientific. However, not only does the Proposed Rule not delineate any process for evaluating, weighing, discounting, or otherwise dealing with any evidence or information which may be presented as science or as scientific in nature, it does not provide criteria or standards for comparing information not labeled as science against the scientific information.

For example, modeling wildlife habitat data is very common, but such models often misrepresent the actual occurrence of wildlife, or may differ from information in the hands of Utah's wildlife agency. A great deal of massaging of data occurs in the vicinity of jurisdictional boundaries in a great many wildlife analysis efforts, which massaging should be subject to scrutiny. Global scale climate change modeling may, at this time, have little validity or usefulness for decisions regarding the activities of the local national forest. Conversely, local information on uses of the forest may not have a "scientific" basis but may prove much more valuable in determining appropriate strategies for use and protection of the forest's resources.

The Proposed Rule burdens the line officer with the very real risk of a successful challenge if a decision is made based on information not labeled scientific. The label "scientific" will elevate all such information to a position inherently superior to other information, and therefore transform itself into information mandating a particular outcome. Clear guidance or sidebars for the weighing of other values and information against scientific information is a necessity. Therefore, the Proposed Rule impermissibly restricts the authority of the line officer to make the hard choices about resource allocation required from the person in that position, and must be rewritten to allow the line officer full decision-making authority.

Additionally, while not addressed in the Proposed Rule, the proposed Climate Change Scorecard may be finalized and implemented by the Forest Service in the immediate future. While the Proposed Rule avoids any explicit reference to increased dependence on the science of

climate change, the Climate Change Scorecard does just that. The state requests further information on the development and anticipated use of the Climate Change Scorecard, the studies endorsing the Scorecard, and use of the Scorecard within the process envisioned by the Proposed Rule.

Budget and Expected Savings

The state questions the soundness of the Proposed Rule in view of the fundamental need to decrease federal spending. The state seriously doubts the Forest Service can maintain the complex and interrelated planning procedures provided in the Proposed Rule in light of the cold hard federal budget cuts. The planning process must remain simple.

The Proposed Rule has a level of complexity that exceeds that of the 1982 rule; therefore, the savings identified in the attached regulatory certification (76 FR 8508) are not assured. For example, the certification states that "[u]nder the proposed rule, costs are projected to be redirected toward collaboration, assessment, and monitoring activities and away from development and analysis of alternatives compared to the 1982 rule procedures." Given that the Forest Service must comply with the provisions of NEPA for plan preparation and project analysis, this statement does not provide any useful information. The Proposed Rule requires new activities, and the previous activities are required by NEPA, so savings will not materialize. It is more likely that the requirements for monitoring and assessment will increase the total costs of the planning process rather than decreasing them.

Further, the certification indicates that costs will be redirected toward more plan amendments due to expectations that the original plan revisions will be the result of collaborative processes that take less time. Because each amendment will require the use of personnel and business resources to process, including the necessary NEPA work required for each plan amendment, the expected savings will not be realized. Further, as discussed above, the collaborative process is unlikely to achieve any consensus on the preparation of the plans themselves, due to the deep divisions about the purposes and direction of forest management. Anticipated cost savings from this source are likely to evaporate into continued process expenses.

Other examples of the gross and misleading nature of the anticipated cost savings can be generated. The Forest Service should abandon the idea of supporting the Proposed Rule based on efficiency or process adjustments, as the calculations are too inaccurate to mean anything. Further, the lack of secured appropriations to implement the requirements of the Proposed Rule will render it largely ineffective. As written, the Proposed Rule does not provide guidance for which, if any, of the Rule's requirements will be scaled back in the event of budget shortfalls. The state requests the Forest Service address budget expectations and work load as related to the implementation of the Proposed Rule, including a prioritization of tasks in the event of a budget shortfall.

Potential Wilderness Lands Review and Interim Protection

The Proposed Rule (Section 219.10(b)(iv)) would require that new plans provide for the "[p]rotection of wilderness areas as well as the protection of recommended wilderness areas to protect the ecologic and social values and character for which they might be added to the National Wilderness System." Within Utah, this latter provision would not be consistent with Section 201 (b)(4) of the Utah Wilderness Act (P.L. 98-428), which provides that "areas not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans." Additionally, Section 201(b)(5) of the Utah Wilderness Act specifies that the Department of Agriculture "shall not conduct any further . . . evaluation of national forest system lands in the State of Utah for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System." Finally, Section101(2) of the Utah Wilderness Act declares that the Forest Service must "insure that certain other national forest system lands (not in the National Wilderness Preservation System) in the State of Utah be available for non-wilderness multiple uses." Therefore, absent further Congressional authorization, areas in Utah may not be managed as if they are wilderness or wilderness study areas. The Forest Service may not assume to itself authority which may only be granted by Congress. The state strongly requests that the Proposed Rule drop the proposed language, at least within the State of Utah.

Conclusion

Given the stated concerns, the State of Utah strongly encourages the Forest Service to reconsider and recognize the value and effectiveness of the existing rule, rather than promulgate the exceedingly complex Proposed Rule. The Proposed Rule does provide some appreciable improvements to the existing rule, including the increased awareness of the need to protect cultural and historic sites and the ability of the local forester to move quickly to address changing conditions. By modifying the existing rule with specifics such as these, while leaving the clarity of the process intact, the Forest Service would be providing the needed leadership to improve the condition of our forests and assure their health long into the future.

The State of Utah appreciates the opportunity to review the Proposed Planning Rule. Please feel free to write me at the above address, or call me at 801-537-9802 with any questions or concerns.

Sincerely,

John Harja
Director

Technical Comments

1. Section 219.1(c) does not recognize commitment to local economies and should do so. Specifically, subsection (c) provides that the objective of the section is to "guide the collaborative and science-based . . . plans that promote healthy, resilient, diverse, and productive national forests and grasslands." The next sentence, however, states that lands will be managed such that they are "ecologically sustainable and contribute to social and economic sustainability." The state requests a clear explanation for the apparently lesser contribution of plans toward social and economic sustainability.

2. Section 219.8 requires that plans provide for social, economic, and ecological sustainability. However, in subsection (b), social and economic sustainability have been demoted from a position of equal footing with ecological sustainability to one where the plan components must only "guide the unit's contribution." The section also requires the responsible official to merely "take into account" the potential conditions and uses. For communities near national forests, the activities of the forest play a significant role in both the social and economic aspects of the community. It is not simply one of several factors but is, in fact, the primary factor that provides jobs, recreation, and even identity of the community. Retaining the relationship and interrelationship of the forest with the local culture is necessary to respect the local traditions and is required by NFMA. The state therefore objects to the approach of the social and economic analysis in relation to forest planning as set forth in this section. Rural communities should not be sacrificed to the goal of inserting the forest into a broader landscape.

3. Section 219.1(c) cites management goals for which there is no authority. That is, subsection (c) asserts that forests will be managed to provide "spiritual sustenance" and "resilient ecosystems." None of the applicable foundational statutes authorizes the Forest Service to manage for "spiritual sustenance" or "resilient ecosystems." Therefore, the state requests the Forest Service provide specific citation to the authority that gives rise to managing the forests for the above-quoted attributes or, in the alternative, remove reference to the noted attributes.

4. Section 219.8 requires that forests be managed with a goal of "sustainability," the definition of which does not substantially differ from the concept of "achievement and maintenance in perpetuity" as described in MUSYA. Sustainability is defined in section 219.19 as "the capacity of meeting the needs of the present generation without compromising the ability of future generations to meet their needs." Adhering to the language in MUYSA is the appropriate way to address the long term goal of the forests, which is assuring continuing resource availability. The state requests the Forest Service return to the clarity and brevity of the language of MUSYA rather than introduce new language.

5. The concept of a landscape-scale or broader-scale approach is included in the Proposed Rule in sections 219.8(a)(1)(i), 219.10(a)(6) and 219.12 without clarification of what this approach includes or explanation of the rationale for broadening forest plans beyond the individual forests. In section 219.12 for example, the section on monitoring, the concept of landscape-scale approach is expanded, and direction is given to regional foresters to create a

broader-scale monitoring approach. The intent and expectations of this approach are unclear, and the state requests clarification.

6. Section 219.10(a) contains a repetitive list of plan components for consideration by officials. It is unclear why several of these considerations are included under multiple use. Issues such as "reasonably foreseeable risks," "aesthetic values," and "landscape scale context" appear to be more appropriate for consideration under diversity of plants and animals. The same may be said for potential impacts of climate change and other stressors, habitat conditions, and opportunities to coordinate with other landowners. There is little justification for the inclusion of many of these issues in the planning rule generally and even less so under multiple uses. A more appropriate approach for this section would give concise directions for forest management to assure the availability of the traditional multiple uses as provided in NFMA. The state suggests this subsection be rewritten to focus on the statutory definition of multiple uses and clarify the decision-making process and authority of the responsible official in determining acceptable use.

7. Section 219.7 describes the breadth of the content of a planning document, but fails to clearly describe or define a "plan component" or explain why "other content in the plan" is not part of the assessment outcome. For example, this section identifies watersheds for maintenance or restoration as an "other" component of a plan. It is unclear both why the cited example would not be an outcome of the assessment process and the rationale for specifically setting it aside as something "other" than an assessment outcome. The state understands that watershed protection is a stated purpose of the National Forests; as such, it should be considered a required plan component, not an "other" component. This is only one example of the confusion created by this section. The state requests a clear explanation of and rationale for the use of "other content in the plan" and how actions taken under the "other content" umbrella can be objected to and/or appealed.

8. Section 219.6(b)(1) refers to "optional content in the plan," but the items listed as "optional" should be included as objectives and not merely options. Specifically, this subsection references potential management approaches and partnership opportunities for achieving plan objectives. Such goals should not be disconnected from the primary management planning. Also, it is unclear what level of flexibility a responsible official might exercise in applying this subsection. The state requests (1) clarification regarding the intent of allowing these items to be "optional;" (2) an explanation of how these items differ from objectives and guidelines developed through the assessment and monitoring process; and (3) what role public participation will play in determining the "other" strategies or activities.

9. Section 219.8 includes redundant language and requirements in setting forth expectations for ecological sustainability, which are further detailed into plan components. Those plans components require (1) maintenance or restoration of the function, structure, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds; (2) ecosystem elements that must maintain, protect, or restore aquatic and terrestrial elements, including rare communities, the water supply and soils; and lastly, (3) riparian elements which must maintain, protect, or restore riparian areas, including creating a default width around all lakes, perennial or intermittent streams and open water wetlands. These requirements appear

redundant and rely on unnecessary ecological jargon that fails to provide a clear direction for decision-making at the forest level.

10. Section 219.15(d)(1) requires that a project be consistent with the plan components by meeting specific criteria, including that the project not foreclose the opportunity to maintain or achieve any goals, desired conditions, or objectives "over the long term." The vagueness of that phrase is particularly concerning as it could impact projects or activities indefinitely. The state requests a clarification of that requirement and identification of a specific time frame.

11. Section 219.11(a) appears to prioritize timber requirements in a highly problematic manner. Specifically, the prioritization under section 219.11 suggests that the first step in meeting the timber requirements of NFMA is to identify lands that are *unsuitable* for timber production. The NFMA provides for the identification of suitable lands for resource management rather than focusing on lands that are unsuitable for activities such as timber harvest. This section therefore appears to directly contradict NFMA. Additionally, the intent of NFMA is to insure that appropriate, traditional multiple-use activities continue. The method of removing lands from consideration based on the concept of sustainability does not follow the intent of the law. The Forest Service has distorted the language in NFMA which requires a review of lands suitable for timber harvest every ten years and is proposing that any land deemed unsuitable is *prohibited* from harvest for ten years. The state finds that interpretation unreasonable and illustrative of the proposed rule's approach to reducing access to forest lands for traditional uses.

12. Section 219.7(d)(1)(v) references 219.11 in requiring that every plan "must identify those lands not suitable for timber production." It is inappropriate to begin a land suitability assessment with the goal of finding reasons *not* to allow an activity, rather than focusing on and finding areas where a mandated resource use *is* allowed. The state requests this section be revised such that findings of suitability for activities identified in NFMA or MUSYA be considered in terms of potential for rather than the dismissal of opportunity.

13. Under section 219.11, timber harvest is not given any identifiable level of priority, despite the fact that it is a primary function of the forests and a key responsibility of the Forest Service. In fact, this section includes additional criteria for timber requirements, one of which is that lands for timber production may be considered unsuitable if they are not compatible with desired conditions and objectives. Yet, the section never identifies timber harvest as a desired condition and/or objective. The state requests that timer harvest be given its rightful level of priority in the proposed rule.

14. Again in subsection (c) of section 219.9, trees are apparently relegated to a second tier position in the management of forests. Specifically, this section directs the responsible official to include plan components "to preserve, where appropriate, and to the degree practicable" the diversity of native trees. Such latitude in preservation is absent from the requirements for management of ecosystem sustainability and terrestrial and aquatic ecosystem maintenance and restoration. Trees are the iconic image of forests, and the protection of timber as a resource is a foundational premise for establishing the National Forest Service. The state requests an explanation of the rationale behind this approach.

15. Section 219.14 requires that the decision document be prepared according to the Forest Service NEPA process. The document must give an explanation of the sustainability requirements and the diversity requirements but is silent regarding the obligation to meet timber or multiple-use requirements of NFMA or MUSYA.

16. Section 219.15(a) requires that projects or activities which need to occupy the land must be "expressly allowed" in a planning document or the project will be considered inconsistent with the plan. The state is concerned with the restrictive nature of the phrase "expressly allowed". Please clarify the flexibility the line officer will have under the proposed language.

17. Section 219.12 governs monitoring and presents several concerns regarding the discretion granted to officials. Although the responsible official is to have discretion as to the scope, scale, and timing of unit monitoring, the proposed rule includes eight questions, at least one of which must be included in the plan. The complexity of the sustainability requirement alone drastically limits the discretion of the responsible official. As written, it is unclear the level of discretion a responsible official can exercise. The state therefore requests a more detailed description of the expectations of responsible officials when making decisions regarding assessments.

18. Section 219.13 outlines the process for plan amendments and administrative changes. Administrative changes do not require a plan amendment or plan revision. However, under the scope of allowable administrative changes, changes to "other content in the plan other than plan components" are included. As previously discussed, the amount of forest management directed under the heading of "other content" is concerning and certainly would include facets that should undergo a full NEPA analysis.

19. Section 219.59(b) separates the objection process in a plan amendment from the activity or project that is proposed requiring such an amendment. It is not clear if objecting under 36 CFR part 215 or part 218 and having the objection substantiated would then eliminate the plan amendment, or if two objections would need to be filed to completely dispel the actions of the project and related management issues. The need to file and track two objection processes appears burdensome to the public. The state requests clarification of the proposed process for raising an objection.

20. Throughout the Proposed Rule, there are new terms that are poorly defined, new language and requirements that completely lack definition, and goals that appear unattainable with current funding. The Proposed Rule is therefore both confusing and complex when compared to the 1982 rule. The following is a list of phrases and terms the state requests clarified, deleted, or rewritten with specificity and clarity.

a. Section 219.5 introduces a planning process that relies on an undefined and inconsistently applied concept, "integrated resource management." Though the concept is addressed as part of multiple uses in section 219.10, it is not referenced in any other section, nor is it fully explained in the context of the planning framework overall. It is unclear how "integrated resource management" relates to only one aspect of forest planning—multiple uses—but is absent from any others, including, for example,

managing for the diversity of plants and animals and timber harvest. The inconsistency in application of a key aspect of forest management is confusing and may subject the Forest Service to challenges regarding the lack of apparent focus on multiple uses. The state requests that the phrase "integrated resource management" be defined and the rationale for requiring this approach under the section regarding multiple uses alone be clearly explained.

b. Section 219.1(b) provides that land management plans are to guide resource management "within the plan area in the context of the broader landscape, giving due consideration to the relative values of the various resources in particular areas." The phrases "broader landscape" and "due consideration" are undefined and subject this section to a wide range of interpretations. The state requests the Forest Service define the intended scope of the "broader landscape" and the "due consideration" the Forest Service intends to give to the various resources. The state also requests clarification regarding how section 219.1(b) will be incorporated into decision-making at the forest level.

c. "Other content in the plan" is a recurring phrase that requires clarification. For example, section 219.13(c) refers to making administrative changes to "other content in the plan other than plan components." Arguably, there should not be the addition to or modification of content that is beyond plan components. The state therefore requests clarification of how this "other content" differs from plan components and how future management decisions may be affected by the "other content" provided for in various sections in the proposed rule. *See also* comments 7 and 8 above.

d. In sections 219.1(c) and 219.8(a)(ii) respectively, the terms "resilient" and "resilience" are used to describe the type of forest ecosystems the Proposed Rule seeks to create. As used, these terms appear to replace the terms "viability" or "productivity" without a clear explanation of what, if any, benefit is derived from the change in terminology. When referencing forest ecosystems, the terms "viability" and "productivity" provide a clear understanding of the type of measurable outcomes the responsible official is expected to achieve. In contrast, the terms "resilient" and "resilience" provide little or no guidance for actual decision-making. The state requests clarification of these terms or, alternatively, a return to the terms "viable" and "productive."

e. In section 219.1(c), the phrase "ecologically sustainable" is used to describe the type of forests the Proposed Rule seeks to create. The phrase is not clearly defined. The state therefore requests a description of how this phrase will be used to direct management decisions and how it differs from other terms related to sustainability and ecological features without relying on any of the new terms introduced in the Proposed Rule. The state also requests explanation, in existing rule language, of what will be accomplished—specific outcomes—when the forest is managed to be "ecologically sustainable."

f. In section 219.7(e)(iv), the phrase "proportion of probable methods of forest vegetation management practices expected" is used to described required plan

information. The state cannot reasonably foresee what information is sought by this phrase. It is unclear what type of management practices must be undertaken to successfully satisfy this requirement. The state requests clarification of the information requirements of the phrase and its possible use in management decisions.

g. In section 219.8(a), the terms "terrestrial [ecosystem] and aquatic [ecosystem]" are used to describe two of the ecosystems that must be maintained. These terms, however, are not defined or differentiated from water, riparian, wildlife, grassland, plants, or other currently used terms. Terrestrial ecosystem and aquatic ecosystems are excessively broad terms. The state requests a definition of these terms and an explanation of how the terms will be used in the context of and influence management decisions.

h. Additionally, the lack of definition of these terms makes it is impossible to determine the level of assessment or protection required to assure sustainability of these ecosystems. Nevertheless, the level of protection appears finer than the requirements of NFMA, and is thus improper. The state requests a more detailed explanation of how terrestrial and aquatic ecosystems will be considered in comparison with management decisions related to timber harvest or recreation.

i. The first item listed in section 219.10(a)(1) for consideration in developing plan components is "aesthetic values," but "aesthetic value" is undefined. Subsection (a) also provides little if any direction regarding what should be considered an "aesthetic value." Fish and wildlife species are included as possible aesthetic values but are repeated in subsection (a)(5) under "habitat conditions" for wildlife. The inclusion of fish and wildlife as considerations in both aesthetic values and wildlife habitat, without any explanation of how to prioritize this particular use in a plan—and in the absence of any clear definition—is confusing. The state requests a clear definition and prioritization of the aesthetic values referenced.

21. The state has again reviewed the critique of the Planning Rule proposed in the year 2000 ("2000 Review"). Below are statements derived from the previous critique followed by the state's current concerns about the Proposed Rule. The 2000 Review comments appear indented below in italics with the state's comments following, also indented and in regular Times New Roman font.

Ecological sustainability is a new management standard and economic and social sustainability has secondary focus, which contravenes multiple use and sustained yield principles;

Section 219.8 of the proposed rule also identifies "ecological sustainability" as a key component of every plan. The Forest Service fails to cite any authority or factual evidence that ecological sustainability is consistent with governing principles of multiple use and sustained yield.

* * *

Scientists are injected into the planning process in a manner that leads to confusion as to their role and the role of science in decision making;

Section 219.3 of the proposed rule requires "tak[ing] into account the best available scientific information throughout the planning process." However, this section does not define the parameters of the scientific information to be used or even what constitutes scientific information. This section therefore does not sufficiently explain the role of science in decision-making. The problematic explanation of the role of science is discussed further in review of section 219.8.

* * *

The increasing dependence on research (monitoring and assessment) would overwhelm the research mission of the Forest Service;

The proposed rule is heavily weighted toward research, including monitoring and assessment. However, the proposed rule fails to identify how the required research will be included in the larger research mission of the Forest Service. The required research also has no defined link to any future funding and sets high expectations that are, at best, difficult to achieve and more likely are unrealistic.

* * *

The rule requires considerable analysis of ecological, economic and social components of sustainability all of which must be accomplished using the best available science. Those analysis requirements are likely beyond the Agency's capability;

As stated in the prior comment, because there is no funding connected with the proposed rule's requirements, the degree of analysis mandated is likely impossible.

* * *

The rule describes a level and specificity of monitoring that might not be feasible.

The detail required by section 219.8 requires both depth and breadth in sustainability requirements. For example, this section requires planning for the sustainability of specific ecosystem elements (rare aquatic plan communities) as well as recreational activities. This type of depth and breadth is unrealistic at current budget and staffing levels.

* * *

The rule has both definitions and analytical requirements that are very complex, unclear, and therefore subject to inconsistent implementation across the Agency;

There are several new terms included in the proposed rule that are both ill defined and not defined. These undefined terms are open to personal or unit interpretation, which will undoubtedly lead to inconsistency in implementation across the Forest Service. As stated in the review committee's comment above, the analytical expectations and expertise necessary to implement the proposed rule means that while some offices may have access to necessary experts and resources, other offices will not. This inconsistency in access to resources will result in inconsistency in methodology, analysis, and implementation of the proposed rule.

* * *

Compliance with the regulatory direction on such matters as ecological sustainability and science consistency checks would be difficult, if not impossible to accomplish;

The extensive focus on ecological sustainability makes this rule unmanageable and burdensome for local forest supervisors. Even the phrase "ecological sustainability" lacks a clear definition and imposes an expectation of outcomes that are unrealistic.

OT	S	RT	DT	EA	F	RI	CE

Attributes

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Comments

Please accept the attached letter as the Missoula County comments on the USFS National Forest Planning Rule. A hard copy will also be sent in the mail.

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MISSOULA COUNTY

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BCC 2011-098
May 12, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S.
Bountiful, UT 84010

RE: U.S FOREST SERVICE NATIONAL PLANNING RULE

National Planning Rule Team:

The Missoula Board of County Commissioners supports and encourages efforts to improve land and resource management of public and private lands located within Missoula County. We believe in maintaining open communications with regional land managers about activities occurring within the county and the surrounding region. Our county has been an active participant in previous planning efforts on the Lolo National Forest. We look forward to future opportunities to be engaged in the planning process nationally, as well as with our Missoula-based Northern Region, and the Lolo, Bitterroot and Flathead National Forests.

Accordingly, we would like to take this opportunity to comment on the proposed U.S. Forest Service National Planning Rules (hereafter referred to as the Planning Rule), that will provide a framework for the planning process. We commend the U.S. Forest Service (USFS) for the significant time and effort that has gone into the development of these planning rules and the opportunities for public participation that has occurred thus far.

We appreciate the Planning Rule's emphasis on collaboration and public participation. We would encourage the planning team to develop guidelines for a collaborative planning process that applies to all national forests. The guidelines should balance providing structure with allowing for flexibility. We believe that a more structured collaborative process, similar to the model used by the Resource Advisory Councils, would give the public clear expectations of how the collaborative process would work on their individual forests. Consistent guidelines for collaboration and participation across all national forests would help the public and the agency know what to expect in the forest planning process and would allow citizens to be fully engaged in this process.

The Planning Rule emphasizes the use of adaptive management as a planning strategy. We agree that it is important for land managers to have the flexibility to change management approaches in response to changing conditions as documented by a monitoring program. Therefore, we strongly encourage the USFS to design and fund a monitoring program that will provide feedback to managers. Without a rigorous monitoring program to inform this adaptive management approach, the agency may find itself facing conflict and criticism from a public that does not understand why changes in management are being made.

Our county is an active participant in the Southwest Crown of the Continent Collaborative, authorized under the Collaborative Forest Landscape Restoration Act (CFLRA). This collaborative group is in the process of creating a multi-party monitoring plan to determine the effectiveness of management activities funded by the CFLRA. We believe this approach could serve as a model for designing and implementing an effective monitoring plan to provide managers with much needed feedback. We would encourage the Planning Rule to offer more specifics on how monitoring will inform an adaptive management approach and engage the public.

Missoula County supports the Planning Rule's proposal to include an analysis of "ecosystem services" into the planning process. Ecosystem services are defined as "benefits people obtain from ecosystems." These services, which include clean air, fresh water, soil stabilization, nutrient cycling and aesthetics, directly affect the citizens of our county. We feel that it is very appropriate to evaluate the effects of resource management upon an ecosystem's ability to provide these services to the public and we appreciate the inclusion of these benefits into the planning process.

The Board of County Commissioners is committed to supporting efforts to improve resource management within Missoula County and the surrounding region. We feel that the participation of the public in the planning process is critical to successful long term resource management in our communities. Thank you for your invitation to comment on the National Planning Rule. If you have any questions, please do not hesitate to contact us or our Rural Initiatives staff (406-258-3432) at your convenience.

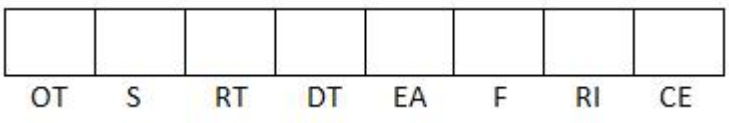
Sincerely,
BOARD OF COUNTY COMMISSIONERS

Jean Curtiss, Chair

Bill Carey, Commissioner

Michele Landquist, Commissioner

BCC/ppr
cc: Sarah Canepa, Rural Initiatives
Pat O'Herren, Rural Initiatives



Attributes

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Comments

Please find attached to this submission comments regarding the 2011 Draft Forest Planning Rule from the Wyoming Association of Conservation Districts and Big Horn and Carbon County, Wyoming.

Individual(s)

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MEMORANDUM

To: Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S.
Bountiful, UT 84010

From: Wyoming Association of Conservation Districts and Bighorn and Carbon County Commissions

Date: May 13, 2011

Re: Comments on the USDA Forest Service 2011 Draft Planning Rule

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The Wyoming Association of Conservation Districts (WACD) and Big Horn and Carbon County Commissions (BHCCC), as duly elected representatives from jurisdictions directly involved with public lands, appreciate this opportunity to engage the United States Forest Service (USFS) and help provide our experience and thoughts in regard to the preparation of a new USFS Draft Planning Rule. The WACD represents 34 districts in the state. The BHCCC represent citizens in northern and southern portions of Wyoming. Many of our districts depend on USFS system lands for an array of multiple uses, including forage, fiber, water, wildlife, recreation, aesthetic and related resources. USFS system lands often contain key watersheds that are critically important for supplying our water needs. USFS lands, and therefore USFS planning, are critical to our future.

Any planning policy, directing planning and management on our public lands will have serious and significant impacts on our state, local Conservation Districts, Counties, families and individuals. Conservation Districts and County Commissions are integral to the natural resources management in Wyoming as we provide technical services and support to help manage natural resources for long term sustainability. As independent Westerners with extensive experience in public lands use and management, we look forward to being a fully engaged participant in the USFS Draft Planning Rule revision process.
Many of the comments contained within this memo on the USFS Draft Planning Rule are manifested in the social and cultural fabric of Wyoming and we strongly encourage the USFS to understand, recognize, and incorporate these social and cultural issues into the USFS Draft Planning Rule. The WACD and BHCCC respectfully submit the following items to be included in review and discussions related to the proposed USFS Draft Planning Rule.

219.1 Purpose and Applicability

The laws governing the national forests must be the basis for the USFS Draft Planning Rule. The following passage (Column 2, p.8514) is contradictory to that:

> Consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531) (MUSYA), the Forest Service manages the NFS to sustain the multiple uses, including ecosystem services, of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land.

The pointed insertion of "ecosystem services" within the discussion of multiple uses in 219.1(b) is unnecessary, inappropriate, and is not found in the National Forest Management Act (NFMA). As "ecosystem services" are defined in 219.19, the national forests already produce all of those "services," and there is no need to muddle the meaning of multiple uses as contained in the Multiple Use Sustained Yield Act of 1960 (MUSYA).

219.2 Levels of Planning and Responsible Officials

Section 219.2(b) (Column 1, p. 8515) of the USFS Draft Planning Rule includes a requirement that assessments and forest and monitoring plans contain:

> [T]he unit's distinctive roles and contributions to the local area, region, and Nation, and the roles for which the unit is best suited, considering the Agency mission, unique capabilities, and the resources and management of other lands in the vicinity.

The preceding requirement is also at 219.6(b)(3), 219.7(e)(ii), 219.8(b)(1), and 219.12(a)(5)(vii) of the USFS Draft Planning Rule. Such language mirrors the concept of "niche," which has previously been discussed in relation to some forest plans (e.g. "Fun in the sun: The Deschutes National Forest is the hub of incredible opportunities in diverse settings within close proximity to one another, facilitating four-season day-use recreation opportunities (2006 Draft Deschutes National Forest Plan)."). The concept of "distinctive roles and contributions" explicitly provides the USFS an opportunity to prioritize amenity attributes, such as scenery or wilderness, at the expense of more tangible outputs. Further, it works to reduce the role and contributions of local offices, while expanding the role and contributions of the national office. The result will be an incongruent mix of forest plans with differing multiple use objectives and outputs.

Given the diversity of the national forests and multiple use objectives and outputs, defining "distinctive roles and contributions" for any given unit will inevitably bias the planning process in favor of predetermined, ideological uses, products, and services. Uses, products, and services incompatible with the values of Responsible Officials will be dismissed without evaluation. As the proposed rule is constructed, following the identification of the "distinctive roles and contributions of the unit" in the assessment, forest, or monitoring plan by the Responsible Official, those "distinctive roles and contributions of the unit" become required content in the plan. There is no requirement in the law for identification of "distinctive roles and contributions." The concept is both polarizing and superfluous. It will require unnecessary time and expense for the USFS and participants in the planning process. The WACD and BHCCC argue the concept is flawed, and recommend that the requirement to incorporate or monitor "distinctive roles and contributions" in assessments and forest and monitoring plans be deleted from all five sections of the USFS Draft Planning Rule.

219.3 Role of Science in Planning

Requiring the use of the "best available scientific information," rather than USFS expertise and *available, relevant* science will make decision making time consuming and vulnerable to litigation. Sound science

has an important role in USFS planning and management. Proving what science is “best” is likely to be time consuming and of little value, but will undoubtedly lead to lawsuits that will halt all progress.
The regulation establishes costly and time consuming procedural requirements to document the consideration of the best available science that will slow the planning process significantly and create a new legal burden on the USFS to prove that it has considered the best available science. This change obfuscates hard fought USFS legal victories that: (1) establish that there is rarely “best” or “most accurate” science (2) will relieve plaintiffs of the burden to prove why the USFS decision is flawed and will now impose the burden on the USFS to prove why its decision “is informed by” the best science, and (3) undermines the USFS multiple-use mandate which the courts have only recently more explicitly acknowledged.
The WACD and BHCCC have numerous concerns about the following (Column 2, p.8515):

> The responsible official shall take into account the best available scientific information throughout the planning process identified in this subpart. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to a particular decision or action. The responsible official shall document this consideration in every assessment report (§ 219.6), plan decision document (§ 219.14), and monitoring evaluation report (§ 219.12). Such documentation must:
>
> (a) Identify sources of data, peer reviewed articles, scientific assessments, or other scientific information relevant to the issues being considered;
>
> (b) Describe how the social, economic, and ecological sciences were identified and appropriately interpreted and applied; and
>
> (c) For the plan decision document, describe how scientific information was determined to be the most accurate, reliable, and relevant information available and how scientific findings or conclusions informed or were used to develop plan components and other content in the plan.

First, the USFS Draft Planning Rule should not create a target for additional litigation and controversy by using or defining the term "best available science" or "best available scientific information." The provision in Section 219.3 of the proposed rule regarding use of "best available scientific information" is likely to fuel further disputes and lawsuits that will obstruct and bog down planning and management activities that are environmentally necessary and beneficial.
Sound science has an important role in national forest planning and management. However, which science is "best," as illustrated in Endangered Species Act (ESA) litigation, as well as NFMA and other disputes, can be extremely subjective and highly politicized.
The NFMA does not use or require use of the term "best available science" or "best available scientific information.” Neither does National Environmental Policy Act (NEPA). The Ninth Circuit Court of Appeals has affirmed that these statutes do not require: (1) a determination of whether national forest planning or project-level NEPA documents are based on "best" available science or methodology, (2) that disagreements among scientists are routine, and (3) that requiring the USFS to resolve or present every such disagreement could impose an unworkable burden that would prevent the needed or beneficial management. Lands Council v. McNair, 537 F.3d 981, 991 (9th Cir. 2008)(en banc); Salmon River Concerned Citizens v. Robertson, 32 F.3d 1346, 1359 (9th Cir. 1994).
The USFS Draft Planning Rule procedures will create new legal claims centered on the requirement that the USFS consider the best available science and demonstrate that the “most accurate, reliable, and relevant information” was considered and how it "informed" the development of the forest plan. In Lands Council v. McNair, a unanimous en banc panel of the Ninth Circuit gave the USFS more leeway and flexibility regarding scientific analysis. The Court emphasized that:

> [t]o require the USFS to affirmatively present every uncertainty in its EIS would be an onerous requirement, given that experts in every scientific field routinely disagree; such a requirement might inadvertently prevent the USFS from acting due to the burden it would impose." McNair, 537 F.3d at 1001.

The USFS should recognize, as the Ninth Circuit finally has, that there is established, recognized source of "best" or "most accurate" science. Even NEPA does not require meeting such a requirement. The Ninth Circuit emphasized that:

> NEPA does not require [that we] decide whether an [environmental impact statement] is based on the best scientific methodology available, nor does NEPA require us to resolve disagreements among various scientists as to methodology." Salmon River Concerned Citizens, 32 F.3d at 1359.

Second, the regulation is written in a way that puts the burden on the USFS to prove that they identified, "appropriately" interpreted it, and explain how best science informed the decision. Yet, an agency with the burden of proof always has an uphill battle in court, particularly in the Ninth Circuit Court of Appeals. The burden to prove that the USFS was arbitrary and capricious in its decision-making should remain with the plaintiff and the regulations must strive to avoid placing the heavy burden of proof on the agency.

Finally, the science-dominated regulation undermines the principle that the agency can make natural resource management decisions based on its discretion in weighing various multiple-use objectives. For example, the Ninth Circuit in Seattle Audubon Society v. Moseley, 830 F.3d 1401, 1404 (9th Cir. 1996) upheld selection of an alternative in the Northwest Forest Plan that provided an 80%, rather than 100%, probability of maintaining the viability of the spotted owl because:

> [T]he selection of an alternative with a higher likelihood of viability would preclude any multiple use compromises contrary to the overall mandate of the NFMA." That Ninth Circuit in the Mission Brush case finally recognized that, "[c]ongress has consistently acknowledged that the USFS must balance competing demands in managing National Forest System lands. Indeed, since Congress' early regulation of the national forests, it has never been the case that 'the national forests were . . . to be set aside for non-use'." McNair, 537 F.3d at 990.

Thus, the Draft USFS Planning Rule must not require the USFS to do more than take into account available, relevant scientific information, along with other factors in the development, amendment, or revision of national forest plans, without reference to which information is "best." Proposed Section 219.3 should be deleted or greatly abbreviated and corrected accordingly, along with any other references to "best available scientific information" in the Draft USFS Planning Rule. The use and dissemination of scientific information by federal agencies is addressed by the Federal Data Quality Act (P.L. 106-554 §515) and subsequent guidelines from the Office of Management and Budget (http://www.whitehouse.gov/omb/fedreg_reproducible). The WACD and BHCCC believe that the protections and assurances of the quality of scientific information used and distributed by federal agencies under the Federal Data Quality Act is sufficient to ensure that quality of scientific information being used by the USFS in the planning process and a requirement to identify the "most accurate" scientific information should not be a legal requirement in the Draft USFS Planning Rule itself.

219.4 Public Participation

The WACD and BHCCC, as duly elected local representatives, believe that it is critical to maintain and continue Cooperating Agency status on both planning and project level documents and NEPA processes. This Cooperating Agency status allows us, as local government representatives, the ability to fully participate in land use planning for our public lands. The Council on Environmental Quality's "40 Questions" document addresses responsibilities' and states in part:

> After a lead agency has been designated (Sec. 1501.5), that agency has the responsibility to solicit cooperation from other federal agencies that have jurisdiction by law or special expertise on any environmental issue that should be addressed in the EIS being prepared. Where appropriate, the lead agency

> should seek the cooperation of state or local agencies of similar qualifications. When the proposal may affect an Indian reservation, the agency should consult with the Indian tribe. Section 1508.5. The request for cooperation should come at the earliest possible time in the NEPA process.
> After discussions with the candidate cooperating agencies, the lead agency and the cooperating agencies are to determine by letter or by memorandum which agencies will undertake cooperating responsibilities. To the extent possible at this stage, responsibilities for specific issues should be assigned. The allocation of responsibilities will be completed during scoping. Section 1501.7(a)(4).

The WACD and BHCCC believe that this Cooperating Agency participation aspect of planning based on our local expertise to be fundamental to effective planning. This local government participation should also be understood and appreciated by the USFS as compared to the special interest participation. As locally elected Supervisors and Commissioners, we represent all stakeholders in our jurisdictions. Elected representatives offer a balance of needs and perspectives compared with the often narrow perspectives of the myriad of special interest groups. Local government participation also improves the credibility of any federal planning process, often making the process and resultant plans easier to implement.

The USFS is interested in moving forward with a collaborative approach to planning, without defining exactly what collaboration means, who can collaborate, or how the agency will deal with conflicting views among collaborators. The use of cooperating agencies in the planning process guarantees that local constituents are represented.

Local cooperators feel that the lead agency's overwhelming sense of ownership does not allow for or truly accept Cooperating Agency participation during plan revisions. Our local government participation needs to be more inclusive than the patronization we sometimes receive. Any revisions to the USFS Draft Planning Rules should lay out guidelines to improve collaboration and the sharing of resources and data.

Improving the collaborative process could benefit many aspects of the planning process:

- The use of Geographic Information Systems should be key in collaborative planning meetings. Projecting spatial data during planning meetings has proved to be a valuable tool in gaining understanding and consensus.
- Actively seeking and engaging potential collaborators early in the planning process could reduce the potential for litigation, while giving all parties a sense of ownership.
- Key issues could be more efficiently identified and worked through early in the process by collaboration with stakeholders and government agencies.
- Planning efforts should be a shared activity among collaborators, which could save Agency time and money in the USFS Draft Planning Rule process.

The WACD and BHCCC suggest the following:

- Streamline the process to reduce the time, effort, and dollars spent by local agencies and collaborators.
- Better utilize local knowledge, research, and datasets.
- Need a better definition of best available science; this has long been a successful point of litigation.
- Guidelines for spatial analysis and the use of nationally consistent and up to date datasets should be included in any USFS Draft Planning Rule revisions.

As stated above, The WACD and BHCCC support the concept of public participation. The USFS Draft Planning Rule states (Column 2, p.8486):

> Many people discussed the need for the Forest Service to make a stronger effort to engage groups and communities that traditionally have been underrepresented in land management planning. This is reflected in the requirement that responsible officials encourage the participation of youth, low-income populations, and

> minority populations in the planning process and in the requirements to be proactive to use contemporary tools to reach out to the public and consider the accessibility of the process to interested groups and individuals. The Agency recognizes the need to engage a full range of interests and individuals in the planning process and the responsibility to promote environmental justice.

The WACD and BHCCC contends that while the intent to involve "youth, low income, and minorities" is admirable and well intended, individuals and organizations that actually get involved with forest planning are going to be limited to either economic stakeholders (grazing permittees, loggers, outfitters, etc.) or those with an existing interest in forest management. While stakeholders or people with strong interests in forest management will indeed include people of all ages, income levels, or ethnicity, the Forest Service cannot make individuals or groups with no interest or economic stake in National Forests participate in forest planning, no matter how much effort the agency puts into targeted scoping. We recommend you remove the reference to those groups.

219.5 Planning Framework

Planning is fundamentally related to a central economics principle – scarcity. The USFS, through the planning process, must allocate scarce resources to competing interests in a manner that maximizes or minimizes a suite of objectives. To do this, planners need information about values — ecological and biophysical, economic, and social. Only by understanding what these values are can a comprehensive and meaningful plan be developed. Without this information, it is impossible to evaluate tradeoffs between alternatives or to assess whether objectives are being met. Without such values, the resulting plan will be meaningless and arbitrary.

With respect to economics, we suggest the USFS Draft Planning Rule consider an analysis that may include revenues and expenditures, as well as any measurable non-market benefits and costs. Non-market refers to costs or benefits that arise from an alternative that does not constitute revenues or expenditures. For example, individuals who value wildlife may be willing to pay to protect a species or enhance wildlife habitat. Although money may not change hands, it is possible to determine value or willingness to pay through survey methodology. This is also true for recreation experiences that do not generate income, such as aesthetic values, wildlife, etc. In the case where tradeoffs are made between market goods and non-market goods, opportunity costs can be calculated to determine relative values. These values can then be used to compare outcomes under each alternative.

Section 219.5 (Column 2, p.8487) speaks to the role of stakeholders in the planning framework:

> The approach described in the proposed framework responds to the public's stated desire for participation throughout land management planning. The assessment phase would allow for early public participation—well before a proposed action—so that stakeholders could engage in joint fact-finding and develop a mutual understanding of the interconnections among social, economic, and ecological communities and systems. The development/ revision/amendment element of the framework responds to the public desire to help develop and provide meaningful input to proposals for land management plans. The monitoring part of the framework responds to stakeholder's desires for a systematic, deliberate, monitoring approach that can inform, and be informed, by other monitoring efforts relevant to management on the unit. Both stakeholders and the Agency recognize the potential efficiencies of a uniform monitoring approach and hope to increase information sharing and learning opportunities.

There is a great deal of difference between a stakeholder 1,000 miles away from a Forest, and one who depends on forest resources for business, recreation, and aesthetic sustenance. The woman who runs a ranch adjacent to USFS lands and relies on a summer grazing lease has a much larger stake in the Forest planning process than does the citizen from many states away. We do not want to diminish the hypothetical dockworker from New Jersey that comes out to enjoy recreation and hunting, but we

absolutely want to recognize the difference in stakes between the stakeholders. The Forest planning processes should recognize that the stronger voice in planning comes from local stakeholders.

219.6 Assessments

The Wyoming Conservation Districts support the concept of doing broad-scale ecological assessments. The Planning Rule states (Column 3, p.8487):

> This section of the proposed rule would require an assessment prior to plan revision or development. The responsible official would reach out to the public, Tribes, Alaska Native Corporations, other Federal agencies, States, local governments, and scientists to start the assessment and help identify the questions and issues to be considered. The responsible official would also be required to coordinate with the regional forester, and agency staff from State and Private Forestry, Research and Development, as well as other governmental and nongovernmental partners to consolidate existing information and develop strategies for satisfying any additional information needs. Early engagement with a diverse set of interests is needed to create an accurate depiction of the issues affecting the plan area and a solid base of understanding for any changes needed to the plan.

While the WACD and BHCCC support the aforementioned direction for conducting assessments, further direction is needed to address the scientifically-based scale at which assessments would normally be conducted. The direction identified in the Interior Columbia Basin Ecosystem Management Project (ICBEMP) (USDA and USDI 2000) is recommended by the WACD and BHCCC. The ICBEMP suggested that the U.S. Geologic Survey 5th code hydrologic unit was probably the minimum size needed to conduct ecological coarse filter assessments. While that scale was crafted to recognize the role that climate and large fires have played in shaping western, interior forests, much of the National Forest system has disturbance regimes on a similar scale, making the ICBEMP direction pertinent**.** For instance, the USFS Draft Planning Rule describes vegetation for the southeastern coastal plain as:

> The forest has two distinct layers: a pure longleaf pine open canopy approaching 70 feet in height and a wiregrass dominated herbaceous layer... This savanna structure is maintained by recurring fire on an average 3-year cycle… This ecological type functions as primary nesting and foraging habitat for red-cockaded woodpecker.

The ICBEMP direction for conducting ecological (coarse filter) assessments at a 5th code hydrologic unit scale would be equally applicable to the southeastern coastal plain. In order to avoid assessments at an inconsistent and scientifically indefensible scale, we suggest you implement ICBEMP direction regarding the scale of ecological assessments.

219.7 New Plan Development or Plan Revision

The new USFS Draft Planning Rule should consider, and institute efficient vehicles to update Forest Plans, either due to new information (e.g. better satellite data), changed conditions (insect infestations), or needs of public resources. Within the last decade the priorities of the USFS appear to have changed. Former USFS Chief Dale Bosworth developed a list of four threats to the nation's forest and grasslands that would emerge as Agency focus points in the 21st century. The four threats identified by Chief Bosworth included: (1) fire and fuels, (2) invasive species, (3) loss of open space, and (4) unmanaged recreation. Former USFS Chief Gail Kimbell expanded on Chief Bosworth's focus on fire and fuels and her tenure in office partially focused on climate change. The new USFS Chief, Tom Tidwell, appears to be focusing more on the restoration of watersheds and forest lands.

The two former USFS Chiefs discussed above, along with the current Chief, have had three different areas of focus. This is instructive as it allows us to consider how Forest Plans should permit emerging changes in information or societal needs. Instead of a wholesale rewriting of the Forest Plan, we believe that it is

more efficient and practical to conduct a simple update and amendment process of the existing Plan. Please consider and discuss an amendment process in the new USFS Draft Planning Rule.

219.8 Sustainability

In the explanation of the Draft Planning Rule, the USFS states that "[t]he proposed rule considered the ecological, social, and economic systems as interdependent systems, which cannot be ranked in order of importance (Column 3, p. 8491)." However, in the same section of the USFS Draft Planning Rule explanation, the USFS goes on to state that "the agency has more influence over the factors that impact ecological sustainability on NFS lands (ecological diversity, forest health, road system management, etc.) than it does for social and economic sustainability (employment, income, community well-being, culture, etc.) (Column 3, p. 8491)." It is this position that leads to the disparate treatment of social and economic systems versus environmental systems in the USFS Draft Planning Rule.

In reference to ecological sustainability in §219.8(a), the USFS Draft Planning Rule requires plan components to "maintain or restore the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area …." However, in §219.8(b) in reference to social and economic sustainability, the USFS Draft Planning Rule requires only that "[t]he plan must include plan components to guide the unit's contribution to social and economic sustainability …." The WACD and BHCCC support the initial assertion of the agency that social, environmental, and economic considerations are not competing values; rather they are truly interdependent and all play an important role in effectively managing national forest lands.

Even if the assertion that the USFS has more influence over factors influencing ecological sustainability than those influencing social or economic sustainability is true, this does not support the language in the USFS Draft Planning Rule that elevates ecological considerations above social and economic considerations. The Agency asserts that the USFS Draft Planning Rule treats the three elements of sustainability as interdependent and further, that none of the elements can be ranked in order of priority. Nowhere does the Agency say that factors cannot be ranked in order of importance unless the Agency has differing abilities to influence the factors.

Further, the WACD and BHCCC find suspect the assertion that the USFS has more authority over factors influencing ecological sustainability. In the explanation of this section in the USFS Draft Planning Rule, the Agency lists a host of factors influencing ecological sustainability that are outside the control of the USFS including "climate change, extreme disturbance events, and urbanization on lands outside of or adjacent to NFS lands (Column 2, p. 8490)." This is not an insubstantial list of factors outside of the USFS control, and says nothing of the Agency's ability to actively manage national forest lands in light of the near constant threat of litigation facing management activities on federal lands.

The precipitous decline in the forest industry throughout the West and the corresponding social and economic benefits closely coincides with the increase in the threats to ecological sustainability stemming from the lack of management on federal lands. These ecological threats include fires outside the historical range of variability, spread of native and invasive pest species at historic levels (extreme disturbance events), and are one of primary factors currently influencing the ecological health and sustainability of Western forests. The Agency's ability to impact factors influencing social and economic sustainability is clear from the affect on these systems following the rapid decline in management on federal lands. What is not clear is that the USFS is in a better position to impact factors influencing ecological sustainability than those influencing economic or social sustainability.

Because the USFS is in a position to have a substantial impact on all of the factors influencing ecological, social, and economic sustainability, we request that the USFS Draft Planning Rule recognize this and include language for plan components that maintain or restore all three elements of sustainability: (1) ecological, (2) social, and (3) economic.

219.9 Diversity of Plant and Animal Communities

The WACD and BHCCC by and large support the concept of achieving plant and animal diversity using the coarse filter/fine filter approach. The USFS Draft Planning Rule states (Column 2, p.8492):

> Known as a coarse-filter/fine-filter approach, this is a well-developed concept in the scientific literature and has broad support from the scientific community and many stakeholders. The coarse-filter should provide ecological conditions for the long-term persistence of the vast majority of species within the plan area. The fine-filter would identify specific habitat needs of species with known conservation concerns or whose long-term persistence in the plan area is at risk, and for which the coarse-filter protection is insufficient.

We feel that if carefully worded, the strategy could potentially:

- Reduce the "analysis paralysis" that plagues project-level NEPA analyses.
- Make USFS decisions more defensible during appeals/litigation.
- Lead to on-the-ground management actions that are done at a scale and intensity that actually make a difference compared against unplanned disturbances that are occurring at a scale and intensity outside the normal range of variability.

Unfortunately, if not carefully worded, the coarse filter/fine filter strategy could further obfuscate planning requirements and add another layer to an already unnecessarily complex and costly analysis process. Please consider our concerns and recommendations in the following sections.

Coarse-filter Approach

Under the category of Coarse Filter Approach, the USFS Draft Planning Rule concludes (Column 3, p. 8492) that:

> The premise behind the proposed coarse-filter approach is that native species evolved and adapted within the limits established by natural landforms, vegetation, and disturbance patterns prior to extensive human alteration. Maintaining or restoring the ecological conditions similar to those under which native species have evolved therefore offers the best assurance against losses of biological diversity and maintains habitats for the vast majority of species in an area…

We contend that in many ecological settings (wildlife/urban interface, checkerboard ownership, etc) "maintaining or restoring" historical conditions may not be possible. In the Interior Columbia Basin Ecosystem Management Report (USDA and USDI 2000), the term "departure" was coined to represent situations where current conditions are radically different from mean historic conditions, and where actions are needed to narrow the "gap" between historic and current conditions. Using terms such as the preceding would make it clear that while many situations make it impossible or undesirable for "maintaining or restoring" historic conditions, identifying the magnitude of "departure" and narrowing that departure to the degree possible would improve long-term species sustainability.

Under the category of Coarse Filter Approach, the USFS Draft Planning Rule concludes (Column 3, p. 8492) that:

> Healthy ecosystems are indicated by the degree of ecological integrity related to the completeness or wholeness of their composition, structure, function, and connectivity.

The term "connectivity" appears repeatedly throughout the USFS Draft Planning Rule. Based on appeals and court cases, the term "connectivity" is a term that has been grossly misunderstood and evoked by

special interest groups to stop well-intended and well-designed projects. The term "connectivity" (or lack thereof) has been used to describe every situation from small, isolated "islands" of eastern forest surrounded by urban development (MacArthur and Wilson 2001), to reduced dispersal opportunities for juvenile northern spotted owls in western coastal forests caused by checkerboard 40-acre clearcuts (USDI 2008), and every situation in between. To both recognize and provide for connectivity, and avoid NEPA pitfalls that will derail future projects, the USFS Draft Planning Rule needs to be carefully worded to explain the nuances of habitat connectivity. We suggest adding the following direction:

- Acknowledgment of the varying degrees to which human settlement patterns have affected habitat connectivity across the continent. Situations where small patches of forested habitats surrounded by urban areas as described in MacArthur and Wilson (2001) do occur, but are not typical of western forests or the majority of National Forest lands.
- Recognition that while changes in human development and changes in forest vegetation patterns both affect the ability of native animals to move across the landscape, they are substantially different variables, needing substantially different measurement indicators for which to assess effects.
- Stated understanding that the factors affecting vegetation patterns are complex and include such variables as "inherent" characteristics (grassland vs. forested), cover type (predominate species), age class (old trees vs. young trees), structural (single-storied vs. multiple-storied), and the scale at which disturbances create patterns (large, low severity fires that create large, homogeneous, uneven-aged stands vs. high severity fires that create a mosaic of even-aged stands).
- Disclosure that connectivity needs for individual wildlife species varies wildly. Most species (birds and "generalists" species) are not particularly affected by changes in habitat connectivity. A few wide-ranging species (wolverines and grizzly bears) are dramatically affected by changes in connectivity.

We suggest that references to connectivity in the USFS Draft Planning Rule be modified to ensure that Forest Plans:

- Understand and disclose the degree to which connectivity may have changed from historic conditions including changes in human development, cover type, age class, structure, and patterns resulting from changes in natural or anthropogenic disturbances.
- Evaluate how changes in connectivity may affect those species that are known to be particularly sensitive to change in connectivity.
- Consider opportunities to improve habitat connectivity when there are substantial changes from historic levels of connectivity and when there are species present in which those changes have been demonstrated to be particularly detrimental.

Fine Filter Approach

Under the Fine Filter Approach (Column 2, p. 8492) the USFS Draft Planning Rule Planning Rule states:

> Three species-specific requirements for plan components that would provide the basis for the fine-filter approach to species conservation. The intent would be to provide plan components that identify specific habitat needs of species, when those needs are not met through the coarse filter. These species are threatened and endangered (T&E) species, candidate species, and species of conservation concern.

The WACD and BHCCC support the direction to conduct detailed fine filter analyses for listed species and increased analysis for candidate species on the grounds that the ESA provides little choice in the matter. We would, however, recommend adding the following direction:

Generally, single species-driven U.S. Fish & Wildlife Service recovery plans for listed species are compatible with coarse filter findings. For instance, the recovery plan for the red-cockaded woodpecker (USDI 2003), which directs management agencies to recruit large-diameter longleaf pine with periodic underburning, is compatible with the coarse filter assessment for southern coastal plain forests. On the eastern periphery of the northern spotted owl's range, however, where forests shift from coastal Douglas-fir to dry ponderosa pine, the northern spotted owl recovery plan direct agencies to maintain or recruit large expanses of dense, multi-storied conifers (USDI 2008). Not only is this direction incompatible with species like flammulated owls that evolved with frequent, non-lethal fires and open forests, but such direction, while providing short-term protection for northern spotted owls, may be unsustainable in the long-term due to the inevitability of severe wildfires. USFS Forest Plans should ensure that when such conflicts between Forest Plan and ESA direction arise, any conflict between findings from coarse filter analysis and recovery plans be clearly disclosed. Furthermore, effects analysis from the implementation of required recovery plans should be disclosed in both short-term and long-term time frames.

Regarding the direction on species of conservation concern, we have significant distress. The USFS Draft Planning Rules (Column 2, p. 8493) states:

> The final species conservation requirement in this section of the proposed rule addresses the needs of species of conservation concern. A species of conservation concern is a species that is not threatened, endangered, or a candidate species, but is one for which the responsible official has determined there is evidence demonstrating significant concern about its capability to persist over the long term in the plan area. A viable population is defined in this proposed rule as a population of a species that continues to persist over the long-term with sufficient distribution to be resilient and adaptable to stressors and likely future environmental conditions. The responsible official would identify, where necessary, specific ecological conditions needed by these species that are not provided by the coarse-filter. The identification of species of conservation concern within the plan area could be based on several criteria, such as substantial scientific information as to the overall status of the species, the quantity and quality of species habitat within the plan area, and the potential for management activities to affect the species habitat within the plan area. Forest Service Directives would contain the criteria for selecting species of conservation concern. State lists of endangered, threatened, rare, endemic, or other classifications of species, such as those listed as threatened under State law; and other sources such as the Nature Serve conservation status system may be used to inform the selection of species of conservation concern. The proposed rule's requirement for species of conservation concern would be to maintain or restore ecological conditions to maintain viable populations of species of conservation concern within the plan area, within the Agency's authority and consistent with the inherent capability of the plan area. Where a viable population of a species of conservation concern already exists within the plan area, the appropriate ecological conditions needed to maintain the long-term persistence of that species will continue to be provided.

Further narrative under Column 2, p. 8493 states:

> The proposed rule would require that the Agency provide plan components to maintain or restore ecological conditions within the plan area for that species, and by doing so to contribute to the extent practicable to a viable population across its range.

While the WACD and BHCCC strongly support the intent of using a fine filter analysis to ensure that certain species are not under-evaluated when conducting coarse filter analysis, the agency has a history of allowing the findings for a single species to result in actions that are incompatible with coarse filter analysis findings, are ecologically unsustainable, and are ultimately incompatible with sustaining native species viability as a whole. For instance, since the USFS Draft Planning Rule uses goshawks as an example (Column 3, p. 8493), the WACD and BHCCC will also use it as an example of project planning gone askew.

Goshawks occur from the west coast to east coast and occupy all forested environments. Many of these forested environments (aspen, ponderosa pine, western larch, and lodgepole pine) are dependent upon or subject to frequent disturbance (wildfire and insects). Predominate research (Kennedy 2003; Reynolds et

al. 1992), however, stresses the importance of sustaining large expanses of dense, multi-storied forest. Dense, multi-storied forests occur naturally in areas of high summer precipitation (i.e. the Northeast), or where fire return intervals are long (i.e. coastal forests in the Northwest). Where fire return intervals are short, however, such as interior ponderosa pine, dense, multi-storied stands were historically limited to small stands or patches within stands that were repeatedly unburned by wildfires. Of course, after a century of fire exclusion, dense, multi-storied stands currently dominate interior forests and explain much of the present-day forest health crises.

Unfortunately, overzealous protection done to protect goshawk nesting habitat, often has precluded treatments that would have restored historic habitat conditions (as identified during coarse filter analyses). Paradoxically, such protection is ultimately counterproductive to goshawks since extensive dense, multi-storied forest conditions are not sustainable within interior forests. Furthermore, other species that evolved with open forest conditions (flammulated owls) are pushed closer to federal listing. While it is understandable that single-species wildlife researchers may not comprehend fully disturbance ecology and its ramification across the spectrum of wildlife species, and thus recommend against management actions that would provide for long-term habitat sustainability, that is inexcusable for USFS deciding officers. It is paramount that they consider disturbance ecology and habitat sustainability in the interpretation and application of research.

The agency's overemphasis to "protect every species on every acre" has allowed well-intended biologists or appellants/litigants to preclude actions that would have sustained habitat in the long-term, in order to avoid adverse site-specific impacts on goshawks in the short-term. Since there is no limit to the number of single-species analyses that can go into Forest Plans (or projects), the treatment of species of conservation concern can further exacerbate the problem of "analysis paralysis," rather than simplify and defend planning alternatives. To avoid further NEPA conundrums regarding species of conservation concern, we recommend the following measures be considered in the USFS Draft Planning Rule:

- Recognition that all disturbances (man-made or natural) are potentially adverse in the short-term to individual species, even when the species are dependent upon disturbances (e.g. flammulated owls, black-backed woodpeckers, Canada lynx).
- Ensure that biological analyses are done with a full understanding of local disturbance ecology so that long-term habitat sustainability is evaluated and disclosed.
- Disclose effects of alternatives upon species in both the short-term and long-term. Unless short-term effects clearly place a species at risk of federal listing, favor long-term effects over short-term effects when making decisions.
- Identification that wildlife species "specialists" have very specific niches and healthy forests must provide a mix of habitats to provide those niches. Thus, it is impossible to meet the needs of all species on every acre, or even on every project. Effects analyses, therefore, must incorporate those critical considerations at a large enough scale so that habitat for species of conservation concern can be provided over time considering natural, unplanned disturbances.

We also argue that decisions for sustaining species of conservation concern consider economics and efficiency. For instance, the USFS Draft Planning Rules references (Column 3, p. 8493):

> A guideline that recommends a ''no disturbing activities'' time period within a specified distance of a known bald eagle or goshawk nest site during the critical breeding period.

Timing restrictions to protect goshawks are almost universal in existing Forest Plans, yet they are extremely expensive, inefficient, and contribute little to the conservation of the species compared to other variables. For example, to protect goshawks from disturbance, nest surveys are required. However, goshawks are extremely difficult and expensive to survey (Woodbridge and Hargis 2006). Because goshawks select alternate nests every year (Reynolds et al. 1992), goshawk territories must be resurveyed before the startup of project activities and contracts must be updated to ensure that no activity occurs near nests. Goshawks have high fledgling success (Reynolds et al. 1992), but like most large raptors, juveniles have a low recruitment (survival) rate into the adult population (only about 10% of the fledglings produced). The odds are, therefore, that spending large amounts of limited money to inventory, resurvey, and protect a nest that produces two fledglings will only contribute 0.2 adults to the population. This could make sense if most goshawk nests within an administrative unit were being disturbed at any given time or if the species was on the cusp of federal listing (which it is not (USDI 1998)). Nevertheless, a large percentage of NEPA documents suggest that only a fraction of nests are ever disturbed at any given time.

A prime example of such inefficiencies is associated with well-intended protective measures in the Shoshone National Forest (SNF) Land & Resource Management Plan (USDA 1985), which requires all nests to be protected from disturbance. On the SNF, however, 90% of the Forest is wilderness or wilderness study areas in which no nests are ever exposed to disturbance. Furthermore, a query of size class data (ERG 2011) suggests the availability of nest habitat has increased dramatically on the SNF due to a century of fire exclusion. Clearly, assuming that sustaining goshawk habitat is going to be a long-term concern, simply managing for a mix of size classes, including some large, dense stands across the Forest, will provide a vastly more efficient way of assuring species sustainability than worrying about nest disturbance. Therefore, we suggest you consider adding the following provision to the USFS Draft Planning Rule:

> When crafting conservation strategies for species of conservation concern, the USFS should consider the economic costs and the management efficiency of the strategy. The strategy should ensure that it both minimizes risks to the species and minimizes costs to the agency. The intent is that monies and man-power should be optimized to the extent possible in order to provide for the maximum number of species and habitats.

We found the examples of specific measures taken to protect species evaluated during the fine filter analysis to lack scientific merit. The USFS Draft Planning Rule (Column 3, p. 8493) states:

> A standard that sets a maximum road density that will improve habitat conditions for the Canada lynx or gray wolf; or a guideline that recommends a ‘‘no disturbing activities’’ time period within a specified distance of a known bald eagle or goshawk nest site during the critical breeding period.

The Canada lynx literature (Ruediger et al. 2000; Squires et al. 2006) and Northern Rockies Lynx Management Direction (USDA 2007) generally concludes that lynx do not react negatively to forest roads. Literature from Colorado (Shenk 2007) does conclude that landscapes that have high speed highways have had substantial lynx road-kill, however, that paper does not attribute that mortality to low-speed forest roads. As wolves have repopulated the northern Rockies, population density shows no correlation to road density. In fact, some of the highest wolf densities are in developed landscapes where prey populations are high. Previous papers (Ruediger et al. 2000; Squires et al. 2006) that did show a possible link to road density are generally disregarded when compared to the two variables that currently explain high wolf viability-abundant prey and public tolerance. Thus, the USFS Draft Planning Rule examples regarding Canada lynx and wolf response are without scientific merit. Regarding the wording of “no disturbing activities” for goshawk protection, please see our previous comment.

The WACD and BHCCC are concerned about the inclusion of the following in the USFS Draft Planning Rule (Column 2, p. 8494):

> Additionally, it is important to note that the proposed rule is not limited to ''vertebrate'' species as required under the 1982 provisions. The proposed rule would include native plants and native invertebrates (fungi, aquatic invertebrates, insects, plants, and others) for which the Agency currently has very minimal biological information on their life histories, status, abundance, and distribution. However, maintaining or restoring ecosystem diversity within the plan area is the best opportunity to conserve these little-known species.

The inclusion of maintaining viable populations of invertebrates will certainly increase litigation over viability. Particularly since the USFS acknowledges that the "Agency currently has very minimal biological information on their life histories, status, abundance, and distribution." Additionally, this treats national forests as biological preserves rather than managed forests for the use and necessities of the people United States as required by the Organic Act. 16 USC 476. Accordingly, the WACD and BHCCC asks that invertebrates by removed from plant and animal diversity requirement.

On April 12, 2011, Stephen P. Mealey and Harold J. Salwasser, Boone and Crockett Club, submitted comments regarding section **219.9 Diversity of Plant and Animal Communities** of the USFS Draft Planning Rule. The WACD and BHCCC carefully reviewed the comments of Mealey and Salwasser and endorse them in their entirety. Please find their comments reproduced in full below.

TO: Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S. Bountiful, UT 84010
FROM: Stephen P. Mealey and Harold J. Salwasser, Boone and Crockett Club

SUBJECT: Comments on USDA Forest Service proposed rulemaking ("planning rule"), February 14, 2011

DATE: April 12, 2011

Our comments are limited to 36 CFR 219.9: Diversity of plant and animal communities.

COMMENDATIONS:

I. We commend the Forest Service for excluding from the proposed planning rule, requirements for diversity at the species population level included in the 1979 regulations: *"maintain viable populations of all existing native vertebrates"* (36 CFR 219.12); and in the 1982 regulations: *"Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area." (36 CFR 219.19).*

This commendation is based on the following:

1. **The 1976 National Forest Management Act (NFMA) amendment to the 1974 Forest and Rangeland Renewable Resources Planning Act (RPA) mandated diversity only at the ecological community level.**

The NFMA (Sec. 6 (g) (3) (B) calls for provision of "diversity of plant and animal communities…to meet overall multiple use objectives." This equates to ("coarse scale") ecological community considerations, or "Principles and Concepts Pertaining to organization at the Community Level" discussed by Odum in Chapter 6., of his 1971 *Fundamentals of Ecology*, a widely respected textbook in use at the time the NFMA was enacted. It does not equate to ("fine scale") population consideration, or "Principles and Concepts Pertaining to Organization at the Population Level, in Chapter 7 of *Fundamentals of Ecology*, which is the primary concern and responsibility of state agencies and federal agencies administering the Endangered Species Act of 1973, as amended (ESA). In the words of Art Cooper, Chair of the first NFMA Committee of Scientists charged with developing the first NFMA planning regulations, "viability was entirely a creation of the regulations; it did not have a connection to the diversity language, and it was a result of the dynamics of the committee where individual specialists (Bill Webb, ornithologist, SUNY, in this case) acted essentially independently" (Cooper, personal communication to Mealey and Johnson 2003).

2. Species population viability is the primary business of state wildlife and fish management agencies, and federal agencies charged with administering the ESA.

The Public Trust Doctrine is widely recognized as the cornerstone of America's wildlife conservation heritage well documented by James B. Trefethen in his 1975 *An American Crusade for Wildlife*. Two basic principles apply: that all fish and wildlife belong to all Americans and that the states primarily, through their state fish and wildlife management agencies, hold wildlife in trust for Americans and manage fish and wildlife populations mainly through hunting and fishing, to sustain conservation and public use in perpetuity. In general, states possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on federal lands within states. State statutes and state courts universally assert state ownership of fish and wildlife populations. The NFMA planning rule viability requirement is not clearly aligned with the American wildlife conservation heritage and its Public Trust Doctrine underpinning and could jeopardize both.

3. The NFMA planning rule requirement to maintain viable populations of vertebrates remains technically challenging/infeasible and has thus relied on "surrogates" to satisfy judges and minimize legal exposure.

Generally accepted theoretical and practical measures for population viability (resilience, fitness and adaptability) and related feasible implementing processes for thousands of species on national forests and grasslands have been elusive if not lacking. Using the Northwest Forest Plan for federal lands in the range of the northern spotted owl as an example, lacking such useful measures and processes, the "revised" Option 9 (Plan) relied on nearly 10 million acres of unmanaged late succession reserves (LSRs), a "survey and manage" process, watershed analysis, and expert panel opinions as viability "surrogates" to protect over a thousand species populations, and to convince Judge William Dwyer that the intent of the NFMA planning rule "viability language" had been met. Multiple use management on affected lands was greatly diminished by this requirement and federal forest management remains at a virtual standstill while court ordered and policy mandates for population viability are implemented. Such measures have become unintended impediments to reducing the risk of uncharacteristic wildfires which ironically are harming ESA listed species and LSRs. If "overkill" viability surrogates which make multiple use management virtually impossible

were replaced with strict "viable population" management as technically defined, the action would require an understanding of the biology of thousands of species vastly exceeding current information and the resources available to acquire such information. Data requirements for necessary information about numbers, distribution, reproductive rates, and survival to afford a high likelihood of persistence for 100 years are practically unreachable for all but a very few species. The technical NFMA planning rule requirement for "viability" is thus, unachievable; therefore the requirement itself is invalid.
II. We commend the Forest Service for keeping the primary focus of the proposed planning regulations on maintaining the diversity of plant and animal communities. The first paragraph under 36 CFR 219.9 titled: Diversity of plant and animal communities and the following paragraph (a) titled Ecosystem Diversity appear largely consistent with the requirement of the NFMA Sec. 6 (g) (3) (B).

CONCERNS:

I. We have a grave concern that the Forest Service in 36 CFR 219.9. (b) Species Conservation, is departing from its primary focus on maintaining the diversity of plant and animal communities, i.e. habitats, with a renewed requirement in (3) for plans to maintain viable populations of (animal- our emphasis) "species of conservation concern" within the plan area. We agree with the 36 CFR 219.9 (b) (1) and (2) requirements to contribute to the recovery of threatened and endangered species; and to conserve candidate species, but we firmly disagree for the three reasons given above under Commendation I. that the Forest Service should accept in any case, sole and/or principal responsibility for the viability of any non-ESA listed animal species.
II. We also have a deep concern about the proposed term: "species of conservation concern" (SCC). Search of the literature reveals no commonly accepted definition of this term. The definition given at 36 CFR 219.19 (page 8525): "Species other than federally listed threatened or endangered species or candidate species, for which the responsible official has determined that there is evidence demonstrating significant concern about its capability to persist over the long term in the plan area", offers much of the vagueness and ambiguity associated with the term "viability". That lack of specificity lead to frequent "viability litigation" to clarify ambiguity, which in turn lead to forest management "gridlock". (The Western Environmental Law Center headquartered in Eugene, Oregon has been, along with others, and continues to be a frequent litigant challenging the Forest Service on species viability and related issues).
With this proposed definition, a worst case scenario is not hard to imagine: overwhelming litigation brought against the Forest Service by plaintiffs arguing the agency, because of insufficient data and analysis, failed to demonstrate through the self imposed requirement for viability analysis, one or more species' capability to persist over the long term. One foreseeable outcome could be court ordered service-wide requirements for "survey and manage" as is currently mandated in the Northwest Forest Plan. Problems with the proposed definition could be significantly reduced or minimized if it was made more specific. For example, SCC could be defined in terms of the NatureServe Conservation Status Ranks G1, T1, N1, and S1, and G2, T2, N2, and S2, and state threatened, endangered and sensitive species. This approach would align with the Sustainable Forestry Initiative (SFI) Section 6. Standards for Forests with Exceptional Conservation Value, and Wildlife Habitat Diversity.

RECOMMENDATIONS:

I. Delete the entire paragraph 36 CFR 219.9 (b) (3) and replace it with the following:
Conserve species of conservation concern within the plan area.
through formal partnership agreements with appropriate state, federal, tribal and private entities.
II. Delete the entire definition of "species of conservation concern" (36 CFR 219.19, page 8525) and replace it with the following:
Species of conservation concern: Species other than federally listed threatened or endangered species or candidate species identified by the NatureServe Network of Natural Heritage Programs and Conservation Data Centers according to NatureServe Conservation Status Rank as G1, T1, N1, S1, and G2, T2, N2, S2; and by states as threatened and endangered.

219.10 Multiple Uses

The MUSYA of 1960 governs the annual and sustainable production of trees, grasses, forbs and shrubs. The new USFS Draft Planning Rule will need to balance the allocation of those resources by adopting the definitions of "multiple use" and "sustained yield" found in Section 4 of MUSYA.

> ''Multiple use'' means: The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.
> ''Sustained yield of the several products and services'' means the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.

The grazing of domestic livestock should be a recognized benefit and output on USFS lands, and should be considered both as a tool for management, as domestic livestock herbivory provides many of the same ecological functions of wild ungulates.

Grazing is critically important to Wyoming's local government constituents. Permitted grazing on USFS lands provides significant benefits to both the permittee and the USFS. The permittee benefits from the sustainable use of annual forage and the USFS benefits from strong local communities and economies. The beneficial impacts of herbivory as a natural resource management tool is vital, as many plant communities were developed with herbivory from wild ungulates. The economic and ecological benefits, combined with the leveraging of working private landscapes (ranches) on public lands, makes the continued use of domestic livestock a key issue in the development of a USFS Draft Planning Rule. Please keep in mind that the loss of private ranches adjacent to USFS system lands is a loss of ecosystem services provided by those ranches.

219.11 Timber Requirements Based on the NFMA

Current USFS employees have alluded to the fact that the authors of the USFS Draft Planning Rule felt that the timber requirements were of diminished importance. Section 219.11 embodies the notion of USFS employees that timber is of less importance now than during previous iterations of the Planning Rule. The requirement that timber harvest has to be "carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation and aesthetic resources" fails to recognize competing ecological processes and established natural conflicts. What is good for species x, may be clearly detrimental to species y and z. Requiring timber harvest consistency among competing processes,

life cycles, habitats, etc. will have the affect of slowing down timber harvest even more than the current glacial pace.

The WACD and BHCCC believe that the USFS must provide a better understanding of forest-based fiber for many uses, as private lands may not be able to provide all of our nation's fiber needs. Biomass project standards and the ability of a particular forest to provide fiber for the production of renewable energy should be a considered component of Forest Plans. Because of the Renewable Portfolio that many states have, the ability and need to produce renewable energy will become more important. While the WACD and BHCCC acknowledge the USFS Draft Planning Rule mentions "renewable energy projects" in relation to timber harvesting (Column 3, p.8496), we disagree that it can only support "small-scale" projects. Please address in the USFS Draft Planning Rule that the timber industry can support large-scale renewable energy projects.

The WACD and BHCCC is concerned that the USFS Draft Planning Rule minimizes the positive role that timber management can have in maintaining and restoring healthy forests, as well as dismissing the opportunity that timber management plays in sustaining the economic viability of western communities. Further, the WACD and BHCCC assert that the USFS Draft Planning Rule has ignored the need to consider sustaining the infrastructure of the timber industry, so that management tool is available over time. Lastly, the WACD and BHCCC feel that the prescriptive direction for clearcutting is out-of-date and unnecessary. The USFS Draft Planning Rule states (Column 2, p.8497):

> The Agency believes that the provisions of this section would provide a balanced approach, allowing timber harvest on lands not suitable for timber production if it serves as a tool for achieving or maintaining plan desired conditions or objectives. Timber harvest today is used often to achieve ecological conditions and other multiple use benefits for purposes other than timber production; therefore we have included § 219.11(b)(2) in the proposed rule to clarify.
>
> Paragraph (d) sets forth limits on timber harvest, regardless of the reason, on all NFS lands. All plans would, at a minimum, comply with the limitations set forth by the NFMA (16 U.S.C. 1604(g)(3)(E) and (F)). These requirements would limit harvest to situations where the productivity of the land could be sustained and harvesting prescriptions are appropriately applied. These requirements are referenced but not repeated because the Agency believes they are incorporated and enhanced by the requirements for resource protection and plan compatibility set forth in this section of the proposed rule. However, paragraph (d) does reiterate that harvests must be carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources.

The WACD and BHCCC agree that "timber harvest today is used often to achieve ecological conditions." However, we disagree with the phrase that timber harvest is generally done "for purposes other than timber production." We contend that since our nation demands immense quantities of lumber, paper, and biomass, and since many western communities are economically dependent upon the timber industry, producing timber as an economic commodity should be on par with "achieving ecological conditions." Furthermore, we contend that timber management requires an infrastructure and thus requires an annual, predictable supply of timber. Consequently, we recommend you add the following direction:

> For suitable lands where timber harvest is commonly used as a tool to achieve ecological objectives or provide for community economic stability, identify the level of wood (lumber, pulp, biomass, etc) needed on an annual basis to sustain the timber industry infrastructure in the target area.

The loss of timber infrastructure will make vegetation treatments much more expensive and inefficient. The more expensive treatments become, it is our opinion and experience that vegetation project implementation will be less likely. Without vegetation treatment, some public lands will be more susceptible to catastrophic natural disturbances. A healthy forest products industry infrastructure would enable the National Forest to treat highly departed forest conditions in a cost effective manner and manage for forest production in line with ecological processes and multiple uses of the forest.

Additionally, a growing need for energy security could be addressed with National Forest commodity outputs.

The USFS Draft Planning Rule has some prescriptive language regarding clearcutting that reads like a relic from the 1970's. For instance, the USFS Draft Planning Rule (Column 2 p. 8497) states:

> Paragraph (d) also includes requirements that track the NFMA at 16 U.S.C. 1604(g)(3)(F) regarding even-aged timber harvest. These requirements: (1) Limit clearcutting to locations where it is determined to be the optimum method for regenerating the site…
>
> (clearcutting) (3) require(s) cutting to be blended with the natural terrain…
>
> "(clearcutting requires) (3) establish(ing) maximum size limits of areas that may be cut; and (5) requires that harvest is consistent with resource protections.

This section reverts back to 1970's timber management practices where landscapes were harvested in a checkerboard of 40-acre clearcuts. Under USFS Draft Planning Rule direction for conducting broad-scale, coarse-filter, and fine-filter assessments, and recognizing the role that natural disturbances have in shaping the landscape and meeting the needs of plants and animals, clearcutting may still be an appropriate prescription for some lands (i.e. lodgepole pine stands on the Continental Divide that lack an early seral, post-fire component). Whether the prescription provides the fastest regeneration, however, may or may not be a pertinent variable to restoring desired habitat conditions for a given plant or animal species. We suggest you drop the requirement.

The USFS Draft Planning Rule attempts to justify these unduly prescriptive measures with the following rationale (Column 3, p. 8497):

> The procedure for varying these (size) limits is an established process and has worked effectively, providing a limit on opening size and public involvement with higher level approval for exceeding the limits. The Agency believes that the procedure for varying from these limits may be particularly justifiable in the future for ecological restoration, species recovery, improvement of vegetation diversity, mitigation of wildland fire risk, or other reasons. For example, some rare species are adapted to large patch sizes with similar habitat attributes for critical parts of their life cycle. Many of the specific NFMA requirements related to timber harvest are not reiterated in the text of the proposed rule, but are incorporated by reference. Some requirements are not repeated because they are addressed by other regulations; for example, the NEPA regulations direct environmental analysis and the use of interdisciplinary teams.

The WACD and BHCCC argue that the USFS needs to streamline its direction. For instance, if clearcutting at sizes greater than 40 acres is warranted based on results of broad-scale assessments, it is permissible under the USFS Draft Planning Rule. Why complicate the planning process with multi-layer reviews? Simply let the decision to harvest at large scales be evaluated and analyzed through the NEPA, NFMA, and ESA process. We suggest the agency drop the entire 40-acre review process.

219.12 Monitoring

The proposed requirements for monitoring focal species and management indicator species are vague and open to interpretation as to what constitutes adequate monitoring levels. The unintended consequence of lack of specificity will force the USFS into costly monitoring that will likely make projects economically unfeasible and/or subject to indefensible litigation. The USFS Draft Planning Rule states (Column 3, p. 8498):

> *Focal Species and Management Indicator Species:* The proposed requirement for monitoring questions that address the status of focal species is linked to the requirement of § 219.9 of the proposed rule to provide for ecosystem diversity, which describes the coarse filter approach for providing diversity of plant and animal communities. The term ''focal species'' is defined in the rule as: a small number of species selected for monitoring whose status is likely to be responsive to changes in ecological conditions and effects of management. Monitoring the status of focal species is one of many ways to gauge progress toward achieving desired conditions in the plan. There are several categories of species that could be used to inform the

> selection of focal species for the unit. These include indicator species, keystone species, ecological engineers, umbrella species, link species, species of concern, and others. Monitoring the status of selected focal species over time is intended to provide insight into the integrity of ecological systems on which those species depend and the effects of management on those ecological conditions (*i.e.*, the coarse filter aspect of the diversity requirement). It is not expected that a focal species be selected for every element of ecological conditions. The proposed requirement for the responsible official to monitor a small number of focal species is intended to allow discretion to choose the number needed to properly assess the relevant ecological conditions across the planning area, within the financial and technical capabilities of the Agency. The choice to have the proposed rule require monitoring of focal species as well as select ecological and watershed conditions is a shift from the 1982 rule's requirement to specifically monitor population trends of ''management indicator species,'' or MIS. The theory of MIS has been discredited since the 1982 rule. Essentially, monitoring the population trend of one species should not be extrapolated to form conclusions regarding the status and trends of other species. In addition, population trends for most species are extremely difficult to determine within the 15-year life of a plan, as it may take decades to establish accurate trend data, and data may be needed for a broader area than an individual national forest or grassland. Instead, the Agency expects to take advantage of recent technological advancements in monitoring the status of focal species, such as genetic sampling to estimate area occupied by species.

Monitoring wildlife populations as required under the 1982 USFS Planning Rule has been fraught with legal challenges including contentions that monitoring was not done at a large enough sample size, did not have statistically-significant results, or did not consider the effects of other variables, including those out of the purview of the USFS. The fact is, monitoring wildlife populations at a sample size that provides statistically significant results, and will stand up to scientific scrutiny, is both extremely expensive and difficult. We suggest pursuing a different approach that includes a categorization of species monitoring protocols:

1. Species that typically occur at sufficient densities so that most suitable habitats are occupied (e.g. if their habitat/niche is present, the species is generally present (ungulates, most passerines, furbearers, etc)).
2. Highly specialized species where data shows that substantial portions of available habitat/niches are unoccupied (e.g. willow flycatchers, fishers, leopard frogs, etc).
3. Widely distributed, highly specialized species that occur at such inherently low densities (e.g. goshawks) where monitoring at a forest-scale is too small a scale to assess their response to changes in habitat.

Recommended Monitoring Strategies by Species Group

- Group One: Species that typically occur at sufficient densities so that most suitable habitats are occupied (e.g. if their habitat/niche is present, the species is generally present (ungulates, most passerines, furbearers, etc)).

Since these species are generally present if the habitat is available, monitoring should be limited to habitat variables (cover type, size or age class, stand structure, forage condition, etc) that define suitable or preferred habitat. Generally, these variables should be measured using Geographic Information System-available data layers (Forest Inventory and Analysis, satellite imagery, etc). Trends should be considered only when those data layers are updated. Careful consideration should be given to what species fall within Group One. For instance, white-tailed deer would almost always fall within Group One. American martens in the Rocky Mountains would generally fall within Group One when state trapping data indicate most suitable habitat is occupied. Fishers would generally not fall within this group due to the lingering effects of past trapping and local extirpation.

- Group Two: Highly specialized species (e.g. willow flycatchers, fishers, leopard frogs, etc) where data shows that substantial portions of available habitat/niches are unoccupied.

Since data indicate that substantial portions of suitable habitat for species in this group are unoccupied, monitoring should measure species occurrence within suitable habitat. Long-term trend conclusions

should be limited to changes in habitat occupancy. For passerines (e.g. willow flycatchers) point counts should be adequate. For mammals (e.g. fishers), DNA hair sampling should be ample. For amphibians (e.g. leopard frogs), spring tadpole surveys should be sufficient. Monitoring should commonly avoid making assessments on population density within individual areas of occupied habitat due to the difficulties in reaching statistically-valid conclusions.

- Group Three: Highly specialized species that occur at such inherently low densities (i.e. goshawks, wolverines) where monitoring at a forest scale is too small a scale to assess their response to changes in habitat.

This group is perhaps the most challenging to monitor, and for which past USFS attempts at monitoring have been both expensive and inconclusive. Using goshawks as an example, we suggest that monitoring on an individual forest basis is both unnecessarily expensive and redundant. Clusters of inventoried nests from past research (Clough 2000; Kennedy 2003; Reynolds et al. 1992) within representative cover types that can be repeated periodically at the regional scale provide sufficient data to measure trends. Limiting monitoring to these clusters makes monitoring more likely to fall within expected budgets, and makes the results more defensible by limiting the "noise" that individual birds exhibit when selecting alternate nests that are often erroneously confused with a response to human disturbance.
Occupancy monitoring of wolverines could be done via DNA hair samples. In most cases, however, occupancy monitoring should be left to research.

General Comments Regarding Forest Plan Monitoring

Generally we support the following strategies for monitoring in order to keep monitoring affordable and simple (and therefore defensible in a litigation situation).

- Wildlife monitoring should emphasize habitat monitoring over occupancy or population monitoring where availability of habitat is the limiting factor.
- The number of species monitored should be a "very short list" and limited to those species that clearly show adverse effects from USFS activities, and which are generally not affected by a multitude of non-USFS activities.
- When it is required to monitor species, not simply habitat (i.e. where some suitable habitat is unoccupied) limit monitoring to "occupancy" where possible. The more that monitoring focuses on population density, fledging success, juvenile recruitment, etc, the more those results are likely to be successfully challenged.
- Consider selective, clustered monitoring at a regional scale over forest scale monitoring when species are widely distributed, occur at low densities, or are expensive or difficult to monitor.

219.15 Project and Activity Consistency with the Plan

The regulation effectively eliminates the distinction between forest plan guidelines and standards, making guidelines legally enforceable standards that all projects must "comply with." This eliminates hard fought USFS legal victories establishing that guidelines are discretionary, not mandatory, and provide management flexibility. The USFS Draft Planning Rule states (Column 1, p. 8522):

> (d) Determining consistency. A project or activity approval document must describe how the project or activity is consistent with applicable plan components developed or revised in conformance with this part by meeting the following criteria:
>
> (1) Goals, desired conditions, and objectives. The project or activity contributes to the maintenance or attainment of one or more goals, desired conditions, or objectives or does not foreclose the opportunity to maintain or achieve any goals, desired conditions, or objectives, over the long term.

(2) Standards. The project or activity complies with applicable standards.

(3) Guidelines. The project or activity:

(i) Is designed to comply with applicable guidelines as set out in the plan; or

(ii) Is designed in a way that is as effective in carrying out the intent of the applicable guidelines in contributing to the maintenance or attainment of relevant desired conditions and objectives, avoiding or mitigating undesirable effects, or meeting applicable legal requirements (§ 219.7(d)(1)(iv)).

The courts have had several occasions to review the distinction between forest plan standards and guidelines as they are currently defined under the existing regulations. The courts have ruled in favor of the USFS and repeatedly rejected plaintiffs' arguments that the Agency was legally compelled to follow a forest plan guideline. The USFS should not toss aside these legal victories. For example, in Wilderness Soc. v. Bosworth, 118 F.Supp.2d 1082, 1096 (D.Mont.,2000), the Ninth Circuit rejected plaintiffs argument that all old growth stands had to be a minimum of 25 acres. The court concluded that "the 25 acre minimum size requirement in the Forest Plan is a guideline and is therefore discretionary rather than mandatory." Similarly, in Greater Yellowstone Coalition, Inc. v. Servheen, 672 F.Supp.2d 1105, 1114 (D.Mont.2009), the court noted that "[w]hen Forest Plans contain standards, the standards are 'mandatory requirements,' in contrast to guidelines, 'which are discretionary.' Citing Miller v. U.S., 163 F.3d 591, 594, n. 1 (9th Cir.1998)." Does the USFS really want to clamp down on its discretion and provide more vehicles for litigation challenges to Agency decisions?

The provision dealing with the consistency of "existing authorizations" and previously approved projects with the new plan, presumes that all projects are inconsistent with the plan unless the plan expressly singles out the project and states that it is consistent with the plan. A better and less costly approach would be to assume that all existing authorizations and previously approved projects are consistent with the plan unless the plan explicitly states that those projects are inconsistent and must be modified to conform to the new plan. This would avoid disruptions of existing contracts and costly contract claims. The approach that the "existing authorizations" and approved projects are consistent with the new plan is supported by language in NFMA that states that plan approval is subject to valid existing rights and also with the common practice that a plan assumes environmental effects based on existing conditions, which are a reflection of the current authorizations and approved projects.

The USFS Draft Planning Rule provides that there may be additional independent resource plans developed by the USFS. NFMA was designed to eliminate separate resource management plans. The separate resource plans had the effect of preventing the achievement of objectives for other resources. NFMA required one integrated plan to eliminate the Balkanized planning for a national forest. The Act requires that "[p]lans developed in accordance with this section shall – (1) form one integrated plan for each unit of the National Forest System (16 U.S.C. § 1604 (f)(1))."

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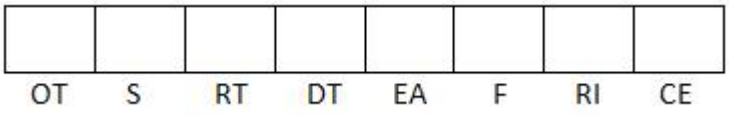

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Comments

May 11, 2011

To: Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S
Bountiful, UT 84010

Dear Sir or Madam:

Thank you for this opportunity to submit comments on the proposed forest planning rule (76 Fed. Reg. 8480, Feb. 14, 2011). The Meeteetse Conservation District (MCD) is pleased to offer the following comments for the proposed planning rule.

Additionally, as a member of the Wyoming Association of Conservation Districts, the MCD hereby incorporates by reference all comments made by the Wyoming Association of Conservation Districts regarding 76 Fed. Reg. 8480, Feb. 14, 2011, which in particular include those comments dated May 11, 2011.

The Meeteetse Conservation District (MCD) comprised of five locally elected Supervisors, pursuant to Wyoming Statute 11-16-101 et. seq., is responsible for enhancing and maintaining natural resources, including the protection of water quality and quantity, preservation of wildlife, and the protection of public lands, while stabilizing ranching and farming operations, and protecting the tax base within its local district boundaries. Additionally, authority for these comments is established through The Meeteetse Conservation District Long Range Program Land Use Management and Resource Conservation Plan (2010) which must be recognized under U.S.C. § 1712 (c) (9).

As a Cooperating Agency and Government Cooperator in federal land management planning, the MCD has participated for many years and had significant experience in attempting to develop the best plans possible for its constituency and the public in general.

Management of the national forests is important to the MCD because the local custom and culture, the socioeconomic condition, and the overall general wellbeing of its constituency are dependent on forest management.

As currently conceived, the Proposed Rule appears to add additional administrative burden to the USFS and to make planning an end in itself, increasing the time and cost for completing forest plans, resulting in less, not more, on the ground management of the national forests; and, resulting in paperwork and litigation, not management for desired conditions of managed resources. Simply put, our National Forests should be working for all of us and need to be well-managed according to a set of multiple use priorities and within budget constraints. Because of this, the

Forest Supervisor should be the Responsible Official for forest plans. (Sec. 219.2).

Respectfully submitted,

Steve Jones

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MEMORANDUM

To: Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S.
Bountiful, UT 84010

From: Wyoming Association of Conservation Districts and Bighorn and Carbon County Commissions

Date: May 11, 2011

Re: Comments on the USDA Forest Service 2011 Draft Planning Rule

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The Wyoming Association of Conservation Districts (WACD) and Big Horn and Carbon County Commissions (BHCCC), as duly elected representatives from jurisdictions directly involved with public lands, appreciate this opportunity to engage the United States Forest Service (USFS) and help provide our experience and thoughts in regard to the preparation of a new USFS Draft Planning Rule. The WACD represents 34 districts in the state. The BHCCC represent citizens in northern and southern portions of Wyoming. Many of our districts depend on USFS system lands for an array of multiple uses, including forage, fiber, water, wildlife, recreation, aesthetic and related resources. USFS system lands often contain key watersheds that are critically important for supplying our water needs. USFS lands, and therefore USFS planning, are critical to our future.

Any planning policy, directing planning and management on our public lands will have serious and significant impacts on our state, local Conservation Districts, Counties, families and individuals. Conservation Districts and County Commissions are integral to the natural resources management in Wyoming as we provide technical services and support to help manage natural resources for long term sustainability. As independent Westerners with extensive experience in public lands use and management, we look forward to being a fully engaged participant in the USFS Draft Planning Rule revision process.
Many of the comments contained within this memo on the USFS Draft Planning Rule are manifested in the social and cultural fabric of Wyoming and we strongly encourage the USFS to understand, recognize, and incorporate these social and cultural issues into the USFS Draft Planning Rule. The WACD and BHCCC respectfully submit the following items to be included in review and discussions related to the proposed USFS Draft Planning Rule.

219.1 Purpose and Applicability

The laws governing the national forests must be the basis for the USFS Draft Planning Rule. The following passage (Column 2, p.8514) is contradictory to that:

> Consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531) (MUSYA), the Forest Service manages the NFS to sustain the multiple uses, including ecosystem services, of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land.

The pointed insertion of "ecosystem services" within the discussion of multiple uses in 219.1(b) is unnecessary, inappropriate, and is not found in the National Forest Management Act (NFMA). As "ecosystem services" are defined in 219.19, the national forests already produce all of those "services," and there is no need to muddle the meaning of multiple uses as contained in the Multiple Use Sustained Yield Act of 1960 (MUSYA).

219.2 Levels of Planning and Responsible Officials

Section 219.2(b) (Column 1, p. 8515) of the USFS Draft Planning Rule includes a requirement that assessments and forest and monitoring plans contain:

> [T]he unit's distinctive roles and contributions to the local area, region, and Nation, and the roles for which the unit is best suited, considering the Agency mission, unique capabilities, and the resources and management of other lands in the vicinity.

The preceding requirement is also at 219.6(b)(3), 219.7(e)(ii), 219.8(b)(1), and 219.12(a)(5)(vii) of the USFS Draft Planning Rule. Such language mirrors the concept of "niche," which has previously been discussed in relation to some forest plans (e.g. "Fun in the sun: The Deschutes National Forest is the hub of incredible opportunities in diverse settings within close proximity to one another, facilitating four-season day-use recreation opportunities (2006 Draft Deschutes National Forest Plan)."). The concept of "distinctive roles and contributions" explicitly provides the USFS an opportunity to prioritize amenity attributes, such as scenery or wilderness, at the expense of more tangible outputs. Further, it works to reduce the role and contributions of local offices, while expanding the role and contributions of the national office. The result will be an incongruent mix of forest plans with differing multiple use objectives and outputs.

Given the diversity of the national forests and multiple use objectives and outputs, defining "distinctive roles and contributions" for any given unit will inevitably bias the planning process in favor of predetermined, ideological uses, products, and services. Uses, products, and services incompatible with the values of Responsible Officials will be dismissed without evaluation. As the proposed rule is constructed, following the identification of the "distinctive roles and contributions of the unit" in the assessment, forest, or monitoring plan by the Responsible Official, those "distinctive roles and contributions of the unit" become required content in the plan. There is no requirement in the law for identification of "distinctive roles and contributions." The concept is both polarizing and superfluous. It will require unnecessary time and expense for the USFS and participants in the planning process. The WACD and BHCCC argue the concept is flawed, and recommend that the requirement to incorporate or monitor "distinctive roles and contributions" in assessments and forest and monitoring plans be deleted from all five sections of the USFS Draft Planning Rule.

219.3 Role of Science in Planning

Requiring the use of the "best available scientific information," rather than USFS expertise and *available, relevant* science will make decision making time consuming and vulnerable to litigation. Sound science

has an important role in USFS planning and management. Proving what science is "best" is likely to be time consuming and of little value, but will undoubtedly lead to lawsuits that will halt all progress.
The regulation establishes costly and time consuming procedural requirements to document the consideration of the best available science that will slow the planning process significantly and create a new legal burden on the USFS to prove that it has considered the best available science. This change obfuscates hard fought USFS legal victories that: (1) establish that there is rarely "best" or "most accurate" science (2) will relieve plaintiffs of the burden to prove why the USFS decision is flawed and will now impose the burden on the USFS to prove why its decision "is informed by" the best science, and (3) undermines the USFS multiple-use mandate which the courts have only recently more explicitly acknowledged.
The WACD and BHCCC have numerous concerns about the following (Column 2, p.8515):

> The responsible official shall take into account the best available scientific information throughout the planning process identified in this subpart. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to a particular decision or action. The responsible official shall document this consideration in every assessment report (§ 219.6), plan decision document (§ 219.14), and monitoring evaluation report (§ 219.12). Such documentation must:
>
> (a) Identify sources of data, peer reviewed articles, scientific assessments, or other scientific information relevant to the issues being considered;
>
> (b) Describe how the social, economic, and ecological sciences were identified and appropriately interpreted and applied; and
>
> (c) For the plan decision document, describe how scientific information was determined to be the most accurate, reliable, and relevant information available and how scientific findings or conclusions informed or were used to develop plan components and other content in the plan.

First, the USFS Draft Planning Rule should not create a target for additional litigation and controversy by using or defining the term "best available science" or "best available scientific information." The provision in Section 219.3 of the proposed rule regarding use of "best available scientific information" is likely to fuel further disputes and lawsuits that will obstruct and bog down planning and management activities that are environmentally necessary and beneficial.
Sound science has an important role in national forest planning and management. However, which science is "best," as illustrated in Endangered Species Act (ESA) litigation, as well as NFMA and other disputes, can be extremely subjective and highly politicized.
The NFMA does not use or require use of the term "best available science" or "best available scientific information." Neither does National Environmental Policy Act (NEPA). The Ninth Circuit Court of Appeals has affirmed that these statutes do not require: (1) a determination of whether national forest planning or project-level NEPA documents are based on "best" available science or methodology, (2) that disagreements among scientists are routine, and (3) that requiring the USFS to resolve or present every such disagreement could impose an unworkable burden that would prevent the needed or beneficial management. Lands Council v. McNair, 537 F.3d 981, 991 (9th Cir. 2008)(en banc); Salmon River Concerned Citizens v. Robertson, 32 F.3d 1346, 1359 (9th Cir. 1994).
The USFS Draft Planning Rule procedures will create new legal claims centered on the requirement that the USFS consider the best available science and demonstrate that the "most accurate, reliable, and relevant information" was considered and how it "informed" the development of the forest plan. In Lands Council v. McNair, a unanimous en banc panel of the Ninth Circuit gave the USFS more leeway and flexibility regarding scientific analysis. The Court emphasized that:

> [t]o require the USFS to affirmatively present every uncertainty in its EIS would be an onerous requirement, given that experts in every scientific field routinely disagree; such a requirement might inadvertently prevent the USFS from acting due to the burden it would impose." McNair, 537 F.3d at 1001.

The USFS should recognize, as the Ninth Circuit finally has, that there is established, recognized source of "best" or "most accurate" science. Even NEPA does not require meeting such a requirement. The Ninth Circuit emphasized that:

> NEPA does not require [that we] decide whether an [environmental impact statement] is based on the best scientific methodology available, nor does NEPA require us to resolve disagreements among various scientists as to methodology." Salmon River Concerned Citizens, 32 F.3d at 1359.

Second, the regulation is written in a way that puts the burden on the USFS to prove that they identified, "appropriately" interpreted it, and explain how best science informed the decision. Yet, an agency with the burden of proof always has an uphill battle in court, particularly in the Ninth Circuit Court of Appeals. The burden to prove that the USFS was arbitrary and capricious in its decision-making should remain with the plaintiff and the regulations must strive to avoid placing the heavy burden of proof on the agency.

Finally, the science-dominated regulation undermines the principle that the agency can make natural resource management decisions based on its discretion in weighing various multiple-use objectives. For example, the Ninth Circuit in Seattle Audubon Society v. Moseley, 830 F.3d 1401, 1404 (9th Cir. 1996) upheld selection of an alternative in the Northwest Forest Plan that provided an 80%, rather than 100%, probability of maintaining the viability of the spotted owl because:

> [T]he selection of an alternative with a higher likelihood of viability would preclude any multiple use compromises contrary to the overall mandate of the NFMA." That Ninth Circuit in the Mission Brush case finally recognized that, "[c]ongress has consistently acknowledged that the USFS must balance competing demands in managing National Forest System lands. Indeed, since Congress' early regulation of the national forests, it has never been the case that 'the national forests were . . . to be set aside for non-use'." McNair, 537 F.3d at 990.

Thus, the Draft USFS Planning Rule must not require the USFS to do more than take into account available, relevant scientific information, along with other factors in the development, amendment, or revision of national forest plans, without reference to which information is "best." Proposed Section 219.3 should be deleted or greatly abbreviated and corrected accordingly, along with any other references to "best available scientific information" in the Draft USFS Planning Rule. The use and dissemination of scientific information by federal agencies is addressed by the Federal Data Quality Act (P.L. 106-554 §515) and subsequent guidelines from the Office of Management and Budget (http://www.whitehouse.gov/omb/fedreg_reproducible). The WACD and BHCCC believe that the protections and assurances of the quality of scientific information used and distributed by federal agencies under the Federal Data Quality Act is sufficient to ensure that quality of scientific information being used by the USFS in the planning process and a requirement to identify the "most accurate" scientific information should not be a legal requirement in the Draft USFS Planning Rule itself.

219.4 Public Participation

The WACD and BHCCC, as duly elected local representatives, believe that it is critical to maintain and continue Cooperating Agency status on both planning and project level documents and NEPA processes. This Cooperating Agency status allows us, as local government representatives, the ability to fully participate in land use planning for our public lands. The Council on Environmental Quality's "40 Questions" document addresses responsibilities' and states in part:

> After a lead agency has been designated (Sec. 1501.5), that agency has the responsibility to solicit cooperation from other federal agencies that have jurisdiction by law or special expertise on any environmental issue that should be addressed in the EIS being prepared. Where appropriate, the lead agency should seek the cooperation of state or local agencies of similar qualifications. When the proposal may affect an Indian reservation, the agency should consult with the Indian tribe. Section 1508.5. The request for cooperation should come at the earliest possible time in the NEPA process.
> After discussions with the candidate cooperating agencies, the lead agency and the cooperating agencies are to determine by letter or by memorandum which agencies will undertake cooperating responsibilities. To the extent possible at this stage, responsibilities for specific issues should be assigned. The allocation of responsibilities will be completed during scoping. Section 1501.7(a)(4).

The WACD and BHCCC believe that this Cooperating Agency participation aspect of planning based on our local expertise to be fundamental to effective planning. This local government participation should also be understood and appreciated by the USFS as compared to the special interest participation. As locally elected Supervisors and Commissioners, we represent all stakeholders in our jurisdictions. Elected representatives offer a balance of needs and perspectives compared with the often narrow perspectives of the myriad of special interest groups. Local government participation also improves the credibility of any federal planning process, often making the process and resultant plans easier to implement.

The USFS is interested in moving forward with a collaborative approach to planning, without defining exactly what collaboration means, who can collaborate, or how the agency will deal with conflicting views among collaborators. The use of cooperating agencies in the planning process guarantees that local constituents are represented.

Local cooperators feel that the lead agency's overwhelming sense of ownership does not allow for or truly accept Cooperating Agency participation during plan revisions. Our local government participation needs to be more inclusive than the patronization we sometimes receive. Any revisions to the USFS Draft Planning Rules should lay out guidelines to improve collaboration and the sharing of resources and data.

Improving the collaborative process could benefit many aspects of the planning process:

- The use of Geographic Information Systems should be key in collaborative planning meetings. Projecting spatial data during planning meetings has proved to be a valuable tool in gaining understanding and consensus.
- Actively seeking and engaging potential collaborators early in the planning process could reduce the potential for litigation, while giving all parties a sense of ownership.
- Key issues could be more efficiently identified and worked through early in the process by collaboration with stakeholders and government agencies.
- Planning efforts should be a shared activity among collaborators, which could save Agency time and money in the USFS Draft Planning Rule process.

The WACD and BHCCC suggest the following:

- Streamline the process to reduce the time, effort, and dollars spent by local agencies and collaborators.
- Better utilize local knowledge, research, and datasets.
- Need a better definition of best available science; this has long been a successful point of litigation.
- Guidelines for spatial analysis and the use of nationally consistent and up to date datasets should be included in any USFS Draft Planning Rule revisions.

As stated above, The WACD and BHCCC support the concept of public participation. The USFS Draft Planning Rule states (Column 2, p.8486):

> Many people discussed the need for the Forest Service to make a stronger effort to engage groups and communities that traditionally have been underrepresented in land management planning. This is reflected in the requirement that responsible officials encourage the participation of youth, low-income populations, and minority populations in the planning process and in the requirements to be proactive to use contemporary tools to reach out to the public and consider the accessibility of the process to interested groups and individuals. The Agency recognizes the need to engage a full range of interests and individuals in the planning process and the responsibility to promote environmental justice.

The WACD and BHCCC contends that while the intent to involve "youth, low income, and minorities" is admirable and well intended, individuals and organizations that actually get involved with forest planning are going to be limited to either economic stakeholders (grazing permittees, loggers, outfitters, etc.) or those with an existing interest in forest management. While stakeholders or people with strong interests in forest management will indeed include people of all ages, income levels, or ethnicity, the Forest Service cannot make individuals or groups with no interest or economic stake in National Forests participate in forest planning, no matter how much effort the agency puts into targeted scoping. We recommend you remove the reference to those groups.

219.5 Planning Framework

Planning is fundamentally related to a central economics principle – scarcity. The USFS, through the planning process, must allocate scarce resources to competing interests in a manner that maximizes or minimizes a suite of objectives. To do this, planners need information about values — ecological and biophysical, economic, and social. Only by understanding what these values are can a comprehensive and meaningful plan be developed. Without this information, it is impossible to evaluate tradeoffs between alternatives or to assess whether objectives are being met. Without such values, the resulting plan will be meaningless and arbitrary.

With respect to economics, we suggest the USFS Draft Planning Rule consider an analysis that may include revenues and expenditures, as well as any measurable non-market benefits and costs. Non-market refers to costs or benefits that arise from an alternative that does not constitute revenues or expenditures. For example, individuals who value wildlife may be willing to pay to protect a species or enhance wildlife habitat. Although money may not change hands, it is possible to determine value or willingness to pay through survey methodology. This is also true for recreation experiences that do not generate income, such as aesthetic values, wildlife, etc. In the case where tradeoffs are made between market goods and non-market goods, opportunity costs can be calculated to determine relative values. These values can then be used to compare outcomes under each alternative.

Section 219.5 (Column 2, p.8487) speaks to the role of stakeholders in the planning framework:

> The approach described in the proposed framework responds to the public's stated desire for participation throughout land management planning. The assessment phase would allow for early public participation—well before a proposed action—so that stakeholders could engage in joint fact-finding and develop a mutual understanding of the interconnections among social, economic, and ecological communities and systems. The development/ revision/amendment element of the framework responds to the public desire to help develop and provide meaningful input to proposals for land management plans. The monitoring part of the framework responds to stakeholder's desires for a systematic, deliberate, monitoring approach that can inform, and be informed, by other monitoring efforts relevant to management on the unit. Both stakeholders and the Agency recognize the potential efficiencies of a uniform monitoring approach and hope to increase information sharing and learning opportunities.

There is a great deal of difference between a stakeholder 1,000 miles away from a Forest, and one who depends on forest resources for business, recreation, and aesthetic sustenance. The woman who runs a ranch adjacent to USFS lands and relies on a summer grazing lease has a much larger stake in the Forest planning process than does the citizen from many states away. We do not want to diminish the hypothetical dockworker from New Jersey that comes out to enjoy recreation and hunting, but we absolutely want to recognize the difference in stakes between the stakeholders. The Forest planning processes should recognize that the stronger voice in planning comes from local stakeholders.

219.6 Assessments

The Wyoming Conservation Districts support the concept of doing broad-scale ecological assessments. The Planning Rule states (Column 3, p.8487):

> This section of the proposed rule would require an assessment prior to plan revision or development. The responsible official would reach out to the public, Tribes, Alaska Native Corporations, other Federal agencies, States, local governments, and scientists to start the assessment and help identify the questions and issues to be considered. The responsible official would also be required to coordinate with the regional forester, and agency staff from State and Private Forestry, Research and Development, as well as other governmental and nongovernmental partners to consolidate existing information and develop strategies for satisfying any additional information needs. Early engagement with a diverse set of interests is needed to create an accurate depiction of the issues affecting the plan area and a solid base of understanding for any changes needed to the plan.

While the WACD and BHCCC support the aforementioned direction for conducting assessments, further direction is needed to address the scientifically-based scale at which assessments would normally be conducted. The direction identified in the Interior Columbia Basin Ecosystem Management Project (ICBEMP) (USDA and USDI 2000) is recommended by the WACD and BHCCC. The ICBEMP suggested that the U.S. Geologic Survey 5th code hydrologic unit was probably the minimum size needed to conduct ecological coarse filter assessments. While that scale was crafted to recognize the role that climate and large fires have played in shaping western, interior forests, much of the National Forest system has disturbance regimes on a similar scale, making the ICBEMP direction pertinent**.** For instance, the USFS Draft Planning Rule describes vegetation for the southeastern coastal plain as:

> The forest has two distinct layers: a pure longleaf pine open canopy approaching 70 feet in height and a wiregrass dominated herbaceous layer... This savanna structure is maintained by recurring fire on an average 3-year cycle… This ecological type functions as primary nesting and foraging habitat for red-cockaded woodpecker.

The ICBEMP direction for conducting ecological (coarse filter) assessments at a 5th code hydrologic unit scale would be equally applicable to the southeastern coastal plain. In order to avoid assessments at an inconsistent and scientifically indefensible scale, we suggest you implement ICBEMP direction regarding the scale of ecological assessments.

219.7 New Plan Development or Plan Revision

The new USFS Draft Planning Rule should consider, and institute efficient vehicles to update Forest Plans, either due to new information (e.g. better satellite data), changed conditions (insect infestations), or needs of public resources. Within the last decade the priorities of the USFS appear to have changed. Former USFS Chief Dale Bosworth developed a list of four threats to the nation's forest and grasslands that would emerge as Agency focus points in the 21st century. The four threats identified by Chief Bosworth included: (1) fire and fuels, (2) invasive species, (3) loss of open space, and (4) unmanaged recreation. Former USFS Chief Gail Kimbell expanded on Chief Bosworth's focus on fire and fuels and

her tenure in office partially focused on climate change. The new USFS Chief, Tom Tidwell, appears to be focusing more on the restoration of watersheds and forest lands.
The two former USFS Chiefs discussed above, along with the current Chief, have had three different areas of focus. This is instructive as it allows us to consider how Forest Plans should permit emerging changes in information or societal needs. Instead of a wholesale rewriting of the Forest Plan, we believe that it is more efficient and practical to conduct a simple update and amendment process of the existing Plan. Please consider and discuss an amendment process in the new USFS Draft Planning Rule.

219.8 Sustainability

In the explanation of the Draft Planning Rule, the USFS states that "[t]he proposed rule considered the ecological, social, and economic systems as interdependent systems, which cannot be ranked in order of importance (Column 3, p. 8491)." However, in the same section of the USFS Draft Planning Rule explanation, the USFS goes on to state that "the agency has more influence over the factors that impact ecological sustainability on NFS lands (ecological diversity, forest health, road system management, etc.) than it does for social and economic sustainability (employment, income, community well-being, culture, etc.) (Column 3, p. 8491)." It is this position that leads to the disparate treatment of social and economic systems versus environmental systems in the USFS Draft Planning Rule.
In reference to ecological sustainability in §219.8(a), the USFS Draft Planning Rule requires plan components to "maintain or restore the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area …." However, in §219.8(b) in reference to social and economic sustainability, the USFS Draft Planning Rule requires only that "[t]he plan must include plan components to guide the unit's contribution to social and economic sustainability …." The WACD and BHCCC support the initial assertion of the agency that social, environmental, and economic considerations are not competing values; rather they are truly interdependent and all play an important role in effectively managing national forest lands.
Even if the assertion that the USFS has more influence over factors influencing ecological sustainability than those influencing social or economic sustainability is true, this does not support the language in the USFS Draft Planning Rule that elevates ecological considerations above social and economic considerations. The Agency asserts that the USFS Draft Planning Rule treats the three elements of sustainability as interdependent and further, that none of the elements can be ranked in order of priority. Nowhere does the Agency say that factors cannot be ranked in order of importance unless the Agency has differing abilities to influence the factors.
Further, the WACD and BHCCC find suspect the assertion that the USFS has more authority over factors influencing ecological sustainability. In the explanation of this section in the USFS Draft Planning Rule, the Agency lists a host of factors influencing ecological sustainability that are outside the control of the USFS including "climate change, extreme disturbance events, and urbanization on lands outside of or adjacent to NFS lands (Column 2, p. 8490)." This is not an insubstantial list of factors outside of the USFS control, and says nothing of the Agency's ability to actively manage national forest lands in light of the near constant threat of litigation facing management activities on federal lands.
The precipitous decline in the forest industry throughout the West and the corresponding social and economic benefits closely coincides with the increase in the threats to ecological sustainability stemming from the lack of management on federal lands. These ecological threats include fires outside the historical range of variability, spread of native and invasive pest species at historic levels (extreme

disturbance events), and are one of primary factors currently influencing the ecological health and sustainability of Western forests. The Agency's ability to impact factors influencing social and economic sustainability is clear from the affect on these systems following the rapid decline in management on federal lands. What is not clear is that the USFS is in a better position to impact factors influencing ecological sustainability than those influencing economic or social sustainability.

Because the USFS is in a position to have a substantial impact on all of the factors influencing ecological, social, and economic sustainability, we request that the USFS Draft Planning Rule recognize this and include language for plan components that maintain or restore all three elements of sustainability: (1) ecological, (2) social, and (3) economic.

219.9 Diversity of Plant and Animal Communities

The WACD and BHCCC by and large support the concept of achieving plant and animal diversity using the coarse filter/fine filter approach. The USFS Draft Planning Rule states (Column 2, p.8492):

> Known as a coarse-filter/fine-filter approach, this is a well-developed concept in the scientific literature and has broad support from the scientific community and many stakeholders. The coarse-filter should provide ecological conditions for the long-term persistence of the vast majority of species within the plan area. The fine-filter would identify specific habitat needs of species with known conservation concerns or whose long-term persistence in the plan area is at risk, and for which the coarse-filter protection is insufficient.

We feel that if carefully worded, the strategy could potentially:

- Reduce the "analysis paralysis" that plagues project-level NEPA analyses.
- Make USFS decisions more defensible during appeals/litigation.
- Lead to on-the-ground management actions that are done at a scale and intensity that actually make a difference compared against unplanned disturbances that are occurring at a scale and intensity outside the normal range of variability.

Unfortunately, if not carefully worded, the coarse filter/fine filter strategy could further obfuscate planning requirements and add another layer to an already unnecessarily complex and costly analysis process. Please consider our concerns and recommendations in the following sections.

Coarse-filter Approach

Under the category of Coarse Filter Approach, the USFS Draft Planning Rule concludes (Column 3, p. 8492) that:

> The premise behind the proposed coarse-filter approach is that native species evolved and adapted within the limits established by natural landforms, vegetation, and disturbance patterns prior to extensive human alteration. Maintaining or restoring the ecological conditions similar to those under which native species have evolved therefore offers the best assurance against losses of biological diversity and maintains habitats for the vast majority of species in an area…

We contend that in many ecological settings (wildlife/urban interface, checkerboard ownership, etc) "maintaining or restoring" historical conditions may not be possible. In the Interior Columbia Basin Ecosystem Management Report (USDA and USDI 2000), the term "departure" was coined to represent situations where current conditions are radically different from mean historic conditions, and where actions are needed to narrow the "gap" between historic and current conditions. Using terms such as the preceding would make it clear that while many situations make it impossible or undesirable for "maintaining or restoring" historic conditions, identifying the magnitude of "departure" and narrowing that departure to the degree possible would improve long-term species sustainability.

Under the category of Coarse Filter Approach, the USFS Draft Planning Rule concludes (Column 3, p. 8492) that:

> Healthy ecosystems are indicated by the degree of ecological integrity related to the completeness or wholeness of their composition, structure, function, and connectivity.

The term "connectivity" appears repeatedly throughout the USFS Draft Planning Rule. Based on appeals and court cases, the term "connectivity" is a term that has been grossly misunderstood and evoked by special interest groups to stop well-intended and well-designed projects. The term "connectivity" (or lack thereof) has been used to describe every situation from small, isolated "islands" of eastern forest surrounded by urban development (MacArthur and Wilson 2001), to reduced dispersal opportunities for juvenile northern spotted owls in western coastal forests caused by checkerboard 40-acre clearcuts (USDI 2008), and every situation in between. To both recognize and provide for connectivity, and avoid NEPA pitfalls that will derail future projects, the USFS Draft Planning Rule needs to be carefully worded to explain the nuances of habitat connectivity. We suggest adding the following direction:

- Acknowledgment of the varying degrees to which human settlement patterns have affected habitat connectivity across the continent. Situations where small patches of forested habitats surrounded by urban areas as described in MacArthur and Wilson (2001) do occur, but are not typical of western forests or the majority of National Forest lands.
- Recognition that while changes in human development and changes in forest vegetation patterns both affect the ability of native animals to move across the landscape, they are substantially different variables, needing substantially different measurement indicators for which to assess effects.
- Stated understanding that the factors affecting vegetation patterns are complex and include such variables as "inherent" characteristics (grassland vs. forested), cover type (predominate species), age class (old trees vs. young trees), structural (single-storied vs. multiple-storied), and the scale at which disturbances create patterns (large, low severity fires that create large, homogeneous, uneven-aged stands vs. high severity fires that create a mosaic of even-aged stands).
- Disclosure that connectivity needs for individual wildlife species varies wildly. Most species (birds and "generalists" species) are not particularly affected by changes in habitat connectivity. A few wide-ranging species (wolverines and grizzly bears) are dramatically affected by changes in connectivity.

We suggest that references to connectivity in the USFS Draft Planning Rule be modified to ensure that Forest Plans:

- Understand and disclose the degree to which connectivity may have changed from historic conditions including changes in human development, cover type, age class, structure, and patterns resulting from changes in natural or anthropogenic disturbances.
- Evaluate how changes in connectivity may affect those species that are known to be particularly sensitive to change in connectivity.
- Consider opportunities to improve habitat connectivity when there are substantial changes from historic levels of connectivity and when there are species present in which those changes have been demonstrated to be particularly detrimental.

Fine Filter Approach

Under the Fine Filter Approach (Column 2, p. 8492) the USFS Draft Planning Rule Planning Rule states:

> Three species-specific requirements for plan components that would provide the basis for the fine-filter approach to species conservation. The intent would be to provide plan components that identify specific habitat needs of species, when those needs are not met through the coarse filter. These species are threatened and endangered (T&E) species, candidate species, and species of conservation concern.

The WACD and BHCCC support the direction to conduct detailed fine filter analyses for listed species and increased analysis for candidate species on the grounds that the ESA provides little choice in the matter. We would, however, recommend adding the following direction:

Generally, single species-driven U.S. Fish & Wildlife Service recovery plans for listed species are compatible with coarse filter findings. For instance, the recovery plan for the red-cockaded woodpecker (USDI 2003), which directs management agencies to recruit large-diameter longleaf pine with periodic underburning, is compatible with the coarse filter assessment for southern coastal plain forests. On the eastern periphery of the northern spotted owl's range, however, where forests shift from coastal Douglas-fir to dry ponderosa pine, the northern spotted owl recovery plan direct agencies to maintain or recruit large expanses of dense, multi-storied conifers (USDI 2008). Not only is this direction incompatible with species like flammulated owls that evolved with frequent, non-lethal fires and open forests, but such direction, while providing short-term protection for northern spotted owls, may be unsustainable in the long-term due to the inevitability of severe wildfires. USFS Forest Plans should ensure that when such conflicts between Forest Plan and ESA direction arise, any conflict between findings from coarse filter analysis and recovery plans be clearly disclosed. Furthermore, effects analysis from the implementation of required recovery plans should be disclosed in both short-term and long-term time frames.

Regarding the direction on species of conservation concern, we have significant distress. The USFS Draft Planning Rules (Column 2, p. 8493) states:

> The final species conservation requirement in this section of the proposed rule addresses the needs of species of conservation concern. A species of conservation concern is a species that is not threatened, endangered, or a candidate species, but is one for which the responsible official has determined there is evidence demonstrating significant concern about its capability to persist over the long term in the plan area. A viable population is defined in this proposed rule as a population of a species that continues to persist over the long-term with sufficient distribution to be resilient and adaptable to stressors and likely future environmental conditions. The responsible official would identify, where necessary, specific ecological conditions needed by these species that are not provided by the coarse-filter. The identification of species of conservation concern within the plan area could be based on several criteria, such as substantial scientific information as to the overall status of the species, the quantity and quality of species habitat within the plan area, and the potential for management activities to affect the species habitat within the plan area. Forest Service Directives would contain the criteria for selecting species of conservation concern. State lists of endangered, threatened, rare, endemic, or other classifications of species, such as those listed as threatened under State law; and other sources such as the Nature Serve conservation status system may be used to inform the selection of species of conservation concern. The proposed rule's requirement for species of conservation concern would be to maintain or restore ecological conditions to maintain viable populations of species of conservation concern within the plan area, within the Agency's authority and consistent with the inherent capability of the plan area. Where a viable population of a species of conservation concern already exists within the plan area, the appropriate ecological conditions needed to maintain the long-term persistence of that species will continue to be provided.

Further narrative under Column 2, p. 8493 states:

> The proposed rule would require that the Agency provide plan components to maintain or restore ecological conditions within the plan area for that species, and by doing so to contribute to the extent practicable to a viable population across its range.

While the WACD and BHCCC strongly support the intent of using a fine filter analysis to ensure that certain species are not under-evaluated when conducting coarse filter analysis, the agency has a history of allowing the findings for a single species to result in actions that are incompatible with coarse filter

analysis findings, are ecologically unsustainable, and are ultimately incompatible with sustaining native species viability as a whole. For instance, since the USFS Draft Planning Rule uses goshawks as an example (Column 3, p. 8493), the WACD and BHCCC will also use it as an example of project planning gone askew.

Goshawks occur from the west coast to east coast and occupy all forested environments. Many of these forested environments (aspen, ponderosa pine, western larch, and lodgepole pine) are dependent upon or subject to frequent disturbance (wildfire and insects). Predominate research (Kennedy 2003; Reynolds et al. 1992), however, stresses the importance of sustaining large expanses of dense, multi-storied forest. Dense, multi-storied forests occur naturally in areas of high summer precipitation (i.e. the Northeast), or where fire return intervals are long (i.e. coastal forests in the Northwest). Where fire return intervals are short, however, such as interior ponderosa pine, dense, multi-storied stands were historically limited to small stands or patches within stands that were repeatedly unburned by wildfires. Of course, after a century of fire exclusion, dense, multi-storied stands currently dominate interior forests and explain much of the present-day forest health crises.

Unfortunately, overzealous protection done to protect goshawk nesting habitat, often has precluded treatments that would have restored historic habitat conditions (as identified during coarse filter analyses). Paradoxically, such protection is ultimately counterproductive to goshawks since extensive dense, multi-storied forest conditions are not sustainable within interior forests. Furthermore, other species that evolved with open forest conditions (flammulated owls) are pushed closer to federal listing. While it is understandable that single-species wildlife researchers may not comprehend fully disturbance ecology and its ramification across the spectrum of wildlife species, and thus recommend against management actions that would provide for long-term habitat sustainability, that is inexcusable for USFS deciding officers. It is paramount that they consider disturbance ecology and habitat sustainability in the interpretation and application of research.

The agency's overemphasis to "protect every species on every acre" has allowed well-intended biologists or appellants/litigants to preclude actions that would have sustained habitat in the long-term, in order to avoid adverse site-specific impacts on goshawks in the short-term. Since there is no limit to the number of single-species analyses that can go into Forest Plans (or projects), the treatment of species of conservation concern can further exacerbate the problem of "analysis paralysis," rather than simplify and defend planning alternatives. To avoid further NEPA conundrums regarding species of conservation concern, we recommend the following measures be considered in the USFS Draft Planning Rule:

- Recognition that all disturbances (man-made or natural) are potentially adverse in the short-term to individual species, even when the species are dependent upon disturbances (e.g. flammulated owls, black-backed woodpeckers, Canada lynx).
- Ensure that biological analyses are done with a full understanding of local disturbance ecology so that long-term habitat sustainability is evaluated and disclosed.
- Disclose effects of alternatives upon species in both the short-term and long-term. Unless short-term effects clearly place a species at risk of federal listing, favor long-term effects over short-term effects when making decisions.
- Identification that wildlife species "specialists" have very specific niches and healthy forests must provide a mix of habitats to provide those niches. Thus, it is impossible to meet the needs of all species on every acre, or even on every project. Effects analyses, therefore, must incorporate those critical considerations at

> a large enough scale so that habitat for species of conservation concern can be provided over time considering natural, unplanned disturbances.

We also argue that decisions for sustaining species of conservation concern consider economics and efficiency. For instance, the USFS Draft Planning Rules references (Column 3, p. 8493):

> A guideline that recommends a ‘‘no disturbing activities’’ time period within a specified distance of a known bald eagle or goshawk nest site during the critical breeding period.

Timing restrictions to protect goshawks are almost universal in existing Forest Plans, yet they are extremely expensive, inefficient, and contribute little to the conservation of the species compared to other variables. For example, to protect goshawks from disturbance, nest surveys are required. However, goshawks are extremely difficult and expensive to survey (Woodbridge and Hargis 2006). Because goshawks select alternate nests every year (Reynolds et al. 1992), goshawk territories must be resurveyed before the startup of project activities and contracts must be updated to ensure that no activity occurs near nests. Goshawks have high fledgling success (Reynolds et al. 1992), but like most large raptors, juveniles have a low recruitment (survival) rate into the adult population (only about 10% of the fledglings produced). The odds are, therefore, that spending large amounts of limited money to inventory, resurvey, and protect a nest that produces two fledglings will only contribute 0.2 adults to the population. This could make sense if most goshawk nests within an administrative unit were being disturbed at any given time or if the species was on the cusp of federal listing (which it is not (USDI 1998)). Nevertheless, a large percentage of NEPA documents suggest that only a fraction of nests are ever disturbed at any given time.

A prime example of such inefficiencies is associated with well-intended protective measures in the Shoshone National Forest (SNF) Land & Resource Management Plan (USDA 1985), which requires all nests to be protected from disturbance. On the SNF, however, 90% of the Forest is wilderness or wilderness study areas in which no nests are ever exposed to disturbance. Furthermore, a query of size class data (ERG 2011) suggests the availability of nest habitat has increased dramatically on the SNF due to a century of fire exclusion. Clearly, assuming that sustaining goshawk habitat is going to be a long-term concern, simply managing for a mix of size classes, including some large, dense stands across the Forest, will provide a vastly more efficient way of assuring species sustainability than worrying about nest disturbance. Therefore, we suggest you consider adding the following provision to the USFS Draft Planning Rule:

> When crafting conservation strategies for species of conservation concern, the USFS should consider the economic costs and the management efficiency of the strategy. The strategy should ensure that it both minimizes risks to the species and minimizes costs to the agency. The intent is that monies and man-power should be optimized to the extent possible in order to provide for the maximum number of species and habitats.

We found the examples of specific measures taken to protect species evaluated during the fine filter analysis to lack scientific merit. The USFS Draft Planning Rule (Column 3, p. 8493) states:

> A standard that sets a maximum road density that will improve habitat conditions for the Canada lynx or gray wolf; or a guideline that recommends a ‘‘no disturbing activities’’ time period within a specified distance of a known bald eagle or goshawk nest site during the critical breeding period.

The Canada lynx literature (Ruediger et al. 2000; Squires et al. 2006) and Northern Rockies Lynx Management Direction (USDA 2007) generally concludes that lynx do not react negatively to forest roads. Literature from Colorado (Shenk 2007) does conclude that landscapes that have high speed highways have had substantial lynx road-kill, however, that paper does not attribute that mortality to low-

speed forest roads. As wolves have repopulated the northern Rockies, population density shows no correlation to road density. In fact, some of the highest wolf densities are in developed landscapes where prey populations are high. Previous papers (Ruediger et al. 2000; Squires et al. 2006) that did show a possible link to road density are generally disregarded when compared to the two variables that currently explain high wolf viability-abundant prey and public tolerance. Thus, the USFS Draft Planning Rule examples regarding Canada lynx and wolf response are without scientific merit. Regarding the wording of "no disturbing activities" for goshawk protection, please see our previous comment.

The WACD and BHCCC are concerned about the inclusion of the following in the USFS Draft Planning Rule (Column 2, p. 8494):

> Additionally, it is important to note that the proposed rule is not limited to ''vertebrate'' species as required under the 1982 provisions. The proposed rule would include native plants and native invertebrates (fungi, aquatic invertebrates, insects, plants, and others) for which the Agency currently has very minimal biological information on their life histories, status, abundance, and distribution. However, maintaining or restoring ecosystem diversity within the plan area is the best opportunity to conserve these little-known species.

The inclusion of maintaining viable populations of invertebrates will certainly increase litigation over viability. Particularly since the USFS acknowledges that the "Agency currently has very minimal biological information on their life histories, status, abundance, and distribution." Additionally, the treats national forests as biological preserves rather than managed forests for the use and necessities of the people United States as required by the Organic Act. 16 USC 476. Accordingly, the WACD and BHCCC asks that invertebrates by removed from plant and animal diversity requirement.

On April 12, 2011, Stephen P. Mealey and Harold J. Salwasser, Boone and Crockett Club, submitted comments regarding section **219.9 Diversity of Plant and Animal Communities** of the USFS Draft Planning Rule. The WACD and BHCCC carefully reviewed the comments of Mealey and Salwasser and endorse them in their entirety. Please find their comments reproduced in full below.

TO: Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S. Bountiful, UT 84010
FROM: Stephen P. Mealey and Harold J. Salwasser, Boone and Crockett Club

SUBJECT: Comments on USDA Forest Service proposed rulemaking ("planning rule"), February 14, 2011

DATE: April 12, 2011

Our comments are limited to 36 CFR 219.9: Diversity of plant and animal communities.

COMMENDATIONS:

I. We commend the Forest Service for excluding from the proposed planning rule, requirements for diversity at the species population level included in the 1979 regulations: *"maintain viable populations of all existing native vertebrates"* (36 CFR 219.12); and in the 1982 regulations: *"Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area.*

In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area." (36 CFR 219.19).
This commendation is based on the following:

1. **The 1976 National Forest Management Act (NFMA) amendment to the 1974 Forest and Rangeland Renewable Resources Planning Act (RPA) mandated diversity only at the ecological community level.**

The NFMA (Sec. 6 (g) (3) (B) calls for provision of "diversity of plant and animal communities…to meet overall multiple use objectives." This equates to ("coarse scale") ecological community considerations, or "Principles and Concepts Pertaining to organization at the Community Level" discussed by Odum in Chapter 6., of his 1971 *Fundamentals of Ecology*, a widely respected textbook in use at the time the NFMA was enacted. It does not equate to ("fine scale") population consideration, or "Principles and Concepts Pertaining to Organization at the Population Level, in Chapter 7 of *Fundamentals of Ecology,* which is the primary concern and responsibility of state agencies and federal agencies administering the Endangered Species Act of 1973, as amended (ESA). In the words of Art Cooper, Chair of the first NFMA Committee of Scientists charged with developing the first NFMA planning regulations, "viability was entirely a creation of the regulations; it did not have a connection to the diversity language, and it was a result of the dynamics of the committee where individual specialists (Bill Webb, ornithologist, SUNY, in this case) acted essentially independently" (Cooper, personal communication to Mealey and Johnson 2003).

2. **Species population viability is the primary business of state wildlife and fish management agencies, and federal agencies charged with administering the ESA.**

The Public Trust Doctrine is widely recognized as the cornerstone of America's wildlife conservation heritage well documented by James B. Trefethen in his 1975 *An American Crusade for Wildlife*. Two basic principles apply: that all fish and wildlife belong to all Americans and that the states primarily, through their state fish and wildlife management agencies, hold wildlife in trust for Americans and manage fish and wildlife populations mainly through hunting and fishing, to sustain conservation and public use in perpetuity. In general, states possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on federal lands within states. State statutes and state courts universally assert state ownership of fish and wildlife populations. The NFMA planning rule viability requirement is not clearly aligned with the American wildlife conservation heritage and its Public Trust Doctrine underpinning and could jeopardize both.

3. **The NFMA planning rule requirement to maintain viable populations of vertebrates remains technically challenging/infeasible and has thus relied on "surrogates" to satisfy judges and minimize legal exposure.**

Generally accepted theoretical and practical measures for population viability (resilience, fitness and adaptability) and related feasible implementing processes for thousands of species on national forests and grasslands have been elusive if not lacking. Using the Northwest Forest Plan for federal lands in the range of the northern spotted owl as an example, lacking such useful measures and processes, the "revised" Option 9 (Plan) relied on nearly 10 million acres of unmanaged late

succession reserves (LSRs), a "survey and manage" process, watershed analysis, and expert panel opinions as viability "surrogates" to protect over a thousand species populations, and to convince Judge William Dwyer that the intent of the NFMA planning rule "viability language" had been met. Multiple use management on affected lands was greatly diminished by this requirement and federal forest management remains at a virtual standstill while court ordered and policy mandates for population viability are implemented. Such measures have become unintended impediments to reducing the risk of uncharacteristic wildfires which ironically are harming ESA listed species and LSRs. If "overkill" viability surrogates which make multiple use management virtually impossible were replaced with strict "viable population" management as technically defined, the action would require an understanding of the biology of thousands of species vastly exceeding current information and the resources available to acquire such information. Data requirements for necessary information about numbers, distribution, reproductive rates, and survival to afford a high likelihood of persistence for 100 years are practically unreachable for all but a very few species. The technical NFMA planning rule requirement for "viability" is thus, unachievable; therefore the requirement itself is invalid.

II. We commend the Forest Service for keeping the primary focus of the proposed planning regulations on maintaining the diversity of plant and animal communities. The first paragraph under 36 CFR 219.9 titled: Diversity of plant and animal communities and the following paragraph (a) titled Ecosystem Diversity appear largely consistent with the requirement of the NFMA Sec. 6 (g) (3) (B).

CONCERNS:

I. We have a grave concern that the Forest Service in 36 CFR 219.9. (b) Species Conservation, is departing from its primary focus on maintaining the diversity of plant and animal communities, i.e. habitats, with a renewed requirement in (3) for plans to maintain viable populations of (animal- our emphasis) "species of conservation concern" within the plan area. We agree with the 36 CFR 219.9 (b) (1) and (2) requirements to contribute to the recovery of threatened and endangered species; and to conserve candidate species, but we firmly disagree for the three reasons given above under Commendation I. that the Forest Service should accept in any case, sole and/or principal responsibility for the viability of any non-ESA listed animal species.

II. We also have a deep concern about the proposed term: "species of conservation concern" (SCC). Search of the literature reveals no commonly accepted definition of this term. The definition given at 36 CFR 219.19 (page 8525): "Species other than federally listed threatened or endangered species or candidate species, for which the responsible official has determined that there is evidence demonstrating significant concern about its capability to persist over the long term in the plan area", offers much of the vagueness and ambiguity associated with the term "viability". That lack of specificity lead to frequent "viability litigation" to clarify ambiguity, which in turn lead to forest management "gridlock". (The Western Environmental Law Center headquartered in Eugene, Oregon has been, along with others, and continues to be a frequent litigant challenging the Forest Service on species viability and related issues).

With this proposed definition, a worst case scenario is not hard to imagine: overwhelming litigation brought against the Forest Service by plaintiffs arguing the agency, because of insufficient data and analysis, failed to demonstrate through the self imposed requirement for

viability analysis, one or more species' capability to persist over the long term. One foreseeable outcome could be court ordered service-wide requirements for "survey and manage" as is currently mandated in the Northwest Forest Plan. Problems with the proposed definition could be significantly reduced or minimized if it was made more specific. For example, SCC could be defined in terms of the NatureServe Conservation Status Ranks G1, T1, N1, and S1, and G2, T2, N2, and S2, and state threatened, endangered and sensitive species. This approach would align with the Sustainable Forestry Initiative (SFI) Section 6. Standards for Forests with Exceptional Conservation Value, and Wildlife Habitat Diversity.

RECOMMENDATIONS:

I. Delete the entire paragraph 36 CFR 219.9 (b) (3) and replace it with the following:
Conserve species of conservation concern within the plan area.
through formal partnership agreements with appropriate state, federal, tribal and private entities.
II. Delete the entire definition of "species of conservation concern" (36 CFR 219.19, page 8525) and replace it with the following:
Species of conservation concern: Species other than federally listed threatened or endangered species or candidate species identified by the NatureServe Network of Natural Heritage Programs and Conservation Data Centers according to NatureServe Conservation Status Rank as G1, T1, N1, S1, and G2, T2, N2, S2; and by states as threatened and endangered.

219.10 Multiple Uses

The MUSYA of 1960 governs the annual and sustainable production of trees, grasses, forbs and shrubs. The new USFS Draft Planning Rule will need to balance the allocation of those resources by adopting the definitions of "multiple use" and "sustained yield" found in Section 4 of MUSYA.

> ''Multiple use'' means: The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.
> ''Sustained yield of the several products and services'' means the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.

The grazing of domestic livestock should be a recognized benefit and output on USFS lands, and should be considered both as a tool for management, as domestic livestock herbivory provides many of the same ecological functions of wild ungulates.

Grazing is critically important to Wyoming's local government constituents. Permitted grazing on USFS lands provides significant benefits to both the permittee and the USFS. The permittee benefits from the sustainable use of annual forage and the USFS benefits from strong local communities and economies. The beneficial impacts of herbivory as a natural resource management tool is vital, as many plant communities were developed with herbivory from wild ungulates. The economic and ecological benefits, combined with the leveraging of working private landscapes (ranches) on public lands, makes the continued use of domestic livestock a key issue in the development of a USFS Draft Planning Rule.

Please keep in mind that the loss of private ranches adjacent to USFS system lands is a loss of ecosystem services provided by those ranches.

219.11 Timber Requirements Based on the NFMA

Current USFS employees have alluded to the fact that the authors of the USFS Draft Planning Rule felt that the timber requirements were of diminished importance. Section 219.11 embodies the notion of USFS employees that timber is of less importance now than during previous iterations of the Planning Rule. The requirement that timber harvest has to be "carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation and aesthetic resources" fails to recognize competing ecological processes and established natural conflicts. What is good for species x, may be clearly detrimental to species y and z. Requiring timber harvest consistency among competing processes, life cycles, habitats, etc. will have the affect of slowing down timber harvest even more than the current glacial pace.

The WACD and BHCCC believe that the USFS must provide a better understanding of forest-based fiber for many uses, as private lands may not be able to provide all of our nation's fiber needs. Biomass project standards and the ability of a particular forest to provide fiber for the production of renewable energy should be a considered component of Forest Plans. Because of the Renewable Portfolio that many states have, the ability and need to produce renewable energy will become more important. While the WACD and BHCCC acknowledge the USFS Draft Planning Rule mentions "renewable energy projects" in relation to timber harvesting (Column 3, p.8496), we disagree that it can only support "small-scale" projects. Please address in the USFS Draft Planning Rule that the timber industry can support large-scale renewable energy projects.

The WACD and BHCCC is concerned that the USFS Draft Planning Rule minimizes the positive role that timber management can have in maintaining and restoring healthy forests, as well as dismissing the opportunity that timber management plays in sustaining the economic viability of western communities. Further, the WACD and BHCCC assert that the USFS Draft Planning Rule has ignored the need to consider sustaining the infrastructure of the timber industry, so that management tool is available over time. Lastly, the WACD and BHCCC feel that the prescriptive direction for clearcutting is out-of-date and unnecessary. The USFS Draft Planning Rule states (Column 2, p.8497):

> The Agency believes that the provisions of this section would provide a balanced approach, allowing timber harvest on lands not suitable for timber production if it serves as a tool for achieving or maintaining plan desired conditions or objectives. Timber harvest today is used often to achieve ecological conditions and other multiple use benefits for purposes other than timber production; therefore we have included § 219.11(b)(2) in the proposed rule to clarify.
>
> Paragraph (d) sets forth limits on timber harvest, regardless of the reason, on all NFS lands. All plans would, at a minimum, comply with the limitations set forth by the NFMA (16 U.S.C. 1604(g)(3)(E) and (F)). These requirements would limit harvest to situations where the productivity of the land could be sustained and harvesting prescriptions are appropriately applied. These requirements are referenced but not repeated because the Agency believes they are incorporated and enhanced by the requirements for resource protection and plan compatibility set forth in this section of the proposed rule. However, paragraph (d) does reiterate that harvests must be carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources.

The WACD and BHCCC agree that "timber harvest today is used often to achieve ecological conditions." However, we disagree with the phrase that timber harvest is generally done "for purposes other than timber production." We contend that since our nation demands immense quantities of lumber, paper, and biomass, and since many western communities are economically dependent upon the timber industry,

producing timber as an economic commodity should be on par with "achieving ecological conditions." Furthermore, we contend that timber management requires an infrastructure and thus requires an annual, predictable supply of timber. Consequently, we recommend you add the following direction:

> For suitable lands where timber harvest is commonly used as a tool to achieve ecological objectives or provide for community economic stability, identify the level of wood (lumber, pulp, biomass, etc) needed on an annual basis to sustain the timber industry infrastructure in the target area.

The loss of timber infrastructure will make vegetation treatments much more expensive and inefficient. The more expensive treatments become, it is our opinion and experience that vegetation project implementation will be less likely. Without vegetation treatment, some public lands will be more susceptible to catastrophic natural disturbances. A healthy forest products industry infrastructure would enable the National Forest to treat highly departed forest conditions in a cost effective manner and manage for forest production in line with ecological processes and multiple uses of the forest. Additionally, a growing need for energy security could be addressed with National Forest commodity outputs.

The USFS Draft Planning Rule has some prescriptive language regarding clearcutting that reads like a relic from the 1970's. For instance, the USFS Draft Planning Rule (Column 2 p. 8497) states:

> Paragraph (d) also includes requirements that track the NFMA at 16 U.S.C. 1604(g)(3)(F) regarding even-aged timber harvest. These requirements: (1) Limit clearcutting to locations where it is determined to be the optimum method for regenerating the site…
>
> (clearcutting) (3) require(s) cutting to be blended with the natural terrain…
>
> "(clearcutting requires) (3) establish(ing) maximum size limits of areas that may be cut; and (5) requires that harvest is consistent with resource protections.

This section reverts back to 1970's timber management practices where landscapes were harvested in a checkerboard of 40-acre clearcuts. Under USFS Draft Planning Rule direction for conducting broad-scale, coarse-filter, and fine-filter assessments, and recognizing the role that natural disturbances have in shaping the landscape and meeting the needs of plants and animals, clearcutting may still be an appropriate prescription for some lands (i.e. lodgepole pine stands on the Continental Divide that lack an early seral, post-fire component). Whether the prescription provides the fastest regeneration, however, may or may not be a pertinent variable to restoring desired habitat conditions for a given plant or animal species. We suggest you drop the requirement.

The USFS Draft Planning Rule attempts to justify these unduly prescriptive measures with the following rationale (Column 3, p. 8497):

> The procedure for varying these (size) limits is an established process and has worked effectively, providing a limit on opening size and public involvement with higher level approval for exceeding the limits. The Agency believes that the procedure for varying from these limits may be particularly justifiable in the future for ecological restoration, species recovery, improvement of vegetation diversity, mitigation of wildland fire risk, or other reasons. For example, some rare species are adapted to large patch sizes with similar habitat attributes for critical parts of their life cycle. Many of the specific NFMA requirements related to timber harvest are not reiterated in the text of the proposed rule, but are incorporated by reference. Some requirements are not repeated because they are addressed by other regulations; for example, the NEPA regulations direct environmental analysis and the use of interdisciplinary teams.

The WACD and BHCCC argue that the USFS needs to streamline its direction. For instance, if clearcutting at sizes greater than 40 acres is warranted based on results of broad-scale assessments, it is permissible under the USFS Draft Planning Rule. Why complicate the planning process with multi-layer reviews? Simply let the decision to harvest at large scales be evaluated and analyzed through the NEPA, NFMA, and ESA process. We suggest the agency drop the entire 40-acre review process.

219.12 Monitoring

The proposed requirements for monitoring focal species and management indicator species are vague and open to interpretation as to what constitutes adequate monitoring levels. The unintended consequence of lack of specificity will force the USFS into costly monitoring that will likely make projects economically unfeasible and/or subject to indefensible litigation. The USFS Draft Planning Rule states (Column 3, p. 8498):

> *Focal Species and Management Indicator Species:* The proposed requirement for monitoring questions that address the status of focal species is linked to the requirement of § 219.9 of the proposed rule to provide for ecosystem diversity, which describes the coarse filter approach for providing diversity of plant and animal communities. The term ''focal species'' is defined in the rule as: a small number of species selected for monitoring whose status is likely to be responsive to changes in ecological conditions and effects of management. Monitoring the status of focal species is one of many ways to gauge progress toward achieving desired conditions in the plan. There are several categories of species that could be used to inform the selection of focal species for the unit. These include indicator species, keystone species, ecological engineers, umbrella species, link species, species of concern, and others. Monitoring the status of selected focal species over time is intended to provide insight into the integrity of ecological systems on which those species depend and the effects of management on those ecological conditions (*i.e.*, the coarse filter aspect of the diversity requirement). It is not expected that a focal species be selected for every element of ecological conditions. The proposed requirement for the responsible official to monitor a small number of focal species is intended to allow discretion to choose the number needed to properly assess the relevant ecological conditions across the planning area, within the financial and technical capabilities of the Agency. The choice to have the proposed rule require monitoring of focal species as well as select ecological and watershed conditions is a shift from the 1982 rule's requirement to specifically monitor population trends of ''management indicator species,'' or MIS. The theory of MIS has been discredited since the 1982 rule. Essentially, monitoring the population trend of one species should not be extrapolated to form conclusions regarding the status and trends of other species. In addition, population trends for most species are extremely difficult to determine within the 15-year life of a plan, as it may take decades to establish accurate trend data, and data may be needed for a broader area than an individual national forest or grassland. Instead, the Agency expects to take advantage of recent technological advancements in monitoring the status of focal species, such as genetic sampling to estimate area occupied by species.

Monitoring wildlife populations as required under the 1982 USFS Planning Rule has been fraught with legal challenges including contentions that monitoring was not done at a large enough sample size, did not have statistically-significant results, or did not consider the effects of other variables, including those out of the purview of the USFS. The fact is, monitoring wildlife populations at a sample size that provides statistically significant results, and will stand up to scientific scrutiny, is both extremely expensive and difficult. We suggest pursuing a different approach that includes a categorization of species monitoring protocols:

1. Species that typically occur at sufficient densities so that most suitable habitats are occupied (e.g. if their habitat/niche is present, the species is generally present (ungulates, most passerines, furbearers, etc)).
2. Highly specialized species where data shows that substantial portions of available habitat/niches are unoccupied (e.g. willow flycatchers, fishers, leopard frogs, etc).
3. Widely distributed, highly specialized species that occur at such inherently low densities (e.g. goshawks) where monitoring at a forest-scale is too small a scale to assess their response to changes in habitat.

Recommended Monitoring Strategies by Species Group

- Group One: Species that typically occur at sufficient densities so that most suitable habitats are occupied (e.g. if their habitat/niche is present, the species is generally present (ungulates, most passerines, furbearers, etc)).

Since these species are generally present if the habitat is available, monitoring should be limited to habitat variables (cover type, size or age class, stand structure, forage condition, etc) that define suitable or preferred habitat. Generally, these variables should be measured using Geographic Information System-available data layers (Forest Inventory and Analysis, satellite imagery, etc). Trends should be considered only when those data layers are updated. Careful consideration should be given to what species fall within Group One. For instance, white-tailed deer would almost always fall within Group One. American martens in the Rocky Mountains would generally fall within Group One when state trapping data indicate most suitable habitat is occupied. Fishers would generally not fall within this group due to the lingering effects of past trapping and local extirpation.

- Group Two: Highly specialized species (e.g. willow flycatchers, fishers, leopard frogs, etc) where data shows that substantial portions of available habitat/niches are unoccupied.

Since data indicate that substantial portions of suitable habitat for species in this group are unoccupied, monitoring should measure species occurrence within suitable habitat. Long-term trend conclusions should be limited to changes in habitat occupancy. For passerines (e.g. willow flycatchers) point counts should be adequate. For mammals (e.g. fishers), DNA hair sampling should be ample. For amphibians (e.g. leopard frogs), spring tadpole surveys should be sufficient. Monitoring should commonly avoid making assessments on population density within individual areas of occupied habitat due to the difficulties in reaching statistically-valid conclusions.

- Group Three: Highly specialized species that occur at such inherently low densities (i.e. goshawks, wolverines) where monitoring at a forest scale is too small a scale to assess their response to changes in habitat.

This group is perhaps the most challenging to monitor, and for which past USFS attempts at monitoring have been both expensive and inconclusive. Using goshawks as an example, we suggest that monitoring on an individual forest basis is both unnecessarily expensive and redundant. Clusters of inventoried nests from past research (Clough 2000; Kennedy 2003; Reynolds et al. 1992) within representative cover types that can be repeated periodically at the regional scale provide sufficient data to measure trends. Limiting monitoring to these clusters makes monitoring more likely to fall within expected budgets, and makes the results more defensible by limiting the "noise" that individual birds exhibit when selecting alternate nests that are often erroneously confused with a response to human disturbance.
Occupancy monitoring of wolverines could be done via DNA hair samples. In most cases, however, occupancy monitoring should be left to research.

General Comments Regarding Forest Plan Monitoring

Generally we support the following strategies for monitoring in order to keep monitoring affordable and simple (and therefore defensible in a litigation situation).

- Wildlife monitoring should emphasize habitat monitoring over occupancy or population monitoring where availability of habitat is the limiting factor.

- The number of species monitored should be a "very short list" and limited to those species that clearly show adverse effects from USFS activities, and which are generally not affected by a multitude of non-USFS activities.
- When it is required to monitor species, not simply habitat (i.e. where some suitable habitat is unoccupied) limit monitoring to "occupancy" where possible. The more that monitoring focuses on population density, fledging success, juvenile recruitment, etc, the more those results are likely to be successfully challenged.
- Consider selective, clustered monitoring at a regional scale over forest scale monitoring when species are widely distributed, occur at low densities, or are expensive or difficult to monitor.

219.15 Project and Activity Consistency with the Plan

The regulation effectively eliminates the distinction between forest plan guidelines and standards, making guidelines legally enforceable standards that all projects must "comply with." This eliminates hard fought USFS legal victories establishing that guidelines are discretionary, not mandatory, and provide management flexibility. The USFS Draft Planning Rule states (Column 1, p. 8522):

> (d) Determining consistency. A project or activity approval document must describe how the project or activity is consistent with applicable plan components developed or revised in conformance with this part by meeting the following criteria:
>
> (1) Goals, desired conditions, and objectives. The project or activity contributes to the maintenance or attainment of one or more goals, desired conditions, or objectives or does not foreclose the opportunity to maintain or achieve any goals, desired conditions, or objectives, over the long term.
>
> (2) Standards. The project or activity complies with applicable standards.
>
> (3) Guidelines. The project or activity:
>
> (i) Is designed to comply with applicable guidelines as set out in the plan; or
>
> (ii) Is designed in a way that is as effective in carrying out the intent of the applicable guidelines in contributing to the maintenance or attainment of relevant desired conditions and objectives, avoiding or mitigating undesirable effects, or meeting applicable legal requirements (§ 219.7(d)(1)(iv)).

The courts have had several occasions to review the distinction between forest plan standards and guidelines as they are currently defined under the existing regulations. The courts have ruled in favor of the USFS and repeatedly rejected plaintiffs' arguments that the Agency was legally compelled to follow a forest plan guideline. The USFS should not toss aside these legal victories. For example, in Wilderness Soc. v. Bosworth, 118 F.Supp.2d 1082, 1096 (D.Mont.,2000), the Ninth Circuit rejected plaintiffs argument that all old growth stands had to be a minimum of 25 acres. The court concluded that "the 25 acre minimum size requirement in the Forest Plan is a guideline and is therefore discretionary rather than mandatory." Similarly, in Greater Yellowstone Coalition, Inc. v. Servheen, 672 F.Supp.2d 1105, 1114 (D.Mont.2009), the court noted that "[w]hen Forest Plans contain standards, the standards are 'mandatory requirements,' in contrast to guidelines, 'which are discretionary.' Citing Miller v. U.S., 163 F.3d 591, 594, n. 1 (9th Cir.1998)." Does the USFS really want to clamp down on its discretion and provide more vehicles for litigation challenges to Agency decisions?

The provision dealing with the consistency of "existing authorizations" and previously approved projects with the new plan, presumes that all projects are inconsistent with the plan unless the plan expressly singles out the project and states that it is consistent with the plan. A better and less costly approach would be to assume that all existing authorizations and previously approved projects are consistent with the plan unless the plan explicitly states that those projects are inconsistent and must be modified to conform to the new plan. This would avoid disruptions of existing contracts and costly contract claims.

The approach that the “existing authorizations” and approved projects are consistent with the new plan is supported by language in NFMA that states that plan approval is subject to valid existing rights and also with the common practice that a plan assumes environmental effects based on existing conditions, which are a reflection of the current authorizations and approved projects.

The USFS Draft Planning Rule provides that there may be additional independent resource plans developed by the USFS. NFMA was designed to eliminate separate resource management plans. The separate resource plans had the effect of preventing the achievement of objectives for other resources. NFMA required one integrated plan to eliminate the Balkanized planning for a national forest. The Act requires that "[p]lans developed in accordance with this section shall – (1) form one integrated plan for each unit of the National Forest System (16 U.S.C. § 1604 (f)(1)).”

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Comments

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To whom it may concern:

The U.S. Department of the Interior (the Department) has reviewed the U.S. Department of Agriculture, U.S. Forest Service's Proposed Rule on National Forest System Land Management Planning. We offer the following comments based on the analysis of our Bureau of Land Management.

Specific Comments:

Page FR 8514 §219.2: We recommend adding in a subsection that states that land management plans need to be consistent with the plans of other Federal agencies both in neighboring areas and where administrative boundaries overlap if those plans are consistent with Federal law and regulation.

Page FR 8516 §219.5: We recommend moving the descriptions of assessment, plan development, and monitoring to the appropriate heading of each (§219.6, §219.7, §219.12) for ease of reading.

Page FR 8516 §219.5(a)(2)(ii): We recommend clarifying the use of Categorical Exclusions (CEs). As written, it appears that a CE could be used in potentially any situation, rather than CEs being limited to certain focused circumstances.

Page FR 8516 §219.6: There could be some concern that the responsible official is given too much discretion in determining when to conduct a plan assessment. Please consider setting standards or guidelines for determining proper time frames and the need for assessment.

Page FR 8518 §219.7(d)(2): We recommend considering discussing the benefits of including "goals" as an optional plan requirement, as they may be covered in the "desired conditions" and "objectives" sections.

Page FR 8518 §219.9(b)(2): Is "conserve" in the phrase "conserve candidate species" a more stringent standard than that of Threatened and Endangered (T&E) species as in the comment for Page FR 8514 §219.2 above?

Page FR 8518 §21 9.12: We recommend that the final rule ensures that planning units have the capability to adjust and shift priorities and resources toward this new system that now focuses more heavily on monitoring and assessment.

Page FR 8521 §219.13: We recommend tying §219.13 to §219.7 to clarify the nature of the relationship. Define what happens if an Environmental Impact Statement (EIS) is chosen as the proper National Environmental Policy Act (NEPA) process for a plan amendment. Clarify if it follows in any way the same process as new plan developments or plan revisions or if it is fully up to the responsible official within the sideboards of the process laid forth in §219.13(b).

Page FR 8522, §219.16(a)(4), and §219.52: In Section 219.16(a)(4), and Section 219.52, please clarify the point in the

process when the objection process would take place. We recommend clarifying the necessary differences between the approval of the underlying NEPA document and the approval of the land management plan (the plan). Consider changing §219.16(4) to state: "The objection period for a proposed plan, plan amendment, or plan revision begins after approval of the appropriate NEPA analysis," if that is in fact the point where you intend for the objection period to begin. In §219.52, the write-up inconsistently refers to both the objection period for "the proposed plan" and "the plan." To be consistent, throughout the objection sections, the wording should always refer to "the proposed plan."

Page FR 8525 §219.50: We recommend adding a section stating that the objection process only applies to the unit planning decisions (if that is the intent). Please clarify if the objection process applies to both the project plan and the plan amendment. Also clarify if it would it apply only to the plan amendment (planning) decisions rather than the implementation decisions.

Page FR 8526 §219.54(c)(6): We recommend adding a requirement in §219.54(c)(6) that the objector identify how the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy. If the objector is unable to do this, then it is difficult to determine the need for change. BLM policy requires the objector to show how our plan does not comply with law, regulation, or policy, and BLM retains the ability to dismiss as a valid protest opinions without documentation. As written, the Forest Service will be required to respond to each comment. Suggest including a subheading in §219.55 that sets these sorts of objections aside from review.

Page FR 8527 §219.56(c)(1): The methods to determine timely filing of an objection are unclear. Please clarify if the term objection "filing date" means the "close of the 30-day objection filing period". If so, this section may not allow for a postmark within 5 days after the close of the filing period. Suggest the following change: "All mailed objections must be postmarked no later than the last day of the objection filing period." While all objections may not actually be received by the end of the 30 days, the resolution process can still begin with those that have been received.

Page FR 8527 §219.57(a): Please evaluate in §219.57(a) whether the intention of this section is for every objector to be able to unilaterally call a meeting to discuss the issues raised in the objection. This seems like potentially a huge workload and could present a way for the objector to slow the process down, perhaps beyond the 90 day protest resolution window. While meetings are a good idea, we believe that it is more appropriate to leave meeting dates up to the discretion of the reviewing officer, when more information or clarification regarding the objection would be useful.

Page FR 8527 §219.56(g): BLM's Land Use Planning Handbook states that "It will be the BLM's goal to resolve all protests within 90 days. If it is not possible to resolve and respond to the protests within 90 days, the WO-210 Group Manager should send a letter acknowledging receipt of the protest to the originating party, indicating that a more detailed response will follow." There is no discussion of protest resolution timeframes in our planning rule itself. We suggest that the Forest Service not limit itself to a 90 day objection resolution period, and retain the flexibility to extend that period when necessary.

Page FR 8527 §219.59(a): This section should help ensure that there will not be overlapping and potentially conflicting administrative review processes across agencies.

We appreciate the opportunity to comment on the proposed rule. Should you have any specific questions about these comments, please contact Mr. Dave Goodman, BLM Division of Decision Support, Planning, and NEPA at (202) 912-7352, dave_goodman@blm.gov. All other general questions may be addressed to Lisa Treichel in the Department's Office of Environmental Policy and Compliance at (202) 208-7116, Lisa_Treichel@ios.doi.gov .

Sincerely,

Willie R. Taylor
Director
Office of Environmental Policy
and Compliance

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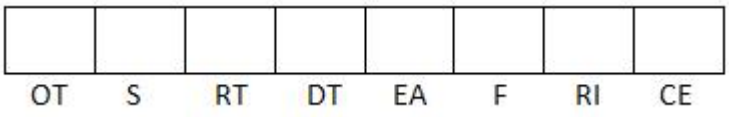

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Comments

Attached are New Mexico Department of Agriculture's comments to the Proposed Rule and Draft Programmatic Environmental Impact Statement for National Forest System Land Management Planning.

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May 13, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 East 500 South
Bountiful, UT 84010

RE: NFS Planning Rule Comments

To Whom It May Concern:

New Mexico Department of Agriculture (NMDA) submits the following comments to the Proposed Rule and Draft Programmatic Environmental Impact Statement (DEIS) for National Forest System Land Management Planning.

Part of NMDA's vision is ". . . proactive advocacy and promotion of New Mexico's agricultural industries." NMDA supports management of National Forest System (NFS) lands under the principles of multiple use and sustained yield as congressionally mandated by the Multiple-Use and Sustained-Yield Act of 1960 (MUSYA) (16 U.S.C. 528-531) and further codified by the National Forest Management Act of 1976 (NFMA) (16 U.S.C. 1601-1614). The Proposed Rule shifts management of NFS lands to advance the concepts of ecological sustainability and ecosystem diversity above multiple use and sustained yield.

The overview in the *Federal Register* notice for the Proposed Rule states that, "*Planning would consider the full suite of multiple uses including ecosystem services, energy, minerals, outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. . . .*" However, plan components would "*. . . be required to provide for multiple uses, including sustainable recreation and ecosystem services, and protect cultural and historic resources and specially designated areas (such as wilderness and wild and scenic rivers).*" The elevated status of select multiple uses is further evident in text of the Proposed Rule.

Sections 219.8 Sustainability and 219.9 Diversity of Plant and Animal Communities are redundant in providing requirements that plans "*. . . must include plan components to maintain or restore the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area.*" Section 219.10 Multiple Uses directs planning to meet the requirements of §219.8 and §219.9 and "*consider*" a full suite of multiple uses including ecosystem services. Section 219.10 further requires that plans " *. . . must provide for . . .*" sustainable recreation, protection of cultural and historic resources,

management of areas of tribal importance, protection of wilderness areas, protection of wild and scenic rivers, protection and appropriate management of other designated or recommended areas, and other plan components for multiple uses as necessary. The Proposed Rule assigns greater importance to certain multiple uses and, in doing so, violates NFMA.

NFMA provides clear guidance regarding the equality of multiple uses at 16 U.S.C. 1604 (e) (1) ". . . *provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960, and in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. . . .*" Coordination, as defined by *Black's Law Dictionary*, means the state of being equal; of the same order, rank, degree, or importance; not subordinate. Through NFMA it is clear Congress intended that NFS planning coordinate and consider each of the listed multiple uses equally. Based on this foundation, NMDA objects to the Proposed Rule because it violates NFMA by omitting specific requirements for plan components to provide for the range program.

The Proposed Rule at §219.10 (b) (1) (IV) requires that plans extend protection of congressionally designated wilderness areas to recommended wilderness areas identified in the assessment process. It is beyond the authority of the United States Department of Agriculture (USDA) to manage an area as wilderness unless and until Congress actually designates such areas pursuant to the Wilderness Act. This requirement should be removed from the Proposed Rule.

The pre-decisional administrative review process described in Subpart B of the Proposed Rule strictly limits who may file an objection to those who have previously submitted formal comments during opportunities provided in plan development. This strict limitation is contradictory to an overall goal of the Proposed Rule to provide for meaningful public involvement throughout all stages of the planning process. Objector limitations are particularly onerous when considering issues that arise after opportunities for formal comment. A loophole is created that allows NFS planning to consider issues that the public, as a whole, is not allowed to comment on. All restrictions on who may object to a plan, plan revision, or plan amendment should be removed from the Proposed Rule to ensure meaningful public involvement throughout all stages of planning.

The DEIS provides an analysis of how each alternative meets the purposes and needs associated with the concepts of ecological sustainability and ecosystem diversity, not the principles of multiple use and sustained yield as mandated by MUSYA and NFMA. The resulting document fails to consider how each alternative will impact traditional multiple uses of NFS lands. Page 134 of the DEIS indicates that range was highlighted during scoping as one of the major contributors to community jobs and income from NFS lands. Of the multiple uses required by MUSYA and NFMA, range is the only use the Proposed Rule does not specifically require in-land management plans.

The DEIS repeatedly refers to livestock grazing as a stressor to other resources. Properly managed livestock grazing is a valuable resource management tool that can improve wildlife habitat, biodiversity, and overall ecological conditions while providing cultural and economic NFS Planning Rule Comments Page 3 May 13, 2011 benefits to communities. Unmanaged grazing, by both wild and domestic herbivores, can be a stressor to resources. The DEIS should make this distinction by replacing all references to livestock grazing as a stressor with unmanaged grazing by wild and domestic herbivores.

New Mexico contains over 9.2 million acres of land administered by the USDA Forest Service comprising the Carson, Cibola (including the Kiowa National Grasslands), Gila, Lincoln, Santa Fe, and part of the Coronado national forests. NFS authorized 549,409 animal unit months (AUM) of forage for commercial livestock operations in New Mexico, according to the Grazing Statistical Summary for Fiscal Year 2009 (USDA-FS 2009).

The 2009 Basin and Range Region Cow-calf Cost and Return Budget reports an annual value of production on a per cow basis of $472 (USDA-ERS 2009). By converting 2009 AUM authorizations to animal units yearlong (549,409/12), the number of head of cows capable of being supported by the 2009 AUM authorizations can be estimated at 45,784. Applying this estimate, the 2009 potential for value of production from NFS forage is

over $21.6 million in estimated direct benefit to New Mexico communities. This figure demonstrates the importance to rural communities of continued and consistent access to forage on NFS lands for qualified ranching operations.

Beyond economic benefits, ranching represents an important and irreplaceable part of the custom and culture of agriculture in New Mexico, conserves open space, provides habitat for wildlife, and presents day-to-day stewardship of both private and federally owned lands. Continued incorporation of NFS lands with privately owned ranching operations directly contributes to meeting goals 1, 2, and 3 of the USDA Strategic Plan listed on page 3 of the DEIS. The Planning Rule should explicitly recognize and require that all forest plans developed under the rule contain provisions to provide consistent access to forage resources for the purposes of commercial livestock production as congressionally mandated by MUSYA and NFMA.

In conclusion, President Obama and USDA Secretary Vilsack share a commitment to strengthening rural America. The vitality and sustainability of rural America is and always has been tied to a continued yield of goods and services from the land. The shift in management from the principles of multiple use and sustained yield outlined in the Proposed Rule is not only inconsistent with MUSYA and in violation of NFMA but it also moves USDA in a direction away from meeting the stated commitments of its leadership.

Thank you for the opportunity to comment on this important matter.

Sincerely,

Tom J. Bagwell
Interim Director/Secretary
JM/lo

Literature Cited:
USDA-ERS. 2009. United States Department of Agriculture Economic Research Service Basin and Range Region Cow-calf Cost and Return Estimates for 2009. Online. Available at http://www.ers.usda.gov/Data/CostsAndReturns. [Retrieved May 2011]
USDA-FS. 2009. United States Department of Agriculture Forest Service Grazing Statistical Summary Fiscal Year 2009. Online. Available at http://www.fs.fed.us/rangelands/reports/index.shtml. [Retrieved May 2011]

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Comments

See Attachments

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UINTAH COUNTY

STATE OF UTAH

Our past is the nation's future

May 16, 2011

SUBMITTED ELECTRONICALLY: http://www.govcomments.com

Forest Service Planning DEIS
C/O Bear West Company
132 E. 500 S
Bountiful, UT 84010
Fax - 801-397-1605

Dear Sir or Madam:

Thank you for the opportunity to comment on the Proposed Forest Service Planning DEIS.

Uintah County has worked closely with the Utah Association of Counties (UAC) on our comments for the Forest Service Planning Rule.

We have felt that a correlated approach between Counties and the State of Utah comments would be best. We feel that the State of Utah and the UAC comments are aligned in similar positions. In an effort to consolidate comments and strengthen the position of Uintah County and the State, please regard the Utah Association of Counties comments and the State of Utah's comments as those of Uintah County.

We have had opportunity to put meaningful input into both sets of comments.

Sincerely,

UINTAH COUNTY COMMISSION

Darlene R. Burns

Darlene R. Burns, Chair

Michael J. McKee

Michael J. McKee

Mark D. Raymond

Mark D. Raymond

State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

Office of the Governor
PUBLIC LANDS POLICY COORDINATION

JOHN HARJA
Director

0684

May 12, 2011

Tom Tidwell
Chief, U.S. Forest Service
1400 Independence Avenue, S.W.
Washington, D.C. 20250-0003

Re: Proposed Planning Rule – U.S. Forest Service
76 FR 8480

The State of Utah has reviewed the proposed revisions to the basic planning rules for the units of the National Forest System published in the Federal Register on February 14, 2011 (76 FR 8480) ("Proposed Rule"). The state has been involved in the discussions leading up to the Proposed Rule publication and participated in the federal roundtables held in Washington, D.C. The state also has reviewed the Draft Environmental Impact Statement, which accompanies the Proposed Rule. We look forward to meeting with the Forest Service to discuss the state's concerns with the Proposed Rule, with the goal of assisting in drafting a rule that addresses the myriad planning factors, yet is simple in operation.

After careful and thorough review, it is apparent that the Proposed Rule has serious defects and fails to significantly improve the existing Planning Rule that was adopted in 1982. In recent years, the Forest Service has proposed a series of revisions to the Service's planning rules, all of which have foundered for one reason or another. The current proposal shares many similarities with the Planning Regulation proposed in 2000. Many of the concerns expressed about the unworkable nature of that proposal are directly applicable to the current proposal. This series of unsuccessful rule-making efforts raises the question of whether the problem is the existing Planning Rule or the implementation of the Rule. In the interim, many of the National Forests in Utah have seen plan after plan go by the wayside, and the Forests are managed by *ad hoc* decisions. The State of Utah therefore recommends the Forest Service simply engage in planning under the provisions of the existing Planning Rule, with perhaps some focused, small amendments and revamped procedures in order to update the efforts.

General Thoughts

The Forest Service asserts that the Proposed Rule has been drafted essentially in response to the hue and cry alleging various and sundry deficiencies with the existing planning rule Yet it

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is apparent from the public comments received that the direction to be taken by the Proposed Rule is deeply divided. Therefore, the Proposed Rule must, first and foremost, provide the means and direction for making the admittedly hard choices required of a line officer.

Unfortunately, the Service has piled planning feature upon planning feature upon a fragile framework to satisfy all concerns and meet all objections that were expressed. By so doing, the Proposed Rule eliminates the processes that result in sound management decisions and instead adopts superfluous wording related to the resources themselves. The Proposed Rule is simply too heavy on definitions and definitional connections between resource conditions to provide any clear path for a line officer to make a management choice that can be measured against known planning criteria.

The 1982 Planning Rule, in contrast to the Proposed Rule, lays out an effective and logical process for the development of forest plans, plan revisions, and plan amendments. It clearly states that plans shall (1) provide for multiple-use and sustained-yield of goods and services in a way that maximizes long term net public benefits in an environmentally sound manner; and (2) determine resource management practices, level of resource production and management, and the availability and suitability of lands for resource management. It then lists 14 succinct and specific principles that form the basis for forest planning. Conversely, the Proposed Rule "sets out the requirement for plan components and other content in land management plans," which provides no specificity, only vague references creating the expectation that more specific information will follow somewhere in the Rule. *See* section 219.1.

The 1982 Rule has been criticized as lacking flexibility and failing to provide for either updating information or prosecuting amendments in a timely manner in response to changed conditions. Indeed, the Service's own explanation of the need for a new planning rule identifies this as the chief failure of the 1982 Rule. (76 FR 8480, Part 2, Overview). In addition, the Forest Service asserts that the 1982 Rule is unduly complex, costly, lengthy, and cumbersome. Of course, these adjectives are employed to make the rule appear inadequate. While the current rule may be cumbersome, a certain amount of deliberative review is the result of a process that requires review under the provisions of NEPA and allows for full public participation.

At the core, both the existing planning process and the process envisioned by the Proposed Rule encompass the normal adaptive management process underway in many parts of the nation. As stated in proposed section 219.5, the Forest Service (and any other land management agency) will assess resource conditions, devise a plan to deal with the necessary response, monitor what happens, and then start again. According to research, in 2002, 40% of the work at the national forest level is for planning and assessment at a cost of more than $250 million annually. (See Fretwell, *Who is Minding the Federal Estate,* (Lexington Press, 2009) 77) Unfortunately, the degree of planning (assessment, monitoring, and revising) outlined in the Proposed Rule is far beyond current practice. Given the budget reductions presently in place, and with more anticipated, priority should be given to fully amending or revising plans as needed under the 1982 planning rule. Planning should not increase the workload at the forest or national level while reducing the amount of time and funds available for on-the-ground implementation.

The adaptive management process works well under the existing planning rule, and certainly does not need to be enshrined as individual, separate parts of a new planning rule. Enshrining the obvious nature of the resource management process will only provide hooks for process paralysis, thereby handicapping the line officer with office procedure rather than providing a tool for on-the-ground management issue resolution.

Authority of and Coordination with the State of Utah

The Proposed Rule does not acknowledge the authority of the State of Utah to manage wildlife and water resources and to have an equal place at the planning table with the Forest Service to represent the direct impact of Forest Service decisions on Utah's economy and social fabric. The trust authority the state has over water, wildlife, and forest resources, and the state's right to engage in federal land planning processes should be provided greater recognition in the Proposed Rule. Of course, the Forest Service should seek the input of all members of the public, but the Service should not forget—and indeed should explicitly recognize—the constitutionally-framed responsibilities of the state.

Specifically, the Proposed Rule should establish requirements to obtain the policy advice of the Governor concerning all facets of forest planning, including the timing, scope, and coordination of plan components; definition of planning areas; scheduling of public involvement activities; and the multiple-use opportunities and constraints on public lands. To facilitate coordination with the state, the Forest Service should adopt language similar to the BLM language in the Code of Federal Regulations at Title 43, Section 1610.3-1.b.

In addition, section 291.4 of the draft Planning Rule provides that the responsible official "should encourage" states to seek cooperating agency status in the NEPA process for a plan development, amendment, or revision. The State of Utah will always consider Cooperating Agency status in the preparation of NEPA documents. The proposed Planning Rule must be revised to direct the responsible official to "offer cooperating agency status to state and local governments in all instances."

Water is a vital resource to the citizens of the State of Utah. The Planning Rule must recognize the preeminent role of the states in adjudicating and allocating rights to the use of water for federal and non-federal purposes. In addition, water supply should be treated not just as an "ecosystem element" (section 219.8 (a)(2)(iv)), but as a critical resource with significant economic and community values, and the important role of state and local water resource managers should be explicitly acknowledged.

Multiple-Use

The definition of multiple-use in the Proposed Rule is not in accordance with the law. The proposed section 219.10 provides that "the plan must provide for multiple uses, including ecosystem services, outdoor recreation, range, timber, watershed, wildlife and fish." In contrast, the Multiple-Use Sustained Yield Act of 1960 (16 U.S.C. §528) ("MUSYA") provides "[t]he national forests are established and shall be administered for outdoor recreation, range, timber,

watershed, and wildlife and fish purposes," and that "[n]othing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands."

Multiple-use and sustained yield are thereafter defined as follows (16 U.S.C.§531):

> "Multiple use" means the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.
>
> (b) "Sustained yield of the several products and services" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.

The statement in the Proposed Rule (section 219.10) that forest plans "must provide for multiple uses, including ecosystem services, [and] outdoor recreation" is outside the clear Congressional definition of the purposes for the national forests with the inclusion of ecosystem services. The definition of "multiple use" also incorrectly treats each multiple use as a discrete resource, rather than recognizing the statutory philosophy of the balance of resources and resource uses amongst each other. This misunderstanding of the nature of the statutory definition of multiple use leads to a vague and arbitrary blurring of uses and processes in the sections of the proposed rule that follow. For example, section 219.10(a)(1) lists a plethora of national forest resources, i.e., forage and recreational settings, while section 219.10(a)(4) references process, i.e., opportunities to coordinate. This vague and arbitrary blurring of definitions, aside from being unauthorized, will only lead to confusion by the public and the line officer regarding his or her duties under the Proposed Rule.

In addition, section 219.10 provides in subsection (a) that the plan must only consider the multiple uses (as improperly blurred above), while subsection (b), mandates provisions be adopted for recreation, cultural resources, wilderness, and wild and scenic rivers, thus relegating all other uses to the catch-all category in subsection (b)(2). This structure is completely misleading and improperly elevates the recreational resources above the other Congressionally-mandated purposes – timber, range, etc. – and perpetuates the illusion that multiple uses are distinct, various resources, rather than recognizing the guiding philosophy of management as set forth in MUSYA.

The state strongly urges the Forest Service to completely rewrite this section of the Proposed Rule to properly account for the statutory purposes of the national forests, define

multiple-use within its statutory framework, and remove the concept of ecosystem services from this part of the regulatory framework.

Ecosystem Services

The State of Utah has serious concerns about the Forest Service's attempt to employ the concept of ecosystem services as a resource, rather than as the desired outcome of use of the forest in a sustainable yield manner. The state also questions whether this concept can provide any real guidance in decision-making by line officers.

As an initial point, the state also has concerns about the definition proposed for an ecosystem in the Proposed Rule. The state strongly recommends the Forest Service use a standardized definition of this commonly understood biological concept. The proposed definition for an ecosystem is overly complex compared to the standard biological definitions employed by other federal agencies and which are readily available and easily understood by diverse audiences and consumers of environmental policies. For example, the U.S. Fish and Wildlife Service definition provides that an ecosystem is a "[d]ynamic and interrelating complex of plant and animal communities and their associated nonliving (e.g. physical and chemical) environment."

As discussed above, ecosystem services are not one of the statutorily-enumerated purposes for the national forests. The concept of ecosystem services has its beginnings in the last decade from the efforts to account for the value of "goods and services" provided by natural systems during the review of proposed projects requiring federal permitting. This has been most developed in the arena of review overseen by the Environmental Protection Agency.

By definition, ecosystem services cannot be defined independently from human values. Healthy ecosystems do provide important benefits to overall ecological health and well-being, but any use of risk-benefit calculations without a connection to human values and benefits is inaccurate. In work reported by the EPA, the calculation of benefits (which have been the traditional means to assess value) have been limited to the willingness to pay for goods and services and the willingness to accept compensation for loss. Both of these methods of valuation are fraught with scientific uncertainty.

The Proposed Rule attempts to employ the concept of ecosystem services out of its proper context. The Forest Service may not, by simple *fiat*, redefine ecosystem services—a concept derived from risk-benefit analysis– into an object (resource) subject to management prescriptions. That is, the risk-benefit calculation involved with resource development analysis does not successfully translate into a substantive "resource" which can be utilized in planning allocations.

In addition, the term today is fraught with multiple, mutually confusing meanings. The term is sometimes used to describe a process, sometimes an outcome, and sometimes a value. It is treated as both a verb and a noun. With so much inherent uncertainty of meaning, and given its genisis as a risk-benefit calculation, the term is an extremely poor choice of a word for the necessary clarity and simplicity of a planning rule.

The concept of managing resources to protect their long-term viability or sustainability is already encompassed in the current 1982 Planning Rule. There is no fundamental need to invent a new phrase in order to make an attempt to "modernize" the standard and viable concept of sustainable yield in this manner. Again, the desired outcome is to manage natural resources employing the concepts of sustainable yield, the statutorily authorized process, not combine a risk-benefit calculation in with other resources which are the subject of planning. The state requests the Forest Service rewrite the relevant sections of the Proposed Rule to reflect these comments.

The Role of Social and Economic Sustainability

The Proposed Rule reduces the role of forests in creating social and economic sustainability to an unquantifiable "contribution"—a concept that has a lower expectation of planning attention than that of ecological sustainability. The Proposed Rule emphasizes ecological sustainability over multiple uses and stresses ecology over the social and economic benefits provided by the forest. The ranking of social and economic interest as secondary to ecological interest is unacceptable to the state, as it relegates local communities that depend on the forest to expendable consequences of the alleged superiority in planning for ecological sustainability.

In the Proposed Rule, in section 219.9, attention to the diversity of plant and animal communities is subsumed under the term "ecosystem diversity," which is then cross-referenced to the definition of "ecological sustainability" in Section 219.8(a). The structure of this part of the Proposed Rule can be interpreted to identify "ecological sustainability" as a tangible use of the forest. Ecological sustainability should not be viewed as a use or resource, but should be addressed as a desired outcome. Thereafter, if ecological sustainability is defined as a desired outcome, the elements of economic and social sustainability become equivalent to ecological sustainability, as the law requires. In addition, the Proposed Rule must utilize clear definitive economic indicators when developing plan standards and when making project-level decisions.

Further, as described in section 219.8, social and economic sustainability are improperly centered upon recreational opportunities. The Proposed Rule provides no guidance concerning these recreational opportunities, nor any other contribution of the forest to the local economy. The state requests an explanation of the practical application of sustainability in the development of a forest plan, especially in relation to the total economic picture of an area.

In 1998, the National Association of State Foresters and the U.S. Forest Service jointly agreed that the Montreal Process Criterion and Indicators could provide a clearer vision for the management of the nation's public and private forest lands. The Proposed Rule makes no mention of using these criteria to measure sustainability. It is unclear how the U.S. Forest Service will establish consistency among these three components and measure social, economic and ecological sustainability.

The state also requests a definition of "ecosystem diversity" that does not include the redundant use of "ecological sustainability" or "ecosystem sustainability."

Public Participation

The Forest Service proposes changes to the process for public participation both in the preparation of a plan and throughout plan implementation. The Proposed Rule requires collaborative processes "where feasible and appropriate," thereby essentially advocating for front-loading participation on a proposed project (within a completed plan), seeking collaboration amongst all the stakeholders on a plan of action, and then issuing a decision consistent with the collaborative solution by the line officer. *See generally* sections 219.4 and 76 FR 8485 – 8487. However, adding more opportunities for participation does not necessarily equate to a more efficient process or a better product. The expectation that more participation early in the process will lead to a more efficient decision-making process is based on a definition of collaboration that involves all the stakeholders working towards a common goal. That scenario unfortunately is not the case for line officer decisions at a number of strategic and tactical levels, particularly as written in the planning documents themselves.

The line officer, by law, must retain the final decision-making authority. The officer must be free to make decisions which comport with the law and local forest needs and conditions. A collaborative process can be, and certainly has been in the past, a valuable tool when reviewing project-scale decisions. The process is, however, unlikely to assist with the creation of strategic planning decisions themselves.

Further, collaborative processes are helpful at project-level decisions only if managed by line officers with appropriate training or through hired facilitators. Recent research points out increased costs associated with attempting to avoid litigation through collaborative efforts. (*See* Fretwell, *Who is Minding the Federal Estate?*, 2009). For example, for the Wallowa-Whitman National Forest in 1992, aggregate timber management costs were $125 per thousand board feet. Comparable cost to produce 1,000 board feet of lumber for industrial producers was $53; for the Bureau of Indian Affairs it was $25; and for the Idaho Department of Lands, just $9.

Collaborative processes must be well-managed or litigation will result. Indeed, the outcome of a group process is largely dependent on the method employed. A consensus process will yield a different outcome than a majority rule scenario, and the use of a Delphi method could produce yet another outcome. The method employed can also lead a group in a direction not intended by the Forest Service when convening the stakeholders. Input that does not become policy usually leads to legal action.

The rewrite of the Proposed Rule must provide criteria for management of the collaborative process and there must be sufficient funding to provide the necessary skill set to control expectations. Contrary to assurances from the Forest Service, it is not likely that existing untrained staff in their existing roles will be able to manage the level of participation described in the proposed Planning Rule. Further, the cost of hiring outside facilitators will be at the expense of other forest management functions.

For these reasons, it is doubtful that the expectation concerning budget efficiencies and gains can be achieved through collaborative processes on a regional or forest unit scale, leaving

the other costs of implementing the Proposed Rule subject to the difficulties of future Congressional appropriations.

The Role of Science in Decision-Making

There are many types of information available to the line officer during the process of promulgating a forest plan and thereafter during the plan's implementation. This information includes what the Proposed Rule delineates as scientific information; that is, what it considers to be "science." The Proposed Rule correctly notes that science and scientific analysis and information include "social, economic and ecological sciences." *See* section 219.3(b). However, the Proposed Rule goes on to state that the line officer (responsible official) shall determine "what [scientific] information is the most accurate, reliable and relevant to a particular decision," and further, to describe how this information was "used to develop plan components." *See* sections 219.3 and 219.3(c).

As with the difficulties managing a collaborative process mentioned above, the Proposed Rule does not provide any useful guidance, criteria, or sidebars regarding the acquisition or use of scientific evidence, scientific analysis, or scientists themselves. The line officer will need to make management decisions, weighing all the factors, including social, economic, and ecological scientific information, as well as other information not labeled science or scientific. However, not only does the Proposed Rule not delineate any process for evaluating, weighing, discounting, or otherwise dealing with any evidence or information which may be presented as science or as scientific in nature, it does not provide criteria or standards for comparing information not labeled as science against the scientific information.

For example, modeling wildlife habitat data is very common, but such models often misrepresent the actual occurrence of wildlife, or may differ from information in the hands of Utah's wildlife agency. A great deal of massaging of data occurs in the vicinity of jurisdictional boundaries in a great many wildlife analysis efforts, which massaging should be subject to scrutiny. Global scale climate change modeling may, at this time, have little validity or usefulness for decisions regarding the activities of the local national forest. Conversely, local information on uses of the forest may not have a "scientific" basis but may prove much more valuable in determining appropriate strategies for use and protection of the forest's resources.

The Proposed Rule burdens the line officer with the very real risk of a successful challenge if a decision is made based on information not labeled scientific. The label "scientific" will elevate all such information to a position inherently superior to other information, and therefore transform itself into information mandating a particular outcome. Clear guidance or sidebars for the weighing of other values and information against scientific information is a necessity. Therefore, the Proposed Rule impermissibly restricts the authority of the line officer to make the hard choices about resource allocation required from the person in that position, and must be rewritten to allow the line officer full decision-making authority.

Additionally, while not addressed in the Proposed Rule, the proposed Climate Change Scorecard may be finalized and implemented by the Forest Service in the immediate future. While the Proposed Rule avoids any explicit reference to increased dependence on the science of

climate change, the Climate Change Scorecard does just that. The state requests further information on the development and anticipated use of the Climate Change Scorecard, the studies endorsing the Scorecard, and use of the Scorecard within the process envisioned by the Proposed Rule.

Budget and Expected Savings

The state questions the soundness of the Proposed Rule in view of the fundamental need to decrease federal spending. The state seriously doubts the Forest Service can maintain the complex and interrelated planning procedures provided in the Proposed Rule in light of the cold hard federal budget cuts. The planning process must remain simple.

The Proposed Rule has a level of complexity that exceeds that of the 1982 rule; therefore, the savings identified in the attached regulatory certification (76 FR 8508) are not assured. For example, the certification states that "[u]nder the proposed rule, costs are projected to be redirected toward collaboration, assessment, and monitoring activities and away from development and analysis of alternatives compared to the 1982 rule procedures." Given that the Forest Service must comply with the provisions of NEPA for plan preparation and project analysis, this statement does not provide any useful information. The Proposed Rule requires new activities, and the previous activities are required by NEPA, so savings will not materialize. It is more likely that the requirements for monitoring and assessment will increase the total costs of the planning process rather than decreasing them.

Further, the certification indicates that costs will be redirected toward more plan amendments due to expectations that the original plan revisions will be the result of collaborative processes that take less time. Because each amendment will require the use of personnel and business resources to process, including the necessary NEPA work required for each plan amendment, the expected savings will not be realized. Further, as discussed above, the collaborative process is unlikely to achieve any consensus on the preparation of the plans themselves, due to the deep divisions about the purposes and direction of forest management. Anticipated cost savings from this source are likely to evaporate into continued process expenses.

Other examples of the gross and misleading nature of the anticipated cost savings can be generated. The Forest Service should abandon the idea of supporting the Proposed Rule based on efficiency or process adjustments, as the calculations are too inaccurate to mean anything. Further, the lack of secured appropriations to implement the requirements of the Proposed Rule will render it largely ineffective. As written, the Proposed Rule does not provide guidance for which, if any, of the Rule's requirements will be scaled back in the event of budget shortfalls. The state requests the Forest Service address budget expectations and work load as related to the implementation of the Proposed Rule, including a prioritization of tasks in the event of a budget shortfall.

Potential Wilderness Lands Review and Interim Protection

The Proposed Rule (Section 219.10(b)(iv)) would require that new plans provide for the "[p]rotection of wilderness areas as well as the protection of recommended wilderness areas to protect the ecologic and social values and character for which they might be added to the National Wilderness System." Within Utah, this latter provision would not be consistent with Section 201 (b)(4) of the Utah Wilderness Act (P.L. 98-428), which provides that "areas not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans." Additionally, Section 201(b)(5) of the Utah Wilderness Act specifies that the Department of Agriculture "shall not conduct any further . . . evaluation of national forest system lands in the State of Utah for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System." Finally, Section101(2) of the Utah Wilderness Act declares that the Forest Service must "insure that certain other national forest system lands (not in the National Wilderness Preservation System) in the State of Utah be available for non-wilderness multiple uses." Therefore, absent further Congressional authorization, areas in Utah may not be managed as if they are wilderness or wilderness study areas. The Forest Service may not assume to itself authority which may only be granted by Congress. The state strongly requests that the Proposed Rule drop the proposed language, at least within the State of Utah.

Conclusion

Given the stated concerns, the State of Utah strongly encourages the Forest Service to reconsider and recognize the value and effectiveness of the existing rule, rather than promulgate the exceedingly complex Proposed Rule. The Proposed Rule does provide some appreciable improvements to the existing rule, including the increased awareness of the need to protect cultural and historic sites and the ability of the local forester to move quickly to address changing conditions. By modifying the existing rule with specifics such as these, while leaving the clarity of the process intact, the Forest Service would be providing the needed leadership to improve the condition of our forests and assure their health long into the future.

The State of Utah appreciates the opportunity to review the Proposed Planning Rule. Please feel free to write me at the above address, or call me at 801-537-9802 with any questions or concerns.

Sincerely,

John Harja
Director

Technical Comments

1. Section 219.1(c) does not recognize commitment to local economies and should do so. Specifically, subsection (c) provides that the objective of the section is to "guide the collaborative and science-based . . . plans that promote healthy, resilient, diverse, and productive national forests and grasslands." The next sentence, however, states that lands will be managed such that they are "ecologically sustainable and contribute to social and economic sustainability." The state requests a clear explanation for the apparently lesser contribution of plans toward social and economic sustainability.

2. Section 219.8 requires that plans provide for social, economic, and ecological sustainability. However, in subsection (b), social and economic sustainability have been demoted from a position of equal footing with ecological sustainability to one where the plan components must only "guide the unit's contribution." The section also requires the responsible official to merely "take into account" the potential conditions and uses. For communities near national forests, the activities of the forest play a significant role in both the social and economic aspects of the community. It is not simply one of several factors but is, in fact, the primary factor that provides jobs, recreation, and even identity of the community. Retaining the relationship and interrelationship of the forest with the local culture is necessary to respect the local traditions and is required by NFMA. The state therefore objects to the approach of the social and economic analysis in relation to forest planning as set forth in this section. Rural communities should not be sacrificed to the goal of inserting the forest into a broader landscape.

3. Section 219.1(c) cites management goals for which there is no authority. That is, subsection (c) asserts that forests will be managed to provide "spiritual sustenance" and "resilient ecosystems." None of the applicable foundational statutes authorizes the Forest Service to manage for "spiritual sustenance" or "resilient ecosystems." Therefore, the state requests the Forest Service provide specific citation to the authority that gives rise to managing the forests for the above-quoted attributes or, in the alternative, remove reference to the noted attributes.

4. Section 219.8 requires that forests be managed with a goal of "sustainability," the definition of which does not substantially differ from the concept of "achievement and maintenance in perpetuity" as described in MUSYA. Sustainability is defined in section 219.19 as "the capacity of meeting the needs of the present generation without compromising the ability of future generations to meet their needs." Adhering to the language in MUYSA is the appropriate way to address the long term goal of the forests, which is assuring continuing resource availability. The state requests the Forest Service return to the clarity and brevity of the language of MUSYA rather than introduce new language.

5. The concept of a landscape-scale or broader-scale approach is included in the Proposed Rule in sections 219.8(a)(1)(i), 219.10(a)(6) and 219.12 without clarification of what this approach includes or explanation of the rationale for broadening forest plans beyond the individual forests. In section 219.12 for example, the section on monitoring, the concept of landscape-scale approach is expanded, and direction is given to regional foresters to create a

broader-scale monitoring approach. The intent and expectations of this approach are unclear, and the state requests clarification.

6. Section 219.10(a) contains a repetitive list of plan components for consideration by officials. It is unclear why several of these considerations are included under multiple use. Issues such as "reasonably foreseeable risks," "aesthetic values," and "landscape scale context" appear to be more appropriate for consideration under diversity of plants and animals. The same may be said for potential impacts of climate change and other stressors, habitat conditions, and opportunities to coordinate with other landowners. There is little justification for the inclusion of many of these issues in the planning rule generally and even less so under multiple uses. A more appropriate approach for this section would give concise directions for forest management to assure the availability of the traditional multiple uses as provided in NFMA. The state suggests this subsection be rewritten to focus on the statutory definition of multiple uses and clarify the decision-making process and authority of the responsible official in determining acceptable use.

7. Section 219.7 describes the breadth of the content of a planning document, but fails to clearly describe or define a "plan component" or explain why "other content in the plan" is not part of the assessment outcome. For example, this section identifies watersheds for maintenance or restoration as an "other" component of a plan. It is unclear both why the cited example would not be an outcome of the assessment process and the rationale for specifically setting it aside as something "other" than an assessment outcome. The state understands that watershed protection is a stated purpose of the National Forests; as such, it should be considered a required plan component, not an "other" component. This is only one example of the confusion created by this section. The state requests a clear explanation of and rationale for the use of "other content in the plan" and how actions taken under the "other content" umbrella can be objected to and/or appealed.

8. Section 219.6(b)(1) refers to "optional content in the plan," but the items listed as "optional" should be included as objectives and not merely options. Specifically, this subsection references potential management approaches and partnership opportunities for achieving plan objectives. Such goals should not be disconnected from the primary management planning. Also, it is unclear what level of flexibility a responsible official might exercise in applying this subsection. The state requests (1) clarification regarding the intent of allowing these items to be "optional;" (2) an explanation of how these items differ from objectives and guidelines developed through the assessment and monitoring process; and (3) what role public participation will play in determining the "other" strategies or activities.

9. Section 219.8 includes redundant language and requirements in setting forth expectations for ecological sustainability, which are further detailed into plan components. Those plans components require (1) maintenance or restoration of the function, structure, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds; (2) ecosystem elements that must maintain, protect, or restore aquatic and terrestrial elements, including rare communities, the water supply and soils; and lastly, (3) riparian elements which must maintain, protect, or restore riparian areas, including creating a default width around all lakes, perennial or intermittent streams and open water wetlands. These requirements appear

redundant and rely on unnecessary ecological jargon that fails to provide a clear direction for decision-making at the forest level.

10. Section 219.15(d)(1) requires that a project be consistent with the plan components by meeting specific criteria, including that the project not foreclose the opportunity to maintain or achieve any goals, desired conditions, or objectives "over the long term." The vagueness of that phrase is particularly concerning as it could impact projects or activities indefinitely. The state requests a clarification of that requirement and identification of a specific time frame.

11. Section 219.11(a) appears to prioritize timber requirements in a highly problematic manner. Specifically, the prioritization under section 219.11 suggests that the first step in meeting the timber requirements of NFMA is to identify lands that are *unsuitable* for timber production. The NFMA provides for the identification of suitable lands for resource management rather than focusing on lands that are unsuitable for activities such as timber harvest. This section therefore appears to directly contradict NFMA. Additionally, the intent of NFMA is to insure that appropriate, traditional multiple-use activities continue. The method of removing lands from consideration based on the concept of sustainability does not follow the intent of the law. The Forest Service has distorted the language in NFMA which requires a review of lands suitable for timber harvest every ten years and is proposing that any land deemed unsuitable is *prohibited* from harvest for ten years. The state finds that interpretation unreasonable and illustrative of the proposed rule's approach to reducing access to forest lands for traditional uses.

12. Section 219.7(d)(1)(v) references 219.11 in requiring that every plan "must identify those lands not suitable for timber production." It is inappropriate to begin a land suitability assessment with the goal of finding reasons *not* to allow an activity, rather than focusing on and finding areas where a mandated resource use *is* allowed. The state requests this section be revised such that findings of suitability for activities identified in NFMA or MUSYA be considered in terms of potential for rather than the dismissal of opportunity.

13. Under section 219.11, timber harvest is not given any identifiable level of priority, despite the fact that it is a primary function of the forests and a key responsibility of the Forest Service. In fact, this section includes additional criteria for timber requirements, one of which is that lands for timber production may be considered unsuitable if they are not compatible with desired conditions and objectives. Yet, the section never identifies timber harvest as a desired condition and/or objective. The state requests that timer harvest be given its rightful level of priority in the proposed rule.

14. Again in subsection (c) of section 219.9, trees are apparently relegated to a second tier position in the management of forests. Specifically, this section directs the responsible official to include plan components "to preserve, where appropriate, and to the degree practicable" the diversity of native trees. Such latitude in preservation is absent from the requirements for management of ecosystem sustainability and terrestrial and aquatic ecosystem maintenance and restoration. Trees are the iconic image of forests, and the protection of timber as a resource is a foundational premise for establishing the National Forest Service. The state requests an explanation of the rationale behind this approach.

15. Section 219.14 requires that the decision document be prepared according to the Forest Service NEPA process. The document must give an explanation of the sustainability requirements and the diversity requirements but is silent regarding the obligation to meet timber or multiple-use requirements of NFMA or MUSYA.

16. Section 219.15(a) requires that projects or activities which need to occupy the land must be "expressly allowed" in a planning document or the project will be considered inconsistent with the plan. The state is concerned with the restrictive nature of the phrase "expressly allowed". Please clarify the flexibility the line officer will have under the proposed language.

17. Section 219.12 governs monitoring and presents several concerns regarding the discretion granted to officials. Although the responsible official is to have discretion as to the scope, scale, and timing of unit monitoring, the proposed rule includes eight questions, at least one of which must be included in the plan. The complexity of the sustainability requirement alone drastically limits the discretion of the responsible official. As written, it is unclear the level of discretion a responsible official can exercise. The state therefore requests a more detailed description of the expectations of responsible officials when making decisions regarding assessments.

18. Section 219.13 outlines the process for plan amendments and administrative changes. Administrative changes do not require a plan amendment or plan revision. However, under the scope of allowable administrative changes, changes to "other content in the plan other than plan components" are included. As previously discussed, the amount of forest management directed under the heading of "other content" is concerning and certainly would include facets that should undergo a full NEPA analysis.

19. Section 219.59(b) separates the objection process in a plan amendment from the activity or project that is proposed requiring such an amendment. It is not clear if objecting under 36 CFR part 215 or part 218 and having the objection substantiated would then eliminate the plan amendment, or if two objections would need to be filed to completely dispel the actions of the project and related management issues. The need to file and track two objection processes appears burdensome to the public. The state requests clarification of the proposed process for raising an objection.

20. Throughout the Proposed Rule, there are new terms that are poorly defined, new language and requirements that completely lack definition, and goals that appear unattainable with current funding. The Proposed Rule is therefore both confusing and complex when compared to the 1982 rule. The following is a list of phrases and terms the state requests clarified, deleted, or rewritten with specificity and clarity.

a. Section 219.5 introduces a planning process that relies on an undefined and inconsistently applied concept, "integrated resource management." Though the concept is addressed as part of multiple uses in section 219.10, it is not referenced in any other section, nor is it fully explained in the context of the planning framework overall. It is unclear how "integrated resource management" relates to only one aspect of forest planning—multiple uses—but is absent from any others, including, for example,

managing for the diversity of plants and animals and timber harvest. The inconsistency in application of a key aspect of forest management is confusing and may subject the Forest Service to challenges regarding the lack of apparent focus on multiple uses. The state requests that the phrase "integrated resource management" be defined and the rationale for requiring this approach under the section regarding multiple uses alone be clearly explained.

b. Section 219.1(b) provides that land management plans are to guide resource management "within the plan area in the context of the broader landscape, giving due consideration to the relative values of the various resources in particular areas." The phrases "broader landscape" and "due consideration" are undefined and subject this section to a wide range of interpretations. The state requests the Forest Service define the intended scope of the "broader landscape" and the "due consideration" the Forest Service intends to give to the various resources. The state also requests clarification regarding how section 219.1(b) will be incorporated into decision-making at the forest level.

c. "Other content in the plan" is a recurring phrase that requires clarification. For example, section 219.13(c) refers to making administrative changes to "other content in the plan other than plan components." Arguably, there should not be the addition to or modification of content that is beyond plan components. The state therefore requests clarification of how this "other content" differs from plan components and how future management decisions may be affected by the "other content" provided for in various sections in the proposed rule. *See also* comments 7 and 8 above.

d. In sections 219.1(c) and 219.8(a)(ii) respectively, the terms "resilient" and "resilience" are used to describe the type of forest ecosystems the Proposed Rule seeks to create. As used, these terms appear to replace the terms "viability" or "productivity" without a clear explanation of what, if any, benefit is derived from the change in terminology. When referencing forest ecosystems, the terms "viability" and "productivity" provide a clear understanding of the type of measurable outcomes the responsible official is expected to achieve. In contrast, the terms "resilient" and "resilience" provide little or no guidance for actual decision-making. The state requests clarification of these terms or, alternatively, a return to the terms "viable" and "productive."

e. In section 219.1(c), the phrase "ecologically sustainable" is used to describe the type of forests the Proposed Rule seeks to create. The phrase is not clearly defined. The state therefore requests a description of how this phrase will be used to direct management decisions and how it differs from other terms related to sustainability and ecological features without relying on any of the new terms introduced in the Proposed Rule. The state also requests explanation, in existing rule language, of what will be accomplished—specific outcomes—when the forest is managed to be "ecologically sustainable."

f. In section 219.7(e)(iv), the phrase "proportion of probable methods of forest vegetation management practices expected" is used to described required plan

information. The state cannot reasonably foresee what information is sought by this phrase. It is unclear what type of management practices must be undertaken to successfully satisfy this requirement. The state requests clarification of the information requirements of the phrase and its possible use in management decisions.

g. In section 219.8(a), the terms "terrestrial [ecosystem] and aquatic [ecosystem]" are used to describe two of the ecosystems that must be maintained. These terms, however, are not defined or differentiated from water, riparian, wildlife, grassland, plants, or other currently used terms. Terrestrial ecosystem and aquatic ecosystems are excessively broad terms. The state requests a definition of these terms and an explanation of how the terms will be used in the context of and influence management decisions.

h. Additionally, the lack of definition of these terms makes it is impossible to determine the level of assessment or protection required to assure sustainability of these ecosystems. Nevertheless, the level of protection appears finer than the requirements of NFMA, and is thus improper. The state requests a more detailed explanation of how terrestrial and aquatic ecosystems will be considered in comparison with management decisions related to timber harvest or recreation.

i. The first item listed in section 219.10(a)(1) for consideration in developing plan components is "aesthetic values," but "aesthetic value" is undefined. Subsection (a) also provides little if any direction regarding what should be considered an "aesthetic value." Fish and wildlife species are included as possible aesthetic values but are repeated in subsection (a)(5) under "habitat conditions" for wildlife. The inclusion of fish and wildlife as considerations in both aesthetic values and wildlife habitat, without any explanation of how to prioritize this particular use in a plan—and in the absence of any clear definition—is confusing. The state requests a clear definition and prioritization of the aesthetic values referenced.

21. The state has again reviewed the critique of the Planning Rule proposed in the year 2000 ("2000 Review"). Below are statements derived from the previous critique followed by the state's current concerns about the Proposed Rule. The 2000 Review comments appear indented below in italics with the state's comments following, also indented and in regular Times New Roman font.

Ecological sustainability is a new management standard and economic and social sustainability has secondary focus, which contravenes multiple use and sustained yield principles;

Section 219.8 of the proposed rule also identifies "ecological sustainability" as a key component of every plan. The Forest Service fails to cite any authority or factual evidence that ecological sustainability is consistent with governing principles of multiple use and sustained yield.

* * *

Scientists are injected into the planning process in a manner that leads to confusion as to their role and the role of science in decision making;

Section 219.3 of the proposed rule requires "tak[ing] into account the best available scientific information throughout the planning process." However, this section does not define the parameters of the scientific information to be used or even what constitutes scientific information. This section therefore does not sufficiently explain the role of science in decision-making. The problematic explanation of the role of science is discussed further in review of section 219.8.

* * *

The increasing dependence on research (monitoring and assessment) would overwhelm the research mission of the Forest Service;

The proposed rule is heavily weighted toward research, including monitoring and assessment. However, the proposed rule fails to identify how the required research will be included in the larger research mission of the Forest Service. The required research also has no defined link to any future funding and sets high expectations that are, at best, difficult to achieve and more likely are unrealistic.

* * *

The rule requires considerable analysis of ecological, economic and social components of sustainability all of which must be accomplished using the best available science. Those analysis requirements are likely beyond the Agency's capability;

As stated in the prior comment, because there is no funding connected with the proposed rule's requirements, the degree of analysis mandated is likely impossible.

* * *

The rule describes a level and specificity of monitoring that might not be feasible.

The detail required by section 219.8 requires both depth and breadth in sustainability requirements. For example, this section requires planning for the sustainability of specific ecosystem elements (rare aquatic plan communities) as well as recreational activities. This type of depth and breadth is unrealistic at current budget and staffing levels.

* * *

The rule has both definitions and analytical requirements that are very complex, unclear, and therefore subject to inconsistent implementation across the Agency;

There are several new terms included in the proposed rule that are both ill defined and not defined. These undefined terms are open to personal or unit interpretation, which will undoubtedly lead to inconsistency in implementation across the Forest Service. As stated in the review committee's comment above, the analytical expectations and expertise necessary to implement the proposed rule means that while some offices may have access to necessary experts and resources, other offices will not. This inconsistency in access to resources will result in inconsistency in methodology, analysis, and implementation of the proposed rule.

* * *

Compliance with the regulatory direction on such matters as ecological sustainability and science consistency checks would be difficult, if not impossible to accomplish;

The extensive focus on ecological sustainability makes this rule unmanageable and burdensome for local forest supervisors. Even the phrase "ecological sustainability" lacks a clear definition and imposes an expectation of outcomes that are unrealistic.

0684

From: J. Mark Ward [mark@uacnet.org]
Sent: Monday, May 16, 2011 4:49 PM
To: mmckee@uintah.utah.gov; mmckee@co.uintah.ut.us
Subject:Final Signed UAC Comments on FS Planning Rule
Attachments: Utah Association of Counties May 16, 2011 Comments on Forest Service Planning Rule and DEIS.pdf

Attached in PDF format.

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Utah Association of Counties
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Comments

See Attachments

Individual(s)

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City of Aurora

AURORA WATER

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Aurora All-America City 2008

Delivery via http://www.govcomments.com/

May 16, 2011
Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, Utah 84010

Re: Comments on Proposed Forest Service Planning Published February 14, 2011

Dear Secretary of Agriculture and Forest Service representatives:

The City of Aurora (specifically, Aurora Water) has reviewed the proposed Forest Planning Rule as published in the February 14, 2011 Federal Register 8480-8528. Aurora Water provides clean, high quality drinking water to our more than 300,000 residents. More than 90% of our water arises on the national forests in Colorado. These watersheds, shared by other municipal water providers, need to be managed for this important resource to the best of the U.S. Forest Service's abilities. This includes both long term programmatic planning and short term, immediate reaction to national disasters. Over the past fifteen years our watershed have be wracked by severe wildfires and the onslaught of a continuing Mountain Pine Bark Beetle epidemic. Recovery from these events will take decades and billions of dollars. The U.S. Forest Service will need to be able to respond quickly to restore and protect these critical watersheds.

One of the main purposes of the proposed Forest Planning Rule is to avoid litigation that has crippled the forest planning process over the past three decades. Unfortunately, the proposed changes, in our view, actually run counter to this stated purpose. In addition it may take local planning efforts to the sidelines as national environmental policies delay forest recovery. The problems with the proposed rule fall into one of the following six categories:

A. General Points Regarding Modernization of the Planning Rule

The Proposed Rule provides a national framework for preparation, revision, and amendment of forest plans in conformance with the National Forest Management Act (NFMA), the Multiple Use Sustained Yield Act (MUSYA) and other applicable law. The Proposed Rule should focus upon providing a concise and clear, but flexible, adaptive general framework to guide cost-effective amendment and revision of existing forest plans. An updated Planning Rule that is overly detailed, complex, or prescriptive will almost certainly generate more litigation and controversy, and be the target for replacement at a much earlier date than a better crafted and concise Rule. As set forth below, we think the Proposed Rule contains numerous unnecessary requirements that risk unduly restraining Forest Service efforts to establish workable and flexible forest plans.

B. National Environmental Policy Act

We recommend substantially limiting the use of either an environmental impact statement (EIS) or an environmental assessment ("EA") in developing revisions and amendments to forest plans:

1. Forest plans are programmatic and do not commit to any particular actions on the ground with environmental effects.

2. One or more EIS processes have already been completed for virtually all national forest plans; any additional environmental analysis should supplement and update the prior work, and only as needed to address truly significant issues.

3. The huge costs and delays associated with the EISs that have been produced outweigh the usefulness of the relatively general and programmatic information and analysis that has been generated; this information and analysis often has become outdated before the planning process is even completed.

At the very least, the final Planning Rule should not dictate the level of NEPA process required for an amendment or revision of an existing forest plan. The full range of NEPA options should be available to the Forest Service, with the appropriate level of NEPA analysis determined according to existing criteria in the implementing NEPA regulations. This could range from: a) an EIS or supplemental EIS for a major, relatively comprehensive revision of a forest plan; b) an EA for a lesser amendment; c) a categorical exclusion for a simple, limited amendment with clearly insignificant environmental effects. The existing flexibility should be maintained for plan amendments that are specific to a particular project or activity to be evaluated in the EA or EIS for that proposed project or activity.

Our primary concern with the Proposed Rule regarding NEPA is its requirement that an EIS be prepared for all revisions of forest plans. At least some revisions may be limited in scope, sufficiently tied to an earlier EIS, or otherwise not indicate, at the programmatic level, a likely potential for significant environmental effects that would trigger the need for an additional EIS. A cost-effective Planning Rule should leave the determination of the level of NEPA analysis and documentation required for each revision as well as each amendment of a forest plan to the existing Council on Environmental Quality and Forest Service NEPA regulations.

C. "Best" Available Science

The Planning Rule should not create a target for additional litigation and controversy by using or defining the term "best available science" or "best available scientific information." The provision in Section 219.3 and other parts of the proposed rule regarding use of "best available scientific information" is likely to fuel further disputes and lawsuits that will obstruct and bog down planning and management activities that are environmentally necessary and beneficial.

Sound science has an important part in national forest planning and management. The Coalition is a supporter of objective scientific research for forest management. However, which science is "best" can be extremely subjective and highly politicized, as illustrated in Endangered Species Act litigation as well as NFMA and other disputes.

The NFMA does not use or require use of the term "best available science" or "best available scientific information" in the Planning Rule. Neither does NEPA. The Ninth Circuit Court of Appeals has affirmed that these statutes do not require the Forest Service to determine whether forest plan or project-level NEPA documents are based on "best" available science or methodology, that disagreements among scientists are

routine, and that requiring the Forest Service to resolve or present every such disagreement could impose an unworkable burden that would prevent the needed or beneficial management. *Lands Council v. McNair*, 537 F.3d 981, 991 (9th Cir. 2008)(en banc); *Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1359 (9th Cir. 1994).

Thus, the Planning Rule must not require the Forest Service to do more than take into account available, relevant scientific information along with other factors in the development, amendment, or revision of national forest plans, without reference to which information is "best."

We recognize that seeking out and using "best" available science is stated as an objective in various mission and vision statements and other guidance issued by the White House and the Secretary. Such statements are fine as aspirational goals and guidance. However, more harm than good follows from codifying such statements as a legal requirement which can spawn unnecessary litigation and delay for beneficial forest management.

Proposed Section 219.3 should be deleted or greatly shortened and corrected accordingly, along with any other references to "best available scientific information" in the proposed rule.

D. "Ecosystem Services" and Multiple Use/Sustained Yield

The Planning Rule and forest plans must provide for human use as well as protection of natural resources. Providing "ecosystem services" from national forest lands, including carbon sequestration, fish and wildlife, and other benefits, has an important place in national forest management. However, this should not be to the detriment of water supply and quality, on a sustainable and high level basis, for municipal use, as well as recreation and other tangible goods and services from national forest lands and waters, as required by the MUSYA and NFMA.

The Rule must be clear and carefully crafted not to derogate or confuse the statutorily named multiple uses and sustained yield production requirements in relation to ecological or other concepts. The Rule must provide a framework for forest plans to support economic and social sustainability equal to and in balance with sustaining ecological integrity within national forest units. The Proposed Rule as presently drafted does not strike this balance.

E. Animal and Plant Species "Diversity" or "Viability"

The Forest Service also cannot emphasize plant and animal species "diversity" or "viability" or other concepts to the detriment of the multiple use and sustained yield legal requirements that apply to planning and management of national forest lands under the NFMA and MUSYA.

The Proposed Rule mistakenly extends requirements regarding maintenance of "viable" populations of species, to invertebrate species such as fungi and other "species of conservation concern." This is not required by NFMA and is unnecessary to add to Endangered Species Act ("ESA") requirements.

F. Transition from Existing Plans and Approved Projects to Plans Amended or Revised Under the Updated Planning Rule

The Proposed Rule contains new requirements for assessments, monitoring, and other components of the forest planning process, and for the contents of forest plans. These requirements and the plan revisions or amendments following an updated final Planning Rule will be subject to legal challenge and may take many years to successfully complete and implement on national forests. So that national forest management can continue in reliance on existing forest plan requirements and provisions, the final Planning Rule must provide

clearly for the continued effectiveness of existing plans pending final approval and effectiveness of an updated revision or amendment under the new Planning Rule, including resolution of any appeals or litigation. Projects and activities approved under an existing plan should be expressly deemed consistent with a subsequent amendment or revision of the Plan, unless clearly specified otherwise in the amendment or revision decision documents.

The final Planning Rule should also allow for the option of amending existing plans under either the existing planning regulations or the updated Planning Rule requirements, pending a revision of the plan under the updated Planning Rule. Particularly for recently revised plans, this is also an essential component of flexibility for a smooth transition to an updated forest plan that does not disrupt and confuse management and thus impair public benefits from the forest.

Conclusion:

As Aurora Water and other Front Range Water Providers are struggling to work cooperatively with the individual National Forests on a local level to recover from the scourges of wildfire and mountain pine bark beetle infestation, the proposed rules will make local forest management and restoration much more difficult to initiate by adding additional requirements and conditions that may, in fact, trigger more litigation. Instead of increasing the regulatory burden with ambiguous and poorly defined concepts such as "best available science" and requiring the development of an EIS for all forest rule changes no matter how minor, we urge you to take a hard look at the goals of the planning effort to avoid litigation and seek ways to enable the USFS to act locally in a responsible yet expeditious manner.

Sincerely,

Kathleen Kitzmann

Kathleen Kitzmann
Senior Water Resources Engineer

OT	S	RT	DT	EA	F	RI	CE

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See Attachments

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May 16, 2011

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RE: National Forest System Land Management Planning Notice of Proposed Rulemaking and Draft Programmatic EIS

To Whom It May Concern:

Thank you for the opportunity to comment on the Forest Service's Proposed Forest Planning Rule (Proposed Rule) published in the Federal Register February 14, 2011.

I am making these comments as the Baker County Commission Chairman representing my constituents in Baker County. Forest planning is important because our federal forests should be working for all of us and need to be well-managed according to a set of priorities and within budget constraints. Unfortunately, the Proposed Rule seems to make planning an end in itself. I believe it will add to the process burden already overwhelming the Forest Service. Less, not more, will get done on the lands the Forest Service manages.

In a time when the United States is facing record budget deficits, the Forest Service needs to be working to maximize productive work, not paper work. I urge you to revise the Proposed Rule by eliminating everything that goes beyond the statutory planning requirements contained in the Multiple Use Sustained Yield Act and the National Forest Management Act. The contents of Alternative C, Appendix E to the Draft Programmatic Environmental Impact Statement for the Proposed Rules (Alternative C) would be a good way to do this.

It is time to streamline the planning processes on our National Forests. The new rule should allow flexibility for the responsible official at the local level. Alternative C gives all involved the chance to move our National Forests toward healthy ecosystems which will benefit all in the long run.

Attached are specific comments which reflect the sentiments of the local citizens who live and work near our public lands. Thank you for your consideration on this important issue.

Sincerely,

Fred Warner Jr.

Fred Warner, Jr.
Chairman, Baker County Board of Commissioners

May 11, 2011 version

DETAILED COMMENTS ON THE 2011 DRAFT PLANNING RULE AND ENVIRONMENTAL IMPACT STATEMENT

The following comments are organized into three sections.

(1) Generally Applicable Comments.
(2) Section by Section Comments.
(3) Comments on the EIS.

GENRALLY APPLICABLE COMMENTS

The rule throws out hard fought legal victories and offers a buffet of new legal claims for plaintiffs who view the national forests as national preserves.

One of the most disheartening results of the proposed rule is the abandonment of favorable legal precedents that the agency has established after nearly 30 years of litigation over NEPA and the provisions of the 1982 planning rule. This is particularly frustrating for those who have worked hard to defend Forest Service decisions and establish that the agency has discretion in implementing the existing planning regulations and is not bound by costly data collection and scientific proof requirements. Instead of building on these legal victories and streamlining and narrowing the existing planning rule, the proposed planning rule concedes precious legal ground and builds a strong foundation for future legal defeats. Our comments in the next section provide more detail about the numerous victories of the Forest Service and other government agencies that are being tossed out by the proposed planning rule, and we only highlight a few of the suicidal provisions of the proposed planning rule here.

- The proposed rule abandons the major victory in Lands Council v. McNair, 537 F.3d 981, 991 (9th Cir. 2008)(en banc) that the Forest Service has discretion in it management decisions by adopting in the proposed rule many non-discretionary requirements where the responsible official "must" or "shall" adopt a specific management approach. For example, under Section 219.8 "the plan must include plan components to maintain, protect, or restore . . . .
Rare aquatic and terrestrial plant and animal communities, consistent with § 219.9" (emphasis added).

- The proposed rule abandons the victory in Seattle Audubon Society v. Moseley, 830 F.3d 1401, 1404 (9th Cir. 1996) which upheld selection of an alternative in the Northwest Forest Plan that provided an 80% rather than 100% probability of maintaining the viability of the spotted owl because "the selection of an alternative with a higher likelihood of viability would preclude any multiple use compromises contrary to the overall mandate of the NFMA." The proposed rule does not even mention the term "multiple-use objectives" in Section 219. 9 covering diversity and viability, despite the fact that the statute says diversity is a goal to be provided "in order to meet overall multiple-use objectives."

-The proposed rule abandons the victory in Lands Council v. McNair, 537 F.3d 981, 991 (9th Cir. 2008)(en banc) that builds on the Mosely case that the Forest Service does not have to provide for viability or that viability reigns supreme. "NFMA... requires that plans developed

for units of the National Forest System 'provide for multiple use and sustained yield of the products and services obtained there from.' . . . the NFMA is explicit that wildlife viability is not the Forest Service's only consideration when developing site-specific plans for National Forest System lands." Id. at 990 (emphasis added).

-The proposed rule abandons the victory in Lands Council v. McNair, 537 F.3d 981, 991 (9th Cir. 2008)(en banc) that the Forest Service does not have to verify its methodology with on the ground scientific analysis. For example, Section 219.3 requires the Forest Service to verify "what information is the most accurate, reliable, and relevant" and Section 219.12 governing monitoring requires that "the responsible official . . . shall ensure that scientists are involved in the design and evaluation of unit and broad scale monitoring." 219.12 (c)(4).

- The proposed rule abandons the victory in Salmon River Concerned Citizens v. Robertson, 32 F.3d 1346, 1359 (9th Cir. 1994) that "NEPA does not require [that we] decide whether an [environmental impact statement] is based on the best scientific methodology available, nor does NEPA require us to resolve disagreements among various scientists as to methodology" by imposing in Section 219.3 an independent requirement beyond NEPA that the responsible official for the forest plan "determine" and justify what is the "best available scientific information."

- The proposed rule abandons the victory in Greater Yellowstone Coalition, Inc. v. Servheen, 672 F.Supp.2d 1105, 1114 (D.Mont.2009) that held "[w]hen Forest Plans contain standards, the standards are 'mandatory requirements,' in contrast to guidelines, 'which are discretionary.' The proposed rule throws this victory away because Section 219.15 defines both standards and guidelines as mandatory.

- The proposed rule abandons the victory in Norton v. Southern Utah Wilderness Alliance, 124 S.Ct. 2372, 2382 (2004) that land use plan monitoring is not a "binding commitment in terms of the plan." Although this case involves the monitoring provisions of a BLM management plan, it is a helpful victory that recognized the agency has flexibility if the agency itself has not created a binding commitment. Unfortunately, in Section 219.12, the longest and most detailed section of the planning rule, the Forest Service sets forth extensive and detailed monitoring requirements replete with the word "shall" that will be undermine the Norton victory.

- The proposed rule abandons the victory in Ohio Forestry Ass'n v. Sierra Club, 523 U.S. 726 (1998) which held that a forest plan is not a decision ripe for litigation because it makes no on the ground decisions. As the court emphasized in Ohio Forestry, "the ripeness requirement is designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.' " (emphasis added). Id. at 732-33. Section 219.7 requires that "every project" must comply with "plan components." Under the sustainability Section 219.8, forest plans "must include plan components" to "maintain, protect, and restore" aquatic elements, soils, and rare plant and animal communities. Together Sections 219.7 and 219.8 of the proposed rule tie forest plan decisions more directly into projects which will make the forest plan immediately ripe for litigation undermining the victory in Ohio Forestry.

The rule fails to comply with current direction for regulations to be shorter, more flexible, and less costly and burdensome.

The proposed rule is overly long, detailed, and encumbered with inflexible mandatory requirements and jargon that preclude it from being a workable, affordable, and enduring Planning Rule. Millions of more dollars will be spent on an expanded planning effort which will divert funds from desperately needed on the ground forest management.

The proposed rule is not consistent with the "Improving Regulation and Regulatory Review" Executive Order recently issued on January 18, 2011 by President Obama, as well as previously existing requirements for cost-effective, less burdensome, and flexible regulations, such as the Regulatory Flexibility Act.

The January 18, 2011 Executive Order requires that regulations must be tailored to "impose the least burden on society, consistent with regulatory objectives" and that agencies are to review and change or eliminate rules may be "outmoded, ineffective, insufficient, or excessively burdensome."

Yet the Forest Service's own analysis of the proposed rule confirms that even under favorable assumptions, it will be only slightly less costly than the 1982 Planning Rule that has been identified as outmoded and overly burdensome—i.e. approximately $1.5 million less per year than the $104 million annual cost of the 1982 Rule. Draft EIS at 43.

The draft EIS and accompanying analysis for the proposed rule confirm that there are readily available alternatives that are far less costly and burdensome, and which still meet NFMA requirements and the agency's stated purpose and need for a new Planning Rule.

For example, Alternative C in the draft EIS would, according to the Forest Service analysis, cost nearly $24 million (24%) less per year than the proposed rule to implement. Draft EIS at 43. As another example, the 2008 Planning Rule contains most of the same basic concepts as the proposed rule but is only half the length of the proposed rule (7 pages of Federal Register text compared to 14 pages for the proposed rule). The 2008 Rule has its flaws, but was enjoined by a federal district court only for procedural shortcomings in the EIS and Endangered Species Act Section 7 consultation completed for the rulemaking, and not any inadequacy in meeting NFMA requirements. Citizens for Better Forestry v. U.S. Dept. of Agriculture, 632 F.Supp.2d 968 (N.D. Cal. 2009).

The overly detailed, burdensome rhetoric and mandates in the proposed rule can be eliminated without any loss of useful, nationwide programmatic guidance for national forest land management planning. Detail regarding basic concepts and requirements in the Planning Rule can and should be instead included in the Forest Service Manual and Handbook directive

system ("FSM/FSH"), where it can guide and facilitate national forest planning rather than burden the agency, national forest users, dependent communities, and taxpayers with unnecessary detailed, restrictive, and confusing regulatory mandates.

It is more consistent with the adaptive management approach incorporated in the proposed rule to include such details in the directive system, where content can more easily be clarified, refined and updated than when promulgated as a formal rule in the Code of Federal Regulations. The difficulty of updating overly burdensome published regulations is confirmed by the persistence of the 1982 Rule for nearly thirty years, despite several past attempts to replace it.

As an example of material that belongs in the FSM/FSH, most if not all of the content in the "sustainability" and "diversity of plant and animal communities" sections of the proposed rule is already included in substantially similar form in FSM ID No. 2020-2010-1, Ecological Restoration and Resilience, and FSH 1909.12-2000-5, Chapter 40—Science and Sustainability.

Section 219.1(d) of the proposed rule already requires the Forest Service to establish procedures for Planning Rule in the FSM/FSH. Much of the detailed content in the proposed rule, with appropriate modifications simplify and conform it to NFMA and MUSYA principles, can be moved to the FSM/FSH with ease.

The complexity of the rule and how it will increase confusion and cost is illustrated by its treatment of wildlife. The planning rule and its preamble include multiple categories of species: indicator, focal, keystone, ecological engineers, umbrella, link, species of concern, threatened, endangered, and "others." Some of the species are probably mutually exclusive but other species overlap creating a planning nightmare. The forest planning rule by focusing on habitat, a factor over which it has some control.

The rule ignores the appropriate role of multiple-use.

Though occasionally referenced in the proposal, the Forest Service appears to be ignoring its multiple use mandate, a mandate imposed by Congress, codified in agency regulations and affirmed by the courts. This problem manifests itself in three ways. First, the proposal fails generally to acknowledge the multiple use mandate as a guiding principle of forest planning. Second, proposed provisions specifically conflict with the multiple use mandate. Third, the proposed definition of "ecosystem services" is so inclusive and vague that it dilutes the entire concept of multiple use.

Congress established the National Forest System through the Organic Administration Act of 1897, 30 Stat. 11 (June 4, 1987). By operation of the Transfer Act of 1905, 33 Stat. 628 (Feb. 1, 1905), stewardship of the national forests was transferred from the Department of the Interior to the Department of Agriculture. Over the next decades, Congress consistently and clearly specified through a number of enactments that stewardship over the national forests would be guided by the principles of multiple use and sustained yield. These statutes, all of which endorse multiple use and sustained yield, include the Multiple Use Sustained Yield Act of 1960

(MUSYA), 16 U.S.C. §§528-31; the Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. §§1600-14; and the National Forest Management Act of 1976 (NFMA), 16 U.S.C. §1600 *et seq.*

"Multiple use" is defined in Section 4 of the MUYSA as:

> the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

16 U.S.C. §531

The multiple use sustained yield statutory mandate is a viable and credible planning blueprint for managing forest lands. Although the Forest Service is required to ensure that multiple use remains on par with sustainability concepts, the overview of the proposed rule clearly prioritizes other areas of consideration that the rule must address, including climate change, forest restoration and conservation, wildlife conservation, and watershed protection, before so much as mentioning the need for the rule to meet the statutory requirements of the NFMA, MUSYA and other legal requirements. Additionally, the sustainability section expressly states that "sustainability is the fundamental principle that will guide land management planning." 76 Fed. Reg. 8490. Such statements clearly reflect a lack of acknowledgement on the part of the Forest Service of the important function multiple use must play in the land planning process.

As appropriately concluded by the U.S. Court of Appeals for the Seventh Circuit, the Forest Service does not have the discretion to ignore the multiple use mandate to focus solely on environmental and recreational resources. The court specifically held that "the national forests, unlike national parks, are not wholly dedicated to recreational and environmental values." Cronin v. United States Department of Agriculture, 919 F.2d 439, 444 (7th Cir. 1990). The Forest Service, through the planning rule, must actively promote this stewardship role delegated to it by Congress in legislation spanning more than a century and consistently upheld by the courts. The proposal fails to adequately do so.

The rule establishes new priorities for the national forests not found in statute.

Not only does the text of the planning rule at various points entirely ignore or down-play the Multiple-Use Sustained-Yield Act, the planning rule establishes new purposes and priorities for the national forests for which there is no statutory authority. The proposed rule's emphasis on the overbroad "ecosystem services" and global climate change go well beyond the multiple uses Congress established for management of the national forests.

SECTION BY SECTION COMMENTS

Section 219.1 – Purpose and applicability

1. The laws governing the national forests must be the basis for the Planning Rule.

The pointed insertion of "ecosystem services" within the discussion of multiple uses in 219.1(b) is unnecessary, inappropriate, and is not found in the National Forest Management Act. As "ecosystem services" are defined in 219.19, the national forests already produce all of those "services", and there is no need to muddle the meaning of multiple uses as contained in the Multiple Use Sustained Yield Act of 1960.

There is, further, no reason to add "in the context of the broader landscape" to the last sentence in 219.1(b).

2. The statutory multiple uses of the national forests should be explicitly identified.

219.1(c) - As discussed later in these comments in regards to Section 219.8 Sustainability, the proposed rule should consistently include language for plan components that maintain or restore all three elements of sustainability, being ecologic, social, and economic. Further, 219.1(c) should also reference timber and grazing, which are two of the five multiple uses outlined in the Multiple Use Sustained Yield Act of 1960 and delete the references to "spiritual sustenance."

Section 219.2 – Levels of planning and responsible officials

We are concerned with the expectation outlined in the second sentence of 219.2(b), that "A plan reflects the unit's distinctive roles and contributions to the local area, region, and Nation, and the roles for which the unit is best suited, considering the Agency mission unique capabilities, and the resources and management of other lands in the vicinity". That concept is very similar to the concept of "niche" or "single-use" as applied to forest planning. As explained previously, we are concerned that the rule is minimizing the role of multiple-use in forest planning. Furthermore the concept is inserted throughout the planning rule at sections 219.6(b)(3), 219.7(e)(ii), 219.8(b)(1), and 219.12(a)(5)(vii) which requires that assessments, forest plans, and monitoring plans contain "the unit's distinctive roles and contributions" across the broader landscape or to the local area, region, and Nation, and the roles for which the unit is best suited, considering the Agency mission, unique capabilities, and the resources and management of other lands in the vicinity. The concept of niche or single use reflected by a plan's "expected distinctive role" appears to be nothing more than an opportunity for the Forest Service to highlight attributes such as scenery or Wilderness, at the expense of more tangible outputs. Further, gives more weight to national role and contributions than to local role and contributions. We believe the whole concept is flawed, and this sentence should be deleted from

219.2, plus variations of this concept in 219.6(b)(3) and 219.7(e)(ii) and 219.8(b)(1) and 219.12(a)(5)(vii) should also be deleted.

Every forest plan should contain a different mix of multiple-use objectives and outputs. Given the diversity of the national forests and multiple-use objectives and outputs, defining "distinctive roles and contributions" for any given unit will inevitably bias the entire planning process in favor of some uses, products, and services and against other uses, products, and services. As the proposed rule is written, once the Responsible Official identifies the "distinctive roles and contributions of the unit" in the Assessment, those "distinctive roles and contributions of the unit" becomes required content in the plan. There is no requirement in the law for identification of "distinctive roles and contributions". This is a polarizing and unnecessary concept. This will require unnecessary time and expense for the Forest Service and participants in the planning process. The entire concept is flawed, and all requirements for assessments, forest plans, and monitoring plan to identify, incorporate, or monitor "distinctive roles and contributions" should be deleted from the proposed rule.

We agree with the designation of the forest supervisor as the responsible official for forest plans in section 219.2(b)(3). Section 219.2(b)(3) states that the local unit supervisor is the responsible official for development and approval of a plan, unless a regional forester, Chief, under secretary, or the Secretary acts as the responsible official. We recommend adding addition language clarifying under what circumstances higher officials would be able override the unit supervisor as the responsible official.

Section 219.3 – Role of Science in Planning

Requiring the use of the "best available scientific information" rather than agency expertise and *available, relevant* science will make decision making time consuming and vulnerable to litigation. Sound science has an important role in Forest Service planning and management. Proving what science is "best" is likely to be time consuming and of little value, but will undoubtedly lead to lawsuits that will halt all progress.

The regulation establishes costly, time consuming procedural requirements to document the consideration of the best available science that will slow the planning process to a crawl and create a new legal burden on the Forest Service to prove that it has considered the best available science. This change throws away the Forest Service hard fought legal victories (1) that establish that there is no such thing as the "best" or "most accurate" science (2) will relieve plaintiffs of the burden to prove why the Forest Service decision is flawed and will now impose the burden on the agency to prove why its decision "is informed by" the best science, and (3) undermines the Forest Service multiple-use mandate which the courts have only recently more explicitly acknowledged.

§ 219.3 Role of science in planning.

The responsible official shall take into account the best available scientific information throughout the planning process identified in this subpart. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to a

particular decision or action. The responsible official shall document this consideration in every assessment report (§ 219.6), plan decision document (§ 219.14), and monitoring evaluation report (§ 219.12). Such documentation must:

(a) Identify sources of data, peer reviewed articles, scientific assessments, or other scientific information relevant to the issues being considered;

(b) Describe how the social, economic, and ecological sciences were identified and appropriately interpreted and applied; and

(c) For the plan decision document, describe how scientific information was determined to be the most accurate, reliable, and relevant information available and how scientific findings or conclusions informed or were used to develop plan components and other content in the plan.

We have numerous concerns about this section. First, the planning rule should not create a target for additional litigation and controversy by using or defining the term "best available science" or "best available scientific information." The provision in Section 219.3 o the proposed rule regarding use of "best available scientific information" is likely to fuel further disputes and lawsuits that will obstruct and bog down planning and management activities that are environmentally necessary and beneficial.

Sound science has an important part in national forest planning and management. However, which science is "best," as illustrated in Endangered Species Act litigation as well as NFMA and other disputes, can be extremely subjective and highly politicized.

The NFMA does not use or require use of the term "best available science" or "best available scientific information." Neither does NEPA. The Ninth Circuit Court of Appeals has affirmed that these statutes do not require a determination of whether national forest planning or project-level NEPA documents are based on "best" available science or methodology, that disagreements among scientists are routine, and that requiring the Forest Service to resolve or present every such disagreement could impose an unworkable burden that would prevent the needed or beneficial management. Lands Council v. McNair, 537 F.3d 981, 991 (9th Cir. 2008)(en banc); Salmon River Concerned Citizens v. Robertson, 32 F.3d 1346, 1359 (9th Cir. 1994).

The regulation's procedures will create new legal claims centered on the requirement that the Forest Service consider the best available science and demonstrate that the "most accurate, reliable, and relevant information" was considered and how it "informed" the development of the forest plan. In Lands Council, a unanimous en banc panel of the Ninth Circuit gave the Forest Service more leeway and flexibility regarding scientific analysis. The Court emphasized that, "[t]o require the Forest Service to affirmatively present every uncertainty in its EIS would be an onerous requirement, given that experts in every scientific field routinely disagree; such a requirement might inadvertently prevent the Forest Service from acting due to the burden it would impose." McNair, 537 F.3d at 1001. The Forest Service should recognize as

the Ninth Circuit finally has, that there is no holy grail of the "best" or "most accurate" science. Even NEPA does not require such impossible divining of the "best" science. The Ninth Circuit emphasized that "NEPA does not require [that we] decide whether an [environmental impact statement] is based on the best scientific methodology available, nor does NEPA require us to resolve disagreements among various scientists as to methodology." Salmon River Concerned Citizens, 32 F.3d at 1359.

Second, the regulation is written in a way that puts the burden on the Forest Service to prove that it identified the best science, "appropriately" interpreted it, and explain how it informed the decision. But an agency with the burden of proof always has an uphill battle in court, particularly in the Ninth Circuit Court of Appeals. The burden to prove that the Forest Service was arbitrary and capricious in its decision-making should remain with plaintiff and the regulations must strive to avoid placing the heavy burden of proof on the agency.

Third, the science dominated regulation undermines the principle that the agency can make natural resource management decisions based on its discretion in weighing various multiple-use objectives rather than elevating science to the tail that wags the multiple-use decision-making dog. For example, the Ninth Circuit in Seattle Audubon Society v. Moseley, 830 F.3d 1401, 1404 (9th Cir. 1996) upheld selection of an alternative in the Northwest Forest Plan that provided an 80% rather than 100% probability of maintaining the viability of the spotted owl because "the selection of an alternative with a higher likelihood of viability would preclude any multiple use compromises contrary to the overall mandate of the NFMA." That Ninth Circuit in the Mission Brush case finally recognized that, "[c]ongress has consistently acknowledged that the Forest Service must balance competing demands in managing National Forest System lands. Indeed, since Congress' early regulation of the national forests, it has never been the case that 'the national forests were . . . to be set aside for non-use'." McNair, 537 F.3d at 990.

Fourth, sound national forest planning and management that complies with NFMA, MUSYA, and other applicable law must reflect more than "western" or European culture academic science and scientist opinion. Native American and other traditional local knowledge along with other practical expertise, collaborative consensus reached through the planning process regarding application of science, and other considerations are critical to environmentally, economically, and socially sound forest planning and plan implementation.

Thus, the Planning Rule must not require the Forest Service to do more than take into account available, relevant scientific information along with other factors in the development, amendment, or revision of national forest plans, without reference to which information is "best."

Proposed Section 219.3 should be deleted or greatly abbreviated and corrected accordingly, along with any other references to "best available scientific information" in the proposed rule. The use and dissemination of scientific information by federal agencies is addressed by the Federal Data Quality Act (P.L. 106-554 §515) and subsequent guidelines from the Office of Management and Budget (http://www.whitehouse.gov/omb/fedreg_reproducible). We believe that the protections and assurances of the quality of scientific information used and distributed by federal agencies under the Federal Data Quality Act is sufficient to ensure that quality of

scientific information being used by the USFS in the planning process and a requirement to identify the "most accurate" scientific information should not be a legal requirement in the planning rule itself.

Section 219.4 - Requirements for Public Participation

1. The "public engagement" requirement distances the decision-making process from the local area and renders the agency vulnerable to more litigation.

The language requiring that the agency "shall encourage" public input creates an obligation to affirmatively gather public comment—and a legal question as to the legal threshold of encouragement. And even as the rule calls for greater "public input," it weakens the existing requirement to coordinate forest planning with local government and their plans. We encourage the agency to give increased weight to local communities most directly impacted by the plan. The proposed rule weakens the process by which state, county, and local governments may meaningfully participate in the development of land and resource management plans. This process, known as "coordination," is mandated under NFMA and currently included in Sec. 219.7 of the 1982 Planning Rule. Under Sec. 219.4 of the proposed rule, the agency is directed to solicit "public participation," but local governments, the entities responsible for supplying a balanced representation of local needs, are not given adequately elevated coordination status over individual special interests. When the process of coordination has been used, it has prevented costly litigation by resolving conflicts before final decisions are made. We hope that provisions for coordination will remain intact in the proposed rule.

2. The language requiring that the agency "shall encourage" public input creates an obligation to affirmatively gather public comment—and a legal question as to the legal threshold of encouragement. And even as the rule calls for greater "public input," it weakens the existing requirement to coordinate forest planning with local government and their plans.

The requirement that the Forest Service shall provide for public comment turns the tables on public comment. Rather than receiving comment from people who develop their own views, it risks putting the Forest Service employees in the position of telling people who have no views on the matter what to think. The responsible official "shall encourage" participation by youth, low-income populations, minority populations, private landowners, and Indian Tribes. Forest plans do not suffer for lack of public comment. This "shall encourage" language creates the same legal vulnerability as the use of the identical term that the Forest Service "shall encourage" participation of scientists in the Assessments in Section 219.6. What must be done to meet the legal threshold of encouragement? Who will make the contacts and explain the forest plan, a seasonal employee, a botanist, a deputy Forest Supervisor? Does the Forest Service need to take affirmative action to bus residents of East Los Angeles to the Los Padres Supervisor's headquarters in Goleta for public meetings about the Plan? For state, counties, and local governments the responsible official need only "provide opportunities" to participate in planning.

3. The rule weakens the role of planning efforts of state and local government and Indian Tribes.

The planning efforts of state and local governments and Indian tribe should have a special place in forest planning. That was the case under the 1982 rule which separated "Public participation" requirements under 36 C.F.R. § 219.6 from the "Coordination with other public planning efforts" under 36 C.F.R. § 219.7. The proposed rule weakens the requirement to consider the plans of state and local government and Indian tribes in three ways. First, it combines public participation requirements together with the section on coordination with other public planning efforts into one section which dilutes the importance of coordination with other public planning efforts. Second, within the newly combined single section 219.4, the rule compels the Forest Service to "encourage" public participation from all segments of the public except state and local government. Finally, whereas the 1982 planning rule in 219.7 clearly required that "the responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes," the rule under 219.4 adds the equivocal phrase at the end of the sentence "to the extent practicable and appropriate." This changes coordination with state and local government and Indian tribe plans from a requirement to a discretionary decision of the forest supervisor. If increasing the agency discretion is the objective, then the phrase "to the extent practicable and appropriate" should be used elsewhere in the proposed planning rule particularly with regards to species viability and consideration of the best science.

Delete the reference "to the extent practicable and appropriate" from §219.4(b)(1) and replace with "attempt to achieve consistency between the proposed forest and local plans." The following requirement should be added to the rule: "Where the forest plan may not be made consistent with local plans, the responsible official should document how and why its plan is not consistent with local plans, as determined by local officials, and explain why its plan cannot be made consistent with local plans."

The language in §219.4(b)(3) states "the responsible official will [not] seek to direct or control management of lands outside of the planning area, nor will the responsible official conform management to meet non-Forest Service objectives and policies." This language may contradict the earlier stated objective to coordinate with local governments. We are concerned that this section may create conflict with established Community Wildfire Protection Plans (CWPP) which include planning on both Federal and non-Federal lands.

Section 219.5 – Planning Framework

219.5(a)(3) requires "biennial monitoring evaluation reports", a significant change and increase for many national forests which have five year monitoring evaluation reports. This will divert additional time, people, and resources away from actual management. In the big picture, with forest rotations of 80-250 years, is it really necessary to monitor on a two year cycle. See also 219.12(d).

Section 219.6 - Assessments

1. The regulation establishes a separate layer of planning called "Assessments" which will be prepared apart from the Forest Plan without NEPA analysis, which under the law the Forest Service cannot do. This will make any Forest Plan that relies on the illegal assessment dead on arrival in the courts.

§ 219.6 Assessments.
Assessments may range from narrow in scope to comprehensive, depending on the issue or set of issues to be evaluated, and should consider relevant ecological, economic, and social conditions, trends, and sustainability within the context of the broader landscape. The responsible official has the discretion to determine the scope, scale, and timing of an assessment, subject to the requirements of this section.

(a) Process for plan development or revision assessments. One or more assessments must be conducted for the development of a new plan or for a plan revision. . ..
The responsible official shall:

(1) Notify and encourage the public and appropriate Federal agencies, States, local governments, other entities, and scientists to participate in the assessment process.

(b) Content of assessments for plan development or revision. In the assessment(s) for plan development or revision, the responsible official shall:

(1) Identify and evaluate information needed to understand and assess existing and potential future conditions and stressors in order to inform and develop required plan components and other content in the plan (§ 219.7), including plan components for sustainability (§ 219.8), diversity of plant and animal communities (§ 219.9), multiple uses (§ 219.10), and timber requirements based on NFMA (§ 219.11).

First, courts have repeatedly rejected the reliance of a plan or project on an earlier prepared assessment or an analysis that was not subject to NEPA. For example, in Klamath-Siskiyou Wildlands Center v. Bureau of Land Management 387 F.3d 989, 998 (9th Cir. 2004) the court explained "tiering to the Watershed Analysis cannot save the EAs, because the Watershed Analysis is not a NEPA document. A NEPA document cannot tier to a non-NEPA document." Citing Kern v. BLM, 284 F.3d 1062, 1073 (9th Cir. 2002)(holding that "tiering to a document that has not itself been subject to NEPA review is not permitted"); Muckleshoot Indian Tribe v. Forest Service, 177 F.3d 800, 811 (9th Cir. 1999)("The appellees also attempt to tier the Exchange EIS to the Green River Watershed Report to cure the deficiencies of the cumulative impact analysis of the Exchange EIS. Such reliance is impermissible under the NEPA regulations, which only permit tiering to prior EIS's."); See also League of Wilderness Defenders-Blue Mountains Biodiversity Project v. U.S. Forest Service, 549 F.3d 1211, 1213 (9th Cir. 2008) ("Because the Final Supplemental Environmental Impact Statement (FSEIS) may not tier to a non-NEPA watershed analysis to consider adequately the aggregate cumulative effects of past timber sales, we reverse the district court's grant of summary judgment in favor of the Forest Service").

2. The assessment process also creates a legally enforceable obligation to "notify and encourage" . . . "appropriate" . . . "scientists to participate in the assessment process." If plaintiff can show that the Forest Service failed to do enough to "encourage" the participation of the so called "appropriate scientists" the agency will have violated the regulation.

Second, the Assessments will presumably include non-federal scientists to help "inform" planning which will require compliance with the Federal Advisory Committee Act. Thus, the Forest Service is placing the subsequently developed Forest Plans at risk by requiring a process to develop Assessments with public participation and non-federal scientists that "inform" decisions in the plan without going through the NEPA process or complying with FACA. One alternative is to make the Assessments subject to NEPA and FACA but this will make the forest planning process unworkable. Another alternative is to have the planning rule categorically exclude the Assessments from NEPA and exempt the Assessment from FACA (the FACA exemption would require legislation). A better approach is to eliminate the Assessments section from the forest planning rule entirely. This approach is probably the best because it eliminates a NEPA (and FACA) claim that plaintiffs are sure to raise challenging a forest plan's reliance on Assessments.

Third, the Assessment section creates its own fertile ground for litigation independent of NEPA and FACA by imposing new requirements that the Forest Service must follow to develop Assessments. The agency must "notify" and "encourage" "appropriate" "Federal agencies, States, local governments, other entities, and scientists" to "participate" in the assessment process. If the Forest Service does not "notify" and "encourage" plaintiffs' preferred scientists to participate, then the agency violates the law. Also does "encourage" mean just publish a notice in the newspaper? Which newspaper – The Redding Record Search Light or the Stanford Daily? Or does the Forest Supervisor have to write the scientist asking her to participate? Is a letter and a follow-up phone call enough? And who are the "appropriate" agencies and scientists? Certainly EPA would have to be notified and encouraged to participate in the Assessment given the regulation's emphasis on climate change and carbon sequestration.

3. Plaintiffs will scour the forest planning record to find thoughtful papers prepared by the planning staff and argue that these papers are really "Assessments" and violate the regulation because they were not subject to public comment and scientific participation.

Finally, the Assessment section will also create a powerful new tool for plaintiffs to attack Forest Service analysis that looks and smells like an Assessment but which was not developed according to the section's procedural requirements to notify the public, and encourage appropriate scientists to participate in the development of the assessment. For example, any resource analysis in the planning file arguably related to "ecological, economic, or social conditions, trends, and sustainability within the context of the broader landscape" will violate the regulation if it was not prepared with public participation and the Forest Service failed to encourage appropriate scientists to be involved in its preparation.

4. Eliminate the reference to "the unit's distinctive roles and contributions" in 219.6(b)(3).

As explained in more detail in our comments on section 219.2, the reference to "the unit's distinctive roles and contributions . . ." focuses on single use rather than multiple-use management and will inevitably bias the entire planning process in favor of some uses, products, and services and against other uses, products, and services. As the proposed rule is written, once the Responsible Official identifies the "distinctive roles and contributions of the unit" in the Assessment, those "distinctive roles and contributions of the unit" becomes required content in the plan. There is no requirement in the law for identification of "distinctive roles and contributions."

Section 219.7 – New Plan Development or Plan Revision

Section 219.7(d)(1)(ii) directs that "Objectives shall be based on reasonably foreseeable budgets." This is not a matter for the planning rule, overly constrains planning analysis and the sentence should be deleted.

Future planning efforts should address reduction of Fire Regime Condition Class (FRCC) in considering of desired condition. 219.7(d)(1)(i). National forest lands should be actively managed to reduce the threat of wildfire and the release of greenhouse gases. Reduction of FRCC 3 to FRCC 2 and FRCC 1 will insure a sustainable economic and environmental legacy for future generations.

The reference to "the unit's distinctive roles and contributions . . ." in 219.7(e)(ii) should be eliminated. As explained in more detail in our comments on section 219.2, the reference to "the unit's distinctive roles and contributions . . ." focuses on single use rather than multiple-use management and will inevitably bias the entire planning process in favor of some uses, products, and services and against other uses, products, and services. As the proposed rule is written, the the plan must "Describe the unit's distinctive roles and contributions within the broader landscape." There is no requirement in the law for identification of "distinctive roles and contributions."

Section 219.7(e)(iv) directs that every plan must contain "the planned timber sale program". As written, this would require a detailed list of timber sales for the next 10-15 years, and then amendments to the forest plan in order to change the list. This would be an impossible task, and that requirement should be deleted.

Section 219.8 - Sustainability

1. The Proposed rule elevates ecological sustainability over social and economic concerns.

In the explanation of the proposed rule, the USFS states that "[t]he proposed rule considered the ecological, social, and economic systems as interdependent systems, which cannot be ranked in order of importance." Fed. Reg. Vol. 76, No. 30 at 8491. However, in the same section of the proposed rule explanation, the USFS goes on to state that "the agency has more influence over the factors that impact ecological sustainability on NFS lands (ecological diversity, forest health, road system management, etc.) than it does for social and economic sustainability (employment, income, community well-being, culture, etc.)." *Id.* It is this position that leads to the disparate treatment of social and economic systems versus environmental systems in the proposed rule.

In reference to ecological sustainability in §219.8(a) the proposed rule requires plan components to "**maintain or restore** the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area ...." (emphasis added). However in §219.8(b) in reference to social and economic sustainability, the rule requires only that "[t]he plan must include plan components **to guide the unit's contribution** to social and economic sustainability ...." (emphasis added). We support the initial assertion of the agency that social, environmental and economic considerations are not

competing values; rather they are truly interdependent and all play an important role in effectively managing NFS lands.

Even if the assertion that the agency has more influence over factors influencing ecological sustainability than those influencing social or economic sustainability is true, this does not support the language in the proposed rule which elevates ecological considerations above social and economic considerations. The agency asserts that the proposed rule treats the three elements of sustainability as interdependent and further, that none of the elements can be ranked in order of priority. Nowhere does the agency say that factors cannot be ranked in order of importance unless the agency has differing abilities to influence the factors.

Further, we find the assertion that the agency has more influence over factors influencing ecological sustainability suspect. In the explanation of this section in the proposed rule, the agency lists a host of factors influencing ecological sustainability that are outside the control of the agency including "climate change, extreme disturbance events, and urbanization on lands outside of or adjacent to NFS lands." Fed. Reg. Vol. 76, No. 30 at 8490. This is not an insubstantial list of factors outside of the agencies control, and says nothing of the agency's ability to actively manage NFS lands in light of the near constant threat of litigation facing management activities on federal lands. The precipitous decline in the forest industry throughout the west and the corresponding social and economic benefits closely coincides with the increase in the threats to ecological sustainability stemming from the lack of management on federal lands. These ecological threats include fires outside the historical range of variability and spread of native and invasive pest species at historic levels (extreme disturbance events) and are one of, if not the primary, factors currently influencing the ecological health and sustainability of western forests. The agency's ability to impact factors influencing social and economic sustainability is clear from the impact on these systems following the rapid decline in management on federal lands. What is not clear is that the agency is in a better position to impact factors influencing ecological sustainability than those influencing economic or social sustainability.

Because the USFS is in a position to have a substantial impact on all of the factors influencing ecological, social and economic sustainability, we request that the proposed rule recognize this and include language for plan components that maintain or restore all three elements of sustainability, being ecological, social and economic.

2. The "inherent capability of the land" is a nebulous concept that should be excluded from the rule.

The proposed rule requires that forest plans must provide for sustainability "consistent with the inherent capability of the plan area." This is a vague term and there is no such thing as the "inherent capability" of the land. A fundamental teaching of forest management, which the Forest Service rule writers should be aware, is that the capability of the land depends upon the intensity of management applied to the land. And capability of one resource may differ depending on the intensity applied for the management of another resource. Brush control and thinning may increase the capability of the land to produce timber and to provide large trees for wildlife species that prefer large trees. However, it may reduce the capability of the land to provide for early successional forest species such as certain songbirds and big-game. The Forest Service's own science review of the proposed planning rule was also critical of the use of the

term "inherent capability." The executive summary explains: "Several reviewers discussed biological topics of concern, notably how to evaluate inherent capacity of the land, particularly in complex, changing systems. This is particularly difficult when considering cumulative effects." Science Review at i. Dr. Keeton noted how unhelpful the term is: "Inherent capability of the land - The chapter is rife with overly broad statements like: 'Ecosystems are defined by interactions of biological and physical systems.' This reads like a brief summary of the entire field of ecology rather than a distillation of science specifically relevant to federal forest and grassland management." We agree and "inherent capability of the land" should be eliminated from the rule or more specifically defined. If the Forest Service means that even with the most intensive management the land will not be capable of producing a specific resource or of providing for viability of specific species, then the proposed rule should say so. We certainly do not object to the proposed rule recognizing that it may not be possible to provide a stream temperature of 55° or 50 pine marten per acre, but the proposed rule does not explicitly explain this principle.

3. Eliminate the reference to "the unit's distinctive roles and contributions" in 219.8(b)(1).

As explained in more detail in our comments on section 219.2, the reference to "the unit's distinctive roles and contributions . . ." focuses on single use rather than multiple-use management and will inevitably bias the entire planning process in favor of some uses, products, and services and against other uses, products, and services. The plan must "account for" the "distinctive roles and contributions of the unit within the broader landscape." It is unclear what this phrase means. If the adjoining forest is industrial timberland does that mean that the national forest should emphasize wildlife? There is no requirement in the law for identification of "distinctive roles and contributions."

Section 219.9 - Diversity of Plant and Animal Communities

1. The regulation fails to fix the problem of an unattainable and procedurally impossible obligation to demonstrate that a forest plan will "maintain viable populations of species" and there is no requirement in the NFMA to "maintain viable populations."

> *§ 219.9 Diversity of plant and animal communities.*
> *Within Forest Service authority and consistent with the inherent capability of the plan area, the plan must include plan components to maintain the diversity of plant and animal communities, as follows:*
>
> * * *
>
> *(b) Species Conservation. The plan components must provide for the maintenance or restoration of ecological conditions in the plan area to:*
>
> * * *
>
> *(3) Maintain viable populations of species of conservation concern within the plan area. Where it is beyond the authority of the Forest Service or the inherent capability of the plan area to do so, the plan components must provide for the maintenance or restoration of ecological conditions to contribute to the extent practicable to maintaining a viable population of a species within its range. When developing such plan components, the responsible official shall coordinate to the extent practicable with other Federal, State, tribal, and private land managers having management authority over lands where the population exists.*

NFMA does not mention "viable populations" but instead the Act only requires the Forest Service to "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives and within the multiple-use objectives of the land management plan." 16 U.S.C. 1604 (a)(3)(b). In contrast, the regulation treats national forests as biological preserves rather than forests managed for the use and necessities of the people United States as required by the Organic Act. 16 USC 476.

The current planning rule makes it extremely difficult for the Forest Service to demonstrate that it is maintaining viable populations of wildlife species. One of the most frequent legal claims in national forest litigation is that the Forest Service is not maintaining viable populations. The Forest Service should use the revision of the planning regulation as an opportunity to eliminate this fertile ground for litigation. There is no consensus on the population level that achieves a "viable" population so the regulation imposes a legal obligation on the Forest Service to ascertain what is not ascertainable. Measuring and proving that a forest plan will "maintain" or is "maintaining" a viable population is nearly impossible, leaving the Forest Service highly vulnerable to lawsuits.

Even the Forest Service admits that using one wildlife species, in this case "species of conservation concern," provides no information about how well other species are doing and there is no sound way to establish population trends in a short period of time. In the background explaining the regulations, the Forest Service concedes "[t]he theory of [management indicator species] has been discredited since the 1982 rule. Essentially, monitoring the population trend of one species should not be extrapolated to form conclusions regarding the status and trends of other species. In addition, population trends for most species are extremely difficult to determine within the 15-year life of a plan, as it may take decades to establish accurate trend data, and data may be needed for a broader area than an individual national forest or grassland." 76 Fed. Reg. at 8499 (Feb. 14, 2011). Unfortunately, the "maintain viable populations" regulation ignores the discredited theories and extreme difficulties regarding population estimates.

2. The planning rule does not include the phrase "to meet overall multiple-use objectives" to make clear that the Forest Service must provide for diversity of plant and animal communities to meet overall multiple use objectives and not the other way around;

The Ninth Circuit understood that wildlife viability is not the preeminent command of NFMA and it is unfortunate the drafters of the regulation do not. In the Mission Brush case, the Ninth Circuit explained that "NFMA… requires that plans developed for units of the National Forest System 'provide for multiple use and sustained yield of the products and services obtained there from.'" McNair, 537 F.3d at 990. The Ninth Circuit then emphasized that "the NFMA is explicit that wildlife viability is not the Forest Service's only consideration when developing site-specific plans for National Forest System lands. Id.

The prior regulation also acknowledged that providing for management indicator species was to be accomplished "to the degree consistent with overall multiple use objectives of the [forest plan] alternative." 36 C.F.R. 219.19(a). This language was instrumental to the Ninth Circuit finally approving the Northwest Forest Plan despite plaintiffs' argument that the plan had to demonstrate that there was a 100% probability that the spotted owl would survive in the

future. The Forest Service instead chose an alternative that provided an 80% probability of spotted owl survival. The Ninth Circuit approved in Seattle Audubon Society v. Moseley, 830 F.3d 1401, 1404 (9th Cir. 1996), noting that "the selection of an alternative with a higher likelihood of viability would preclude any multiple use compromises contrary to the overall mandate of the NFMA." If the viability regulation is not eliminated, then the Forest Service must retain the concept that overall multiple use objectives should drive decisions in the forest plan - not maintaining the viability of species, particularly for those species that are not even considered species under the Endangered Species Act.

3. The regulation requires the Forest Service to do the impossible by requiring it to demonstrate with information in a forest plan that it will maintain viability of "species of conservation concern," a category of species that by definition, the agency has minimal information about.

The rule requires the plan to demonstrate it will maintain a viable population for a "species of conservation concern" which the planning rule defines as a species about which "there is evidence demonstrating significant concern about its capability to persist over the long-term in the plan area." 36 C.F.R. 219.19. Based on a joint publication of federal agencies, universities and NGOs entitled "State of the Birds," species of conservation concern include any bird which is an ESA listed species, is on the USFWS list of Birds of Conservation Concern, or is on the American Bird Conservancy/Audubon Watch list. Requiring a forest plan to provide a guarantee of viability for a species over which there is significant concern about viability requires the agency to guarantee something that it cannot. It puts the burden on the Forest Service to prove it will maintain a viable population and invites litigation over the adequacy of the substantive requirements in the plan, survey obligations, and population monitoring.

4. The regulation will make the problem worse by expanding the viability requirement beyond vertebrate species to include "native plants and native invertebrates (fungi, aquatic invertebrates, insects, plants, and others)" which will make the cost of compliance soar and establish a regulatory standard that cannot be achieved.

The "maintain viable population" regulation will also increase litigation over "viability" since it is now being expanded to include viability of all species in the six taxonomic Kingdoms, i.e., Plants, Animals, Fungus, Bacteria, Algae, and Protozoa. The agency acknowledges it knows very little about invertebrates. The 1982 viability requirement just for vertebrates has cost the agency many millions of dollars and 29 years of litigation that is still on-going. Adding a viability obligation for invertebrates such as fungi, slugs, and insects assures millions more in costs over the next decade and 30 more years of litigation.

The preamble to the regulation explains that "it is important to note that the proposed rule is not limited to 'vertebrate' species as required under the 1982 provisions. The proposed rule would include native plants and native invertebrates (fungi, aquatic invertebrates, insects, plants, and others) for which the Agency currently has very minimal biological information on their life histories, status, abundance, and distribution." 76 Fed. Reg. at 8494. In the national forests covered by the Northwest Forest Plan there are over 400 invertebrate species for which there is minimum biological knowledge. This led to a survey and manage program costing over $33 million per year. Many of these species aren't even of concern under the Endangered Species Act. For example, fungi cannot even be listed under the Endangered Species Act since the

Endangered Species Act permits only the listing of fish, wildlife, and plants but under the planning regulation a Forest Supervisor could be required to maintain a viable population of a fungus. The agency is forced to prove what a viable population level is and then prove it will maintain this level for species where there is "very minimal biological information on their life histories, status, abundance, and distribution." The viability regulation forces the Forest Supervisors to make a promise that they cannot keep. Unfortunately, the new regulation will only expand the litigation over "viability" since instead of applying to vertebrate species, the viability requirement can now be expanded to include native plants and invertebrates such as fungi, slugs, and insects.

5. The regulation creates a new obligation to "conserve" fish and wildlife species that are only candidates for listing under the ESA. There will be a clamor for the Forest Service to develop recovery like plans for conservation of candidate species even though under the ESA recovery plans are not required for unlisted species.

> *§ 219.9 Diversity of plant and animal communities.*
> *Within Forest Service authority and consistent with the inherent capability of the plan area, the plan must include plan components to maintain the diversity of plant and animal communities, as follows:*
> * * *
> *(b) Species Conservation. The plan components must provide for the maintenance or restoration of ecological conditions in the plan area to:*
>
> *(1) Contribute to the recovery of threatened and endangered species;*
>
> *(2) Conserve candidate species;*

Under the ESA, a candidate species is an unlisted species. Candidate species are those petitioned species that are actively being considered for listing as endangered or threatened under the ESA, as well as those species for which the listing agency has initiated an ESA status review that it has announced in the Federal Register. The Forest Service has higher planning priorities than to devote its scarce resources to providing a conservation strategy in the forest plan to conserve every species for which someone has filed a petition to list or for which the listing agency has not yet determined whether listing is even warranted. The regulation now gives incentive to file petitions to list just so the Forest Service will have to address the species in the forest planning process. The forest planning regulation should not make the protection of candidate species a legal obligation when Congress has not imposed such a legal obligation in either the Endangered Species Act or the National Forest Management Act.

6. The diversity section creates a legally enforceable "non-degradation" standard for wildlife contrary to case law, the NFMA, the Organic Act, and the Multiple-Use Sustained-Yield Act.

The Ninth Circuit has emphasized in McNair that "[o]f course, neither the NFMA nor the . . . Forest Plan require the Forest Service to improve a species' habitat to prove that it is maintaining wildlife viability." McNair, 537 F.3d at 995. However, the planning rule is written so that all "plan components" "must provide for maintenance and restoration" of all species, which creates a legal "non-degradation standard" for wildlife throwing away the victory in

McNair. Similar non-degradation language was used for the Aquatic Conservation Strategy (ACS) in the Northwest Forest Plan which led to years of litigation over whether projects could have short-term negative effects on soils and water quality and comply with the ACS. Pacific Coast Federation of Fishermen's Association v. National Marine Fisheries Service, 71 F.Supp.2d 1063 (W.D. Wash. 1999), aff'd, 265 F.3d 528 (9th Cir. 2001).

The diversity section creates an obligation to "contribute to the recovery" of ESA listed species but a forest plan is not a recovery plan and courts have held that a recovery plan is not a legally enforceable document. Citation. Therefore, by including an obligation to "contribute to the recovery" of an ESA listed species in the regulation itself, plaintiffs have a new legal claim that does not exist under the ESA recovery plan statutory language. While designing a forest plan to contribute to recovery is a laudable goal, it should not be a hard fast legal requirement in the planning regulation. The 1982 regulations were more flexible, and stated that "[o]bjectives shall be determined for threatened and endangered species that shall provide for, where possible, their removal from listing as threatened and endangered species through appropriate conservation measures." 36 C.F.R. section 219.19 (7)(emphasis added).

7. The diversity section must be modified to reduce its cost, to make compliance possible rather than impossible, to be habitat based, and to build on legal victories not to provide more ammunition for legal defeats.

The Forest Service would be better off drafting a regulation that focuses on maintaining the diversity of habitats rather than imposing legal requirement upon itself to identify, survey, and maintain "a viable population" that is not required by the National Forest Management Act. We strongly urge the Forest Service to use a habitat based approach. Such an approach would be entirely consistent with the plain language of the Act and the simplest solution is just to repeat the statutory language in the regulation and no more.

The courts have held that there is maximum flexibility and discretion under the NFMA diversity provision. Sierra Club v. Robertson, 810 F.Supp. 1021 (W.D.Ark.1992). The provision does not require viable populations, and as the Court recognized the diversity provision:

> is so qualified "that it is difficult to discern any concrete legal standards on the face of the provision." Charles F. Wilkinson and H. Michael Anderson, *Land and Resource Planning in the National Forests,* 64 Or.L.Rev. 1, 296 (1985). The Committee on Scientists ("the Committee"), which assisted in drafting the NFMA regulations, noted: Provision for "diversity" as required by NFMA is one of the most perplexing issues dealt with in the draft regulations. We believe it is impossible to write specific regulations to "provide for" diversity. 44 Fed.Reg. 26600-01. "Although the statement of policy [to provide for diversity] is clear, there remains a great deal of room for honest debate on the translation of policy into management planning requirements and into management programs." *Id.* at 26608.

Id. at 1027 -1029.

So the Forest Service is mistaken if it believes that the viability rule is required to comply with the diversity provision of NFMA. And just because there are some references in the Forest

Service Handbook to wildlife viability, that does not mean that the Handbook needs to be imposed as an inflexible regulation.

8. The diversity section fails to address that providing conditions for viability of one species may be to the detriment of other species.

All species do not have the same needs to survive and conditions that favor one species can be detrimental to other species. We strongly urge that the rule use an approach that achieve the NFMA diversity requirement by providing a variety of habitats rather than adopting an approach that will impose a legally binding requirement to ensure viability for a specific species.

9. The reference to the "inherent capability of the land" must be better defined.

As explained in our comments under section 219.8, we believe the term "inherent capability of the land" has little meaning because the capability of the land is determined by the intensity of management. Thus we recommend eliminating the term from the rule. However, if the Forest Service means that even with the most intensive management the land will not be capable of providing for viability of specific species, then the proposed rule should say so. We certainly do not object to the proposed rule recognizing that it may not be possible to demonstrate that the land will provide a viable population of a species, particularly on a national forest which is on the fringes of the species range. However, the proposed rule does not explicitly provide for this reasonable assumption that maintaining viability is not always possible, even if there were reasonable ways to measure is you were maintaining viabilty.

Section 219.10 - Multiple Uses

The rule inappropriately gives equal status to "protection" of recommended wilderness as to "protection" of Congressionally designated Wilderness.

Only Congress can create wilderness. The Forest Service should not create de facto wilderness. The rule requires that any area recommended for wilderness must be "protected." But the 2001 roadless rule already "protects" millions of acres of unroaded lands. The planning rule does nothing to provide that the millions of acres swept away from forest planning in the 2001 roadless rule are subject to forest planning when plans are revised. Thus the planning rule violates NFMA because the act requires that it is planning provisions apply to all lands, not just those that were not locked up in the 2001 roadless rule.

Section 219.11 - Timber Requirements Based on NFMA

The rule fails to explicitly acknowledge the importance of the "salvage or sanitation harvesting of timber which is substantially damaged by fire, windthrow or other catastrophe, or which are in imminent danger from insect or disease attack" which is emphasized in the plain text of the NFMA statute numerous times. 16 U.S.C. 1604(g)(F)(iv), (k), (m), and 1611.

The rule is drafted so as to illegally abandon or dilute the consistent clear statutory direction that any standards for suitable lands, size of openings, culmination of mean annual increment, or annual limits on timber removal "shall not preclude the Secretary from salvage or sanitation

harvesting of timber which are substantially damaged by fire windthrow or other catastrophe, or which are in imminent danger from insect or disease attack" 16 U.S.C. 1604(m)(emphasis added). The regulation should be rewritten to consistently and explicitly set forth the insect, disease, and wildfire exception contained in the NFMA statute.

219.11(c) – we recommend rewording this paragraph to – "Harvest for salvage, sanitation, or public health or safety. Plans shall include direction for timber harvest for salvage, sanitation, or public health or safety objectives."

219.11(d)(4) – In requiring direction for limits on the quantity of timber that can be removed "annually", the proposed rule imposes restrictions on timber harvest that go beyond the requirements of the NFMA. The NFMA limits the quantity of timber that can be removed over a decade, with no annual limitations. It could, for instance, preclude a Forest from re-offering no bid sales in a subsequent fiscal year.

Section 219.12 - Monitoring

1. Carbon storage and climate change are overemphasized and the regulations are written in a way to favor retention of existing carbon stocks rather than to promote increase carbon sequestration through forest management.

The regulation compels a "monitoring program" "addressing . . . [m]easurable changes on the unit related to climate change and other stressors on the unit [and] the carbon stored in above ground vegetation;" 36 C.F.R 219.12. Climate change is mentioned numerous times elsewhere in the regulation. 36 C.F.R. 219.5, 219.8, 219.18. The definition of "ecosystem services" includes "long term storage of carbon [and] climate regulation." 36 C.F.R. 219.18. The plan "must provide for multiple uses, including ecosystem services." 36 C.F.R. 219.10, 219.11.The argument that leaving mature forests untouched to maximize long term storage of carbon and disagreement over the validity of carbon accounting assumptions will just invite litigation arguing that the forest plan violates the regulation because it does not maintain all mature forest for long term carbon storage and climate regulation.

2. The rule establishes broad, costly, unattainable monitoring requirements.

While the regulation supposedly gives the responsible official the discretion to "set the scope and scale of the unit monitoring program", it significantly limits that discretion "subject to the requirements of paragraph (a)(5). We recommend amending (a)(5) to truly give discretion to the responsible official, and specifically, we recommend deleting requirements to monitor status of focal species, changes "related to climate change and other stressors", carbon stored in vegetation, and "progress toward fulfilling the unit's distinctive roles and contributions to ecological, social, and economic conditions of the local area, region, and Nation". We recommend adding requirements to monitor accomplishment of forest plan Objectives, plus progress toward achieving forest plan "desired conditions".

In particular, 219.12(a)(5)(v), which requires monitoring of "measurable changes on the unit related to climate change ..." goes beyond common sense requirements for this planning

rule. Climate is measured over decades, centuries, or millennia, and it makes no sense for the FS to evaluate "measurable" changes on a two-year cycle for every national forest.

Section 219.12(a)(5)(vii), refers to monitoring the "the progress towards fulfilling the unit's distinctive roles and contributions to ecological, social, and economic conditions of the lacal area, region, and Nation." As explained in more detail in our comments on section 219.2, the reference to focuses on single use "distinctive role" rather than multiple-use management and will inevitably bias the entire planning process in favor of some uses, products, and services and against other uses, products, and services." But in the context of monitoring, this requirement is incomprehensible. What is the "distinctive role" at a local area as compared to the region as compared to the nation? How will "progress towards fulfillment" be measured? This requirement epitomizes the gobbledygook in the proposed rule. There is no requirement in the law for identification of "distinctive roles and contributions" and it should be stricken from the monitoring section.

We are further very concerned about the Forest Service's capability to develop "a broader scale monitoring strategy for unit monitoring questions that can best be answered at a geographic scale broader than one unit" (219.12(b)(1)), notwithstanding 219.12(b)(3). We recommend changing "shall" to "may" in 219.12(b)(1).

Section 219.13 - Plan Amendment and Administrative Changes

1. The regulation should explicitly reference in this section that a plan amendment is permissible through a project level analysis.

The regulation does a good job of recognizing that "the responsible official has the discretion to determine whether and how to amend the plan" 36 C.F.R. 219.13. Court decisions have affirmed this broad discretion involving plan amendments and have held that a site-specific analysis for a project can be used to support a plan amendment for a particular project area. The regulation does address project level consistency with a forest plan in 36 C.F.R. 219.15 but should also do so in the plan amendment section of the regulation in 36 C.F.R. 219.13.

2. It is helpful that monitoring methods and protocols can be changed without a plan amendment.

Monitoring methods and protocols are highly technical and the regulation's explicit provision to permit changes without a plan amendment makes good practical sense.

Section 219.15 - Project and Activity Consistency with the Plan

1. The regulation effectively eliminates the distinction between forest plan guidelines and standards making guidelines legally enforceable standards that all projects must "comply with." This change throws away the Forest Service hard fought legal victories establishing that guidelines are discretionary -- not mandatory, and provide management flexibility.

§ 219.15 Project and activity consistency with the plan.

* * *

(d) Determining consistency. A project or activity approval document must describe how the project or activity is consistent with applicable plan components developed or revised in conformance with this part by meeting the following criteria:

(1) Goals, desired conditions, and objectives. The project or activity contributes to the maintenance or attainment of one or more goals, desired conditions, or objectives or does not foreclose the opportunity to maintain or achieve any goals, desired conditions, or objectives, over the long term.

(2) Standards. The project or activity complies with applicable standards.
(3) Guidelines. The project or activity:

(i) Is designed to comply with applicable guidelines as set out in the plan; or

(ii) Is designed in a way that is as effective in carrying out the intent of the applicable guidelines in contributing to the maintenance or attainment of relevant desired conditions and objectives, avoiding or mitigating undesirable effects, or meeting applicable legal requirements (§ 219.7(d)(1)(iv)).

The courts have had several occasions to review the distinction between forest plan standards and guidelines as they are currently defined under the existing regulations. The courts have ruled in favor of the Forest Service and repeatedly rejected plaintiffs' arguments that the agency was legally compelled to follow a forest plan guideline. The Forest Service should not toss aside these legal victories. For example, in Wilderness Soc. v. Bosworth, 118 F.Supp.2d 1082, 1096 (D.Mont.,2000), the Ninth Circuit rejected plaintiffs argument that all old growth stands had to be a minimum of 25 acres. The court concluded that "the 25 acre minimum size requirement in the Forest Plan is a guideline and is therefore discretionary rather than mandatory." Id. at 1096. Similarly, in Greater Yellowstone Coalition, Inc. v. Servheen, 672 F.Supp.2d 1105, 1114 (D.Mont.2009) the court noted that "[w]hen Forest Plans contain standards, the standards are 'mandatory requirements,' in contrast to guidelines, 'which are discretionary.' Citing Miller v. U.S., 163 F.3d 591, 594, n. 1 (9th Cir.1998). Does the Forest Service really want to clamp down on its discretion and provide more vehicles for litigation challenges to agency decisions?

2. A project should be presumed consistent with the plan unless the plan explicitly states it is not consistent.

The provision dealing with the consistency of "existing authorizations" and previously approved projects with the new plan, presumes that all projects are inconsistent with the plan unless the plan expressly singles out the project and states that it is consistent with the plan. 36 C.F.R. 219.15(a). A better and less costly approach would be to assume that all existing authorizations and previously approved projects are consistent with the plan unless the plan explicitly states that those projects are inconsistent and must be modified to conform to the new plan. This would avoid disruptions of existing contracts and costly contract claims. The approach that the "existing authorizations" and approved projects are consistent with the new plan is supported by the language in NFMA that states that plan approval is subject to valid existing rights and also with the common practice that a plan assumes environmental effects

based on existing conditions which are a reflection of the current authorizations and approved projects.

3. The provision that allows separate resource plans to be developed violates the requirement in NFMA that there be one plan for the forest.

The rule provides that there may be additional independent resource plans developed by the Forest Service. Section 219.15 (e). The National Forest Management Act was designed to eliminate separate resource management plans. The separate resource plans had the effect of preventing the achievement of objectives for other resources because the focal point of the resource plan was the particular resource for the plan that was being prepared. The NFMA required one integrated plan to eliminate the Balkanized planning for a national forest. The Act requires that "[p]lans developed in accordance with this section shall – (1) form one integrated plan for each unit of the National Forest System. . ." 16 U.S.C. § 1604 (f)(1).

219.17 - Effective Dates and Transition

Nothing in the regulation explicitly states that the Forest Service may continue to operate under existing plans until the new plans are completed and survive any legal challenges.

The NFMA statute explicitly provides that "[u]ntil such time as a unit of the National Forest System is managed under plans developed in accordance with this Act, the management of such unit may continue under existing land and resource management plans." 16 U.S.C. 1604(c). To avoid disruption of existing contracts, account for the inevitable legal challenges, and to be consistent with NFMA, the regulation should provide that the Forest Service make it to operate under existing plans until all challenges to the new plans are resolved.

Section 219.19 – Definitions

1. The regulation defines ecosystem services too broadly and improperly elevates ecosystem services to the same level of importance as multiple uses under MUSY.

The plan must provide for "ecosystem services" but the term is very broadly defined such that if a plan does not provide one of the services it will violate the regulation. Ecosystem services are defined as: "Benefits people obtain from ecosystems, including: (1) Provisioning services, such as clean air and fresh water, as well as energy, fuel, forage, fiber, and minerals; (2) Regulating services, such as long term storage of carbon; climate regulation; water filtration, purification, and storage; soil stabilization; flood control; and disease regulation; (3) Supporting services, such as pollination, seed dispersal, soil formation, and nutrient cycling; and (4) Cultural services, such as educational, aesthetic, spiritual, and cultural heritage values, as well as recreational experiences and tourism opportunities." 36 C.F.R. 219.19. The regulation states that "the plan must provide for multiple uses and ecosystem services" 36 C.F.R. 219.11. To the extent that ecosystem services trump the multiple uses in the Multiple-Use Sustained-Yield Act, the regulation is an end run around MUSY without an act of Congress.

2. The new requirement that the plan must provide opportunities for "spiritual" "sustenance" will only escalate what some commentator's term as a holy war over management of the national forests.

"Ecosystem services" are defined to include "[c]ultural services such as . . . spiritual . . . opportunities." 36 C.F.R. 219.19. Under the regulations, "[p]lans will guide management of NFS lands so that they . . . provide . . . opportunities . . . for . . . spiritual . . . sustenance." 36 C.F.R. 219.1(c). The plan "must provide for multiple uses, including ecosystem services." 36 C.F.R. 219.10, 219.11. The First Amendment of the Constitution prohibits the making of any law "respecting an establishment of religion" and the Forest Service should not dive into the arena of how Forest Plan decisions comport with the spiritual teachings of the Koran, Torah, or Bible.

3. The concept of "inherent capability of the land" needs to be better defined in the definition of "Health."

As explained in our comments to section 219.18, the concept of inherent capability of the land varies depending on the intensity of management and is a vague term. The term should be eliminated from the rule or better defined.

Section 219.50 - Predecisional Administrative Review Process

A pre-decisional objection process is a superior approach for challenge to a forest plan than the administrative appeals process.

The pre-decisional objection process has worked well for the projects under the Healthy Forest Restoration Act and the regulation does a good job of adopting a similar process for objections to forest plans. Requiring those who don't like a draft plan to object before the final plan is released allows the agency to take issues into account and make appropriate changes prior to the decision; it's working well in HFRA projects.

COMMENTS ON THE EIS

General Overview

The NEPA process is not very informative when evaluating a programmatic Planning Rule and alternatives, and it may be argued that an EIS is not required for such a rulemaking. Alternative versions of the Planning Rule, at least if formulated within NFMA authority, merely establish a range of national level frameworks for preparing forest plans that themselves do not commit to any projects or activities on the ground.

In Ohio Forestry Ass'n v. Sierra Club, 523 U.S. 726 (1998), the U.S. Supreme Court recognized that the provisions of forest plans "do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability; they create nc legal rights or obligations." Id. at 733. As such, the Planning Rule is at least two steps removed from any decision that has likely predictable environmental effects. Consequently, the proposal and alternatives for the Planning Rule have little or no direct effect on the human environment. The "effects" analysis in the DEIS Chapter 3 generally consists of predictions based upon varying degrees of assumptions.

In any case, however, the DEIS does not appear to be any more adequate in level of detail or quality of content than the EIS for the 2008 version of the Planning Rule, found deficient under NEPA in Citizens for Better Forestry v. U.S. Dept. of Agriculture, 632 F. Supp. 2d 968 (N.D. Cal. 2009). The detail and complexity of the current Proposed Rule indicates substantially more environmental change emanating from implementing it than the shorter and simpler 2008 Rule. Thus, the current Proposed Rule and accompanying DEIS present as much or more NEPA deficiency as the 2008 Rule, if the Citizens for Better Forestry federal district court decision criteria are applied.

Alternatives

The DEIS recognizes that a less cumbersome and expensive planning rule is needed. DEIS at 7. Yet the Forest Service's own analysis confirms that the Proposed Rule, even using the favorable assumptions employed by the agency, will be only slightly less costly than the 1982 Planning Rule that has been identified as overly burdensome—approximately $1.5 million less per year than the $104 million annual cost of the 1982 Rule. DEIS at 43. The DEIS and accompanying analysis for the Proposed Rule confirm that there are readily available alternatives that are far less costly and burdensome, and which still meet NFMA requirements and the agency's stated purpose and need.

As one example, Alternative C in the draft EIS would cost nearly $24 million (24%) less per year than the Proposed Rule (Alternative A) to implement. Draft EIS at 43. The more flexible and less prescriptive design of this alternative should increase efficiency and allow units to tailor assessment, monitoring, revision or amendment to address only the priority needs of the unit. As stated in the DEIS, "The consequence of planning cost has an inversely proportional effect on the number of plans that could be revised or amended at one time and possibly the length of time to complete revision. For example, a 25 percent increase in cost might mean 25 percent fewer plans would be revised over a given time period." DEIS at 76. Thus, the Proposed Rule would likely result in substantially more backlog and less on-the-ground results than Alternative C.

The 2008 Planning Rule is another alternative that would appear to meet most or all of the stated purpose and need for an updated Rule. It contains most of the same basic concepts as the Proposed Rule but is only half the length (7 pages of Federal Register text compared to 14 pages for the proposed rule). The 2008 Rule was enjoined by a federal district court only for procedural shortcomings in the EIS and Endangered Species Act § 7 consultation completed for the rulemaking, and not any inadequacy in meeting NFMA requirements. Citizens for Better Forestry, supra. Nonetheless, the 2008 Rule was apparently excluded from any analysis in the DEIS, without any explanation. The 2008 Rule, or something similar to it, clearly belongs in the range of reasonable alternatives evaluated in detail and circulated for public and agency comment in the DEIS.

Alternative C, the 2008 Rule, or the Proposed Rule can be further modified to include the changes that we have recommended in our other comments. This modified alternative would still meet the basic elements of the stated purpose and need in the DEIS, and provide substantial further cost savings and ultimate benefits compared to the Proposed Rule or any of

the other alternatives displayed in the DEIS. This modified alternative should be the preferred and selected alternative for the final EIS.

Economic and Cost-Benefit Analysis

The DEIS and accompanying January 25, 2011 Cost-Benefit Analysis evaluation of the costs and related economic impacts of the Proposed Rule appears to be based on overly optimistic assumptions regarding implementation. This analysis needs to be reviewed and revised with more realistic estimates of time, effort, and cost to the agency and other participants in implementing the complex, cumbersome, and confusing Proposed Rule requirements. This analysis needs to address the further litigation and other delay and similar costs associated with attempting to implement such a scheme, and the resulting lesser benefits on the ground for the ecological health of national forests and yield of multiple-use goods and services to the public. This revised analysis needs to compare the Proposed Rule with costs and benefits for the modified alternative recommended above. The analysis quantifies some costs but only qualitatively estimates benefits. This makes it difficult if not impossible to draw any meaningful conclusion from the cost benefit analysis. The costs of the proposed rule are also significantly underestimated. Our specific page by page comments are set forth below:

Regulatory Impacts

Pg. 2 The agency incorrectly assumes that the site-specific project costs are not affected by the Proposed Rule. Rule direction to the Forest Plans will be translated to Project Implementation. Examples of huge increased costs at both the Plan and Project levels are Collaboration, species viability for all six taxonomic kingdoms, and trying to assure and demonstrate that the best available scientific information is used.

Pg. 3 The effects and cost analysis only are included for administrative processes including appeals and objections. Foreseeable litigation is ignored. The $1 billion spent on trying to implement viability of invertebrates in the 1982 Rule and the 29 years of on-going litigation certainly make the cost of the proposed Rule at 219.9 (viability for all six taxonomic kingdoms) foreseeable. Another $1 billion and another 29 years of litigation will be the outcome. The agency has not briefed the Congress on this fiscal impact.

Agency Cost Impacts

Pg. 4 The analysis incorrectly assumes that costs associated with Alternative C (a rule that would only focus on NFMA requirements) would be similar to the 1982 Rule procedures including viability of vertebrates. Clearly this is a major error and costs will be far greater than the 1982 Rule.

Efficiency and Cost-Effectiveness Impacts

Pg. 5 Proposed Rule – The agency incorrectly concludes there will be long term gains in planning efficiency. This is in obvious error when just considering the impacts of Section 219.9 (Viability of all six taxonomic kingdoms) and the associated litigation that will come with it. The Survey/Manage (400 species of Invertebrates) effort of the Northwest Forest

Plan has cost $33 million/year plus the litigation in multiple cases all of which the agencies lost.

Pg. 6 The agency incorrectly expects there will be gains in cost effectiveness resulting from collaboration. If the agency would quantify costs of current project level collaboration efforts, they would likely find that project costs have doubled and time from project inception to an awarded contract are substantially longer than without formal collaboration.

Pg. 8 Science Support – The agency incorrectly concludes the proposed Rule requirements will lead to a planning efficiency but ignores the complexity and cumbersome, costly procedural requirements to document "best available scientific information" putting the burden on the agency to prove that the best science was identified and used. A new set of legal challenges will also occur.

Pg. 8 Monitoring – Monitoring requirements increase; coupled with collaboration, more monitoring and more frequent reporting are the outcome. Costs will be substantially higher than that experienced in the 1982 Rule.

Pg. 9 Alternative C – The agency takes the stance that less requirements in a Rule means management units won't be able to perform effectively. Just the opposite would be the result; less requirements provides more flexibility. Further, the agency concludes reduced procedural requirements will lead to reduced capacity at the agency to perform. The agency also concludes that without collaboration, the agency will have less opportunity to resolve issues and conflicts. It's unknown how such a conclusion could be drawn.

Cost-Benefit Analysis:

<u>Methodology and General Assumptions</u>

Pg. 28 The analysis "does not estimate the trends in planning complexity or the associated costs." Clearly the proposed Section 219.9 viability clause for all six taxonomic kingdoms is foreseeable in terms of procedural costs and complexity and foreseeable in terms of new litigation. Foreseeable increased costs for analysis and litigation for "best available scientific information" and collaboration are also predictable. Hence, the whole methodology for cost analysis is fundamentally flawed.

<u>Methodology: Agency Cost Analysis</u>

Pg. 30 The agency chose to utilize only cost of administrative actions (project preparation through appeals or objections) and avoids inclusion of costs of litigation. Since litigation has been on-going for decades, the costs could have been determined and included. These costs not only include litigation of a specific case. The true cost also includes the delay and revision expense for multiple projects not involved directly in the litigation but that are affected by the results of the court decision.

<u>Efficiency and Cost-Effectiveness Impacts</u>

Pg. 42 – Collaboration

The agency makes faulty assumptions that collaboration will reduce monitoring costs and bring broader support and resolution of issues with their critics. Project level collaboration is showing that the agency agrees to do more monitoring and the extreme critics simply refuse to participate (because they can't agree with the Purpose and Need for the Project) and litigation is often not avoided. Whether to collaborate should be based on an assessment of risk.

Pg. 43 Science Support

The agency incorrectly assumes that "best available scientific information" will contribute to planning efficiency. The burden of proof falling on the agency and the litigation will prove otherwise.

Pg. 44 Monitoring

The agency incorrectly concludes that monitoring requirements under the proposed Rule will increase planning efficiency by " . . . improving capacity to gather information and reduce uncertainty . . .". The viability requirement for all six taxonomic kingdoms (Section 219.9) will prove otherwise. The agency has publically stated it has minimal knowledge about invertebrates. The Survey/Manage procedures (400 invertebrate species) in the Northwest Forest Plan have added $33 million/year just to **try** to address invertebrates. The agencies have been sued multiple times challenging their effort to make survey and manage more workable or to eliminate the requirement. However, they have lost every lawsuits. Why impose this costly approach nationwide?

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Comments

US EPA comments on 36 CFR 219 and Draft EIS

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MAY 16 2011

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Ric Rine
Assistant Director for Planning Ecosystem Management
USDA Forest Service
201 14th Street, S.W.
Washington, DC 22050

Dear Mr. Rine:

The U.S. Environmental Protection Agency (EPA) has reviewed the Draft Programmatic Environmental Impact Statement (Draft PEIS) for the Forest Service's Revised Land Management Planning Rule (36 CFR Part 219), which establishes procedures for the development and approval of land management plans (LMPs) for National Forest System (NFS) lands. Our review is pursuant to §309 of the Clean Air Act, the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) NEPA implementing regulations (40 CFR Parts 1500-1508).

The preferred alternative (Alternative A) proposes a Planning Rule that will be flexible and adaptable to a variety of the NFS landscapes, relies on science based decisions, can be integrated into existing plans nationwide, and increases the focus on public participation and collaboration. Individual forests and grassland LMPs have the mandate to examine a broader landscape, sustain forest health and resilience of ecosystems, and manage NFS lands so that they are ecologically sustainable and responsive to stressors such as drought, fire, and climate change.

EPA believes the Forest Service has put forth monumental efforts to involve the public and other stakeholders by holding numerous public listening sessions and forums across the nation, as well as using blogs and other social media to enhance participation. We appreciate that the Forest Service incorporated the issues raised at these sessions into its deliberations.

The process in the proposed Planning Rule consists of a three-part cycle: assessment, plan revision or amendment, and monitoring. In addition, the Forest Service will rely significantly on adaptive management plans and related monitoring, and when conditions change the plans will be improved with more frequent amendments based on new information and monitoring. We believe that the proposed Planning Rule offers an implementable and defensible planning framework which will result in improved protection and restoration of water resources.

However, we believe there are specific elements of the Planning Rule that could be clarified, modified, and improved as outlined in our detailed comments.

Based on our review of the Draft PEIS, we have rated the Draft PEIS as *Environmental Concerns – Insufficient Information* (EC-2). Specifically, EPA recommends modifications to the preferred alternative for the proposed Planning Rule to reduce impacts to watersheds, water quality, sole source aquifers, and wetlands. In addition, there is insufficient information in the Draft PEIS on the adaptive management approach that will be followed, including the triggers in the adaptive management plan that will require additional action, and the use of monitoring and model data in the decision-making process. Detailed comments are also enclosed, as well as a "Summary of Rating Definitions and Follow-up Actions."

In particular, EPA recommends that the Final PEIS include a more detailed discussion on the methods that will be used for watershed restoration and protection, and that the Forest Service's interdisciplinary "2011 Watershed Condition Framework" (WCF) is integrated into the Planning Rule. In addition, the proposed Planning Rule could be further enhanced by incorporating elements from both Alternatives A and D when establishing how watershed protection, restoration, and maintenance are to be prioritized. We believe additional consideration should be given to Alternative D, an alternative that was designed to evaluate additional protections for watersheds and an alternative approach to diversity of plant and animal communities. Given that over 50% of the nation's drinking water originates from NFS lands, protecting these resources for communities and wildlife is imperative.

We also recommend that the Final PEIS include specific information and examples of how the concepts of adaptive management would be used in the planning context. In particular we believe it would be useful to provide additional information and guidance on the types of monitoring that would be conducted and reflected in plan modifications, and how land managers will work with the general public to review the monitoring plans and results.

EPA also recommends some clarifications to the rule language that would increase protection of water quality, sole source aquifers and wetlands, included in the discussion about riparian protection. The proposed Planning Rule provides some additional direction with regard to riparian management; calling for the establishment of default widths for riparian management and for plan components to "maintain, protect, or restore riparian areas." We support this direction, but we are concerned by the lack of specificity.

EPA supports full implementation of the Forest Service's "right-sizing" guidance as expressed in the Forest Service's November 10, 2010 memo, "Travel Management, Implementation of 36 CFR, Part 212, Subpart A (36 CFR 212.5(b))" as an effective strategy to identify and implement a minimum necessary road system. This approach would support the removal of roads that contribute large amounts of sediment to streams and rivers.

EPA appreciates the opportunity to review the proposed Planning Rule and Draft PEIS. If you have questions or need further explanation of our comments please contact me at (202) 564-5400, or have your staff contact Elaine Suriano at (202) 564-7162.

Sincerely,

Susan E. Bromm
Director
Office of Federal Activities

Enclosure

U.S. Environmental Protection Agency- Detailed Comments
Draft PEIS for the Forest Service's Revised Land Management Planning Rule

Water Quality and Water Quantity

EPA recommends that the Final PEIS discuss the integration of the "2011 Watershed Condition Framework" (WCF) and "Forest Service Watershed Condition Classification Technical Guide" (Technical Guide) into the proposed Planning Rule to address EPA's interests regarding Water Quality and Water Quantity. The WCF contains specific indicators of Watershed Condition and is integrated with the Clean Water Act (CWA) Water Quality Standards and 303(d) listed waters. The WCF is also supplemented by the Technical Guide, which includes twelve indicators of Watershed Condition. The first indicator is Water Quality and contains a direct reference to 303(d) listed waters under the CWA (pg.25).

In addition, as the WCF focuses primarily on Watershed Restoration, we believe that the WCF should be revised to balance the objectives of Watershed Restoration and Watershed Protection. We recommend the "Aquatic Conservation Strategy" developed under the Northwest Forest Plan as an example of a document that includes both Watershed Restoration and Watershed Protection components.

Coordination and Cooperation Beyond National Forest Service (NFS) Boundaries

The "all-lands" approach, as described in the Draft PEIS and the proposed Planning Rule, is ideally suited to aid conservation efforts and to protect watersheds that cross jurisdictional boundaries. It is also effective in coordinating input and interaction with Federal, State, Tribal and Local government agencies and Non-Governmental Organizations (NGOs). The "all-lands" approach is especially suited for the design and implementation of unit monitoring plans and broader-scale regional monitoring strategies.

EPA believes that pollution and habitat degradation problems can best be solved by using an "all-lands" approach. The watershed approach incorporates a comprehensive strategy and the language in the final Planning Rule should reflect the need for watershed scale assessments, which will later be used to revise or amend Land Management Plans (LMPs) based on the need for change.

Watershed Analysis and Key Watersheds

The proposed Planning Rule includes an adaptive management framework that will assess conditions and stressors in the context of the broader landscape. LMPs will be revised or amended accordingly, and changes in the unit and landscape will be monitored. EPA believes that watershed analysis and watershed scale assessments are needed to appropriately guide the desired conditions that will be developed in the LMPs.

A watershed analysis is designed to provide information to understand the processes at work in a watershed including: how those processes are distributed in time and space, what the current upland and riparian conditions of the watershed are, and how all of those factors

influence riparian habitat and other beneficial uses. Examining conditions and stressors at the broad landscape scale has been shown to be an effective restoration strategy.

Overall, we favor the language in Alternative D at Section 219.6(b)(6) regarding watershed analyses. This Alternative was designed to evaluate additional protections for watersheds and an alternative approach to the diversity of plant and animal communities. We would support the language being modified to reflect the fact that some regions, such as the Northwest Forest Plan area, have completed a watershed analysis for a majority of watersheds. However, we recommend the rule be clear that watershed analysis should be completed (or updated as appropriate) for all NFS lands.

Given that broad scale assessments are a major objective of the final Planning Rule, EPA recommends the Final PEIS clarify why Alternative A, requires the assessments and monitoring needed to develop plan components to maintain and restore wetlands, but does not specifically require watershed scale assessments. We recommend that the final Planning Rule and EIS explicitly state the need for watershed analysis and watershed scale assessments. Many forests have already undergone watershed scale assessments and this language would not impact what has already occurred; if watershed scale assessments have already been conducted, tiered watershed assessments would likely be carried out.

EPA also recommends the final Planning Rule include the identification of key watersheds and the prioritization of watersheds as a focus of LMPs. Although rigid management prescriptions may not apply to all watersheds and flexibility is important, comprehensive forest management practices in general generate better protection and restoration of ecosystem functions on large spatial scales. In many regions, coordination with the States is vital to this process.

Riparian Buffers

We support prioritizing restoration projects to maximize the economic and ecological benefit of the treatment. These treatments should be based on a watershed analysis, targeted at "causes" rather than "symptoms," and integrated at a watershed scale. We also support protecting watersheds that contain high quality (or high potential) habitat. These watersheds represent the best of what remains, and provide the ecological infrastructure needed to support species recovery and the restoration of ecological integrity in lower functioning watersheds[1]. This position is consistent with the interdisciplinary, WCF document issued by the Forest Service[2], which should be integrated into any of the alternatives selected. This will ensure a systems approach to assessment for prioritizing protection and restoration activities. Adopting such an approach is consistent with and complementary to the assessment and management approaches encouraged under EPA's "Healthy Watershed Initiative" (http://water.epa.gov/polwaste/nps/watershed/index.cfm.)

We recommend that the final Planning Rule incorporate elements from both Alternatives A and D when establishing how watershed protection, restoration and maintenance are to be

[1] http://water.epa.gov/polwaste/nps/watershed/upload/complete_033111_final_low.pdf
[2] http://www.fs.fed.us/publications/watershed/Watershed_Condition_Framework.pdf

prioritized. Specifically, we recommend that the WCF is used to identify priority watersheds for active restoration of habitat and healthy watershed function.

EPA supports including Section 219.8(a)(3)(ii) to prioritize protection, maintenance, and restoration of Riparian Conservation Areas in LMPS. This prioritization should take place such that management activities within these areas are used primarily for restoration and when not, that best available science and applicable BMPs are used to minimize impacts to ecological function of the area.

The proposed Planning Rule provides additional direction with regard to riparian management; calling for the establishment of default widths for riparian management and for plan components to "maintain, protect, or restore riparian areas." We support this direction, but we are concerned by the lack of specificity. While the current trend in forest planning is toward active restoration and protection (Draft PEIS p. 94), there remains a range of views as to how and to what extent riparian areas should be protected and restored. Without an established minimum buffer, we are concerned that there may continue to be a wide variation in the resultant protection for riparian management.

The final Planning Rule should establish the importance of riparian conservation areas. All relevant LMPs should include a well documented rationale for selecting minimum or default widths for riparian areas in which only conservation-oriented management is allowed. For instance, a minimum of one "site potential tree height" or equivalent should be considered as the default *minimum* buffer width in forested ecosystems. The final Planning Rule should prohibit plans in which management activities within riparian areas are not consistent with the promotion of aquatic and riparian values and should direct forest plans to include standards and guidelines that require management activities within riparian areas to be primarily for purposes of restoration.

We believe that the minimum buffer required under Alternative D would provide both consistency and flexibility. While ecologically derived buffers may be wider or narrower for a particular site, it is generally accepted that disturbance to vegetation or soil within 100 feet length of a water body carries with it the potential to impact a number of riparian and aquatic functions (e.g. water temperature regulation, microclimate, sedimentation and nutrient filtration, streambed/bank stability and fish and wildlife habitat)[3]. The 100-foot or other minimum buffer therefore provides a reasonable point of departure for developing future management strategies. We recommend, however, that Section 219.8(a)(3)(I) of the proposed Planning Rule clarify that the minimum width does not replace established management strategies such as the Aquatic Conservation Strategy under the Northwest Forest Plan where buffers have already been established in accordance with the best available science.

We believe that alternative D provides flexibility because the minimum buffer widths established under Alternative D would be temporary pending riparian area delineation, and the temporary defaults could be greater than 100 feet. Following delineation, buffers could be

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[3] Fred H. Everest and Gordon H. Reeves. 2007. Riparian and Aquatic Habitats of the Pacific Northwest and Southeast Alaska: Ecology, Management History, and Potential Management Strategies. United States Department of Agriculture Forest Service Pacific Northwest Research Station General Technical Report PNW-GTR-692

widened or narrowed, based on site specific characteristics. Further, the buffers established under Alternative D do not represent "no management" areas, but rather areas where any management should support protection and restoration goals. This point could be reinforced by replacing the term "riparian conservation area" with "riparian management area."

Road Systems

Managing the millions of miles of NFS and other non-NFS roads on the forests and grasslands is a perpetual task. Over 300,000 miles of roads need to be maintained, improved and/or removed and the need far exceeds the dollars available. The Draft PEIS states (page 98) that road density standards alone might not be effective in addressing the greatest resource impacts, and that density is not always a reliable indicator of impacts. While there is support for this statement, it should also be acknowledged that road systems and road conditions have a greater effect on water quality, fish, and wildlife than any other management feature on NFS lands. In addition, on average, there are numerous benefits for decommissioning, closing, and maintaining roads. The Science Review Summary Report[4] identified additional areas that should receive attention, including road building and erosion, especially in habitats vulnerable to erosion (Science Review p. 17). This is particularly true in sensitive riparian zones and key watersheds. EPA recommends including objectives to achieve reductions in road density and mileage in key watersheds as one way to improve watershed health (Alternative D, Section 219.8(a)(4)(ii)).

EPA also recommends that the final Planning Rule include additional guidance on road management. Although the Travel Management Rule (36 CFR part 212), requires individual forests to identify the minimum necessary road system, we believe there should be more direction regarding roads required in the LMPs, given that roads are the major source of sediment and the adverse impacts it causes in the forests. The Draft PEIS states that fewer and better maintained roads result in a lower potential for sedimentation into streams, blockage of aquatic passage, habitat fragmentation, channel instability, and alteration of surface and subsurface flows (p. 85). The final Planning Rule should incorporate language that NFS roads be adequately maintained, constructed, decommissioned, and monitored to achieve sediment reduction, minimize erosion, and maintain connectivity of aquatic and riparian habitat. Many forests already use best management practices (BMPs), developed in conjunction with the state, for adequate road construction and maintenance. The proposed Planning Rule should support any developments implemented by forests resulting in road improvements. We recommend the Forest Service incorporate language from Alternative D (Section 219.8(a)(4)) which indicates that LMPs should include standards and guidelines for minimum necessary road systems, road removal and remediation, protection, maintenance and restoration of a natural range of variability.

Total Maximum Daily Loads (TMDL)

The Draft PEIS states that guidance for watershed condition varies widely and that many plans already focus on meeting water quality requirements for 303(d) listed water bodies (p. 82). Across the country, coordination with states is imperative to develop the 303(d) list and to meet water quality targets. In order to avoid duplication of efforts, we recommend the TMDL process

[4] http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5295052.pdf

is considered in the final Planning Rule, and it should be included specifically in Section 219.6(b)(2), "identifying and considering relevant governmental assessments and plans", Section 219.8(a)(iv), "including 303(d) listed water bodies as criteria for maintaining and restoring watersheds", and Section 219.12(a)(5)(I), "monitoring indicators".

Multiple Uses

The definition of Ecosystem Services, as it is described in the Proposed Planning Rule (pg. 8523), is drawn from the "Millennium Ecosystem Assessment (MEA)" completed by the United Nations in 2005. The title for the Synthesis and Full Report in the MEA is "Ecosystems and Human Well-Being." We recommend final Planning Rule reference the MEA and Human Well-Being in Section 219.19 in the definition of Ecosystem Services and that "Human Well-Being" is included as the objective of Ecosystem Services. This distinction is important and creates the balance between the objectives stated in Section 219.9, "Diversity of plant and animal communities" (nature centric) and Section 219.10, "Multiple Uses" (human centric).

Ecosystem Restoration

EPA supports the changes in the Draft PEIS and proposed Planning Rule that replace the application of traditional Silvicultural Systems with the concepts of "Ecosystem Restoration" and "Desired Future Condition" to achieve the desired Multiple Uses, including Ecosystem Services. This is a major positive change. The intervention (treatment(s)) necessary to restore forest ecosystems is different than the Silvicultural Systems needed to maintain them in perpetuity. EPA recommends the Final PEIS include a discussion of how guidance on these concepts will be transferred to the field.

The example of a Longleaf Pine Savanna Ecological Restoration on page 8489 of the Proposed Planning Rule is a case in point. We move from the "Existing Condition", a loblolly pine forest with closed canopy to a "Desired Future Condition" a longleaf pine savanna open canopy that is maintained by recurring fire on an average 3-year cycle. The ongoing and repeatable Silvicultural System being employed to sustain a longleaf pine savanna has not been identified. Moving beyond Ecosystem Restoration to Sustainable Forest Management Silvicultural Systems achieves the desired Multiple Uses, including Ecosystem Services. We recommend guidance is developed and communicated to the stakeholders as part of a plan revision.

Climate Change

NFS land management planning provides a unique opportunity to conduct Landscape Level Ecosystem Management in the United States. The Forest Service recently completed a National Roadmap and Performance Scorecard for Climate Change. The three components or modes in this roadmap are: assess, engage, and manage. The assessment of risk and vulnerabilities is central to the "assess mode" and largely accomplished through a Climate Change Vulnerability Assessment. EPA recommends that a Climate Change Vulnerability Assessment is included as a required component in the final Planning Rule and incorporated as part of the Assessment Phase of the planning cycle.

In addition, adaption and mitigation objectives are accommodated in the Agency's National Roadmap and Performance Scorecard for Climate Change. However, the overriding goals of ecology integrity, resilience and resistance on National Forest Service Lands means that short-term changes in carbon stocks and fluxes may result from restoration actions that enhance long-term sequestration of carbon in ecosystems.

Use of Science

Section 219.6(b)(2) of the proposed Planning Rule states that the Responsible Official shall "(i)dentify and consider relevant information contained in governmental or non-governmental assessments, plans, monitoring evaluation reports, and studies, including relevant neighboring LMPs." We support the proposed all-lands approach, and bringing all of the best available science to bear on the land management planning process. However, controversial resource management issues are often accompanied by peer-reviewed science that supports several points of view. In order to ensure the integrity and productivity of the planning process, EPA recommends that the final Planning Rule establish a process or criteria for determining what constitutes "relevant information." One possibility could be to allow the Responsible Official in consultation with the interdisciplinary planning team, agency cooperators, and USDA Forest Service Research and Development to determine when a piece of science does not have adequate standing to be brought forward into the planning process.

Monitoring

The proposed rule emphasizes the need to keep plans current through an adaptive planning cycle. By its nature, this cycle is closely tied to monitoring. We agree that the planning process should be responsive to new science, new information, and new conditions on the ground, and that monitoring is key to setting the stage for adaptation. We are concerned, however, that the Draft EIS does not contain sufficient detail on the adaptive management approach that will be followed or the triggers within the adaptive management plan that will require additional action such as mitigation or a reduced level of disturbance. In addition, the Final EIS should clarify what data (either monitored data or model data) will be used for adaptive management decisions. We also encourage the Forest Service to incorporate language into the final Planning Rule that would endorse a precautionary approach when decision makers have only limited data available to make a fully informed decision about a significant change in resource management.

Public Involvement

The proposed Planning Rule at Section 219.6(1) sets a high bar for broad internal and external involvement in the assessment process to inform plan development or revision. Specifically, the proposed Planning Rule encourages the participation of the public and appropriate Federal agencies, States, local governments, other stakeholders, and scientists in the assessment process. The expectation for public involvement in plan amendment assessments, however, is not described in the rule. The proposed Planning Rule at Section 219.6(c) states, "(w)here the responsible official determines that a new assessment is needed to inform the need

for an amendment, the responsible official has the discretion to determine the scope, scale, process, and content for the assessment depending on the issue or issues to be addressed." While there is a need to establish a practical amendment process, we also note that amendments are a key component of adaptive management, and that assessments informing those amendments will be of key interest to public and agency stakeholders. EPA recommends that Section 219.6(c) be revised to define when and to what extent the public should be involved in amendment assessments.

Public Water Supplies

Below please find for your consideration specific rule language changes concerning public water supplies and sole source aquifers:

Page 41, Paragraph 2, recommended change:

"The proposed rule would require that plans include components to maintain, protect, and restore public water supplies, source water protection areas, *and sole source aquifers* where they occur on NFS lands. Source water protection areas are areas delineated for public water systems as part of the State *or Tribal* source water assessment and protection program and may include ground water or surface water or both."

At the end of this paragraph, please add: *Sole source aquifers are underground water supplies designated by the Environmental Protection Agency (EPA) as the "sole or principal" source of drinking water for an area.*

Page 136, item (IV), recommended change:
"Public water supplies, source water protection areas, *sole source aquifers*, ground water, and other bodies of water . . . "

Page 162, recommend adding "Sole source aquifer" to the Definitions Section, just above "Source water protection area:"

"Sole source aquifer. Sole source aquifers are underground water supplies designated by the Environmental Protection Agency (EPA) as the "sole or principal" source of drinking water for an area. The program was established under Section 1424(e) of the Safe Drinking Water Act of 1974. There are currently 77 Sole Source Aquifers in the U.S."

Page 162, recommended change to the definition of "Source water protection areas:"

The area delineated by the state *or tribe* for a public water system (PWS) or including numerous PWSs, whether the source is ground water or surface water or both, as part of the state *or tribal* source water assessment and protection program (SWAP) approved by the US Environmental Protection Agency under Section 1453 of the Safe Drinking Water Act.

Environmental Impact Statement (EIS) Rating System Criteria

EPA has developed a set of criteria for rating draft EISs. The rating system provides a basis upon which EPA makes recommendations to the lead agency for improving the draft EIS.

RATING THE ENVIRONMENTAL IMPACT OF THE ACTION

- **LO (Lack of Objections)** The review has not identified any potential environmental impacts requiring substantive changes to the preferred alternative. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposed action.

- **EC (Environmental Concerns)** The review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact.

- **EO (Environmental Objections)** The review has identified significant environmental impacts that should be avoided in order to adequately protect the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). The basis for environmental Objections can include situations:

    1. *Where an action might violate or be inconsistent with achievement or maintenance of a national environmental standard;*

    2. *Where the Federal agency violates its own substantive environmental requirements that relate to EPA's areas of jurisdiction or expertise;*

    3. *Where there is a violation of an EPA policy declaration;*

4. *Where there are no applicable standards or where applicable standards will not be violated but there is potential for significant environmental degradation that could be corrected by project modification or other feasible alternatives; or*

5. *Where proceeding with the proposed action would set a precedent for future actions that collectively could result in significant environmental impacts.*

- **EU (Environmentally Unsatisfactory)** The review has identified adverse environmental impacts that are of sufficient magnitude that EPA believes the proposed action must not proceed as proposed. The basis for an environmentally unsatisfactory determination consists of identification of environmentally objectionable impacts as defined above and one or more of the following conditions:

    1. *The potential violation of or inconsistency with a national environmental standard is substantive and/or will occur on a long-term basis;*

    2. *There are no applicable standards but the severity, duration, or geographical scope of the impacts associated with the proposed action warrant special attention; or*

    3. *The potential environmental impacts resulting from the proposed action are of national importance because of the threat to national environmental resources or to environmental policies.*

Top of page

RATING THE ADEQUACY OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (EIS)

1. **(Adequate)** The draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

2. **(Insufficient Information)** The draft EIS does not contain sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the reviewer has identified

new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the proposal. The identified additional information, data, analyses, or discussion should be included in the final EIS.

3. **(Inadequate)** The draft EIS does not adequately assess the potentially significant environmental impacts of the proposal, or the reviewer has identified new, reasonably available, alternatives, that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. The identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. This rating indicates EPA's belief that the draft EIS does not meet the purposes of NEPA and/or the Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS.

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 198.187.3.194
Form Letter:

Comments

See Attachments

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SKAGIT COUNTY
BOARD OF COMMISSIONERS

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May 16, 2011

Forest Service Planning DEIS
C/O Bear West Company
172 E 500 South
Bountiful, UT 84010

RE: Planning Rule

To Whom It May Concern:

On behalf of the Skagit County Board of County Commissioners I would like to thank you for the opportunity to make comments on the National Forest System Land Management Planning Rule (Rule). Our County is a little over a million acres with about 75% in forested lands and of that there is over 25% in National Forest lands Mount Baker National Forest). The management on these lands has a significant impact to our county. As it stands now, the proposed Rule is overly complex and in many cases somewhat unclear as to the desired outcome. It has mandates that prevent it from being workable and affordable. We support the letter submitted by National Association of Counties (NAOC) and would like to emphasize the following:

219.2- Having a unit supervisor as the responsible official should help in the understanding and preparation of local plans. It allows the county to be involved early in the planning process.

219.3- Science should be considered through a planning process; however, it should not become a debatable platform that then turns into potential litigation for every action. The requirement for the responsible official to document in detail the identification, interpretation, and application of scientific findings and conclusions will stifle any planning process and place science above all other considerations. Studies have been completed. To study studies while preparing a plan is a senseless exercise. If in the future science indicates a change, that change will occur; history has proven that. Over the last decade counties in Washington State have adopted regulations protecting critical areas and habitats. They have also put codes in place protecting resource lands from development. This type of information needs to be

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included demonstrating the NFS lands do not need to assume a full burden of ecological responsibility.

219.4- Public participation should be encouraged and it will help the federal government understand the local plans and regulations as well as the community planning goals. We support the requirement to encourage local governments in seeking cooperating agency status. Local governments have expertise that should help in the preparation of environmental documents. It is important to have consistency between the forest plan and the local plans.

219.7- With a new plan or plan revisions, our County firmly believes that NFS lands need to be actively managed to reduce the threat of fire, release of green house gases and diseases. This is an issue even for counties on the west side of the Cascades during those dry years and seems to be ignored.

219.8- Sustainability that includes economic with the ecological and social is good. However, we are concerned that this will get watered down if there is an imbalance in the weight given to requirement to 'take action' on ecological sustainability and only 'guide' social and economic sustainability. This needs to be weighted differently due to the affects the NFS lands have on the community as a whole. The term 'sustainable' needs to be clarified.

219.9- The Rule should have plans provide for diversity of plant and animal populations and NOT require having 'viable populations'. If this is not changed it will lead to continuous litigation. It has the potential of making other parts of the Rule impossible to achieve. All multiple uses should have equal weight. This section needs to ensure that the ecological use is NOT elevated above the other multiple uses.

219.19- The definition of 'ecosystem services' is too broad and elevates it to the same level of importance as the multi-uses. Plans should provide for them but not to the point that it becomes a regulation if can't happen.

Thank you for your considerations and we look forward to working with the Forest Service in its efforts to adopt the Planning Rule and the plan that follows. Working together as neighboring governments should have the potential of a better outcome for ecological, social and economic factors.

Sincerely,

Ron Wesen

Ron Wesen, Chairman
Skagit County Board of Commissioners

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 167.10.240.1
Form Letter:

Comments

SEE ATTACHED LETTER

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May 13, 2011

Forest Service Planning DEIS
c/o Bear West Company
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RE: Comments on the DEIS for the National Forest System Land Management Planning Proposed Rule, 36 C.F.R. Part 219, RIN 0596-AC94.

Dear Forest Service:

The California Attorney General, representing the California Natural Resources Agency (CNRA), and on behalf of its various departments, boards, conservancies, and commissions, appreciates the opportunity to comment on the proposed National Forest System Land Management Planning Rule being promulgated by the USDA Forest Service through publication of the Notice of Proposed Rulemaking for a new National Forest System Land Management Planning Rule (proposed rule) published in the Federal Register on February 14, 2011. This comment letter serves to address concerns both as to the substantive rules itself, and with the environmental review and legal sufficiency of that rule pursuant to the National Environmental Planning Act (NEPA) and the National Forest Management Act (NMFA).

Due to the substantial federal ownership and how intermingled federal and non-federal forest lands are in the California, the state has a very large stake in the management of National Forest System lands, and therefore a strong interest in efforts to create a new planning rule. Given our federal and state legal and regulatory mandates, state agencies should play a unique role in the planning process. The CNRA appreciates the current effort of the Forest Service and recognizes that this proposed rule demonstrates a well-intentioned attempt to move away from the commodity-driven planning rule promulgated over three decades ago, and head toward a conservation and restoration-themed management program.

Though a good start, the proposed rule contains a lack of specificity that could lead to unintended consequences. In its effort to retain flexibility and forest-level managerial discretion, the Forest Service (USFS) has omitted key provisions from the rule that would ensure reliable management practices and sustainable outcomes. As written, individual forests could take wildly varying approaches to the same management issues. Accordingly, the CNRA would like to see the rule provide greater direction for local managers and greater clarity for stakeholders, forest

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beneficiaries, state and local entities alike so that inconsistent approaches do not lead to the further degradation or loss of valuable forest resources.

In an effort to assist USFS, the CNRA has broken its comments into three parts. First, the CNRA will provide general comments about the proposed rule. Second, the CNRA will identify areas in which the rule is procedurally defective or in which it fails to comport with the NEPA or the NFMA, as this letter will also serve to highlight inadequacies in the Environmental Impact Statement. Finally, the CNRA will provide specific language that could help USFS to make surgical revisions to address generalized concerns.

I. General Comments

A. Consultation and Coordination with State and Local Entities

As its greatest priority, the CNRA would like to see required communication and coordination by the individual forests with affected state and local entities earlier in the planning process. Though the proposed rule makes an attempt at engaging state, local, tribal and regional entities early on, it does not mandate this coordination or define its relevance. The CNRA believes strengthening this early coordination and consultation process will help the Forest Service resolve potential conflicts prior to formal appeal, thereby avoiding continual litigation.

Importantly, the federal government has coordinated local and state plans into its rule making process in other land-management contexts, and thus this rule should seek to be consistent with that approach, and not divergent. Specifically, the Bureau of Land Management requires its management plans to be consistent with State, local and tribal plans, which ensures that there is a partnership between agencies all tasked with promoting the health, safety, and welfare people impacted by the decision-making. This rule's approach should be no different. (See revisions to section 219.6 for specific language).

B. Best Available Science

The current rule deviates from the usual standard to rely upon and base decisions on the best available science. This standard is important and the best available science should be used, not merely considered. While discretion can lead to flexibility, it can also lead to uncertainly. Where the restoration and sustainability of one of our nation's greatest natural resources is at stake, such uncertainty is not acceptable. Forest managers and planners should be expected to use the best data and science available to them when making decisions. Additionally, deviation from this is in direct contravention with NEPA and thus creates procedural flaws that will inevitably mire any planning effort in litigation. (See Part II below for further detail).

C. Regional Level Review and Decision-Making

The rule should elevate decision-making to a statewide or Forest Service Regional level when setting standards for conservation of species and habitats, and establishing monitoring of indicator species. Currently, there is too much reliance on the assumed "good will" of local

administrators at the forest-level. Giving such broad discretion to each individual forest manager could result in inconsistent practices and inconsistent approaches across regions. Further, having a regional-level review will increase efficiency by ensuring a state does not have to make the same recommendation for multiple forests on a forest-by-forest basis. In a state the size of California, which contains 18 separate National Forests, consistent practices and approaches are significant tools.

It should be noted that the CNRA supports the creation of sub-regional (multi-forest) teams that can initiate a dialog leading to development of a process for working together to resolve differences and promote common priorities and strategies for conservation of species and habitats among various forests. In this way, the concerns and site-specific needs of local forests could be considered in a broader context during the consultation process.

D. Use of State Assessment and Planning Documents in Federal Forest Planning

The state of California continues to advocate for the explicit inclusion of Statewide Forest Assessments and Resource Strategies in the development of forest plans. The California Department of Forestry and Fire Protection submitted its Statewide Forest Assessment and Resource Strategy document as mandated by the 2008 Farm Bill and was notified that these documents were reviewed by the Forest Service and approved on behalf of the Secretary of Agriculture in August of 2010. As mandated by federal law, California's Statewide Forest Assessment and Resource Strategy documents provide important localized data on the current state of forests across all management boundaries. We strongly believe that California's Forest Assessment and Resource Strategy should be utilized by the Forest Service in its planning efforts and that future forest planning documents be consistent with it. As the proposed planning rule is drafted, there is no guarantee of such consideration or cooperation.

While the reference to state Forest Assessments under §219.6(b)(2) is an important acknowledgement, the CNRA is also concerned that, as written, the proposed rule may not recognize the unique role and contribution to planning efforts that can come from continued collaboration with state and local partners who have already undertaken planning efforts authorized by federal and/or state law and regulations that impact public safety and natural resource protection. Examples of such efforts include, but are not limited to, California's Statewide Forest Assessment and Resource Strategy, California's Strategic Fire Plan, Community Wildfire Protection Plans, other tribal forest/fire plans, the California Wildlife Action Plan, the California Climate Action Plan, California Water Plan and other local government planning documents. We would like to see the language of §219.4 strengthened to ensure that this coordination and collaboration will continue as envisioned under the 1982 rule.

E. Watershed Management

In addition to providing for too much discretion at the local forest level, the rule is also extremely vague as to watershed management. Similar to sustainability, water is a pivotal issue that should be called out more clearly and be made a more central part of the rule. As stated in the rule, one of the original purposes for establishing the Forest Service is to protect our Nation's

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water sources. Water is one of many ecosystem services that healthy forests provide to downstream beneficiaries. Currently, the Forest Service, as manager of the headwater areas, does not have adequate resources to manage forests in a way that achieves ecological health. The rule should more clearly articulate the need for those who benefit from healthy forests and watersheds to contribute more to necessary stewardship activities. For example, in the state of Colorado, the Denver Water Agency has already spent $40 million to remove sediment and debris from the water system and waterways since a 2002 wildfire. There is a significant opportunity for the Forest Service to engage in agreements with water agencies and other beneficiaries across the western United States to have them share in efforts to increase the number of acres treated for fire resiliency to avoid the enormous post-fire costs. We suggest the rule call for an effort to increase the number of these types of financial partnerships and encourage the development of more unique partnerships and agreements to secure the funds necessary to achieve the ecological goals described throughout the NFMA itself.

F. Viability Standards

The proposed rule simply does not go far enough in its efforts to ensure the continued existence of special status species throughout their entire range. To its credit, the 1982 rule called for the maintenance of viable populations of existing native and desired non-native vertebrate species throughout the entire planning area. In contrast, the proposed rule only requires that the species population be maintained somewhere within the particular forest. With respect to a large forest, or large multi-forest planning effort such as the Sierra Nevada Framework, this requirement is so broad as to be meaningless. As a result of the lack of standards for maintaining species populations, land use plans could allow the degradation of healthy populations or even the extirpation of some species in parts of a forest. In addition, the language of the proposed rule vaguely requires "maintenance or restoration" of healthy and resilient ecosystems, which would leave to the responsible official's discretion whether to restore a species in a given area when it is possible and desirable, or whether to simply "maintain" the status quo.

As to species conservation, the proposed rule includes vague requirements for forest plans to contribute to the recovery of species listed as threatened and endangered and to conserve species that are candidates for listing, but leaves completely within the responsible official's discretion how to "maintain viable populations of species of conservation concern within the plan area." Yet, the responsible official need only maintain the viability of the species to the extent of the "inherent capability" of the forest, an undefined term that would allow the Forest Service to decide that no further effort is required to protect the species. Similarly, determining what fits the definition of a "species of conservation concern" is left entirely to the discretion of the responsible official. There is scant guidance as to how the official should go about making this determination, or what the process should be for doing so.

G. Ecological, economic and social concerns must be considered in an integrated fashion

Many of CNRA's departments have missions that require the support and improvement of the environmental, economic and social well-being of state resource areas. We support the USFS in including sustainability as a primary goal as this is critical for the rural communities that

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surround these public lands. The USFS makes the point it has more direct influence on ecological sustainability and less on social and economic, which seems to be the case. However, the distinction the rule is attempting to make on how the USFS will address the differences between the ecological and social and economic sustainability is confusing and needs clarification. Understanding how efforts to achieve forest ecological health will affect communities sharing watersheds with the USFS is critical in guiding agency decisions. The State of California is finding through its support to community-based forestry collaboratives that the more the three are considered in a comprehensive and integrated fashion, the better a community and the local forest unit can build trust, find common ground and move forward in implementing projects that can show benefits for all aspects of sustainability. Social, environmental and economic considerations are not competing values; rather they are truly interdependent and all play an important role in effectively implementing landscape scale restoration.

CNRA supports a Planning Rule that takes into account both socio-economic values, including recreational values, and ecological values of the forests, as well as providing and allowing for collaborative working relationships with state, local, and federal agencies and the public in support of sustained recreation and resource protection opportunities. It would therefore like to see clarification as to the connectivity of recreational activities and ecosystem functions from National Forest System lands to adjacent outdoor recreation and natural resource areas; multiple-uses that balance recreation opportunity with ecological sustainability; a "transparent" streamlined and efficient planning framework that supports coordination with state agencies and other land managers.

H. New plan development or plan revision

Under the 1982 planning rule, only standards are legally enforceable. The creation of a new planning rule may be the appropriate time for the agency to consider providing additional emphasis and/or weight to both goals and desired future conditions as laid out in this section. These pro-active plan components could be important tools for the agency to use in developing and defending management decisions by looking at the long term trend of the forest and undertaking actions that may result in short-term impacts but are important in achieving the goals or desired future conditions stated in the forest plan.

I. Monitoring

Adequate monitoring is absolutely necessary to support the adaptive management framework chosen in the proposed rule. There needs to be a long-term commitment that will improve our understanding of the status and trends in resources that go well beyond individual forest boundaries. Periodic reporting and sharing of monitoring data in a standardized fashion is important. We suggest that a well recognized framework such as the Montreal Protocols be used for reporting on forest conditions and be incorporated into the planning rule as a guide for local managers. It is essential that the monitoring framework included in the proposed rule be sensibly designed so that the monitoring program can reliably executed when the USFS and other public agencies are facing challenging budget constraints. The President's fiscal year (FY) 2012 budget

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proposal presents an uncertain future for funding for the Forest Inventory and Analysis (FIA) program, which acts as the nation's forest census. At the funding levels proposed in the President's budget, California could be impacted by longer cycles between inventories and potential cessation of higher resolution remote sensing projects. With these potential reductions in mind, we believe it is important to continue forward with "all-lands" monitoring efforts (as envisioned under the proposed rules course lens approach) to make sure we can build upon our current knowledge of all forest ecosystems, regardless of ownership.

J. Stewardship Contracting

Given the challenge of adequate funding, it is important to take advantage of outside monitoring efforts being conducted by other government and non-governmental parties. With this in mind, we believe that the language of §219.12(c)(5) should be strengthened to require the responsible official to look to outside research and monitoring efforts. Collaboration is an important part of continuing to improve the efficient and effective use of limited monitoring resources.

Similarly, the rule does not mention stewardship contracts which could be executed to leverage existing programs, funds, or expertise. Importantly, the USFS has the authority to use stewardship contracts and award on a best value basis, allowing the government to consider local benefit as a factor, thereby supporting the economic and social well-being of the surrounding communities. These contracts provide a unique opportunity for the agency, communities, contractors and other stakeholders to work collaboratively to develop well-designed projects, increase public satisfaction, draw upon the knowledge in the contractor community and help create sustained economic opportunities for local business and workers. Furthermore, it allows local contractors to focus up to 10 years on achieving the desired ecological end results on a particular landscape. This is a critical tool currently available that supports the broader definition of sustainability and therefore should be mentioned in the rule and encouraged to be used more broadly.

K. Pre-Decisional Administrative Review Process

The CNRA supports the use of the pre-decisional administrative review process for land management plan proposals as set forth in the proposed rule. We are hopeful that this review process would lead to more collaborative decisions, a method of confirming that national forest plans are consistent with plans required by federal and state statutes and accompanying regulations as well as ultimately save litigation costs and allow the agency to more efficiently implement management on the ground.

L. Notice Periods

The CNRA believes all notice periods for objecting, including those in sections §219.52 and §219.56, should be increased from 30 to 90 days. This would give state agencies and departments dealing with staffing and budget issues, as well as interested stakeholders, adequate time to participate in the pre-determination review process.

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II. Non-compliance with NEPA and NMFA

We believe that the Draft Environment Impact Statement (DEIS), as currently written, does not comply with NEPA as it does not adequately set out the environmental impacts of the proposed rule, nor does it sufficiently discuss mitigation for these impacts. Under NEPA, decisions undertaken by federal agencies must be based on a complete analysis of potential environmental impacts, so that those decisions are fully informed and well-considered. *See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 558 (1978). The EIS must: "set forth sufficient information for the general public to make an informed evaluation . . . and for the decision maker to consider fully the relevant environmental factors and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action." *Sierra Club v. United States Army Corps of Engineers,* 701 F.2d 1011, 1029, n.18 (2d Cir. 1983).

Public involvement and scrutiny are essential to implementing NEPA. The purpose of an EIS is to permit those who do not participate in its preparation to understand and consider meaningfully the reasoning, premises, and data that the decision makers relied upon, and to permit a reasoned choice among different courses of action. *See Friends of the River v. FERC*, 720 F.2d 93, 120 (D.C. Cir. 1983); see also 40 C.F.R. §1500.1(b), (c). NEPA mandates that an EIS contain a reasonably thorough discussion of the significant aspects of the probable consequences of an action. *Oregon Natural Resources Council v. Lowe*, 109 F.3d 521, 526 (9th Cir. 1997). As to the proposed action, an EIS must disclose the environmental impacts, a reasonable range of alternatives, and the means to mitigate the adverse environmental impacts. 42 U.S.C. § 4332(2); 40 C.F.R. §§ 1508.11, 1502.16(h). An EIS fails to meet NEPA's requirements if the information and analysis it contains is "too vague, too general and too conclusory." *Silva v. Lynn*, 482 F.2d 1282, 1285 (1st Cir. 1973). Further, an EIS must contain accurate and high-quality scientific analysis. 40 C.F.R. § 1500.1(b). We believe that the DEIS for the Forest Planning Rule does not meet these requirements of NEPA, as set out in detail below.

In addition, we believe that the proposed rule does not satisfy the requirements of NFMA. Pursuant to NFMA, the Forest Service must determine whether the land uses proposed in a forest plan are of the "best" use, as compared to all the other possible uses for the same lands, including protection of biological and aesthetic resources and other recreational uses. NFMA requires a full discussion of the balancing of the competing demands upon national forests. *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1511 (9th Cir. 1992). As currently constructed, we do not believe that the proposed rule provides sufficient guidance for land managers to carry out this balancing of uses.

A. The Forest Service's DEIS is inadequate as a NEPA planning document because it lacks the necessary analysis of impacts of the proposed rule on the quality of the environment.

While the DEIS acknowledges the challenges and uncertainty created by climate change and evolving science, and outlines several ways to structure management actions to adapt to changing conditions, it fails to explain the consequences of the approach the agency has chosen

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to take, as required by NEPA. The DEIS deemphasizes the environmental effects of the implementation of the rule (see DEIS, pp. 49-55). This failure of analysis has been repeatedly rejected by the Court in the three *Citizens for Better Forestry* decisions that reviewed previous Planning Rule attempts by the Forest Service.

Although the DEIS identifies the principle of "adaptive management" as an "on-going science-based process" to respond to changing conditions, the proposed rule creates no requirements that best-available science actually be used in this process. Instead, it gives local forest officials almost unfettered discretion -- they are free to determine what constitutes "best available scientific information," and are not required to actually apply the best science as long as they give it an unspecified amount of "consideration." This creates the opportunity of forest managers to disregard scientific evidence when making land use decisions in forest plans. In addition, the rule provides no direction for forest managers with respect to how to take climate change into consideration. Under NEPA, the Forest Service is required to address and fully analyze the impacts that could result from decision-making that allows the best science to be disregarded.

In addition, in its ecosystem recovery section, the DEIS does not fully discuss the direct, indirect, or cumulative impacts causing degradation to ecosystems, nor does it have much discussion of the mitigation measures that could reduce or eliminate the impacts. Under NEPA, much more analysis is required of stressors that lead to degradation of the forests, and what types of mitigation may be applied to address these impacts.

The DEIS also fails to adequately analyze the impacts of the proposed rule regarding water resources on federal land. The DEIS acknowledges that forested land provides the highest quality water, and outlines some areas of concern with regards to water quality, but does not provide in-depth analysis of either potential water quality impacts or measures that can be taken to mitigate the harm. Similarly, the DEIS only briefly mentions the potential water quality threats from roads and "non-point sources," but fails to provide a detailed discussion of ways to mitigate the harm or prevent degradation. It does not address the long-standing controversy over roadless inventories, the possibility that new roads will be created in plan areas under the discretion provided to forest managers, or the impacts potentially associated with new roads. The CNRA believes where roads are placed in national forests directly impacts the condition of the watershed.

Finally, while the DEIS acknowledges that the "Forest Service and NFS lands are major contributors to threatened and endangered species recovery plans and actions," it does little more than note the difficulties of planning in a dynamic ecosystem. This is inadequate under NEPA.

B. The proposed rule fails to provide sufficient guidance to direct forest-by-forest planning under NFMA.

The proposed rule fails under NFMA to provide the meaningful, enforceable principles necessary to guide later, more focused planning in each forest. Specifically, it improperly delegates to local forest managers the creation of standards NFMA requires to ensure appropriate

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uses are balanced. 16 U.S.C. §§ 1604(g)(3); *Ohio Forestry Assn. v. Sierra Club* 523 U.S. 726, 729-30 (1998). This delegation exceeds the authority of such officials and violates the Administrative Procedures Act as it relates to NFMA because it allows for an unfettered discretion by forest managers with little or no clarity for stakeholders. With respect to numerous important forestry management principles, the proposed rule abandons the setting of standards that sufficiently protect the natural and recreational resources of the forest in favor of allowing decision-makers to exercise discretion with very little or no guidance. This approach provides no assurances to the public that important forest values will be preserved, and makes it impossible for the public to hold the Forest Service accountable for the decisions that are made at the local level.

As an example, while the proposed rule declares that there is to be no harvesting of trees on lands unsuitable for timber production, several significant exceptions undermine this prohibition, without adequate standards as to when the exceptions should apply. In addition, the proposed rule requires that plans consider various factors when creating size limitations on timber cutting, but such limitations may be exceeded, simply by giving 60 days' notice to the Regional Forester. There are no standards to govern how those exceptions will be granted. (See section F of Part I of this comment letter for additional discussion of the potential problems caused by giving broad discretion to land managers without sufficient standards.)

III. Suggested Amendments Section-by-Section

CNRA makes the following suggestions about revising the Planning Rule:

§219.3 Role of science in planning

CNRA's proposed revision is intended to strengthen the USFS's obligation to use best available science in the planning process:

"The responsible official shall use the best available scientific information throughout the planning process identified in this subpart. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to a particular decision or action. The responsible official shall document this consideration in every assessment report (Sec. 219.6), plan decision document (Sec. 219.14), and monitoring evaluation report (Sec. 219.12). Such documentation must:

(a) Identify sources of data, peer reviewed articles, scientific assessments, or other scientific information relevant to the issues being considered;

(b) Describe how the social, economic, and ecological sciences were identified and appropriately interpreted and applied; and

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(c) For the plan decision document, describe how scientific information was determined to be the most accurate, reliable, and relevant information available and how scientific findings or conclusions informed or were used to develop plan components and other content in the plan."

§219.4 Requirements for public participation

As was mentioned earlier, the CNRA is concerned that the role of the state of California, as well as tribal and local governments, may be weakened under the proposed rule language included at §219.4(b)(1) pertaining to "[c]oordination with other public planning efforts." Section §219.7(a) of the 1982 planning rule states that "[t]he responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes."

However, §219.4(b)(1) of the proposed rule states that "[t]he responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal Agencies, and State and local governments, **to the extent practicable and appropriate.**" (emphasis added).

The inclusion of the final clause provides an ambiguous caveat to the requirement to coordinate with other governmental and tribal efforts. The need for coordination and consistency with government/tribal entities with public health and safety mandates is crucial. Federal forest and fire management actions guided by forest plans and cooperative fire management agreements (e.g. the California Master Cooperative Wildland Fire Management and the Stafford Act Response Agreement) directly affect fire risk to adjacent lands, downstream impacts of a wildfire-flood sequence, and the production and transport of smoke from managed fire or a wildfire -- particularly on Californians residing in non-attainment areas designated under the Federal Clean Air Act. Therefore we believe that the obligation that forest plans be consistent with state, tribal and local government plans and cooperative agreements should be strengthened rather than weakened (as currently proposed in the draft planning rule).

Accordingly, the CNRA proposes the following revisions to the language of §219.4(b)(1):,

"The responsible official shall engage the public—including Tribes and Alaska Native Corporations, other Federal agencies, State and local governments, individuals, and public and private organizations or entities— early and throughout the planning process as required by this part, and no later than 60 days after the first scoping notice or other public notice identifying a new or renewed planning process is issued." .

§219.6 Assessments

The State of California continues to advocate for the explicit inclusion of Statewide Forest Assessments and Resource Strategies in the development of forest plans. This state plan is a

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living "all-lands" assessment that will be updated periodically and is uniquely situated to inform the USFS planning process. Under §219.6(b)(2) considering the content of the required assessment under the proposed rule language, the responsible official is required to "[i]dentify and consider relevant information contained in governmental or non-governmental assessments ...." The proposed rule continues stating that "[s]uch documents **may** include State forest assessments and strategies ...." (emphasis added).

While the CNRA is encouraged by the reference to the Statewide Forest Assessments and Resource Strategies included in the proposed rule, we believe that the draft planning rule must be strengthened to ensure that all USFS Forest Plans be found consistent with the findings and priorities contained in the Statewide Forest Assessment and Resource Strategy documents.

The CNRA therefore suggests the following addition to §219.6:

"the responsible official is required to identify and consider relevant information contained in governmental or non-governmental assessments, plans, and policies .... such documents shall include, but not be limited to, State forest assessments and strategies."

"Additionally, the responsible official shall ensure that all management plans and any amendments or revisions to them are consistent with officially approved or adopted resources related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as such guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to forest management plans."

§219.8 Sustainability

The CNRA would like the USFS to ensure that forest plans take proactive management actions to restore degraded ecosystems and prohibit forest plans from choosing to simply "maintain" degraded ecosystem conditions. Further, forest plans should, as was mentioned, take a firm stance in the protection of water supplies consistent with statutory obligations. The current draft does not fully reflect NFMA's strong requirement that plan regulations ensure against irreversible or serious degradation of water quantity, quality, and availability (16 U.S.C. 1604(g)(3)(E)). Finally, consistent with the research on fisheries and aquatic biology, the CNRA suggests a presumptive default buffer of 100 feet on riparian areas while allowing for science-based variation at both the plan and project level.

The CRNA would like to see the following changes to §219.8:

"Within Forest Service authority and consistent with the inherent capability of the plan area, the plan must provide for social, economic, and ecological sustainability, as follows:

(a) *Ecological sustainability.* (1) *Ecosystem plan components.* The

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plan must include plan components to maintain, and where degraded, restore, the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area, taking into account:

(i) Landscape-scale integration of terrestrial and aquatic ecosystems;

(ii) Potential system drivers, stressors, and disturbance regimes, including likely climate change; how they might affect ecosystem and watershed health and resilience; and the ability of those systems on the unit to adapt to change;

(iii) Air quality; and

(iv) Wildland fire and opportunities to restore fire adapted ecosystems.

(2) *Ecosystem elements*. The plan must include plan components to maintain, protect, and where degraded restore:

(i) Aquatic elements, such as lakes, streams, wetlands, stream banks, and shorelines;

(ii) Terrestrial elements, such as forest stands, grasslands, meadows, and other habitat types;

(iii) Rare aquatic and terrestrial plant and animal communities, consistent with Sec. 219.9;

(iv) Public water supplies, sole source aquifers, source water protection areas, groundwater, and other bodies of water (including guidance to prevent detrimental changes in quantity, quality, and availability, including temperature changes, blockages of water courses, and deposits of sediments); and

(v) Soils and soil productivity (including guidance to prevent irreversible soil damage, erosion, and sedimentation).

(3) *Riparian areas.* The plan must include plan components to maintain, protect, or if degraded restore riparian areas. Plans must establish a default width for riparian areas around all lakes, perennial and intermittent streams, and wetlands, within which management must promote aquatic objectives. The default will presumptively be 100 feet from the greater of the 100 year high water line or channel migration zone, for all lakes, perennial or intermittent streams, and wetlands, but may vary based on best available science, and local ecologic or geomorphic factors or the type of waterbody. The default width will apply unless the actual riparian area for a waterbody or a site has been delineated based on best available scientific information.

(b) *Social and economic sustainability.* The plan must include plan components to guide the unit's contribution to social and economic

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sustainability, taking into account:

(1) Social, cultural, and economic conditions relevant to the area influenced by the plan and the distinctive roles and contributions of the unit within the broader landscape;

(2) Sustainable recreational opportunities and uses;

(3) Multiple uses, including ecosystem services, that contribute to local, regional, and national economies in a sustainable manner; and

(4) Cultural and historic resources and uses."

§ 219.9 Diversity of plant and animal communities.

CNRA believes that the following language should be added to §219.9:

"Within Forest Service authority and consistent with the inherent capability of the plan area, the plan must include plan components to maintain the diversity of plant and animal communities, as follows:

(a) *Ecosystem Diversity.* The plan must include plan components to maintain, and where degraded to restore, the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area, consistent with Sec. 219.8(a), to maintain the diversity of native species. (b) *Species Conservation.* The plan components must provide for the maintenance or restoration of ecological conditions in the plan area to:

(1) Contribute to the recovery of threatened and endangered species;

(2) Conserve candidate species; and

(3) Maintain viable populations of species of conservation concern within the plan area. Where it is beyond the authority of the Forest Service or the inherent capability of the plan area to do so, the plan components must provide for the maintenance or restoration of ecological conditions to contribute, to the extent the Forest Service and the area can, to maintaining a viable population of a species within its range. When developing such plan components, the responsible official shall coordinate to the extent practicable with other Federal, State, tribal, and private land managers having management authority over lands where the population exists.

(c) *Diversity of tree and other plant species.* The plan must include plan components to preserve, where appropriate, and to the degree practicable, the diversity of native tree and other native plant species similar to that existing in the plan area, as required by NFMA (16 U.S.C. 1604(g)(3)(B))."

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§ 219.12 Monitoring

We request that the following changes be made to §219.12:

"(a) (5) Each unit monitoring program must contain one or more monitoring questions or indicators addressing each of the following:

(i) The status of select watershed conditions;
(ii) The status of select ecological conditions;
(iii) The status of focal species and species of conservation concern whose status is not otherwise determined through focal species monitoring; [...]"

§ 219.19 Definitions.

CNRA believes that these additional definitions would greatly enhance the efficacy of the Planning Rule:

"*Candidate species*. Species proposed or found warranted to be listed by the responsible federal agency as threatened or endangered."

[...]

"*Connectivity*. Pertaining to the extent to which conditions exist or should be provided between separate national forest or grassland areas to ensure habitat for breeding, feeding, or movement of wildlife and fish within their home range or migration areas or corridors."

[...]

"*Species of conservation concern*. Species other than federally listed threatened or endangered species or candidate species, for which there is substantial evidence demonstrating significant concern about its capability to persist over the long-term in the plan area, including but not limited to species listed by state departments or agencies with adjacent or joint jurisdiction."

[...]

"*Viable population*. A population of a species that continues to persist over the long term across its range with sufficient abundance, reproduction, and survival to be resilient and adaptable to stressors and likely future environments."

[...]

Conclusion

The State of California appreciates the efforts of the planning rule team at the USFS to develop a rule that will offer a sound framework to implement on-the-ground management and address the pressing threats to forest lands in California and across the country. Again, thank you for the

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opportunity to provide comment and to suggest improvements on the proposed rule. We look forward to continuing to work with the USFS to ensure that all forests are managed to serve the economic and social values of Californians and to ensure the vital health and sustainability of our forests.

Sincerely,

BRIAN W. HEMBACHER
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

Secretary for Natural Resources

OT	S	RT	DT	EA	F	RI	CE

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COUNTY OF SISKIYOU

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May 13, 2011

Forest Service Planning DEIS
c/o Bear West Company
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To Whom It May Concern:

Siskiyou County is the fifth largest county in the State of California with almost two-thirds of its land base in National Forest. This enormous federal responsibility is divided among five National Forests: Klamath, Shasta-Trinity, Six Rivers, Modoc and Rogue-Siskiyou. The Klamath National Forest (KNF) alone accounts for approximately 1.2 million acres of our county's 4 million acre land base. There is a massive interwoven landscape of National Forests, various sized communities, public roads and private homes and property.

National Forest Plans are the embodiment of the resultant unavoidable nexus between the federal government's land management role and local government's fiduciary obligations to the local citizenry. A consistent, flexible, feasible rule by which these plans are developed is therefore essential not only to United States Forest Service (USFS) managers, but for local county government that is inevitably and substantively affected by actions and activities on the National Forests. It was therefore with great optimism that Siskiyou County welcomed the effort to revise the existing Planning Rule that has proven overly burdensome and costly in so many areas of practicality.

Unfortunately, the Planning Rule Draft Environmental Impact Statement (DEIS) not only moves in the wrong direction in far too many critical mandated areas, it proposes to embrace many concepts that have no statutory foundation. In and of themselves, these self-imposed obligations could prove the final fatal blows to the USFS's ability to effectively manage the resources for which it is responsible.

Overview: *The Dilemma*

From the Sundry Civil Appropriations Act (Organic Act) of 1897 that established the National Forest Reserves "to improve and protect the forest within the reservation,... securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States (*16 U.S.C. § 475*),"

through the Multiple Use Sustained Yield Act (MUSY) of 1960 and the National Forest Management Act (NFMA) of 1976, the intent of Congress has been to efficiently and sustainably utilize the National Forests for economic productivity running the gamut from logging, grazing and mining through recreation and tourism. These were fully and consistently established and intended to be useful lands, not mere ornaments.

Since 1897, obviously, society's definitions of concepts as basic as "clean water," not to mention such inherently innocuous notions as "sustainable," have evolved. Worse, that evolution has fractured along ideological lines that have come to be among the most divisive and detrimental in America's cultural history. While the progressive creation and refinement of the laws themselves is somewhat reflective of that continuing evolution, Legislative branch action is rendered virtually inconsequential in comparison to the Executive and Judicial branches of government. Most shamefully and, particularly to forest counties such as Siskiyou, tragically, the Executive and Judicial branches' attempts to accommodate societal change have served to all-but-fatally undermine the most fundamental principal of the National Forests: **USE!**

Use is not a vague term, particularly as expressed throughout federal statute regarding the National Forests. The NFMA, the law that established Forest Plans and requirements for them, is replete with unequivocal mandates for productive use. For example, the Secretary of Agriculture is required to establish standards that "...shall not preclude the use of sound silvicultural practices, such as thinning or other stand improvement measures: [and] that these standards that shall not preclude the Secretary from salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow or other catastrophe, or which are in imminent danger from insect or disease attack. (*16 U.S.C. § 1604,(m)(1)*)." Anyone familiar with the huge catastrophic fires caused by overly dense stand conditions and the resultant billions upon billions of dollars lost in environmental damage and rotting timber is well aware that Congress' mandate for "use" has fallen victim to Executive and Judicial interpretations.

Of all the entities in America engaged upon such matters, the professionals in the USFS are most directly and painfully aware of this problem and the contributory factors. In fact, addressing this situation was perhaps the prime underlying motivation for rewriting the Planning Rule. What appears to have happened, however, is the latest manifestation not only of the long-standing problem, but the mindset causing the worsening spiral toward gridlock and disaster.

At the most basic level, the idea that government can successfully reform itself almost always proves a disappointment. Even further, when government seeks self reform by enlarging its scope and adding increasingly complex layers of refinement, it is assuredly on a fool's errand. While the USFS may feel compelled to attempt to accommodate societal change and ideological diversity into its statutorily mandated responsibilities, it does so at dire peril both to the precious object of is efforts as well as its own institutional integrity, to say nothing of the people directly affected by such a maladapted governmental response. Siskiyou County and its citizens are among those victims.

It is not that the USFS may not have solved some problems for developing Forest Plans that may be of limited short-term benefit to its staff by refining what must go into these plans. Rather, it is in the long run, the fertile new fields for litigation and budget-busting research and monitoring (the areas that are primarily responsible for gridlock), that the new Planning Rule errs. It is essentially in this vein that these comments are aimed.

Comments

While Siskiyou County has pertinent expertise throughout its departmental staff, there are numerous elements of the Planning Rule and the developmental process that are best understood and articulated by individuals and organizations associated with Siskiyou County. For the convenience that such well-expressed expertise lends to the USFS in understanding the County's concerns, the County is attaching copies of Planning Rule DEIS comments from these entities. The County requests that these comments be considered on our behalf.

The County does have specific areas of the Planning Rule DEIS on which it wants to add emphasis to that given in the attached documents. These are:

Coordination

There has been much national ado about the "Coordination Mandate" the federal government has with respect to local governments. The duty of the federal government to "coordinate" with local governments is expressed throughout federal statute. The language consistently differentiates government-to-government obligations as very distinct from requirements of the government to involve the public. This is only natural since unlike individuals or interest groups, all levels of government are legally accountable for a multitude of responsibilities. It is for these reasons that the 1982 Planning Rule makes much of the relationship that must exist between the federal government and local government in order to successfully develop a workable Forest Plan.

County governments' experiences with this intended relationship has been very mixed. Where National Forests have actively consulted and substantively attempted to address the concerns of local government on the front end of planning, outcomes are much more successful. Where the federal interaction with local government has been given short shrift for various reasons by paring coordination to the bare semantic minimum, much time and effort must be expended on the back end of plan development to deal with controversies that could have been minimized.

Much of the difficulty experienced with the involvement of local governments has been the confusion caused by the "Cooperating Agency" option. Often, the USFS extends this offer as being the same thing as coordination. When local governments decline this offer due to the technical and fiscal burden this places

on them, the USFS feels it has provided the opportunity to coordinate and has been turned down. Coordination mandate accomplished!

This is simply not the case. As in any "project," the burden properly belongs almost exclusively on the "project proponent," in this case the USFS. Obviously, local government is obligated to help as much as it can, but mostly it is to tell the project proponent what it needs to consider. It is the proponent who must figure out how to deal with it. Again, local governments are there to provide input and advice but not to the technical level and liability required of a cooperating agency relationship. This is the intended differentiation between cooperation and coordination. This distinction generally gets lost in the shuffle.

The 1982 Planning Rule had the right idea, but the language provides too much temptation for the USFS to minimize this vital component of planning. In *CA Resource Agency v. USDA (US District Ct. N. CA. case No. C 08-3884 MHP)*, the courts clearly stated the obligation on the USFS by this part of the Planning Rule. Given the disparity of interpretation that undermines the beneficial interaction between the USFS and local government, the Planning Rule should strengthen the coordination mandate, not weaken it.

Expansion of statutory mandate

As detailed and explained in the attached documents, the expansion upon statutory Planning Rule mandates for the USFS is a grave error and occurs throughout. "Ecosystem services," "species viability," and "climate change" are among the most troubling of such new Planning Rule arenas. Voluntarily incorporating these into the Planning Rule will not do anything to insure that they are addressed. What will be guaranteed, unfortunately, is inordinate staff time devoted to project development, additional research and monitoring as well as the attendant non-payroll costs. Worst of all is the opening of countless doors into previously untouched litigation territory. This is not the direction to be moving in order to improve planning.

Opening doors to increased litigation

As onerous as direct planning costs have become, they pale in comparison to the litigation attendant to the planning processes. It would appear from the expansive rhetoric, overly detailed language and newly proposed inflexible requirements that the crafters of the Planning Rule were more devoted to providing fodder for environmental lawyers than securing the multiple uses and sustainable capacities of the National Forests, much less creating efficiencies and saving tax dollars. There is an appallingly cavalier lack of regard for the lessons learned over decades of environmental litigation over National Forest management. As simplistic as it may seem, less really is more in terms of providing for the flexibility necessary to achieve proper, timely and efficient management of these lands by limiting rhetoric, detail, and superfluous or ill-

substantiated mandates. And if there is one thing that litigation has taught land managers, it is that built-in flexibility is the best way to avoid losing a lawsuit.

Cumbersome environmental planning comes at the expense of multiple use

It is not that the USFS is not trying to deliver on the promise of multiple uses of the National Forests; it is that planning and other processes for projects are at every turn rendering productive uses harder and harder to implement. Thus, for many years the balance has been tipping precipitously against the productive uses for which the National Forests were created, and alarmingly toward a status nearly identical to that of National Parks. The bulk of the comments above and in the attached documents should make it abundantly clear that the proposed Planning Rule aggravates rather than alleviates process-related impediments, thereby further compromising the National Forests' multiple use mandates.

It is Siskiyou County's sincere hope that this comment document assists the United States Forest Service in recognizing that an early, thorough and substantive relationship with local government along the lines of the 1982 Planning Rule are essential to optimizing outcomes and maximizing broad-based public support. As the level of government most intimately accessible to the people, local government is indispensible in both roles.

As well, in advocating a streamlined, minimalist approach to the Planning Rule, Siskiyou County hopes that the United States Forest Service sees and seizes this opportunity to move in the direction of efficient, productive stewardship that will satisfy every reasonable standard of environmental protection.

Sincerely,

Brian McDermott, County Administrative Officer
County of Siskiyou

cc: Sen. Diane Feinstein, Rep. Wally Herger

Enclosures: Comments from: (1) National Association of Forest Service Retirees; (2) American Forest Resource Council [May 10, 2011 unsigned draft]; (3) National Association of Counties

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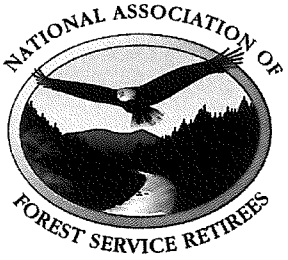

Sustaining the Legacy

Subject: Comments on the 2011 Forest Service Proposed Rules for National Forest System Land Management Planning

> On March 26, 1903 President Teddy Roosevelt spoke to the Society of American Foresters on the importance of professional management of the "Forest Reserves" now known as National Forests. In part he said "'your attention must be directed to the preservation of forests, not as an end in itself but all a means of preserving and increasing prosperity of the Nation."

The members of the National Association of Forest Service Retirees (NAFSR) thank the Forest Service for the opportunity to comment on the proposed planning regulations as presented in the Federal Register Volume 76, Number 30, pages 8480-8528, published on February 14, 2011.

NAFSR is a non-profit, non-partisan, organization, dedicated to the promotion of the ideals and principles of natural resources conservation upon which the U.S. Forest Service was founded. It is committed to the science based sustainable management of the national forests for the public good.

NAFSR's members are uniquely qualified to remember the prodigious efforts of past planning attempts under many past regulations and to bring their experience to inform the currently proposed rule. NAFSR selected a small team of its members to evaluate the proposal. Along with a combined length of service of more than 100 years and breadth of experience of former line officers, from District Ranger, Forest Supervisor, Regional Forester, Station Director and Deputy Chief spanning five Regions, an Experiment Station and the Washington Office. We also received individual comments from several of our members that have been incorporated in our response.

Our collective memory of NFS planning spans the time from Ranger District Multiple Use Plans under the Multiple Use Sustained Yield Act of 1960 (MUSY) to the latest iteration of planning under the National Forest Management Act of 1976 (NFMA). The Forest Service again embarks on another round of planning rules. We are very concerned about the time and expense expended for planning over the course of forty years, time and expense that could have been devoted to actual management and improvement of the national forests. We do not propose to shortcut planning, but rather to constrain its effort to that necessary to meet the basic intent of the law while devoting time thus saved for beneficial treatments of the forest landscapes. In fact, in recognition of the time and cost associated with past forest planning efforts, it was our understanding that the Agency wished to develop a process that was responsive to changing conditions, including acquisition of new information, while streamlining the effort.

General Comments

First, as former Forest Service employees, we are aware of the sincere, honest, and professional effort that went into developing the proposed rule. Clearly the Agency has tried to balance the needs of the Administration and the many comments received from the public on the previous proposal. We also note that you have incorporated some of our earlier comments in this version. For example, we are pleased that you have recognized the need to use modern tools, such as the Internet and virtual meetings, and to consider and evaluate public preferences and values in the planning process. Further,

providing additional opportunities for pre-decisional collaboration and public participation combined with pre-decisional objection opportunities may improve public acceptance of forest plans developed under the new planning regulations. We also are pleased that you recognize the need to find new ways for dealing with the issue of species diversity, although we believe that the approach presented will open up new areas of controversy and litigation.

However, we believe that the overall content of the proposal is overly ambitious, overly optimistic, complex, costly, and promises much more than it can deliver. Rather than providing a simplified, streamlined process for developing and amending plans, we fear that the opposite will result. This is especially troubling in what are likely to be difficult times for funding of federal programs of all kinds. Without addressing the overarching issue of the fundamental purposes of the national forests in this age of controversy, it is unlikely that any of the current controversies involving the use of the national forests will be resolved by this proposal. This issue must be addressed by Congress if there is to be a change from the multiple use and sustained yield principles set out in MUSY and reaffirmed with passage of NFMA. Nonetheless, the proposed planning regulations purport to establish new purposes and priorities for the national forests, such as dealing with climate change and providing "ecosystem services," and management for "ecosystem restoration," for which there are no statutory authorities.

While the proposal is thorough, it is long and tedious to read. At the same time, it is short on useful and workable details—and the devil is in the detail. We are told that more information on how the promises in the rule text and explanatory materials will be fulfilled will be found in the Forest Service Manual and Handbook Directives to be issued at a later date. Unfortunately, given the lack of trust of the Agency among many of the most vocal and litigious members of the public, this is not likely to bring much comfort. Further, while many of the goals in the proposed rule are commendable, such as coordinating across the landscape, they may be unattainable.

The purpose of land management plans must be clear. Planning itself will not improve forest conditions. This is especially true if plans are continuously appealed and litigated. Plans are meant to improve conditions but are wasteful of effort and expense without positive results. Current planning generally falls short in its ability to work its way through the legal hoops. In this regard, the various planning rules and resultant forest planning have failed. Many NAFSR members believe that conditions on the national forests continue to decline. Insect epidemics, frequent large scale wildfires, an unsustainable uneven distribution of age classes of trees, and over-stocking leading to a decline in health and susceptibility to external agents prevail, especially in the west. This is in spite of great effort and expense, most probably exceeding more than one billion dollars over the last thirty years of planning under NFMA.

NAFSR can only conclude that the costs, and the unhealthy conditions now existing on national forests, point to the fact that national forest planning to date has not just failed, but has failed utterly. NAFSR believes that the proposed regulation will not correct the fundamental deficiencies in past planning efforts.

It appears to NAFSR that the past is about to repeat itself under the proposed rule. It is exceedingly complex, with 48 pages in the Federal Register, with 30 pages devoted just to explanation of the rule. This complexity, along with some inconsistencies explained later, present the unfortunate responsible officials an impossible task, in our opinion, to construct a plan that meets the intent of NFMA, improves the health of the national forest and minimizes legal assaults and administrative appeals. A rule that requires more than twice its number of pages for explanations should be ample evidence of onerous complexity.

Finally, we wish to strongly emphasize that the U.S. Forest Service role primarily resides by statute in producing, protecting and actively managing wildlife and fisheries habitat. All encompassing

species situations/status is by statute and "Public Interest Doctrine" are primary responsibilities of the U.S. Fish and Wildlife Service, USDI, National Marine Fisheries, NOAA and the respective States.

Forest Planning and NEPA

The planning rule contributes to complexity by forgetting, or perhaps ignoring, a unanimous Supreme Court (the Court) case that ruled a forest plan, in this case the plan for the Wayne National Forest, did not affect the environment and therefore was not "ripe" and therefore was not judiciable (OHIO FORESTRY ASSOCIATION, INC., PETITIONER *v.* SIERRA CLUB et al. May 18,1998).

The proposed rule itself is accompanied by a Draft Environmental Impact Statement (EIS) that finds a lack of effect on the environment from a programmatic regulation or forest plan. The Court's decision stated: **"As this Court has previously pointed out, the ripeness requirement is designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also *to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.*'** " (Emphasis added). Clearly, the proposed rule and ensuing forest plans will not have concrete effects on the ground.

Experience has shown that activities anticipated in the forest plan, such as proposed silvicultural treatment, can be changed drastically by natural events such as insect outbreaks and fire or by changes in the Agency budget. Thus, the plan does not commit the Agency to a particular action. The commonality of such changes amply demonstrates the futility and waste of speculative front end NEPA analysis which is more appropriately done at the project level.
In further argument against a NEPA analysis at the forest plan level, Section 2.9.5 of the proposed rule states: "A new plan or plan revision requires preparation of an environmental impact statement". The Court denies this need. Secretary Vilsack has himself, in a letter to Senator Murkowski when discussing the Tongass Plan, acknowledged the premature nature of the forest plan:

> "The Forest Service does not see a need to amend the Plan as part of the transition to young growth management. The Tongass Forest Plan is a permissive document similar to a local zoning ordinance. It allocates land to various designations where some types of activities are prohibited and other activities are allowed, subject to standards and guidelines that vary among the different designations. However, it does not make the final decisions on what activities will remain in place at any given location. **Only project-level site-specific decisions authorize activities to be conducted.** Accordingly, a forest plan cannot commit the Agency to a level of activity, and the estimated level of activities that would be possible under a forest plan does not carry the force of law." (Emphasis added)

While in our view, this is true, the Secretary cannot in this case take this stand and then require a NEPA analysis in all other plans.

To further emphasize the futility of evaluating impact under NEPA when no impacts are to be concretely prescribed, the planning rule at 219.7 New plan development or plan revision, . . . the responsible official shall;

(i) Review …
(ii) Identify …
(iii) Consider …

(iv) Identify ...
(v) Identify ...
(vi) Identify ...
(vii) Identify ...
(viii) Identify ...
(ix) Identify ...

Nothing in these nine instructions expresses or implies tangible, concrete actions affecting the environment. They are process requirements only.

NAFSR strongly recommends dispensing with NEPA requirements for the planning rule and for forest plan revisions and amendments, since there is no commitment to activities on the ground (or preclusion of further plan amendments to allow activities) and no effect on the environment of the planning actions themselves. In the interest of full display, however, NAFSR would like to see an economic analysis of the cost of implementing the plan.

Major Concerns with the Proposed Planning Regulations

1. The proposed rule provides that "the plan must include plan components to maintain the diversity of plant and animal communities...and maintain viable populations of species of conservation concern within the plan area."

Maintaining viable populations should not be a requirement of the regulations because there is no requirement in the NFMA to "maintain viable populations" and measuring and proving that a forest plan will "maintain" a viable population is nearly impossible, leaving the Forest Service vulnerable to lawsuits. The proposed rule creates a new obligation to "conserve" fish and wildlife species that are "candidates" for listing under the Endangered Species Act (ESA). This will create a clamor for the Forest Service to develop recovery-like plans for conservation of candidate species even though recovery plans are not required for unlisted species by the ESA. It will also provide fertile ground for litigation.

We are pleased that the proposed rule no longer requires providing for species diversity at the species population level and recognize that forest service lands provide only a portion of needed habitat for species as part of a larger landscape. NFMA required diversity only at the ecological community level. Further, other state and federal agencies are mandated to manage species viability at the population level. Since maintaining viability of vertebrate populations remains challenging and technically infeasible, the agency has necessarily relied on surrogates to satisfy this requirement. If, as we maintain, this requirement is unachievable, the requirement itself may be invalid. Thus, we commend the agency for returning to the original language of NFMA and focusing on maintaining the diversity of plant and animal communities in the planning area with consideration of the role that the national forests play in the larger landscape.

The Forest Service should develop rules that focus on maintaining the diversity of habitats rather than imposing requirements to identify, survey, and maintain "a viable population" that is not required by the NFMA.

If the final rule continues to include the concept of "species of conservation concern," we also recommend deleting paragraph 36 CFR 219.9 (b) (3) and replacing it with "Conserve species of conservation concern [using the proposed definition of 'species of conservation concern'] within the plan area through formal partnership agreements with appropriate state, federal, tribal, and private entities." And, delete the current definition of "species of concern" in 36 CFR 219.19, page 8525 and replace it with "Species of conservation concern: Species other than federally listed threatened or endangered

species or candidate species identified by the NatureServe Network of the Natural Heritage Programs and Conservation Data Centers according to NatureServe Conservation Status Rank as G1, T1, N1, Si, and G2, T2, N2, S2; and by states as threatened and endangered.

The proposed species diversity approach using "fine" and "coarse" filters may be an improvement over the current process, but will be the subject of much litigation. In addition, measuring and proving that a forest plan will "maintain" a viable population is nearly impossible, leaving the Forest Service vulnerable to lawsuits. Additionally the regulation proposes to expand the "maintain viable populations" requirement to include invertebrates such as slugs and insects, plants, and fungi. This will end up continuing the futile exercise to "survey and manage" that brought forest activities to a snail's pace, if not to a grinding halt.

The proposed rule also does not include the phrase "to meet overall multiple-use objectives" to make clear that the Forest Service obligation to provide for diversity of plant and animal communities is in the context of the balance required to meet overall multiple use objectives. The rule should focus on maintaining the diversity of habitats in this multiple use context rather than imposing requirements to identify, survey and maintain "a viable population" that is not required by NFMA.

2. The proposed rule establishes a new layer of planning called "Assessments".

3. The proposed rule defines ecosystem services too broadly and improperly elevates ecosystem services to the same level of importance as multiple uses as defined and listed in MUSY.

4. The proposed rule contains complex and unrealistic monitoring requirements; for instance, the regulation requires biennial monitoring evaluation reports and monitoring of "measurable changes related to climate change". This proposed regulation is unrealistic. In pursuit of the perfect and in response to public pressure, monitoring plans could quickly grow in size, complexity, and cost. This would result in limiting needed projects to only those for which limited monitoring funds were available. Further, we don't believe that it is possible to measure changes related to climate change within a two-year time frame over the geographic scale of a national forest.

5. The proposed rule inappropriately gives equal status to "protection of recommended wilderness and steam corridors eligible for Wild and Scenic River designation as that of Congressionally designated Wilderness and Wild and Scenic Rivers.

6. The proposed rule states that "Plans will guide the management of NFS lands so that they are ecologically sustainable and contribute to social and economic sustainability..." This language and accompanying provisions in the rule text effectively establish a binding requirement for ecological sustainability, above the requirement that the plan "contribute" to social/economic sustainability. This disparity is not justified by any rationale, including any difference in ability of the agency to control or influence various aspects of sustainability which vary widely by forest and geographic area.

7. The expressed objective of use of best available science is a special concern that we address in detail later in our comments.

Helpful Proposals

1. The proposed rule stating that Forest Supervisors will generally be the "responsible official" who approves land management plans (219.2) should be beneficial.

2. The use of a pre-decisional objections process and limiting it to those who have been substantially engaged in the process should be beneficial. Requiring objections before the final plan is released allows

the Forest Service to consider changes before their final decision, as will making the forest supervisor the responsible official. However, we believe that given the likely length and complexity of the plans, proposed period for filing a request to participate in an objection and for filing an objection may be too short.

Areas Needing Additional Emphasis

1. The Forest Service Planning Regulations should assure Forest Plans are written in partnership with the states in which the National Forest is located.

2. Retain intergovernmental coordination in the proposed rule. Communities - including Tribal entities - in close proximity to or socially and economically dependent on a national forest should be a partner in developing a National Forest Land Management Plan.

3. The final rule should include provisions for land exchanges, conveyances and adjustments with states, communities and tribal entities.

Concerns About Terminology

The draft regulation includes ambiguous, undefined and confusing terminology. For example:

Broader landscape often appears. What is broad enough under the circumstances will be contentious.

Stressor is a new term and should be defined, with examples.

Default width has no real meaning by itself. What does the term imply when considering management activities in riparian areas? What activities are permitted and what are proscribed? Is it meant to be a substitute for "buffer"? If so, it is even more ambiguous than "buffer".

What does **landscape scale integration of terrestrial and aquatic ecosystems** mean? How would the responsible official know when it is met?

What are **system drivers**?

Where will be the guidance across planning areas to determine the effects **of climate change** and how it might affect the planning area?

What is meant by **connectivity of ecosystems and watersheds in the plan area**? Does it mean that a watershed must be "connected" to other watersheds? One could argue that a watershed has connectivity if it's connected to a hydropower system or a domestic water supply system. Can it mean that like ecosystems must be connected to each other? The plan will be doomed if these components are not "connected".

What is meant by the term **ecosystems**, anyway? Presumably it's a discrete delineated area with similar characteristics, but exactly what are those characteristics, and in what manner is the responsible official obliged to select among various and numerous possible components comprising a "system"?

It would be helpful to the lay reader to have examples of what **ecosystem services** are.

The definition of **conservation** is incomplete. We suggest adding "and the management of natural and renewable resources with the objective of sustaining their productivity while providing for human use compatible with sustainability of these resources" based on the "Dictionary of Forestry," edited by John Helms and published by the Society of American Foresters in 1998.

As indicated earlier, we have concern about the use of **species of conservation concern** especially since it seems to have no accepted definition in the literature.

Special Concerns about the "Use of Best Science" Requirement

The Forest Service has chosen to place in regulation at draft Section 219.3 mandatory requirements that the agency extensively document and then determine what constitutes "best available scientific information" in the planning process. While a laudable objective if clearly stated as an aspirational goal, this requirement is nothing short of astonishing in view the volume of litigation which has burdened the agency in recent years, much of it involving contested science of resource protection.

To place such a regulatory burden on the agency is unwise, unnecessary as a matter of policy or law, unfunded, unstaffed and (as far as we know) unprecedented in federal regulation on such a broad scale. Not only must the agency take into account "best science", but such science must be documented and an explanation given regarding how it was considered. Further, draft Section 219.3(c) provides:

(c) For the plan decision document, describe how scientific information was determined to be the most accurate, reliable, and relevant information available .....

Science does not come labeled "good, better, best" and its adequacy is often a matter of professional judgment or the "eye of the beholder". The draft regulation mandates the consideration of such rapidly evolving scientific fields as climate change and habitat connectivity in which there is substantial disagreement within the scientific community. Yet the above quoted regulation would require the responsible Forest Service officer to determine which scientific information is "the *most* accurate and reliable" in every field.

In discussing diversity of plant and animal species communities, the Forest Service explanatory materials at 76 FR 8494 stated:
Additionally, it is important to note that the proposed rule is not limited to ''vertebrate'' species as required under the 1982 provisions. The proposed rule would include native plants and native invertebrates (fungi, aquatic invertebrates, insects, plants, and others) for which the Agency currently has very minimal biological information on their life histories, status, abundance, and distribution.
(emphasis added)

In light of this admission, it seems even more unlikely that the responsible forest officer is capable of staying aware and abreast of the "best science" involving all biological information which may be implicated in planning decisions. Further, the "best" science for one species may suggest a different management regime than the "best" science for another species accorded protection under the regulations. The Forest Service alludes to this problem in the draft regulations at 76 FR 8493, noting that a conflict may exist between protecting candidate species and other species or (the best science for resource) management objectives. While replete with direction to document the existing environment through assessments and to determine the best science for individual species and resources, NAFSR is greatly concerned that the draft regulation provides no guidance to the responsible official in balancing resource

protection measures with the sustained yield of multiple uses or in determining which "best science" controls when various resource values dictate different management.
Finally, the Forest Service would be subjecting itself to the highest degree of legal risk by incurring an unwise and unnecessary legal duty to identify "best" science. Further, the agency completely misapprehends and misstates the legal risks of its "best" science requirement in the draft regulation explanatory notes at 76 FR 8485:

The Agency has a longstanding practice of considering relevant factors and explaining the bases for its decisions. Including this section in the proposed rule, with its explicit requirements for determining and documenting the consideration of the information most accurate, reliable, and relevant to making planning decisions, will help to ensure a consistent approach across the National Forest System. However, this section is not intended to impose a higher standard for judicial review than the existing ''arbitrary and capricious'' standard (emphasis added)

A federal court will find it unnecessary to reach the "arbitrary and capricious" standard at all--the court only need find that the agency violated the explicit terms of its own regulations in failing to consider, to cite, or to correctly determine "best" some element of relevant science. A simple failure on a single resource element would allow plaintiffs to prevail and to recover their legal fees under the Equal Access to Justice Act which provides that such fees are to be assessed, not from the Judgment Fund, but from the Forest Service budget!

It is well established law that federal courts are expected to defer to the technical and administrative expertise of federal agencies. The Forest Service regulation would invert this process, needlessly creating a mechanism for judicial review of what constitutes "best" science. Nothing in the makeup of the federal judiciary suggests that federal bench has any particular scientific qualification to make such determinations.

The Forest Service offers no valid reason for, and obtains no benefit from inviting the federal courts to review the question of what constitutes "best" science. NAFSR strongly recommends that the longstanding commitment of the Forest Service to the use of science in management be reflected in guidance contained in Forest Service Directives System as an administrative goal, not as a legal duty to make an inherently difficult and controversial determination.

Finally, since best science is almost impossible to define, we believe a better requirement would be to use a "science-based" approach to planning. Further, the mandate to describe "how scientific information was determined to be most accurate, reliable, and relevant" should be modified to simply require that the science used in the plan be referenced. Scientific results should judged on their own merit by evaluating whether the science met accepted requirements for research such as statistical standards, peer review, publication, etc. Various scientific studies should not be placed in an arbitrary competition over which is best.

Again, we appreciate the opportunity to provide comments on the draft forest planning regulations. As Forest Service retirees, we have a special appreciation of the Agency and its people. Our hope is that our comments will be useful for improving the planning regulations and avoiding the problems of the past.

We would be willing to meet with you to discuss any of these comments.

Sincerely,

Ronald E. Stewart

0731

Ronald Stewart
Chair, NAFSR Ad Hoc Committee
on Forest Service Planning Regulations

{This is a May 10, 2011 working draft of the American Forest Resource Council (AFRC) comments on the Planning Rule DEIS. A final version was not available at the time Siskiyou County submitted its comments. Siskiyou County is in no way implying that these are AFRC's official comments. Rather, we see these comments as coming from a very reputable source with whom we have frequently collaborated and we offer the following as our own and wish them to be considered as such}

DETAILED COMMENTS ON THE 2011 DRAFT PLANNING RULE AND ENVIRONMENTAL IMPACT STATEMENT

The following comments are organized into three sections.

(1) Generally Applicable Comments.
(2) Section by Section Comments.
(3) Comments on the EIS.

GENRALLY APPLICABLE COMMENTS

The rule throws out hard fought legal victories and offers a buffet of new legal claims for plaintiffs who view the national forests as national preserves.

One of the most disheartening results of the proposed rule is the abandonment of favorable legal precedents that the agency has established after nearly 30 years of litigation over NEPA and the provisions of the 1982 planning rule. This is particularly frustrating for those who have worked hard to defend Forest Service decisions and establish that the agency has discretion in implementing the existing planning regulations and is not bound by costly data collection and scientific proof requirements. Instead of building on these legal victories and streamlining and narrowing the existing planning rule, the proposed planning rule concedes precious legal ground and builds a strong foundation for future legal defeats. Our comments in the next section provide more detail about the numerous victories of the Forest Service and other government agencies that are being tossed out by the proposed planning rule, and we only highlight a few of the suicidal provisions of the proposed planning rule here.

- The proposed rule abandons the major victory in Lands Council v. McNair, 537 F.3d 981, 991 (9th Cir. 2008)(en banc) that the Forest Service has discretion in it management decisions by adopting in the proposed rule many non-discretionary requirements where the responsible official "must" or "shall" adopt a specific management approach. For example, under Section 219.8 "the plan must include plan components to maintain, protect, or restore . . . .
Rare aquatic and terrestrial plant and animal communities, consistent with § 219.9" (emphasis added).

- The proposed rule abandons the victory in Seattle Audubon Society v. Moseley, 830 F.3d 1401, 1404 (9th Cir. 1996) which upheld selection of an alternative in the Northwest Forest Plan that provided an 80% rather than 100% probability of maintaining the viability of the spotted owl because "the selection of an alternative with a higher likelihood of viability would preclude any multiple use compromises contrary to the overall mandate of the NFMA." The proposed rule does not even mention the term "multiple-use objectives" in Section 219. 9 covering diversity and viability, despite the fact that the statute says diversity is a goal to be provided "in order to meet overall multiple-use objectives."

-The proposed rule abandons the victory in Lands Council v. McNair, 537 F.3d 981, 991 (9th Cir. 2008)(en banc) that builds on the Mosely case that the Forest Service does not have to provide for viability or that viability reigns supreme. "NFMA... requires that plans developed for units of the National Forest System 'provide for multiple use and sustained yield of the products and services obtained there from.' . . . the NFMA is explicit that wildlife viability is not the Forest Service's only consideration when developing site-specific plans for National Forest System lands." Id. at 990 (emphasis added).

-The proposed rule abandons the victory in Lands Council v. McNair, 537 F.3d 981, 991 (9th Cir. 2008)(en banc) that the Forest Service does not have to verify its methodology with on the ground scientific analysis. For example, Section 219.3 requires the Forest Service to verify "what information is the most accurate, reliable, and relevant" and Section 219.12 governing monitoring requires that "the responsible official . . . shall ensure that scientists are involved in the design and evaluation of unit and broad scale monitoring." 219.12 (c)(4).

- The proposed rule abandons the victory in Salmon River Concerned Citizens v. Robertson, 32 F.3d 1346, 1359 (9th Cir. 1994) that "NEPA does not require [that we] decide whether an [environmental impact statement] is based on the best scientific methodology available, nor does NEPA require us to resolve disagreements among various scientists as to methodology" by imposing in Section 219.3 an independent requirement beyond NEPA that the responsible official for the forest plan "determine" and justify what is the "best available scientific information."

- The proposed rule abandons the victory in Greater Yellowstone Coalition, Inc. v. Servheen, 672 F.Supp.2d 1105, 1114 (D.Mont.2009) that held "[w]hen Forest Plans contain standards, the standards are 'mandatory requirements,' in contrast to guidelines, 'which are discretionary.' The proposed rule throws this victory away because Section 219.15 defines both standards and guidelines as mandatory.

- The proposed rule abandons the victory in Norton v. Southern Utah Wilderness Alliance, 124 S.Ct. 2372, 2382 (2004) that land use plan monitoring is not a "binding commitment in terms of the plan." Although this case involves the monitoring provisions of a BLM management plan, it is a helpful victory that recognized the agency has flexibility if the agency itself has not created a binding commitment. Unfortunately, in Section 219.12, the longest and most detailed section of

the planning rule, the Forest Service sets forth extensive and detailed monitoring requirements replete with the word "shall" that will be undermine the Norton victory.

- The proposed rule abandons the victory in Ohio Forestry Ass'n v. Sierra Club, 523 U.S. 726 (1998) which held that a forest plan is not a decision ripe for litigation because it makes no on the ground decisions. As the court emphasized in Ohio Forestry, "the ripeness requirement is designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.' " (emphasis added). Id. at 732-33. Section 219.7 requires that "every project" must comply with "plan components." Under the sustainability Section 219.8, forest plans "must include plan components" to "maintain, protect, and restore" aquatic elements, soils, and rare plant and animal communities. Together Sections 219.7 and 219.8 of the proposed rule tie forest plan decisions more directly into projects which will make the forest plan immediately ripe for litigation undermining the victory in Ohio Forestry.

The rule fails to comply with current direction for regulations to be shorter, more flexible, and less costly and burdensome.

The proposed rule is overly long, detailed, and encumbered with inflexible mandatory requirements and jargon that preclude it from being a workable, affordable, and enduring Planning Rule. Millions of more dollars will be spent on an expanded planning effort which will divert funds from desperately needed on the ground forest management.

The proposed rule is not consistent with the "Improving Regulation and Regulatory Review" Executive Order recently issued on January 18, 2011 by President Obama, as well as previously existing requirements for cost-effective, less burdensome, and flexible regulations, such as the Regulatory Flexibility Act.

The January 18, 2011 Executive Order requires that regulations must be tailored to "impose the least burden on society, consistent with regulatory objectives" and that agencies are to review and change or eliminate rules may be "outmoded, ineffective, insufficient, or excessively burdensome."

Yet the Forest Service's own analysis of the proposed rule confirms that even under favorable assumptions, it will be only slightly less costly than the 1982 Planning Rule that has been identified as outmoded and overly burdensome—i.e. approximately $1.5 million less per year than the $104 million annual cost of the 1982 Rule. Draft EIS at 43.

The draft EIS and accompanying analysis for the proposed rule confirm that there are readily available alternatives that are far less costly and burdensome, and which still meet NFMA requirements and the agency's stated purpose and need for a new Planning Rule.

For example, Alternative C in the draft EIS would, according to the Forest Service analysis, cost nearly $24 million (24%) less per year than the proposed rule to implement. Draft EIS at 43. As another example, the 2008 Planning Rule contains most of the same basic concepts as the proposed rule but is only half the length of the proposed rule (7 pages of Federal Register text compared to 14 pages for the proposed rule). The 2008 Rule has its flaws, but was enjoined by a federal district court only for procedural shortcomings in the EIS and Endangered Species Act Section 7 consultation completed for the rulemaking, and not any inadequacy in meeting NFMA requirements. Citizens for Better Forestry v. U.S. Dept. of Agriculture, 632 F.Supp.2d 968 (N.D. Cal. 2009).

The overly detailed, burdensome rhetoric and mandates in the proposed rule can be eliminated without any loss of useful, nationwide programmatic guidance for national forest land management planning. Detail regarding basic concepts and requirements in the Planning Rule can and should be instead included in the Forest Service Manual and Handbook directive system ("FSM/FSH"), where it can guide and facilitate national forest planning rather than burden the agency, national forest users, dependent communities, and taxpayers with unnecessary detailed, restrictive, and confusing regulatory mandates.

It is more consistent with the adaptive management approach incorporated in the proposed rule to include such details in the directive system, where content can more easily be clarified, refined and updated than when promulgated as a formal rule in the Code of Federal Regulations. The difficulty of updating overly burdensome published regulations is confirmed by the persistence of the 1982 Rule for nearly thirty years, despite several past attempts to replace it.

As an example of material that belongs in the FSM/FSH, most if not all of the content in the "sustainability" and "diversity of plant and animal communities" sections of the proposed rule is already included in substantially similar form in FSM ID No. 2020-2010-1, Ecological Restoration and Resilience, and FSH 1909.12-2000-5, Chapter 40—Science and Sustainability. Section 219.1(d) of the proposed rule already requires the Forest Service to establish procedures for Planning Rule in the FSM/FSH. Much of the detailed content in the proposed rule, with appropriate modifications simplify and conform it to NFMA and MUSYA principles, can be moved to the FSM/FSH with ease.

The complexity of the rule and how it will increase confusion and cost is illustrated by its treatment of wildlife. The planning rule and its preamble include multiple categories of species: indicator, focal, keystone, ecological engineers, umbrella, link, species of concern, threatened, endangered, and "others." Some of the species are probably mutually exclusive but other species overlap creating a planning nightmare. The forest planning rule by focusing on habitat, a factor over which it has some control.

The rule ignores the appropriate role of multiple-use.

Though occasionally referenced in the proposal, the Forest Service appears to be ignoring its multiple use mandate, a mandate imposed by Congress, codified in agency regulations and

affirmed by the courts. This problem manifests itself in three ways. First, the proposal fails generally to acknowledge the multiple use mandate as a guiding principle of forest planning. Second, proposed provisions specifically conflict with the multiple use mandate. Third, the proposed definition of "ecosystem services" is so inclusive and vague that it dilutes the entire concept of multiple use.

Congress established the National Forest System through the Organic Administration Act of 1897, 30 Stat. 11 (June 4, 1987). By operation of the Transfer Act of 1905, 33 Stat. 628 (Feb. 1, 1905), stewardship of the national forests was transferred from the Department of the Interior to the Department of Agriculture. Over the next decades, Congress consistently and clearly specified through a number of enactments that stewardship over the national forests would be guided by the principles of multiple use and sustained yield. These statutes, all of which endorse multiple use and sustained yield, include the Multiple Use Sustained Yield Act of 1960 (MUSYA), 16 U.S.C. §§528-31; the Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. §§1600-14; and the National Forest Management Act of 1976 (NFMA), 16 U.S.C. §1600 *et seq.*

"Multiple use" is defined in Section 4 of the MUYSA as:

> the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

16 U.S.C. §531

The multiple use sustained yield statutory mandate is a viable and credible planning blueprint for managing forest lands. Although the Forest Service is required to ensure that multiple use remains on par with sustainability concepts, the overview of the proposed rule clearly prioritizes other areas of consideration that the rule must address, including climate change, forest restoration and conservation, wildlife conservation, and watershed protection, before so much as mentioning the need for the rule to meet the statutory requirements of the NFMA, MUSYA and other legal requirements. Additionally, the sustainability section expressly states that "sustainability is the fundamental principle that will guide land management planning." 76 Fed. Reg. 8490. Such statements clearly reflect a lack of acknowledgement on the part of the Forest Service of the important function multiple use must play in the land planning process.

As appropriately concluded by the U.S. Court of Appeals for the Seventh Circuit, the Forest Service does not have the discretion to ignore the multiple use mandate to focus solely on environmental and recreational resources. The court specifically held that "the national forests, unlike national parks, are not wholly dedicated to recreational and environmental values." Cronin v. United States Department of Agriculture, 919 F.2d 439, 444 (7th Cir. 1990). The Forest Service, through the planning rule, must actively promote this stewardship role delegated to it by Congress in legislation spanning more than a century and consistently upheld by the courts. The proposal fails to adequately do so.

The rule establishes new priorities for the national forests not found in statute.

Not only does the text of the planning rule at various points entirely ignore or down-play the Multiple-Use Sustained-Yield Act, the planning rule establishes new purposes and priorities for the national forests for which there is no statutory authority. The proposed rule's emphasis on the overbroad "ecosystem services" and global climate change go well beyond the multiple uses Congress established for management of the national forests.

SECTION BY SECTION COMMENTS

Section 219.1 – Purpose and applicability

1. The laws governing the national forests must be the basis for the Planning Rule.

The pointed insertion of "ecosystem services" within the discussion of multiple uses in 219.1(b) is unnecessary, inappropriate, and is not found in the National Forest Management Act. As "ecosystem services" are defined in 219.19, the national forests already produce all of those "services", and there is no need to muddle the meaning of multiple uses as contained in the Multiple Use Sustained Yield Act of 1960.

There is, further, no reason to add "in the context of the broader landscape" to the last sentence in 219.1(b).

2. The statutory multiple uses of the national forests should be explicitly identified.

219.1(c) - As discussed later in these comments in regards to Section 219.8 Sustainability, the proposed rule should consistently include language for plan components that maintain or restore all three elements of sustainability, being ecologic, social, and economic. Further, 219.1(c) should also reference timber and grazing, which are two of the five multiple uses outlined in the Multiple Use Sustained Yield Act of 1960 and delete the references to "spiritual sustenance."

Section 219.2 – Levels of planning and responsible officials

We are concerned with the expectation outlined in the second sentence of 219.2(b), that "A plan reflects the unit's distinctive roles and contributions to the local area, region, and Nation, and the roles for which the unit is best suited, considering the Agency mission unique capabilities, and the resources and management of other lands in the vicinity". That concept is very similar to the concept of "niche" or "single-use" as applied to forest planning. As explained previously, we are concerned that the rule is minimizing the role of multiple-use in forest planning. Furthermore the concept is inserted throughout the planning rule at sections 219.6(b)(3), 219.7(e)(ii), 219.8(b)(1), and 219.12(a)(5)(vii) which requires that assessments, forest plans, and monitoring plans contain "the unit's distinctive roles and contributions" across the broader landscape or to the local area, region, and Nation, and the roles for which the unit is best suited, considering the Agency mission, unique capabilities, and the resources and management of other lands in the vicinity. The concept of niche or single use reflected by a plan's "expected distinctive role" appears to be nothing more than an opportunity for the Forest Service to highlight attributes such as scenery or Wilderness, at the expense of more tangible outputs. Further, gives more weight to national role and contributions than to local role and contributions. We believe the whole concept is flawed, and this sentence should be deleted from 219.2, plus variations of this concept in 219.6(b)(3) and 219.7(e)(ii) and 219.8(b)(1) and 219.12(a)(5)(vii) should also be deleted.

Every forest plan should contain a different mix of multiple-use objectives and outputs. Given the diversity of the national forests and multiple-use objectives and outputs, defining "distinctive roles and contributions" for any given unit will inevitably bias the entire planning process in favor of some uses, products, and services and against other uses, products, and services. As the proposed rule is written, once the Responsible Official identifies the "distinctive roles and contributions of the unit" in the Assessment, those "distinctive roles and contributions of the unit" becomes required content in the plan. There is no requirement in the law for identification of "distinctive roles and contributions". This is a polarizing and unnecessary concept. This will require unnecessary time and expense for the Forest Service and participants in the planning process. The entire concept is flawed, and all requirements for assessments, forest plans, and monitoring plan to identify, incorporate, or monitor "distinctive roles and contributions" should be deleted from the proposed rule.

We agree with the designation of the forest supervisor as the responsible official for forest plans in section 219.2(b)(3). Section 219.2(b)(3) states that the local unit supervisor is the responsible official for development and approval of a plan, unless a regional forester, Chief, under secretary, or the Secretary acts as the responsible official. We recommend adding addition language clarifying under what circumstances higher officials would be able override the unit supervisor as the responsible official.

Section 219.3 – Role of Science in Planning

Requiring the use of the "best available scientific information" rather than agency expertise and *available, relevant* science will make decision making time consuming and vulnerable to litigation. Sound science has an important role in Forest Service planning

and management. Proving what science is "best" is likely to be time consuming and of little value, but will undoubtedly lead to lawsuits that will halt all progress.

The regulation establishes costly, time consuming procedural requirements to document the consideration of the best available science that will slow the planning process to a crawl and create a new legal burden on the Forest Service to prove that it has considered the best available science. This change throws away the Forest Service hard fought legal victories (1) that establish that there is no such thing as the "best" or "most accurate" science (2) will relieve plaintiffs of the burden to prove why the Forest Service decision is flawed and will now impose the burden on the agency to prove why its decision "is informed by" the best science, and (3) undermines the Forest Service multiple-use mandate which the courts have only recently more explicitly acknowledged.

§ 219.3 Role of science in planning.

The responsible official shall take into account the best available scientific information throughout the planning process identified in this subpart. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to a particular decision or action. The responsible official shall document this consideration in every assessment report (§ 219.6), plan decision document (§ 219.14), and monitoring evaluation report (§ 219.12). Such documentation must:

(a) Identify sources of data, peer reviewed articles, scientific assessments, or other scientific information relevant to the issues being considered;

(b) Describe how the social, economic, and ecological sciences were identified and appropriately interpreted and applied; and

(c) For the plan decision document, describe how scientific information was determined to be the most accurate, reliable, and relevant information available and how scientific findings or conclusions informed or were used to develop plan components and other content in the plan.

We have numerous concerns about this section. First, the planning rule should not create a target for additional litigation and controversy by using or defining the term "best available science" or "best available scientific information." The provision in Section 219.3 of the proposed rule regarding use of "best available scientific information" is likely to fuel further disputes and lawsuits that will obstruct and bog down planning and management activities that are environmentally necessary and beneficial.

Sound science has an important part in national forest planning and management. However, which science is "best," as illustrated in Endangered Species Act litigation as well as NFMA and other disputes, can be extremely subjective and highly politicized.

The NFMA does not use or require use of the term "best available science" or "best available scientific information." Neither does NEPA. The Ninth Circuit Court of Appeals has affirmed that these statutes do not require a determination of whether national forest planning or project-level NEPA documents are based on "best" available science or methodology, that disagreements among scientists are routine, and that requiring the Forest Service to resolve or present every such disagreement could impose an unworkable burden that would prevent the needed or beneficial management. Lands Council v. McNair, 537 F.3d 981, 991 (9th Cir. 2008)(en banc); Salmon River Concerned Citizens v. Robertson, 32 F.3d 1346, 1359 (9th Cir. 1994).

The regulation's procedures will create new legal claims centered on the requirement that the Forest Service consider the best available science and demonstrate that the "most accurate, reliable, and relevant information" was considered and how it "informed" the development of the forest plan. In Lands Council, a unanimous en banc panel of the Ninth Circuit gave the Forest Service more leeway and flexibility regarding scientific analysis. The Court emphasized that, "[t]o require the Forest Service to affirmatively present every uncertainty in its EIS would be an onerous requirement, given that experts in every scientific field routinely disagree; such a requirement might inadvertently prevent the Forest Service from acting due to the burden it would impose." McNair, 537 F.3d at 1001. The Forest Service should recognize as the Ninth Circuit finally has, that there is no holy grail of the "best" or "most accurate" science. Even NEPA does not require such impossible divining of the "best" science. The Ninth Circuit emphasized that "NEPA does not require [that we] decide whether an [environmental impact statement] is based on the best scientific methodology available, nor does NEPA require us to resolve disagreements among various scientists as to methodology." Salmon River Concerned Citizens, 32 F.3d at 1359.

Second, the regulation is written in a way that puts the burden on the Forest Service to prove that it identified the best science, "appropriately" interpreted it, and explain how it informed the decision. But an agency with the burden of proof always has an uphill battle in court, particularly in the Ninth Circuit Court of Appeals. The burden to prove that the Forest Service was arbitrary and capricious in its decision-making should remain with plaintiff and the regulations must strive to avoid placing the heavy burden of proof on the agency.

Third, the science dominated regulation undermines the principle that the agency can make natural resource management decisions based on its discretion in weighing various multiple-use objectives rather than elevating science to the tail that wags the multiple-use decision-making dog. For example, the Ninth Circuit in Seattle Audubon Society v. Moseley, 830 F.3d 1401, 1404 (9th Cir. 1996) upheld selection of an alternative in the Northwest Forest Plan that provided an 80% rather than 100% probability of maintaining the viability of the spotted owl because "the selection of an alternative with a higher likelihood of viability would preclude any multiple use compromises contrary to the overall mandate of the NFMA." That Ninth Circuit in the Mission Brush case finally recognized that, "[c]ongress has consistently acknowledged that the Forest Service must balance competing demands in managing National Forest System lands. Indeed, since Congress' early regulation of the national forests, it has never

been the case that 'the national forests were . . . to be set aside for non-use'." McNair, 537 F.3d at 990.

Fourth, sound national forest planning and management that complies with NFMA, MUSYA, and other applicable law must reflect more than "western" or European culture academic science and scientist opinion. Native American and other traditional local knowledge along with other practical expertise, collaborative consensus reached through the planning process regarding application of science, and other considerations are critical to environmentally, economically, and socially sound forest planning and plan implementation.

Thus, the Planning Rule must not require the Forest Service to do more than take into account available, relevant scientific information along with other factors in the development, amendment, or revision of national forest plans, without reference to which information is "best." Proposed Section 219.3 should be deleted or greatly abbreviated and corrected accordingly, along with any other references to "best available scientific information" in the proposed rule. The use and dissemination of scientific information by federal agencies is addressed by the Federal Data Quality Act (P.L. 106-554 §515) and subsequent guidelines from the Office of Management and Budget (http://www.whitehouse.gov/omb/fedreg_reproducible). We believe that the protections and assurances of the quality of scientific information used and distributed by federal agencies under the Federal Data Quality Act is sufficient to ensure that quality of scientific information being used by the USFS in the planning process and a requirement to identify the "most accurate" scientific information should not be a legal requirement in the planning rule itself.

Section 219.4 - Requirements for Public Participation

1. The "public engagement" requirement distances the decision-making process from the local area and renders the agency vulnerable to more litigation.

The language requiring that the agency "shall encourage" public input creates an obligation to affirmatively gather public comment—and a legal question as to the legal threshold of encouragement. And even as the rule calls for greater "public input," it weakens the existing requirement to coordinate forest planning with local government and their plans. We encourage the agency to give increased weight to local communities most directly impacted by the plan. The proposed rule weakens the process by which state, county, and local governments may meaningfully participate in the development of land and resource management plans. This process, known as "coordination," is mandated under NFMA and currently included in Sec. 219.7 of the 1982 Planning Rule. Under Sec. 219.4 of the proposed rule, the agency is directed to solicit "public participation," but local governments, the entities responsible for supplying a balanced representation of local needs, are not given adequately elevated coordination status over individual special interests. When the process of coordination has been used, it has prevented costly litigation by resolving conflicts before final decisions are made. We hope that provisions for coordination will remain intact in the proposed rule.

2. The language requiring that the agency "shall encourage" public input creates an obligation to affirmatively gather public comment—and a legal question as to the legal threshold of encouragement. And even as the rule calls for greater "public input," it weakens the existing requirement to coordinate forest planning with local government and their plans.

The requirement that the Forest Service shall provide for public comment turns the tables on public comment. Rather than receiving comment from people who develop their own views, it risks putting the Forest Service employees in the position of telling people who have no views on the matter what to think. The responsible official "shall encourage" participation by youth, low-income populations, minority populations, private landowners, and Indian Tribes. Forest plans do not suffer for lack of public comment. This "shall encourage" language creates the same legal vulnerability as the use of the identical term that the Forest Service "shall encourage" participation of scientists in the Assessments in Section 219.6. What must be done to meet the legal threshold of encouragement? Who will make the contacts and explain the forest plan, a seasonal employee, a botanist, a deputy Forest Supervisor? Does the Forest Service need to take affirmative action to bus residents of East Los Angeles to the Los Padres Supervisor's headquarters in Goleta for public meetings about the Plan? For state, counties, and local governments the responsible official need only "provide opportunities" to participate in planning.

3. The rule weakens the role of planning efforts of state and local government and Indian Tribes.

The planning efforts of state and local governments and Indian tribe should have a special place in forest planning. That was the case under the 1982 rule which separated "Public participation" requirements under 36 C.F.R. § 219.6 from the "Coordination with other public planning efforts" under 36 C.F.R. § 219.7. The proposed rule weakens the requirement to consider the plans of state and local government and Indian tribes in three ways. First, it combines public participation requirements together with the section on coordination with other public planning efforts into one section which dilutes the importance of coordination with other public planning efforts. Second, within the newly combined single section 219.4, the rule compels the Forest Service to "encourage" public participation from all segments of the public except state and local government. Finally, whereas the 1982 planning rule in 219.7 clearly required that "the responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes," the rule under 219.4 adds the equivocal phrase at the end of the sentence "to the extent practicable and appropriate." This changes coordination with state and local government and Indian tribe plans from a requirement to a discretionary decision of the forest supervisor. If increasing the agency discretion is the objective, then the phrase "to the extent practicable and appropriate" should be used elsewhere in the proposed planning rule particularly with regards to species viability and consideration of the best science.

Delete the reference "to the extent practicable and appropriate" from §219.4(b)(1) and replace with "attempt to achieve consistency between the proposed forest and local plans." The following requirement should be added to the rule: "Where the forest plan may not be made

consistent with local plans, the responsible official should document how and why its plan is not consistent with local plans, as determined by local officials, and explain why its plan cannot be made consistent with local plans."

The language in §219.4(b)(3) states "the responsible official will [not] seek to direct or control management of lands outside of the planning area, nor will the responsible official conform management to meet non-Forest Service objectives and policies." This language may contradict the earlier stated objective to coordinate with local governments. We are concerned that this section may create conflict with established Community Wildfire Protection Plans (CWPP) which include planning on both Federal and non-Federal lands.

Section 219.5 – Planning Framework

219.5(a)(3) requires "biennial monitoring evaluation reports", a significant change and increase for many national forests which have five year monitoring evaluation reports. This will divert additional time, people, and resources away from actual management. In the big picture, with forest rotations of 80-250 years, is it really necessary to monitor on a two year cycle. See also 219.12(d).

Section 219.6 - Assessments

1. The regulation establishes a separate layer of planning called "Assessments" which will be prepared apart from the Forest Plan without NEPA analysis, which under the law the Forest Service cannot do. This will make any Forest Plan that relies on the illegal assessment dead on arrival in the courts.

> *§ 219.6 Assessments.*
> *Assessments may range from narrow in scope to comprehensive, depending on the issue or set of issues to be evaluated, and should consider relevant ecological, economic, and social conditions, trends, and sustainability within the context of the broader landscape. The responsible official has the discretion to determine the scope, scale, and timing of an assessment, subject to the requirements of this section.*
>
> *(a) Process for plan development or revision assessments. One or more assessments must be conducted for the development of a new plan or for a plan revision. . ..*
> *The responsible official shall:*
>
> *(1) Notify and encourage the public and appropriate Federal agencies, States, local governments, other entities, and scientists to participate in the assessment process.*
>
> *(b) Content of assessments for plan development or revision. In the assessment(s) for plan development or revision, the responsible official shall:*
>
> *(1) Identify and evaluate information needed to understand and assess existing and potential future conditions and stressors in order to inform and develop required plan*

components and other content in the plan (§ 219.7), including plan components for sustainability (§ 219.8), diversity of plant and animal communities (§ 219.9), multiple uses (§ 219.10), and timber requirements based on NFMA (§ 219.11).

First, courts have repeatedly rejected the reliance of a plan or project on an earlier prepared assessment or an analysis that was not subject to NEPA. For example, in Klamath-Siskiyou Wildlands Center v. Bureau of Land Management 387 F.3d 989, 998 (9th Cir. 2004) the court explained "tiering to the Watershed Analysis cannot save the EAs, because the Watershed Analysis is not a NEPA document. A NEPA document cannot tier to a non-NEPA document." Citing Kern v. BLM, 284 F.3d 1062, 1073 (9th Cir. 2002)(holding that "tiering to a document that has not itself been subject to NEPA review is not permitted"); Muckleshoot Indian Tribe v. Forest Service, 177 F.3d 800, 811 (9th Cir. 1999)("The appellees also attempt to tier the Exchange EIS to the Green River Watershed Report to cure the deficiencies of the cumulative impact analysis of the Exchange EIS. Such reliance is impermissible under the NEPA regulations, which only permit tiering to prior EIS's."); See also League of Wilderness Defenders-Blue Mountains Biodiversity Project v. U.S. Forest Service, 549 F.3d 1211, 1213 (9th Cir. 2008) ("Because the Final Supplemental Environmental Impact Statement (FSEIS) may not tier to a non-NEPA watershed analysis to consider adequately the aggregate cumulative effects of past timber sales, we reverse the district court's grant of summary judgment in favor of the Forest Service").

2. The assessment process also creates a legally enforceable obligation to "notify and encourage" . . . "appropriate" . . . "scientists to participate in the assessment process." If plaintiff can show that the Forest Service failed to do enough to "encourage" the participation of the so called "appropriate scientists" the agency will have violated the regulation.

Second, the Assessments will presumably include non-federal scientists to help "inform" planning which will require compliance with the Federal Advisory Committee Act. Thus, the Forest Service is placing the subsequently developed Forest Plans at risk by requiring a process to develop Assessments with public participation and non-federal scientists that "inform" decisions in the plan without going through the NEPA process or complying with FACA. One alternative is to make the Assessments subject to NEPA and FACA but this will make the forest planning process unworkable. Another alternative is to have the planning rule categorically exclude the Assessments from NEPA and exempt the Assessment from FACA (the FACA exemption would require legislation). A better approach is to eliminate the Assessments section from the forest planning rule entirely. This approach is probably the best because it eliminates a NEPA (and FACA) claim that plaintiffs are sure to raise challenging a forest plan's reliance on Assessments.

Third, the Assessment section creates its own fertile ground for litigation independent of NEPA and FACA by imposing new requirements that the Forest Service must follow to develop Assessments. The agency must "notify" and "encourage" "appropriate" "Federal agencies, States, local governments, other entities, and scientists" to "participate" in the assessment process. If the Forest Service does not "notify" and "encourage" plaintiffs' preferred scientists

to participate, then the agency violates the law. Also does "encourage" mean just publish a notice in the newspaper? Which newspaper – The Redding Record Search Light or the Stanford Daily? Or does the Forest Supervisor have to write the scientist asking her to participate? Is a letter and a follow-up phone call enough? And who are the "appropriate" agencies and scientists? Certainly EPA would have to be notified and encouraged to participate in the Assessment given the regulation's emphasis on climate change and carbon sequestration.

3. Plaintiffs will scour the forest planning record to find thoughtful papers prepared by the planning staff and argue that these papers are really "Assessments" and violate the regulation because they were not subject to public comment and scientific participation.

Finally, the Assessment section will also create a powerful new tool for plaintiffs to attack Forest Service analysis that looks and smells like an Assessment but which was not developed according to the section's procedural requirements to notify the public, and encourage appropriate scientists to participate in the development of the assessment. For example, any resource analysis in the planning file arguably related to "ecological, economic, or social conditions, trends, and sustainability within the context of the broader landscape" will violate the regulation if it was not prepared with public participation and the Forest Service failed to encourage appropriate scientists to be involved in its preparation.

4. Eliminate the reference to "the unit's distinctive roles and contributions" in 219.6(b)(3).

As explained in more detail in our comments on section 219.2, the reference to "the unit's distinctive roles and contributions . . ." focuses on single use rather than multiple-use management and will inevitably bias the entire planning process in favor of some uses, products, and services and against other uses, products, and services. As the proposed rule is written, once the Responsible Official identifies the "distinctive roles and contributions of the unit" in the Assessment, those "distinctive roles and contributions of the unit" becomes required content in the plan. There is no requirement in the law for identification of "distinctive roles and contributions."

Section 219.7 – New Plan Development or Plan Revision

Section 219.7(d)(1)(ii) directs that "Objectives shall be based on reasonably foreseeable budgets." This is not a matter for the planning rule, overly constrains planning analysis and the sentence should be deleted.

Future planning efforts should address reduction of Fire Regime Condition Class (FRCC) in considering of desired condition. 219.7(d)(1)(i). National forest lands should be actively managed to reduce the threat of wildfire and the release of greenhouse gases. Reduction of FRCC 3 to FRCC 2 and FRCC 1 will insure a sustainable economic and environmental legacy for future generations.

The reference to "the unit's distinctive roles and contributions . . ." in 219.7(e)(ii) should be eliminated. As explained in more detail in our comments on section 219.2, the reference to

"the unit's distinctive roles and contributions . . ." focuses on single use rather than multiple-use management and will inevitably bias the entire planning process in favor of some uses, products, and services and against other uses, products, and services. As the proposed rule is written, the the plan must "Describe the unit's distinctive roles and contributions within the broader landscape." There is no requirement in the law for identification of "distinctive roles and contributions."

Section 219.7(e)(iv) directs that every plan must contain "the planned timber sale program". As written, this would require a detailed list of timber sales for the next 10-15 years, and then amendments to the forest plan in order to change the list. This would be an impossible task, and that requirement should be deleted.

Section 219.8 - Sustainability

1. The Proposed rule elevates ecological sustainability over social and economic concerns.

In the explanation of the proposed rule, the USFS states that "[t]he proposed rule considered the ecological, social, and economic systems as interdependent systems, which cannot be ranked in order of importance." Fed. Reg. Vol. 76, No. 30 at 8491. However, in the same section of the proposed rule explanation, the USFS goes on to state that "the agency has more influence over the factors that impact ecological sustainability on NFS lands (ecological diversity, forest health, road system management, etc.) than it does for social and economic sustainability (employment, income, community well-being, culture, etc.)." *Id.* It is this position that leads to the disparate treatment of social and economic systems versus environmental systems in the proposed rule.

In reference to ecological sustainability in §219.8(a) the proposed rule requires plan components to "**maintain or restore** the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area ...." (emphasis added). However in §219.8(b) in reference to social and economic sustainability, the rule requires only that "[t]he plan must include plan components **to guide the unit's contribution** to social and economic sustainability ...." (emphasis added). We support the initial assertion of the agency that social, environmental and economic considerations are not competing values; rather they are truly interdependent and all play an important role in effectively managing NFS lands.

Even if the assertion that the agency has more influence over factors influencing ecological sustainability than those influencing social or economic sustainability is true, this does not support the language in the proposed rule which elevates ecological considerations above social and economic considerations. The agency asserts that the proposed rule treats the three elements of sustainability as interdependent and further, that none of the elements can be ranked in order of priority. Nowhere does the agency say that factors cannot be ranked in order of importance unless the agency has differing abilities to influence the factors.

Further, we find the assertion that the agency has more influence over factors influencing ecological sustainability suspect. In the explanation of this section in the proposed rule, the agency lists a host of factors influencing ecological sustainability that are outside the control of the agency including "climate change, extreme disturbance events, and urbanization on lands outside of or adjacent to NFS lands." Fed. Reg. Vol. 76, No. 30 at 8490. This is not an insubstantial list of factors outside of the agencies control, and says nothing of the agency's ability to actively manage NFS lands in light of the near constant threat of litigation facing management activities on federal lands. The precipitous decline in the forest industry throughout the west and the corresponding social and economic benefits closely coincides with the increase in the threats to ecological sustainability stemming from the lack of management on federal lands. These ecological threats include fires outside the historical range of variability and spread of native and invasive pest species at historic levels (extreme disturbance events) and are one of, if not the primary, factors currently influencing the ecological health and sustainability of western forests. The agency's ability to impact factors influencing social and economic sustainability is clear from the impact on these systems following the rapid decline in management on federal lands. What is not clear is that the agency is in a better position to impact factors influencing ecological sustainability than those influencing economic or social sustainability.

Because the USFS is in a position to have a substantial impact on all of the factors influencing ecological, social and economic sustainability, we request that the proposed rule recognize this and include language for plan components that maintain or restore all three elements of sustainability, being ecological, social and economic.

2. The "inherent capability of the land" is a nebulous concept that should be excluded from the rule.

The proposed rule requires that forest plans must provide for sustainability "consistent with the inherent capability of the plan area." This is a vague term and there is no such thing as the "inherent capability" of the land. A fundamental teaching of forest management, which the Forest Service rule writers should be aware, is that the capability of the land depends upon the intensity of management applied to the land. And capability of one resource may differ depending on the intensity applied for the management of another resource. Brush control and thinning may increase the capability of the land to produce timber and to provide large trees for wildlife species that prefer large trees. However, it may reduce the capability of the land to provide for early successional forest species such as certain songbirds and big-game. The Forest Service's own science review of the proposed planning rule was also critical of the use of the term "inherent capability." The executive summary explains: "Several reviewers discussed biological topics of concern, notably how to evaluate inherent capacity of the land, particularly in complex, changing systems. This is particularly difficult when considering cumulative effects." Science Review at i. Dr. Keeton noted how unhelpful the term is: "Inherent capability of the land - The chapter is rife with overly broad statements like: 'Ecosystems are defined by interactions of biological and physical systems.' This reads like a brief summary of the entire field of ecology rather than a distillation of science specifically relevant to federal forest and grassland management." We agree and "inherent capability of the land" should be eliminated

from the rule or more specifically defined. If the Forest Service means that even with the most intensive management the land will not be capable of producing a specific resource or of providing for viability of specific species, then the proposed rule should say so. We certainly do not object to the proposed rule recognizing that it may not be possible to provide a stream temperature of 55° or 50 pine marten per acre, but the proposed rule does not explicitly explain this principle.

3. Eliminate the reference to "the unit's distinctive roles and contributions" in 219.8(b)(1).

As explained in more detail in our comments on section 219.2, the reference to "the unit's distinctive roles and contributions . . ." focuses on single use rather than multiple-use management and will inevitably bias the entire planning process in favor of some uses, products, and services and against other uses, products, and services. The plan must "account for" the "distinctive roles and contributions of the unit within the broader landscape." It is unclear what this phrase means. If the adjoining forest is industrial timberland does that mean that the national forest should emphasize wildlife? There is no requirement in the law for identification of "distinctive roles and contributions."

Section 219.9 - Diversity of Plant and Animal Communities

1. The regulation fails to fix the problem of an unattainable and procedurally impossible obligation to demonstrate that a forest plan will "maintain viable populations of species" and there is no requirement in the NFMA to "maintain viable populations."

> *§ 219.9 Diversity of plant and animal communities.*
> *Within Forest Service authority and consistent with the inherent capability of the plan area, the plan must include plan components to maintain the diversity of plant and animal communities, as follows:*
> * * *
> *(b) Species Conservation. The plan components must provide for the maintenance or restoration of ecological conditions in the plan area to:*
> * * *
> *(3) Maintain viable populations of species of conservation concern within the plan area. Where it is beyond the authority of the Forest Service or the inherent capability of the plan area to do so, the plan components must provide for the maintenance or restoration of ecological conditions to contribute to the extent practicable to maintaining a viable population of a species within its range. When developing such plan components, the responsible official shall coordinate to the extent practicable with other Federal, State, tribal, and private land managers having management authority over lands where the population exists.*

NFMA does not mention "viable populations" but instead the Act only requires the Forest Service to "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives and within the multiple-use objectives of the land management plan." 16 U.S.C. 1604 (a)(3)(b). In

contrast, the regulation treats national forests as biological preserves rather than forests managed for the use and necessities of the people United States as required by the Organic Act. 16 USC 476.

The current planning rule makes it extremely difficult for the Forest Service to demonstrate that it is maintaining viable populations of wildlife species. One of the most frequent legal claims in national forest litigation is that the Forest Service is not maintaining viable populations. The Forest Service should use the revision of the planning regulation as an opportunity to eliminate this fertile ground for litigation. There is no consensus on the population level that achieves a "viable" population so the regulation imposes a legal obligation on the Forest Service to ascertain what is not ascertainable. Measuring and proving that a forest plan will "maintain" or is "maintaining" a viable population is nearly impossible, leaving the Forest Service highly vulnerable to lawsuits.

Even the Forest Service admits that using one wildlife species, in this case "species of conservation concern," provides no information about how well other species are doing and there is no sound way to establish population trends in a short period of time. In the background explaining the regulations, the Forest Service concedes "[t]he theory of [management indicator species] has been discredited since the 1982 rule. Essentially, monitoring the population trend of one species should not be extrapolated to form conclusions regarding the status and trends of other species. In addition, population trends for most species are extremely difficult to determine within the 15-year life of a plan, as it may take decades to establish accurate trend data, and data may be needed for a broader area than an individual national forest or grassland." 76 Fed. Reg. at 8499 (Feb. 14, 2011). Unfortunately, the "maintain viable populations" regulation ignores the discredited theories and extreme difficulties regarding population estimates.

2. The planning rule does not include the phrase "to meet overall multiple-use objectives" to make clear that the Forest Service must provide for diversity of plant and animal communities to meet overall multiple use objectives and not the other way around;

The Ninth Circuit understood that wildlife viability is not the preeminent command of NFMA and it is unfortunate the drafters of the regulation do not. In the Mission Brush case, the Ninth Circuit explained that "NFMA... requires that plans developed for units of the National Forest System 'provide for multiple use and sustained yield of the products and services obtained there from.'" McNair, 537 F.3d at 990. The Ninth Circuit then emphasized that "the NFMA is explicit that wildlife viability is not the Forest Service's only consideration when developing site-specific plans for National Forest System lands. Id.

The prior regulation also acknowledged that providing for management indicator species was to be accomplished "to the degree consistent with overall multiple use objectives of the [forest plan] alternative." 36 C.F.R. 219.19(a). This language was instrumental to the Ninth Circuit finally approving the Northwest Forest Plan despite plaintiffs' argument that the plan had to demonstrate that there was a 100% probability that the spotted owl would survive in the future. The Forest Service instead chose an alternative that provided an 80% probability of spotted owl survival. The Ninth Circuit approved in Seattle Audubon Society v. Moseley, 830

F.3d 1401, 1404 (9th Cir. 1996), noting that "the selection of an alternative with a higher likelihood of viability would preclude any multiple use compromises contrary to the overall mandate of the NFMA." If the viability regulation is not eliminated, then the Forest Service must retain the concept that overall multiple use objectives should drive decisions in the forest plan - not maintaining the viability of species, particularly for those species that are not even considered species under the Endangered Species Act.

3. The regulation requires the Forest Service to do the impossible by requiring it to demonstrate with information in a forest plan that it will maintain viability of "species of conservation concern," a category of species that by definition, the agency has minimal information about.

The rule requires the plan to demonstrate it will maintain a viable population for a "species of conservation concern" which the planning rule defines as a species about which "there is evidence demonstrating significant concern about its capability to persist over the long-term in the plan area." 36 C.F.R. 219.19. Based on a joint publication of federal agencies, universities and NGOs entitled "State of the Birds," species of conservation concern include any bird which is an ESA listed species, is on the USFWS list of Birds of Conservation Concern, or is on the American Bird Conservancy/Audubon Watch list. Requiring a forest plan to provide a guarantee of viability for a species over which there is significant concern about viability requires the agency to guarantee something that it cannot. It puts the burden on the Forest Service to prove it will maintain a viable population and invites litigation over the adequacy of the substantive requirements in the plan, survey obligations, and population monitoring.

4. The regulation will make the problem worse by expanding the viability requirement beyond vertebrate species to include "native plants and native invertebrates (fungi, aquatic invertebrates, insects, plants, and others)" which will make the cost of compliance soar and establish a regulatory standard that cannot be achieved.

The "maintain viable population" regulation will also increase litigation over "viability" since it is now being expanded to include viability of all species in the six taxonomic Kingdoms, i.e., Plants, Animals, Fungus, Bacteria, Algae, and Protozoa. The agency acknowledges it knows very little about invertebrates. The 1982 viability requirement just for vertebrates has cost the agency many millions of dollars and 29 years of litigation that is still on-going. Adding a viability obligation for invertebrates such as fungi, slugs, and insects assures millions more in costs over the next decade and 30 more years of litigation.

The preamble to the regulation explains that "it is important to note that the proposed rule is not limited to 'vertebrate' species as required under the 1982 provisions. The proposed rule would include native plants and native invertebrates (fungi, aquatic invertebrates, insects, plants, and others) for which the Agency currently has very minimal biological information on their life histories, status, abundance, and distribution." 76 Fed. Reg. at 8494. In the national forests covered by the Northwest Forest Plan there are over 400 invertebrate species for which there is minimum biological knowledge. This led to a survey and manage program costing over $33 million per year. Many of these species aren't even of concern under the Endangered Species

Act. For example, fungi cannot even be listed under the Endangered Species Act since the Endangered Species Act permits only the listing of fish, wildlife, and plants but under the planning regulation a Forest Supervisor could be required to maintain a viable population of a fungus. The agency is forced to prove what a viable population level is and then prove it will maintain this level for species where there is "very minimal biological information on their life histories, status, abundance, and distribution." The viability regulation forces the Forest Supervisors to make a promise that they cannot keep. Unfortunately, the new regulation will only expand the litigation over "viability" since instead of applying to vertebrate species, the viability requirement can now be expanded to include native plants and invertebrates such as fungi, slugs, and insects.

5. The regulation creates a new obligation to "conserve" fish and wildlife species that are only candidates for listing under the ESA. There will be a clamor for the Forest Service to develop recovery like plans for conservation of candidate species even though under the ESA recovery plans are not required for unlisted species.

> *§ 219.9 Diversity of plant and animal communities.*
> *Within Forest Service authority and consistent with the inherent capability of the plan area, the plan must include plan components to maintain the diversity of plant and animal communities, as follows:*
> * * *
> *(b) Species Conservation. The plan components must provide for the maintenance or restoration of ecological conditions in the plan area to:*
>
> *(1) Contribute to the recovery of threatened and endangered species;*
>
> *(2) Conserve candidate species;*

Under the ESA, a candidate species is an unlisted species. Candidate species are those petitioned species that are actively being considered for listing as endangered or threatened under the ESA, as well as those species for which the listing agency has initiated an ESA status review that it has announced in the Federal Register. The Forest Service has higher planning priorities than to devote its scarce resources to providing a conservation strategy in the forest plan to conserve every species for which someone has filed a petition to list or for which the listing agency has not yet determined whether listing is even warranted. The regulation now gives incentive to file petitions to list just so the Forest Service will have to address the species in the forest planning process. The forest planning regulation should not make the protection of candidate species a legal obligation when Congress has not imposed such a legal obligation in either the Endangered Species Act or the National Forest Management Act.

6. The diversity section creates a legally enforceable "non-degradation" standard for wildlife contrary to case law, the NFMA, the Organic Act, and the Multiple-Use Sustained-Yield Act.

The Ninth Circuit has emphasized in McNair that "[o]f course, neither the NFMA nor the . . . Forest Plan require the Forest Service to improve a species' habitat to prove that it is maintaining wildlife viability." McNair, 537 F.3d at 995. However, the planning rule is written so that all "plan components" "must provide for maintenance and restoration" of all species, which creates a legal "non-degradation standard" for wildlife throwing away the victory in McNair. Similar non-degradation language was used for the Aquatic Conservation Strategy (ACS) in the Northwest Forest Plan which led to years of litigation over whether projects could have short-term negative effects on soils and water quality and comply with the ACS. Pacific Coast Federation of Fishermen's Association v. National Marine Fisheries Service, 71 F.Supp.2d 1063 (W.D. Wash. 1999), aff'd, 265 F.3d 528 (9th Cir. 2001).

The diversity section creates an obligation to "contribute to the recovery" of ESA listed species but a forest plan is not a recovery plan and courts have held that a recovery plan is not a legally enforceable document. Citation. Therefore, by including an obligation to "contribute to the recovery" of an ESA listed species in the regulation itself, plaintiffs have a new legal claim that does not exist under the ESA recovery plan statutory language. While designing a forest plan to contribute to recovery is a laudable goal, it should not be a hard fast legal requirement in the planning regulation. The 1982 regulations were more flexible, and stated that "[o]bjectives shall be determined for threatened and endangered species that shall provide for, where possible, their removal from listing as threatened and endangered species through appropriate conservation measures." 36 C.F.R. section 219.19 (7)(emphasis added).

7. The diversity section must be modified to reduce its cost, to make compliance possible rather than impossible, to be habitat based, and to build on legal victories not to provide more ammunition for legal defeats.

The Forest Service would be better off drafting a regulation that focuses on maintaining the diversity of habitats rather than imposing legal requirement upon itself to identify, survey, and maintain "a viable population" that is not required by the National Forest Management Act. We strongly urge the Forest Service to use a habitat based approach. Such an approach would be entirely consistent with the plain language of the Act and the simplest solution is just to repeat the statutory language in the regulation and no more.

The courts have held that there is maximum flexibility and discretion under the NFMA diversity provision. Sierra Club v. Robertson, 810 F.Supp. 1021 (W.D.Ark.1992). The provision does not require viable populations, and as the Court recognized the diversity provision:

> is so qualified "that it is difficult to discern any concrete legal standards on the face of the provision." Charles F. Wilkinson and H. Michael Anderson, *Land and Resource Planning in the National Forests,* 64 Or.L.Rev. 1, 296 (1985). The Committee on Scientists ("the Committee"), which assisted in drafting the NFMA regulations, noted: Provision for "diversity" as required by NFMA is one of the most perplexing issues dealt with in the draft regulations. We believe it is impossible to write specific regulations to "provide for" diversity. 44 Fed.Reg. 26600-01. "Although the statement of policy [to

provide for diversity] is clear, there remains a great deal of room for honest debate on the translation of policy into management planning requirements and into management programs." *Id.* at 26608.

Id. at 1027 -1029.

So the Forest Service is mistaken if it believes that the viability rule is required to comply with the diversity provision of NFMA. And just because there are some references in the Forest Service Handbook to wildlife viability, that does not mean that the Handbook needs to be imposed as an inflexible regulation.

8. The diversity section fails to address that providing conditions for viability of one species may be to the detriment of other species.

All species do not have the same needs to survive and conditions that favor one species can be detrimental to other species. We strongly urge that the rule use an approach that achieve the NFMA diversity requirement by providing a variety of habitats rather than adopting an approach that will impose a legally binding requirement to ensure viability for a specific species.

9. The reference to the "inherent capability of the land" must be better defined.

As explained in our comments under section 219.8, we believe the term "inherent capability of the land" has little meaning because the capability of the land is determined by the intensity of management. Thus we recommend eliminating the term from the rule. However, if the Forest Service means that even with the most intensive management the land will not be capable of providing for viability of specific species, then the proposed rule should say so. We certainly do not object to the proposed rule recognizing that it may not be possible to demonstrate that the land will provide a viable population of a species, particularly on a national forest which is on the fringes of the species range. However, the proposed rule does not explicitly provide for this reasonable assumption that maintaining viability is not always possible, even if there were reasonable ways to measure is you were maintaining viabilty.

Section 219.10 - Multiple Uses

The rule inappropriately gives equal status to "protection" of recommended wilderness as to "protection" of Congressionally designated Wilderness.

Only Congress can create wilderness. The Forest Service should not create de facto wilderness. The rule requires that any area recommended for wilderness must be "protected." But the 2001 roadless rule already "protects" millions of acres of unroaded lands. The planning rule does nothing to provide that the millions of acres swept away from forest planning in the 2001 roadless rule are subject to forest planning when plans are revised. Thus the planning rule violates NFMA because the act requires that it is planning provisions apply to all lands, not just those that were not locked up in the 2001 roadless rule.

Section 219.11 - Timber Requirements Based on NFMA

The rule fails to explicitly acknowledge the importance of the "salvage or sanitation harvesting of timber which is substantially damaged by fire, windthrow or other catastrophe, or which are in imminent danger from insect or disease attack" which is emphasized in the plain text of the NFMA statute numerous times. 16 U.S.C. 1604(g)(F)(iv), (k), (m), and 1611.

The rule is drafted so as to illegally abandon or dilute the consistent clear statutory direction that any standards for suitable lands, size of openings, culmination of mean annual increment, or annual limits on timber removal "shall not preclude the Secretary from salvage or sanitation harvesting of timber which are substantially damaged by fire windthrow or other catastrophe, or which are in imminent danger from insect or disease attack" 16 U.S.C. 1604(m)(emphasis added). The regulation should be rewritten to consistently and explicitly set forth the insect, disease, and wildfire exception contained in the NFMA statute.

219.11(c) – we recommend rewording this paragraph to – "Harvest for salvage, sanitation, or public health or safety. Plans shall include direction for timber harvest for salvage, sanitation, or public health or safety objectives."

219.11(d)(4) – In requiring direction for limits on the quantity of timber that can be removed "annually", the proposed rule imposes restrictions on timber harvest that go beyond the requirements of the NFMA. The NFMA limits the quantity of timber that can be removed over a decade, with no annual limitations. It could, for instance, preclude a Forest from re-offering no bid sales in a subsequent fiscal year.

Section 219.12 - Monitoring

1. Carbon storage and climate change are overemphasized and the regulations are written in a way to favor retention of existing carbon stocks rather than to promote increase carbon sequestration through forest management.

The regulation compels a "monitoring program" "addressing . . . [m]easurable changes on the unit related to climate change and other stressors on the unit [and] the carbon stored in above ground vegetation;" 36 C.F.R 219.12. Climate change is mentioned numerous times elsewhere in the regulation. 36 C.F.R. 219.5, 219.8, 219.18. The definition of "ecosystem services" includes "long term storage of carbon [and] climate regulation." 36 C.F.R. 219.18. The plan "must provide for multiple uses, including ecosystem services." 36 C.F.R. 219.10, 219.11.The argument that leaving mature forests untouched to maximize long term storage of carbon and disagreement over the validity of carbon accounting assumptions will just invite litigation arguing that the forest plan violates the regulation because it does not maintain all mature forest for long term carbon storage and climate regulation.

2. The rule establishes broad, costly, unattainable monitoring requirements.

While the regulation supposedly gives the responsible official the discretion to "set the scope and scale of the unit monitoring program", it significantly limits that discretion "subject to the requirements of paragraph (a)(5). We recommend amending (a)(5) to truly give discretion to the responsible official, and specifically, we recommend deleting requirements to monitor status of focal species, changes "related to climate change and other stressors", carbon stored in vegetation, and "progress toward fulfilling the unit's distinctive roles and contributions to ecological, social, and economic conditions of the local area, region, and Nation". We recommend adding requirements to monitor accomplishment of forest plan Objectives, plus progress toward achieving forest plan "desired conditions".

In particular, 219.12(a)(5)(v), which requires monitoring of "measurable changes on the unit related to climate change ..." goes beyond common sense requirements for this planning rule. Climate is measured over decades, centuries, or millennia, and it makes no sense for the FS to evaluate "measurable" changes on a two-year cycle for every national forest.

Section 219.12(a)(5)(vii), refers to monitoring the "the progress towards fulfilling the unit's distinctive roles and contributions to ecological, social, and economic conditions of the lacal area, region, and Nation." As explained in more detail in our comments on section 219.2, the reference to focuses on single use "distinctive role" rather than multiple-use management and will inevitably bias the entire planning process in favor of some uses, products, and services and against other uses, products, and services." But in the context of monitoring, this requirement is incomprehensible. What is the "distinctive role" at a local area as compared to the region as compared to the nation? How will "progress towards fulfillment" be measured? This requirement epitomizes the gobbledygook in the proposed rule. There is no requirement in the law for identification of "distinctive roles and contributions" and it should be stricken from the monitoring section.

We are further very concerned about the Forest Service's capability to develop "a broader scale monitoring strategy for unit monitoring questions that can best be answered at a geographic scale broader than one unit" (219.12(b)(1)), notwithstanding 219.12(b)(3). We recommend changing "shall" to "may" in 219.12(b)(1).

Section 219.13 - Plan Amendment and Administrative Changes

1. The regulation should explicitly reference in this section that a plan amendment is permissible through a project level analysis.

The regulation does a good job of recognizing that "the responsible official has the discretion to determine whether and how to amend the plan" 36 C.F.R. 219.13. Court decisions have affirmed this broad discretion involving plan amendments and have held that a site-specific analysis for a project can be used to support a plan amendment for a particular project area. The regulation does address project level consistency with a forest plan in 36 C.F.R. 219.15 but should also do so in the plan amendment section of the regulation in 36 C.F.R. 219.13.

2. It is helpful that monitoring methods and protocols can be changed without a plan amendment.

Monitoring methods and protocols are highly technical and the regulation's explicit provision to permit changes without a plan amendment makes good practical sense.

Section 219.15 - Project and Activity Consistency with the Plan

1. The regulation effectively eliminates the distinction between forest plan guidelines and standards making guidelines legally enforceable standards that all projects must "comply with." This change throws away the Forest Service hard fought legal victories establishing that guidelines are discretionary -- not mandatory, and provide management flexibility.

§ 219.15 Project and activity consistency with the plan.

* * *

(d) Determining consistency. A project or activity approval document must describe how the project or activity is consistent with applicable plan components developed or revised in conformance with this part by meeting the following criteria:

(1) Goals, desired conditions, and objectives. The project or activity contributes to the maintenance or attainment of one or more goals, desired conditions, or objectives or does not foreclose the opportunity to maintain or achieve any goals, desired conditions, or objectives, over the long term.

(2) Standards. The project or activity complies with applicable standards.
(3) Guidelines. The project or activity:

(i) Is designed to comply with applicable guidelines as set out in the plan; or

(ii) Is designed in a way that is as effective in carrying out the intent of the applicable guidelines in contributing to the maintenance or attainment of relevant desired conditions and objectives, avoiding or mitigating undesirable effects, or meeting applicable legal requirements (§ 219.7(d)(1)(iv)).

The courts have had several occasions to review the distinction between forest plan standards and guidelines as they are currently defined under the existing regulations. The courts have ruled in favor of the Forest Service and repeatedly rejected plaintiffs' arguments that the agency was legally compelled to follow a forest plan guideline. The Forest Service should not toss aside these legal victories. For example, in Wilderness Soc. v. Bosworth, 118 F.Supp.2d 1082, 1096 (D.Mont.,2000), the Ninth Circuit rejected plaintiffs argument that all old growth stands had to be a minimum of 25 acres. The court concluded that "the 25 acre minimum size requirement in the Forest Plan is a guideline and is therefore discretionary rather than mandatory." Id. at 1096. Similarly, in Greater Yellowstone Coalition, Inc. v. Servheen, 672 F.Supp.2d 1105, 1114 (D.Mont.2009) the court noted that "[w]hen Forest Plans contain standards, the standards are 'mandatory requirements,' in contrast to guidelines, 'which are

discretionary.' Citing Miller v. U.S., 163 F.3d 591, 594, n. 1 (9th Cir.1998). Does the Forest Service really want to clamp down on its discretion and provide more vehicles for litigation challenges to agency decisions?

2. A project should be presumed consistent with the plan unless the plan explicitly states it is not consistent.

The provision dealing with the consistency of "existing authorizations" and previously approved projects with the new plan, presumes that all projects are inconsistent with the plan unless the plan expressly singles out the project and states that it is consistent with the plan. 36 C.F.R. 219.15(a). A better and less costly approach would be to assume that all existing authorizations and previously approved projects are consistent with the plan unless the plan explicitly states that those projects are inconsistent and must be modified to conform to the new plan. This would avoid disruptions of existing contracts and costly contract claims. The approach that the "existing authorizations" and approved projects are consistent with the new plan is supported by the language in NFMA that states that plan approval is subject to valid existing rights and also with the common practice that a plan assumes environmental effects based on existing conditions which are a reflection of the current authorizations and approved projects.

3. The provision that allows separate resource plans to be developed violates the requirement in NFMA that there be one plan for the forest.

The rule provides that there may be additional independent resource plans developed by the Forest Service. Section 219.15 (e). The National Forest Management Act was designed to eliminate separate resource management plans. The separate resource plans had the effect of preventing the achievement of objectives for other resources because the focal point of the resource plan was the particular resource for the plan that was being prepared. The NFMA required one integrated plan to eliminate the Balkanized planning for a national forest. The Act requires that "[p]lans developed in accordance with this section shall – (1) form one integrated plan for each unit of the National Forest System. . ." 16 U.S.C. § 1604 (f)(1).

219.17 - Effective Dates and Transition

Nothing in the regulation explicitly states that the Forest Service may continue to operate under existing plans until the new plans are completed and survive any legal challenges.

The NFMA statute explicitly provides that "[u]ntil such time as a unit of the National Forest System is managed under plans developed in accordance with this Act, the management of such unit may continue under existing land and resource management plans." 16 U.S.C. 1604(c). To avoid disruption of existing contracts, account for the inevitable legal challenges, and to be consistent with NFMA, the regulation should provide that the Forest Service make it to operate under existing plans until all challenges to the new plans are resolved.

Section 219.19 – Definitions

1. The regulation defines ecosystem services too broadly and improperly elevates ecosystem services to the same level of importance as multiple uses under MUSY.

The plan must provide for "ecosystem services" but the term is very broadly defined such that if a plan does not provide one of the services it will violate the regulation. Ecosystem services are defined as: "Benefits people obtain from ecosystems, including: (1) Provisioning services, such as clean air and fresh water, as well as energy, fuel, forage, fiber, and minerals; (2) Regulating services, such as long term storage of carbon; climate regulation; water filtration, purification, and storage; soil stabilization; flood control; and disease regulation; (3) Supporting services, such as pollination, seed dispersal, soil formation, and nutrient cycling; and (4) Cultural services, such as educational, aesthetic, spiritual, and cultural heritage values, as well as recreational experiences and tourism opportunities." 36 C.F.R. 219.19. The regulation states that "the plan must provide for multiple uses and ecosystem services" 36 C.F.R. 219.11. To the extent that ecosystem services trump the multiple uses in the Multiple-Use Sustained-Yield Act, the regulation is an end run around MUSY without an act of Congress.

2. The new requirement that the plan must provide opportunities for "spiritual" "sustenance" will only escalate what some commentator's term as a holy war over management of the national forests.

"Ecosystem services" are defined to include "[c]ultural services such as . . . spiritual . . . opportunities." 36 C.F.R. 219.19. Under the regulations, "[p]lans will guide management of NFS lands so that they . . . provide . . . opportunities . . . for . . . spiritual . . . sustenance." 36 C.F.R. 219.1(c). The plan "must provide for multiple uses, including ecosystem services." 36 C.F.R. 219.10, 219.11. The First Amendment of the Constitution prohibits the making of any law "respecting an establishment of religion" and the Forest Service should not dive into the arena of how Forest Plan decisions comport with the spiritual teachings of the Koran, Torah, or Bible.

3. The concept of "inherent capability of the land" needs to be better defined in the definition of "Health."

As explained in our comments to section 219.18, the concept of inherent capability of the land varies depending on the intensity of management and is a vague term. The term should be eliminated from the rule or better defined.

Section 219.50 - Predecisional Administrative Review Process

A pre-decisional objection process is a superior approach for challenge to a forest plan than the administrative appeals process.

The pre-decisional objection process has worked well for the projects under the Healthy Forest Restoration Act and the regulation does a good job of adopting a similar process for objections to forest plans. Requiring those who don't like a draft plan to object before the final

plan is released allows the agency to take issues into account and make appropriate changes prior to the decision; it's working well in HFRA projects.

COMMENTS ON THE EIS

General Overview

The NEPA process is not very informative when evaluating a programmatic Planning Rule and alternatives, and it may be argued that an EIS is not required for such a rulemaking. Alternative versions of the Planning Rule, at least if formulated within NFMA authority, merely establish a range of national level frameworks for preparing forest plans that themselves do not commit to any projects or activities on the ground.

In Ohio Forestry Ass'n v. Sierra Club, 523 U.S. 726 (1998), the U.S. Supreme Court recognized that the provisions of forest plans "do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability; they create no legal rights or obligations." Id. at 733. As such, the Planning Rule is at least two steps removed from any decision that has likely predictable environmental effects. Consequently, the proposal and alternatives for the Planning Rule have little or no direct effect on the human environment. The "effects" analysis in the DEIS Chapter 3 generally consists of predictions based upon varying degrees of assumptions.

In any case, however, the DEIS does not appear to be any more adequate in level of detail or quality of content than the EIS for the 2008 version of the Planning Rule, found deficient under NEPA in Citizens for Better Forestry v. U.S. Dept. of Agriculture, 632 F. Supp. 2d 968 (N.D. Cal. 2009). The detail and complexity of the current Proposed Rule indicates substantially more environmental change emanating from implementing it than the shorter and simpler 2008 Rule. Thus, the current Proposed Rule and accompanying DEIS present as much or more NEPA deficiency as the 2008 Rule, if the Citizens for Better Forestry federal district court decision criteria are applied.

Alternatives

The DEIS recognizes that a less cumbersome and expensive planning rule is needed. DEIS at 7. Yet the Forest Service's own analysis confirms that the Proposed Rule, even using the favorable assumptions employed by the agency, will be only slightly less costly than the 1982 Planning Rule that has been identified as overly burdensome—approximately $1.5 million less per year than the $104 million annual cost of the 1982 Rule. DEIS at 43. The DEIS and accompanying analysis for the Proposed Rule confirm that there are readily available alternatives that are far less costly and burdensome, and which still meet NFMA requirements and the agency's stated purpose and need.

As one example, Alternative C in the draft EIS would cost nearly $24 million (24%) less per year than the Proposed Rule (Alternative A) to implement. Draft EIS at 43. The more

flexible and less prescriptive design of this alternative should increase efficiency and allow units to tailor assessment, monitoring, revision or amendment to address only the priority needs of the unit. As stated in the DEIS, "The consequence of planning cost has an inversely proportional effect on the number of plans that could be revised or amended at one time and possibly the length of time to complete revision. For example, a 25 percent increase in cost might mean 25 percent fewer plans would be revised over a given time period." DEIS at 76. Thus, the Proposed Rule would likely result in substantially more backlog and less on-the-ground results than Alternative C.

The 2008 Planning Rule is another alternative that would appear to meet most or all of the stated purpose and need for an updated Rule. It contains most of the same basic concepts as the Proposed Rule but is only half the length (7 pages of Federal Register text compared to 14 pages for the proposed rule). The 2008 Rule was enjoined by a federal district court only for procedural shortcomings in the EIS and Endangered Species Act § 7 consultation completed for the rulemaking, and not any inadequacy in meeting NFMA requirements. Citizens for Better Forestry, supra. Nonetheless, the 2008 Rule was apparently excluded from any analysis in the DEIS, without any explanation. The 2008 Rule, or something similar to it, clearly belongs in the range of reasonable alternatives evaluated in detail and circulated for public and agency comment in the DEIS.

Alternative C, the 2008 Rule, or the Proposed Rule can be further modified to include the changes that we have recommended in our other comments. This modified alternative would still meet the basic elements of the stated purpose and need in the DEIS, and provide substantial further cost savings and ultimate benefits compared to the Proposed Rule or any of the other alternatives displayed in the DEIS. This modified alternative should be the preferred and selected alternative for the final EIS.

Economic and Cost-Benefit Analysis

The DEIS and accompanying January 25, 2011 Cost-Benefit Analysis evaluation of the costs and related economic impacts of the Proposed Rule appears to be based on overly optimistic assumptions regarding implementation. This analysis needs to be reviewed and revised with more realistic estimates of time, effort, and cost to the agency and other participants in implementing the complex, cumbersome, and confusing Proposed Rule requirements. This analysis needs to address the further litigation and other delay and similar costs associated with attempting to implement such a scheme, and the resulting lesser benefits on the ground for the ecological health of national forests and yield of multiple-use goods and services to the public. This revised analysis needs to compare the Proposed Rule with costs and benefits for the modified alternative recommended above. The analysis quantifies some costs but only qualitatively estimates benefits. This makes it difficult if not impossible to draw any meaningful conclusion from the cost benefit analysis. The costs of the proposed rule are also significantly underestimated. Our specific page by page comments are set forth below:

Regulatory Impacts

Pg. 2 The agency incorrectly assumes that the site-specific project costs are not affected by the Proposed Rule. Rule direction to the Forest Plans will be translated to Project Implementation. Examples of huge increased costs at both the Plan and Project levels are Collaboration, species viability for all six taxonomic kingdoms, and trying to assure and demonstrate that the best available scientific information is used.

Pg. 3 The effects and cost analysis only are included for administrative processes including appeals and objections. Foreseeable litigation is ignored. The $1 billion spent on trying to implement viability of invertebrates in the 1982 Rule and the 29 years of on-going litigation certainly make the cost of the proposed Rule at 219.9 (viability for all six taxonomic kingdoms) foreseeable. Another $1 billion and another 29 years of litigation will be the outcome. The agency has not briefed the Congress on this fiscal impact.

Agency Cost Impacts

Pg. 4 The analysis incorrectly assumes that costs associated with Alternative C (a rule that would only focus on NFMA requirements) would be similar to the 1982 Rule procedures including viability of vertebrates. Clearly this is a major error and costs will be far greater than the 1982 Rule.

Efficiency and Cost-Effectiveness Impacts

Pg. 5 Proposed Rule – The agency incorrectly concludes there will be long term gains in planning efficiency. This is in obvious error when just considering the impacts of Section 219.9 (Viability of all six taxonomic kingdoms) and the associated litigation that will come with it. The Survey/Manage (400 species of Invertebrates) effort of the Northwest Forest Plan has cost $33 million/year plus the litigation in multiple cases all of which the agencies lost.

Pg. 6 The agency incorrectly expects there will be gains in cost effectiveness resulting from collaboration. If the agency would quantify costs of current project level collaboration efforts, they would likely find that project costs have doubled and time from project inception to an awarded contract are substantially longer than without formal collaboration.

Pg. 8 Science Support – The agency incorrectly concludes the proposed Rule requirements will lead to a planning efficiency but ignores the complexity and cumbersome, costly procedural requirements to document "best available scientific information" putting the burden on the agency to prove that the best science was identified and used. A new set of legal challenges will also occur.

Pg. 8 Monitoring – Monitoring requirements increase; coupled with collaboration, more monitoring and more frequent reporting are the outcome. Costs will be substantially higher than that experienced in the 1982 Rule.

Pg. 9 Alternative C – The agency takes the stance that less requirements in a Rule means management units won't be able to perform effectively. Just the opposite would be the result; less requirements provides more flexibility. Further, the agency concludes reduced procedural requirements will lead to reduced capacity at the agency to perform. The agency also concludes that without collaboration, the agency will have less opportunity to resolve issues and conflicts. It's unknown how such a conclusion could be drawn.

Cost-Benefit Analysis:

Methodology and General Assumptions

Pg. 28 The analysis "does not estimate the trends in planning complexity or the associated costs." Clearly the proposed Section 219.9 viability clause for all six taxonomic kingdoms is foreseeable in terms of procedural costs and complexity and foreseeable in terms of new litigation. Foreseeable increased costs for analysis and litigation for "best available scientific information" and collaboration are also predictable. Hence, the whole methodology for cost analysis is fundamentally flawed.

Methodology: Agency Cost Analysis

Pg. 30 The agency chose to utilize only cost of administrative actions (project preparation through appeals or objections) and avoids inclusion of costs of litigation. Since litigation has been on-going for decades, the costs could have been determined and included. These costs not only include litigation of a specific case. The true cost also includes the delay and revision expense for multiple projects not involved directly in the litigation but that are affected by the results of the court decision.

Efficiency and Cost-Effectiveness Impacts

Pg. 42 – Collaboration

The agency makes faulty assumptions that collaboration will reduce monitoring costs and bring broader support and resolution of issues with their critics. Project level collaboration is showing that the agency agrees to do more monitoring and the extreme critics simply refuse to participate (because they can't agree with the Purpose and Need for the Project) and litigation is often not avoided. Whether to collaborate should be based on an assessment of risk.

Pg. 43 Science Support

The agency incorrectly assumes that "best available scientific information" will contribute to planning efficiency. The burden of proof falling on the agency and the litigation will prove otherwise.

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Pg. 44 Monitoring

The agency incorrectly concludes that monitoring requirements under the proposed Rule will increase planning efficiency by " . . . improving capacity to gather information and reduce uncertainty . . .". The viability requirement for all six taxonomic kingdoms (Section 219.9) will prove otherwise. The agency has publically stated it has minimal knowledge about invertebrates. The Survey/Manage procedures (400 invertebrate species) in the Northwest Forest Plan have added $33 million/year just to **try** to address invertebrates. The agencies have been sued multiple times challenging their effort to make survey and manage more workable or to eliminate the requirement. However, they have lost every lawsuits. Why impose this costly approach nationwide?

NACo National Association of Counties

The Voice of America's Counties

0731

May 15, 2011

Forest Service Planning DEIS
C/O Bear West Company
172 E 500 S
Bountiful, UT 84010

RE: Planning Rule

To Whom It May Concern:

On behalf of the National Association of Counties (NACo), please accept the following comments related to the proposed National Forest System Land Management Planning Rule (Rule). We understand the objective of the proposed rule is to guide the collaborative and science based development, amendment, and revision of land management plans that promote healthy, resilient, diverse, and productive national forests and grasslands.

NACo is the primary representative of the 3,068 individual county governments in the United States and works to create partnerships between local county governments and the Federal Government. There are over 700 counties nationwide with National Forest System land within their boundaries. These counties are, therefore, vitally concerned about the present and future management of these lands. The following comments are provided to foster that partnership in the management of the nation's national forests and grasslands.

§219.2 – Levels of planning and responsible officials

NACo supports the designation of the unit supervisor as the responsible official for unit level plans. Experience has shown that early and regular face to face meetings with the governing bodies of the affected counties is the best way to initiate and maintain appropriate local-level collaboration. Elected county officials are the only legally accountable representatives of the "public" at the local level.

§219.2(b)(3) states that the local unit supervisor is the responsible official for development and approval of a plan, unless a regional forester, Chief, under secretary, or the Secretary acts as the responsible official. NACo recommends adding addition language clarifying under what circumstances higher officials would be able override the unit supervisor as the responsible official.

§219.3 – Role of science in planning

NACo supports the requirement that the responsible official shall consider science throughout the planning process. However, this section should additionally recognize that scientific data is one of many factors influencing a plan decision. Sound science has an important role in Forest Service planning and management. Proving what science is "best" is likely to be time consuming and of little value, but will undoubtedly lead to litigation which will further delay the planning process.

While due diligence on behalf of the responsible official should be required, counties are concerned that the strict procedural requirements imposed on the responsible official to document in detail the identification, interpretation, and application of scientific findings and conclusions threaten to drain agency resources, elevate consideration of science above other considerations, and have the potential to allow for increased litigation (specific to compliance).

§219.4 – Requirements for public participation

The Federal Land Management and Policy Act (FLPMA), as well as other regulations, requires that planning efforts undertaken by the federal government consider existing state and local plans and ordinances. This level of coordination ensures a more comprehensive plan that incorporates many of the issues affecting communities located adjacent to public lands.

Under the existing rule (36 CFR 219.7) the planning process took so long that effective public participation by the affected county governments was prohibitively complex and resulted in extreme "process-fatigue" without yielding commensurate benefits. NACo supports early and thorough collaboration with local government officials in the planning process [§219.4(a)], but suggest clarifying when collaborative efforts will be determined not "feasible and appropriate." NACo maintains that Federal law requires agencies to coordinate with local governments and suggest that thorough collaborative efforts (with local governments) are always feasible and appropriate.

NACo supports active public participation and encourages the agency to give increased weight to local communities most directly impacted by the plan.

NACo supports the requirement to provide opportunities for other government agencies to participate in planning on NFS lands [§219.4(a)(8)], specifically the requirement for the responsible official to encourage local governments to seek cooperating agency status.

The National Environmental Policy Act (NEPA) requires the federal government cooperate with local governments when developing environmental documents. The white House Council on Environmental Quality (CEQ) has also provided guidance to federal agencies on granting Cooperating Agency Status to State and local governments. The Forest Service Handbook, provides additional guidance to agency managers about inviting local governments to participate in the preparation of environmental documents.

§219.4 will provide for much needed consistency across Forest Service Regions in county participation as cooperating agencies. Currently, much regional disparity exists in the use and acknowledgement of cooperating agency relationships by the Forest Service.

NACo supports the requirement that the responsible official review county planning and land use policies and document results of the review in the draft Environmental Impact Statement, including how the forest plan will address the impacts identified and how the plan will contribute to joint goals. [§219.4(b)(3)]

NACo recommends striking "to the extent practicable and appropriate" from §219.4(b)(1) and replace with "with a view toward achieving consistency between the proposed forest and local plans." As mentioned before, NACo believes it is always appropriate and practicable for the agency to coordinate with local governments. Additionally NACo recommends adding the following requirement: "Where the forest plan may not be made consistent with local plans, the responsible official shall document how and why its plan is not consistent with local plans, as determined by local officials, and explain why its plan cannot be made consistent with local plans."

The language in §219.4(b)(3) states "the responsible official will [not] seek to direct or control management of lands outside of the planning area, nor will the responsible official conform management to meet non-Forest Service objectives and policies." NACo is concerned that this language may contradict the earlier stated objective to coordinate with local governments. In addition, NACo is concerned that this section may create conflict with established Community Wildfire Protection Plans (CWPP) which include planning on both Federal and non-Federal lands.

§219.7 – New plan development or plan revision

NACo requests that future planning efforts require the responsible official to consider the reduction of Fire Regime Condition Class (FRCC) in consideration of desired conditions [§219.7(d)(1)(i)]. NFS lands should be actively managed to reduce the threat of wildfire and the release of greenhouse gases. Reduction of FRCC 3 to FRCC 2 and FRCC 1 will insure a sustainable economic and environmental legacy for future generations. Each year catastrophic wildfires throughout the nation contribute to climate change, jeopardize the national treasury, threaten fish and wildlife habitat, degrade both water and air quality, and cause devastation to forest dependent communities through loss of life, property, jobs, and the nation's timber resource.

§219.8 – Sustainability

NACo appreciates that the proposed rule considers the ecological, social, and economic systems as interdependent and without ranking in importance. Nevertheless, the rule requires the unit to take affirmative actions under the plan to maintain and restore elements of ecological sustainability, but merely guides the unit's contribution to social and economic sustainability. Counties recognize that the agency has more influence over factors that impact ecological sustainability on its lands. They also acknowledge that the rule makes a presumption that land is suitable for timber production unless identified in the plan as not suitable.

We have concern over how the proposed rule broadly defines "ecosystem services" and recreation as the principal contributions of national forests toward the social and economic well-being of nearby communities. Given the sheer size of these national forests, their contributions to surrounding communities must be more tangible, substantial, and sustainable for their contributions to be appropriately significant. §219.8 should be amended to emphasize the profound role that a national forest plays in the vitality of local communities, and direct the responsible official to embrace that role through meaningful and productive coordination with elected county officials.

§219.8 (b)(4) should be clarified to provide a clear understanding of how the agency defines "sustainable," understanding that local interpretation of economic sustainability may differ from the perspective of the responsible official. All efforts should be made by the responsible official to achieve consistency between agency and local definitions of sustainability.

§219.9 – Diversity of plant and animal communities

NACo is concerned that §219.9 will provide increased process and litigation by diverting scarce agency resources to expand the obligation to demonstrate that a plan will maintain ecosystem diversity and viable populations of plant and animal species. The agency is assuming a burdensome responsibility, not required by statute, to maintain the viability of "species of conservation concern within the plan area", and to extend the viability requirement to native plants and invertebrates, about which the agency has "very minimal biological information on their life histories, status, abundance, and distribution". Wildlife viability is not the only consideration of the agency when developing site-specific plans.

NFMA does not mention "viable populations" but instead the Act only requires the Forest Service to "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives and within the multiple-use objectives of the land management plan." 16 U.S.C. 1604 (a)(3)(b). In contrast, the regulation treats national forests as biological preserves rather than forests managed for the use and necessities of the people United States as required by the Organic Act. 16 USC 476.

The current planning rule makes it extremely difficult for the Forest Service to demonstrate that it is maintaining viable populations of wildlife species. One of the most frequent legal claims in national forest litigation is that the Forest Service is not maintaining viable populations. The Forest Service should use the revision of the planning regulation as an opportunity to eliminate this fertile ground for litigation. There is no consensus on the population level that achieves a "viable" population so the regulation imposes a legal obligation on the Forest Service to ascertain what is not ascertainable. Measuring and proving that a forest plan will "maintain" or is "maintaining" a viable population is nearly impossible, leaving the Forest Service highly vulnerable to lawsuits.

The forest planning regulation should not make the protection of candidate species a legal obligation when Congress has not imposed such a legal obligation in either the Endangered Species Act or the National Forest Management Act. The Forest Service has higher planning priorities than to devote its scarce resources to providing a conservation strategy in the forest plan to conserve every species for which someone has filed a petition to list or for which the listing agency has not yet determined whether listing is even warranted.

§219.9 and §219.10 Multiple uses / Timber requirements based on the NFMA

This section fails to recognize that per the National Forest Management Act (NFMA), ecological factors (as referenced in §219.9) are not elevated above any other multiple-use nor does it require that national forest land use plans be contingent upon such considerations. NACo is concerned that the responsible official will be influenced to consider superfluous and relatively undefined "ecosystem services" above the statutory requirements of multiple use.

The agencies multiple use mandate, a mandate imposed by Congress, codified in agency regulations and affirmed by the courts, seems to be circumvented in the proposed rule. The multiple use sustained yield statutory mandate is a viable and credible planning blueprint for managing forest lands. The current proposed rule fails to adequately uphold the statutory requirements of NFMA (16 U.S.C. §1600) and MUSYA (16 U.S.C. §§528-31).

§219.19 – Definitions

The proposed rule defines ecosystem services too broadly and improperly elevates ecosystem services to the same level of importance as multiple uses under MUSYA.

The plan must provide for "ecosystem services" but the term is very broadly defined such that if a plan does not provide one of the services it will violate the regulation. Ecosystem services are defined as: "Benefits people obtain from ecosystems, including: (1) Provisioning services, such as clean air and fresh water, as well as energy, fuel, forage, fiber, and minerals; (2) Regulating services, such as long term storage of carbon; climate regulation; water filtration, purification, and storage; soil stabilization; flood control; and disease regulation; (3) Supporting services, such as pollination, seed dispersal, soil formation, and nutrient cycling; and (4) Cultural services, such as educational, aesthetic, spiritual, and cultural heritage values, as well as recreational experiences and tourism opportunities." 36 C.F.R. 219.19. The regulation states that "the plan must provide for multiple uses and ecosystem services" 36 C.F.R. 219.11. To the extent that ecosystem services trump the multiple uses in the MUSYA, the regulation is an end run around MUSYA without an act of Congress.

§219.53 – Who may file an objection

NACo supports language that would limit filing of an objection to those who have submitted "formal comments" related to a plan, plan amendment, or plan revision during public participation opportunities provided in the planning process. We also support the requirement that objections be based on the substance of the objector's formal comments, unless the objection concerns an issue that arose after opportunities for formal comment. It is appropriate that the burden falls on the objector to demonstrate compliance with these requirements.

With increased opportunities to participate and comment, objectors have no reasonable arguments against these requirements. A plan, after the exercise of a reasonable process, must be adopted and implemented to let appropriate management begin.

NACo looks forward to continuing our close working relationship with the Forest Service in an effort to ensure that the public is involved in forest planning at the appropriate level and in truly meaningful ways.

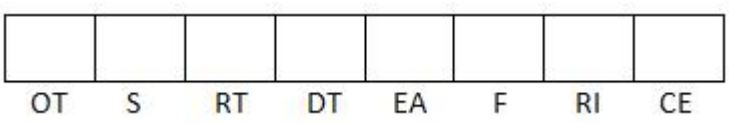
As proposed, we believe the proposed rule is overly long and encumbered with inflexible mandatory requirements that preclude it from being a workable, affordable, and enduring Planning Rule. We believe that the adoption of the above recommendations into the planning rule will better enable the agency to plan for wise stewardship of the Nation's forest resources as well as to provide for the long-term stability of the forest communities we represent.

Sincerely,

Larry E. Naake

Larry E. Naake
Executive Director
National Association of Counties

The National Association of Counties (NACo) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,068 counties. NACo advances issues with a unified voice before the federal government, improves the public's understanding of county government, assists counties in finding and sharing innovative solutions through education and research, and provides value-added services to save counties and taxpayers money.



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See Attachments

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May 10, 2011

The Honorable Tom Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave. S.W.
Washington, DC 20250

Dear Secretary Vilsack:

We are pleased to submit our comments on the National Forest System Land Management Planning Rule. More than 85 percent of the lands being managed under this rule are in the West and, as a former governor, you know that states and the federal government share jurisdiction over U.S. Forest Service lands. Western Governors believe strongly in the mission of the U.S. Forest Service to *"sustain health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations."* Given the joint authority and shared goals, it is imperative that the Planning Rule consistently and clearly recognizes state authorities, as well as the need for inclusive processes and transparency, which will improve planning efforts and collaboration while reducing litigation. Further, given that both the Western Governors and the Obama administration have made the strengthening of our transmission grid a high priority, the Planning Rule must ensure that forest plans recognize this.

The Western Governors' comments aim to clarify the roles of federal, state and local governments in relation to defining and measuring sustainable forest management, promoting regional collaboration, joint planning and coordinated action. We consider it imperative that the U. S. Forest Service coordinate closely with states, tribes and local governments as you refine and implement a new Planning Rule. We stand ready to assist in this endeavor as do our forestry, water and wildlife experts that helped to develop these comments.

If you have any questions, please feel free to contact us, or Pam Inmann, WGA's Executive Director. With our recommended improvements to the draft rule, we can together ensure the health and productivity of our nation's forests, watersheds and wildlife.

Sincerely,

C.L. "Butch" Otter
Governor of Washington
Chair

Christine Gregoire
Governor of Idaho
Vice Chair

cc: Forest Service Planning DEIS c/o Bear West Company
Attachment

Western Governors' Association
Comments on U.S. Forest Service Planning Rule

Overarching Comments

Siting Transmission Lines and Renewable/Non-renewable Energy Development

For several years Western Governors have worked together and with federal land managers to facilitate planning and siting for new electricity transmission lines in the West. Planning for new transmission has been a high priority goal for state and federal governments in recent years, however, the proposed rule does not require plans to appropriately provide for the inclusion of transmission corridors. New transmission will likely cross several forests in the coming years, yet the proposed planning rule does not identify a regional or federal official who would be responsible for transmission planning across multiple forests in multiple states. This is a significant omission, and the rule should be amended to consider how the Forest Service will work with Governors on large multi-forest, multi-state projects.

Numerous national laws and policies related to Forest System lands provide for the use of minerals, oil and gas; renewable energy development; and utility corridors, including transmission. Demand for these resources and use of the lands is increasing and so is the complexity land managers face in crafting development projects. The difficulty land managers face is that the proposed rule only requires consideration of these activities and does not provide specific provisions to guide the planning and implementation of these various activities. We suggest that a subsection of the rule be developed to specifically address planning for transmission lines; other utility infrastructure and facilities; and mineral and energy resources.

Economic Impact

The management of public lands can significantly impact the economy of some local communities. Although the current planning rule requires the U.S. Forest Service to consider the economic and social impact to local communities when developing local national forest plans and decisions, the U.S. Forest Service could improve on this impact analysis. We are concerned that the new Planning Rule fails to reflect the interdependency and coequality among ecological, social and economic elements of sustainability. For example, in Section 219.8 plans must include components that "guide the unit's contribution" to social and economic sustainability, but must "maintain or restore" various ecological components. The new Planning Rule must balance preservation, as well as social and economic benefits, and it should apply the "maintain or restore" language to all elements. To that end, it must utilize clear, definitive economic indicators when developing plan standards and when making project-level decisions. This will provide for transparency in analysis and increased protection for our communities and natural resources from the economic impacts resulting from the lack of management and restoration activities.

By establishing clear and timely processes that allow local economies to grow, while protecting our natural resources, the U.S. Forest Service will effectively meet their agency mission to provide for the productivity of the Nation's forests and grasslands. The Planning Rule must provide additional direction for an increase in large-scale forest restoration and more active management. The current definition of "productivity" should be amended to include economic productivity.

State Authority

The Planning Rule fails to acknowledge the unique authority states have to manage wildlife, forest and water resources; to protect public health and safety within their boundaries; and to participate in land use planning processes that have a direct impact on their economies and communities. The

Planning Rule should be revised to more clearly define the role of state governments in forest planning, and to acknowledge the trust responsibility of the states. We provide additional detail about how this could be achieved in the section below regarding coordination and consistency with state and local plans and assessments.

The Planning Rule appropriately requires the U.S. Forest Service to provide opportunities for public participation, including state governments, and directs the responsible official to take into account the discrete and diverse roles, jurisdictions, responsibilities and skills of interested and affected parties. However, greater recognition should be given to the trust authority state governments have over water, wildlife and forest resources; their primary authority and expertise to protect public health and safety; and the states' right to engage in federal land planning processes.

Specifically, the Planning Rule should "require coordination with state governments and seek the policy advice of the Governor" (see similar BLM language in CFR Title 43, Public Lands: Interior, Subtitle B—Regulations Relating to Public Lands, Part 1610.3-1.b). The Planning Rule should provide state governments the opportunity to review, advise and provide suggestions on those issues and topics that may affect or influence state government programs. To facilitate coordination with state governments, the U.S. Forest Service should seek the policy advice of the Governor(s) on: the timing, scope and coordination of plan components; definition of planning areas; scheduling of public involvement activities; and the multiple use benefits and constraints on public lands, etc.

In addition, Section 219.4 of the draft planning rule reads that "where appropriate" the responsible official "should encourage" states to seek cooperating agency status in the NEPA process for a plan development, amendment or revision. Cooperating agency status is always appropriate for state governments in the NEPA process, and the planning rule should be revised to direct the responsible official to "offer cooperating agency status to state and local governments in all instances."

Coordination and Consistency with State and Local Plans and Assessments

The U.S. Forest Service should coordinate with states and ensure that Forest, Resource and Fire Management Plans incorporate the plans and policies of state and local governments. The Planning Rule should recognize and allow for protection and conservation values as identified by state authorities; state assessments and plans; and local agreements. Current language in the Planning Rule only requires the U.S. Forest Service to "consider" State and locally developed water, wildlife and community fire protection plans. The Planning Rule should require that land and resource management plans be consistent with state plans, programs and policies. At a minimum, the rules should include a consistency requirement no less stringent than that found in current BLM planning rules shown below. CFR Title 43, Public Lands: Interior, Subtitle B—Regulations Relating to Public Lands, Part 1610-3.2 Consistency Requirements provide:

> (a) Guidance and resource management plans and amendments to management plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans.
>
> (b) In the absence of officially approved or adopted resource-related plans of other Federal agencies, State and local governments and Indian tribes, guidance and resource management

> plans shall, to the maximum extent practical, be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian tribes. Such consistency will be accomplished so long as the guidance and resource management plans are consistent with the policies, programs and provisions of Federal laws and regulations applicable to public lands.

Recently, federal land and resource managers and state foresters jointly developed State Forest Resource Assessments. These "all lands" assessments and strategies must be the basis for any federal land and resource management plan. The U.S. Forest Service must work with state and local governments to implement collaboratively developed solutions that will improve the health of our forest lands and reduce negative impacts on watershed health. We are concerned that the current language in the Planning Rule does not mandate consideration of or consistency with these assessments.

Multiple-Use

The Planning Rule introduces new phrases, such as "sustainable multiple uses" and "ecosystem services," in particular as they relate to multiple uses. These terms or phrases as they are currently used throughout the draft Planning Rule are ambiguous. These ambiguities are certain to invite litigation as they are interpreted and implemented by the responsible official. The definition section of the Planning Rule should be expanded to include these phrases, clearly identifying their intent, and appropriate definitions should be reached by collaboration.

Previously we recommended adding a section on the siting of transmission lines and on renewable and non-renewable energy development. If a section is not developed to address these concerns, we believe strongly that you should include the suggested language below:

In Section 219.10, it states that "… the plan must provide for multiple uses, including ecosystem services, outdoor recreation, range, timber, watershed, wildlife and fish." It goes on to say that the responsible official shall consider other items, including renewable and non-renewable energy and mineral resources, and sustainable management of infrastructure, such as recreational facilities and transportation and utility corridors. There is a substantial difference between being required to provide for multiple uses and simply having responsible officials consider them. It is appropriate for the responsible official to consider the value-driven items listed under 219.10(a)(1-9), but such things as energy, minerals and transmission are uses and should be listed as such. We would amend Section 219.10 to read:

> "In meeting the requirements of 219.8 and 219.9 within U.S. Forest Service authority, the capability of the plan area and the fiscal capability of the unit, the plan must provide for multiple uses, including but not limited to renewable and non-renewable energy; mineral resources; infrastructure, such as recreational facilities, and transportation and utility corridors; ecosystem services; outdoor recreation; range timber; watersheds; wildlife; and fish.

Land and Resource Management Plan Components

The Planning Rule eliminates the distinction between plan guidelines and standards, thus making guidelines legally enforceable standards that all projects must "comply with." This change does not allow for the flexibility and discretion needed when making project-level decisions. Guidelines are meant to be discretionary, while standards are mandatory. The Planning Rule should be written so that these are very clearly defined.

Cross Unit Planning
The U.S. Forest Service must be able to recognize and manage for landscape-scale issues that should be addressed on a broader geographical scale, rather than as a single planning unit. The Planning Rule should provide greater clarity and substantial emphasis on this issue. For example, the monitoring provisions of the draft rule explicitly call for officials from two or more forest planning units to jointly develop monitoring that is necessary beyond the boundaries of a single unit. Similar language should be included as well in the draft rule regarding assessment and plan development. Draft language in Section 219.6(b)(3) that calls for assessment and planning regarding "the distinctive roles and contributions of the unit within the context of the broader landscape" does not provide Forest Supervisors with explicit direction, as does the monitoring section, which calls for working across boundaries with neighboring forest planning units regarding assessments and plans. A final rule should require cross unit planning across all of its phases and components. The final rule should also require that plans identify the officials or office, and the process that will be used for project-level consideration of uses that span multiple units.

Sustainability and Science
Western Governors' Association policy promotes the need for a common landscape-scale vision for the sustainable management of forests. Existing criteria and indicators for the sustainable management of the nation's forests provide an in-place framework for protecting and maintaining America's forest and a national policy on sustainable forests. In 1998, the National Association of State Foresters and the U.S. Forest Service jointly agreed that the Montreal Process Criterion and Indicators could provide a clearer vision for the management of the nation's public and private forest lands. The Planning Rule makes no mention of using these criteria and indicators to measure sustainability, and current language does not equally address the components of ecological, social and economic sustainability. It is unclear how the U.S. Forest Service will establish consistency among these three components and measure sustainability.
Language in the Planning Rule refers to providing for the "best available science." While important, this could be cumbersome, as well as very time consuming and expensive. Sound science is crucial in planning and management, but proving what science is "best" will undoubtedly lead to litigation. In order to respect state trust responsibilities and authority, science should be collected as thoroughly as possible in the timeframe provided and include data from affected states.

Stakeholder Input
Early versions of the planning rule included specific language regarding coordination with local government, as required by the National Environmental Protection Act and the National Forest Management Act. Western Governors recommend the coordination include an improved and effective legal framework and consultation process on local and state responsibilities and needs, as well as regional protocols that have been developed with state, tribal and local government representatives. The Planning Rule must recognize and include collaborative stakeholder groups throughout all phases of project development, such as fuels management, community, environmental and economic needs and a balance between natural resource use and protection, while achieving land and resource management plan outcomes.

In Section 219.4, "Requirements for public participation," subsection (b) details requirements for coordination with other public planning efforts. This section requires coordination with State and local governments, "only to the extent practicable." The Planning Rule should be modified and state that "applicable local and regional collaborative groups, including federal, tribal, state and local members, should be involved in plan development."

Comments Regarding Forest and Fire Management

The Planning Rule should explicitly acknowledge the importance of the "salvage or sanitation harvesting of timber which is substantially damaged by fire, windthrow or other catastrophe, or which are in imminent danger from insect or disease attack," which is emphasized in the plain text of the NFMA statute numerous times. 16 U.S.C. 1604 (g)(F)(iv), (k), (m) and 1611.

Comments Regarding State Wildlife Agency Information

Use of State Wildlife Data
The new planning rule should reference the work of Western state wildlife agencies to establish regionally compatible decision support systems (DSS) for crucial wildlife habitat and corridors, Doing so would recognize that states possess broad trustee, police powers and primacy over fish and wildlife within their borders, and acknowledging the June 2009 wildlife data coordination Memorandum of Understanding, which was signed by the Governors and Secretaries of the Interior, Energy and Agriculture. work with states to use scientific data concerning the locations of critical wildlife corridors to help restore and conserve those corridors. The U.S. Forest Service planning rule is in fact specifically called out in the AGO report as an example of a federal policy that needs to incorporate wildlife corridor conservation and restoration. Given the states' jurisdiction over wildlife, the June 2009 MOU, and the administration's own recommendations in its AGO report, we believe the draft planning rule significantly lacks the necessary comprehensive commitment to incorporate and use wildlife data developed by the states and should be revised as described below.

The Planning Rule should require the U.S. Forest Service to consult state wildlife agencies and their DSSs and integrate that information into its planning processes at the earliest possible stage. State wildlife data available through a DSS, or otherwise, should be referenced and incorporated in the following draft sections of the rule:

> 219.3 - As a source of best available science;
>
> 219.6 - For purposes of developing assessments for forest plan developments or revisions in addition to State Wildlife Action Plans;
>
> 219.9 - For purposes of developing components of plans regarding plant and animal diversity, particularly in species conservation; and
>
> 219.2 - For use in undertaking broad-scale monitoring strategies particularly with respect to migratory species and adaptation to climate change.

In order for the planning rule and future forest plans to meet legal standards and the commitments this administration has made with Governors by agreement and policy pronouncements, the rule needs to contain explicit direction throughout its provisions for the U.S. Forest Service to incorporate and use state wildlife data.

Need for Cross-Unit Planning
Related to cross-unit system planning, such a requirement is vital to provide needed flexibility to address species' viability requirements as well as other landscape-level issues. Information available through state wildlife DSSs, the commitment to which is recommended above, will substantially enhance the ability of forest managers to work across unit boundaries. Because the state systems are

being explicitly designed with a goal of compatibility across political jurisdictions, they promise to offer the best source of wildlife data at the landscape scale.

Coordinating Forest Service Landscape-scale Mapping with State Initiatives
Although not directly stated in the draft rule, it has come to our attention that the U.S. Forest Service is considering the development of landscape-scale mapping tools to better assess and plan agency actions. While we appreciate the need for such tools, and given the MOU that Governors signed with the Secretary of Agriculture, the Forest Service should be working closely with those state wildlife agencies that are in the midst of developing and deploying DSSs. Developing mapping tools that are closely linked with wildlife mapping efforts already being undertaken at the state level will ensure that public funds are used with the greatest efficiency. Ensuring consistency between state and federal wildlife maps also will lead to greater public confidence in land and wildlife management agency actions.

Comments Regarding State Water Management

The new Forest Planning Rule must recognize the important connections between forests and clean water supply. As you well know, the national forests were created in part to protect our vital source watersheds for clean freshwater supplies. Nowhere is the connection between national forests and clean water supply more critical than in the American West. The top-line recommendation of WGA's June 2008 report, *Water Needs and Strategies for a Sustainable Future: Next Steps,* highlights the need for Integrated Water Resources Planning at all levels of government. The report continues, "states should identify, restore and preserve high value watersheds and natural features…that provide ecological service (mitigate flooding, filter and remove pollutants, recharge ground water, etc.), and that may minimize the need for structural alternatives."

In this case, we ask that the new Planning Rule consider the impacts of forest health and management practices on freshwater supply and water quality and directly engage local and downstream water providers for input on forest management. For the purposes of the planning rule, public water supplies and associated water quality should be treated not just as an "ecosystem element" (sec 219.8 (a)(2)(iv)), but as a critical resource with significant economic and community values under the "multiple use" provisions of the rule (sec 219.10(a)). In addition, state and local water resource managers should be explicitly acknowledged in the planning rule, and they should be consulted by the U.S. Forest Service for the purpose of evaluating the impacts of forest management and new forest plans on the quantity and quality of public water supplies.

Further, the new Planning Rule should explicitly accommodate the need to operate and maintain water supply infrastructure and data collection devices on forest lands. As you know, many diversions, water conveyance infrastructure, and water data collection facilities occur on national forest lands. Because water supply operators must make periodic improvements and repairs, they generally need to have access to operate and maintain infrastructure to ensure proper function and public safety. In addition, water resource managers must be able to collect data on streamflow and snowpack on forest service lands in order to manage the resource effectively. Regular and prompt access to national forests for these purposes should be accommodated in the Planning Rule. This issue is particularly acute in lands managed as wilderness or roadless areas.

Finally, the new Planning Rule must recognize the preeminent role of the states in adjudicating and allocating rights to the use of water for federal and non-federal purposes.

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Attributes

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Comments

Please see attached comments on the proposed planning rule from the Tulalip Tribes.

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0734

THE TULALIP TRIBES

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The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and other tribes and band signatory to the Treaty of Point Elliott

Forest Service Planning DEIS
C/O Bear West Company
132 E 500 S.
Bountiful, UT 84010

May 13, 2011

Re: Tulalip Tribes' Comments on Forest Service Proposed New Planning Rule for the National Forest System

To Whom It Concerns:

The Tulalip Tribes appreciate the opportunity to submit these comments on the U.S. Forest Service's proposed 2011 Planning Rule. Tulalip is a federally recognized sovereign Indian tribe within Western Washington, and is the successor in interest to the Snohomish, Snoqualmie, Skykomish tribes, and other tribes and bands through the Point Elliott Treaty of 1855. The Tulalip Tribes expressly reserved off-reservation fishing rights and the right to hunt and gather on all off-reservation "open and unclaimed lands". As an Agency of the United States Government, the Forest Service has a trust responsibility to protect the treaty and cultural rights of all federally recognized tribes.

In November of 2007, the Tulalip Tribes signed an historic Memorandum of Agreement with the Mt. Baker-Snoqualmie National Forest to help foster greater communication and collaboration in the management of the forest, and help facilitate the exercise of treaty protected hunting, fishing and gathering rights. In the agreement, the Forest Service specifically recognized that, since time immemorial, the Tulalip Tribes "have harvested animals, plants and other resources on lands now managed by the forest to meet their subsistence, spiritual, cultural, and medicinal needs, and for the purposes of trade and commerce."

The Tribes view the continued availability and use of resources within national forests as essential to perpetuating their culture and identity as a distinct Tribe. Maintaining supply and access to plants, animals, minerals, and certain spiritually and culturally-important places is critical to tribes like Tulalip whose reservation land base by itself, cannot furnish foods, medicines, materials and certain physical landscapes necessary to sustain Tulalip culture. Historically, these resources were sought over a very large area, from the higher elevation mountain landscapes down to the marine coastal waters.

The Tulalip Tribes welcomes the U. S. Forest Service's development of a new Planning Rule, and we are encouraged to see some of our earlier comments and recommendations outlined to the Forest Service addressed in this proposed rule. We

believe that the development of a new planning rule provides an opportunity for the Forest Service to clarify their special trust relationship to Tribes and their responsibilities to address and protect reserved treaty rights on national forests. We hope that the framework of the new planning rule will support treaty-reserved uses in a meaningful and enduring way, and support a stronger, more collaborative relationship between treaty tribes and the Forest Service in the planning of national forests, the management and sustainability of the natural and cultural resources on these lands, and the implementation of treaty rights in the future. Toward that end, we continue to support and recommend the following specific planning rule provisions:

1. The rule should outline specifically how treaty obligations or other legally binding obligations to Indian Tribes will be addressed and assured in the planning rule and subsequent development of forest management plans. The rule should also specifically require that Forest Land and Resource Management Plans outline the various histories and rights of federally recognized tribes on those national forest lands, including any treaty reserved rights, and the nature of the federal trust responsibility to such Tribes, explaining how these rights differ from public stakeholder rights
2. The new planning rule should specify the need to engage in government-to-government consultation with affected Tribes early, in a pre-scoping phase of NEPA planning, and to encourage affected Tribes to join, as Cooperating Agencies under NEPA, in the development of forest land and management plans for individual national forests.
3. The Rule should ensure specifically, that land use designations, prescriptions, and standards for the National Forest Land and Resource Management Plans do not preclude, limit or otherwise impact the exercise of treaty rights on or near those areas, without consultation with and concurrence from affected Tribes. An example of the impact to treaty rights of certain land use designations is the Stevens Pass Ski Area in the Mt. Baker-Snoqualmie National Forest which is designated in the Forest Plan as a "developed site", and as such is closed to treaty hunting, according to the criteria of this designation.
4. The new Forest Planning Rule should mandate the review of existing Special Use Permits (SUPs), and the evaluation of any new SUPs, that currently, or may in the future, limit, displace or preclude tribal access and/or negatively affect the practice of treaty recognized rights in national forests; the review should also include an evaluation of the potential cumulative impact of SUPs on the exercise of Tribal treaty rights; as well as how these permits may affect other planning objectives such as climate change adaptation and ecosystem resilience. Treaty Tribes should be directly involved in this evaluation, and consulted prior to the issuance or re-issuance of any new SUP that may affect the exercise of treaty rights in the SUP area. The Forest Service should work in concert with affected Tribes in determining how to avoid or remedy such impacts, if possible, and where such remedy or mitigation is not possible, refrain from issuing or re-issuing these SUPs.
5. We support the Forest Service's intent to address "resilience" in the proposed Forest Service planning rule; in doing so we encourage you to evaluate, in collaboration with affected Tribes, the diversity of habitat types across national forest units, as they apply to the Pacific Northwest, in further consideration of designations such as Wilderness and Late Successional Stage Reserves (LSRs), and decades of fire suppression policies, that combined have favored an increasing predominance of old growth mature forest conditions, rather than a more diverse, and resilient mosaic of habitat types across the landscape.
6. We also support and recommend that the Forest Service address current and anticipated changes and stresses to the national forest lands as a result of global climate change, and recommend that the Forest Service work closely with

Tribes, and tap their considerable expertise, in developing a strategy to mitigate and adapt to these stresses in a way that supports ecosystem health, and specifically, the treaty-reserved resources and practices that may be tied to fixed areas of lands within these national forest lands, and directly impact the security of Tulalip's food resources and cultural continuity.

7. The new Planning Rule must be consistent with and implement the new tribally-related provisions of the 2008 Farm Bill amendments, Subtitle B--Cultural and Heritage Cooperation Authority, as appropriate, addressing access, privacy, and security of cultural practices, places and artifacts; we support articulating these authorities within the Planning Rule as they relate to forest planning.
8. Ensure that tribes are recognized in the new Planning Rule as valuable and essential collaborators in the management of national forests, and that the rule specifically encourages tribal co-management with the Forest Service, particularly as relates to the protection, conservation and restoration of the natural, cultural resources which Tribes' cultural sustainability depends.
9. The Forest Service should include in the planning rule acknowledgement of tribally-valued resources, access, spiritual and cultural practices and locations, in the development of forest management plans, but at the same time ensure that culturally and spiritually sensitive information is not publicly disclosed. (as provided for in Subtitle B--Cultural and Heritage Cooperation Authority and other authorities). Beyond that, the Forest Service must include in the new planning rule a requirement to build an effective strategy for the management and sustainability of these culturally-important resources and places, developed in cooperation with affected treaty tribes. The strategy needs to consider potential impacts of competition from non-tribal users for resources, crowding, privacy, safety, and ensure that reserved treaty rights are considered a priority when resources are limited.
10. The new planning rule should outline a strategy for the protection and privacy, when needed, of sacred areas that the Tribes depend upon, and as outlined in treaties and federal laws.
11. Re: provision of treaty access to tribes: we do not currently see included in the new Planning Rule a requirement to consider roads, and their development, maintenance, decommissioning, on a broader forest-wide level in Forest Land and Resource Management Plans, that address, in close collaboration with affected Tribes, treaty rights access needs and fish and wildlife protection needs, along with other considerations such as public use, and road building and maintenance costs. A strategy on this scale would allow for consideration of tribal access to a variety of different types of ecosystems, elevations, and forest types, which are representative of the resources and places that the Tribes value and require to exercise their treaty-reserved rights to hunt, fish and gather and pursue other cultural practices.
12. While the proposed rule does mention The new rule should recognize specifically existing Memoranda of Agreements (MOAs) with tribes, and the commitments made by parties to these agreements, and ensure measures are taken in the development of individual Forest Management Plans, developed pursuant to the Planning Rule, to ensure support for and implementation of the provisions of these tribal government-to-government agreements.
13. The new planning rule should consider the integration of evolving Special Forest Products Policy, and should take into consideration any treaty protected Native American gathering rights when developing management plans applicable to forest products and determining commercial harvest levels by non-treaty harvesters. The Tribes recommend that non-treaty commercial harvests should not be permitted until it has been determined, in consultation with affected Tribes, that there are adequate and sustainable treaty based resources on a forest-by forest basis.

14. The new Planning Rule should also recognize and integrate, as appropriate, existing regional plans and strategies, such as in our area, salmon recovery plans, and other resource planning activities in which the Tribes are partners, that may be initiated outside the forest, but that border on or include national forest lands.
15. In recognition of reserved tribal treaty rights on national forest lands, and existing and future resource pressures and stresses on resources and areas, that currently, or may in the future make the exercise of treaty rights increasingly difficult, the new planning rule should recommend the development of new specific forest land use designations, such as, for example, cultural/heritage, treaty-reserved subsistence, cooperative tribal-Forest Service management designations, as a means to better accommodate specific treaty obligations, in addition to and beyond requiring, as in the proposed rule, the consideration of cultural importance in forest planning.

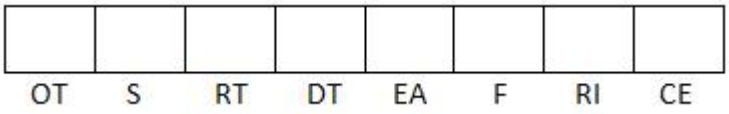
In summary, the Tulalip Tribes ceded thousands of acres of their ancestral territories that are now part of the national forest system, but in the signing of their treaty, reserved their critical rights to continue to practice their culture, and to hunt, fish and gather on these lands. These reserved rights on Forest Service lands constitute property rights, and as such need to be recognized, revealed to the public, and for those actions that may affect these rights, early and direct government-to-government consultation with treaty tribes must be required. We also believe that the Forest Service has an obligation to specifically manage for and sustain the resources and places upon which the meaningful exercise of these treaty rights depends, and do so in partnership with affected treaty tribes.

Thank you for the opportunity to voice our concerns and recommendations in the development of this new planning rule.

Sincerely,

Ray Fryberg, Executive Director
Natural Resources Department
The Tulalip Tribes
6406 Marine Drive
Tulalip, WA 98271
(360) 716-4000

Cc: Rob Iwamoto, Libby Nelson, Terry Williams, Daryl Williams, Jason Gobin, Kurt Nelson, Tim Brewer



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Comments

See Attachments

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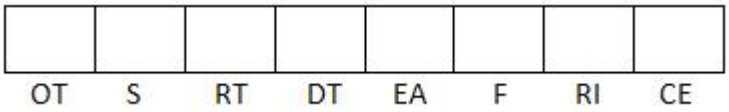

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IP Address: 165.127.247.20
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Comments

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May 16, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, UT 84010

RE: Planning Rule

Dear Sir or Madam:

Thank you for the opportunity to submit comments on the Proposed Rule for National Forest System Land Management Planning. These comments address one of the most important, cross-cutting threats to the economic and ecological integrity of the federal lands – invasive species, specifically those plant species that are considered noxious weeds by federal, state and/or local governments.

General comments

The federal lands administered by the Forest Service exist in a context of many jurisdictions, and decisions made for these lands affect state, tribal, local and private lands. Within this context exists the very significant issue of invasive plant species, which impact ALL multiple uses of the federal lands. As such, invasive plant species deserve to be addressed in a comprehensive, strategic manner that exists in the forum created in the Proposed Rule; rather than relegating the issue to the current inconsistent, ad hoc, unit-by-unit approach taken by the Forest Service.

"The Proposed Rule would include requirements for plan components. …officials would take into account the various stressors or impacts that could affect the presence of ecological resources and their functions…" This introductory passage invites the presence of invasive plant species management into the rule, but the current proposed rule does not mention any intent to integrate invasive plant species management in the Forest Service planning processes.

Invasive plant species threaten the economic and ecological health of the federal lands by establishing vast monocultures that reduce the acreage of available forage and cover for domestic livestock and wildlife; increase soil erosion and risk of wildfire. In order for the Forest Service to realize its goal for the rule that it be responsive to the challenges "of forest restoration and conservation, watershed protection, and wildlife conservation," the rule must specifically address the system-wide impact of invasive plant species.

Specific Comments

1. Coordination. The proposed rule would require the responsible official to review and document the review of

state, tribal and local planning and land use policies. This requirement does not go far enough and is not an active coordination that is required if invasive plant species are to be managed effectively.
• Units should be required to actively collaborate – including sharing resources and personnel – with other Forest Service units, other federal, state, tribal and local agencies;
• Units should actively collaborate with state, tribal and local governments on inventorying, treating and monitoring invasive species distributions in each state.
• Such collaboration should require Forest Service units to adopt species-related management goals of the appropriate neighboring jurisdiction. E.g., a national forest in Colorado should adopt the noxious weed priorities of that state, as well as the counties and/or tribal lands that it borders; and
• Units should voluntarily comply with state laws and regulations that address invasive species management, including the development of management plans for noxious weeds;

2. Content. The content requirements of Section 219.6 Assessments should include the noxious weed management plans of state or local jurisdictions.
• "Desired conditions" should address invasive plant species management in every case, as such management will positively impact all other economic and ecological health indicators; and
• Under "Ecological Sustainability", the Proposed Rule would "require the development of plan components that maintain or restore the structure, function, composition, and connectivity of these systems as a whole and that maintain, protect, or restore key elements within each system." Again, invasive plant species (distribution, density, toxicity, etc.) should be considered a cross-cutting plan component that is required to appear in all Forest Service planning activities.

Section 219.9 Diversity of Plant and Animal Communities, provides the strongest argument offered in the Proposed Rule for placing invasive plant species management as a planning requirement in all Forest Service plans:

"Maintaining or restoring the ecological conditions similar to those under which native species have evolved therefore offers the best assurance against losses of biological diversity and maintains habitats for the vast majority of species in an area."

We encourage you to consider giving specific mention to invasive plant species as a system-wide cross-cutting issue in all Forest Service planning activities, given their vast economic and ecological impacts on federal lands.

Sincerely,

Steve Ryder
State Weed Coordinator
Colorado Department of Agriculture

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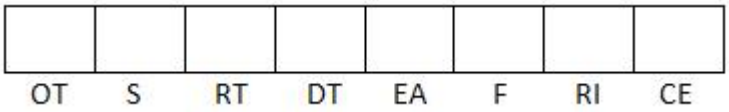

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Form Letter:

Comments

See Attachments

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May 9, 2011

Forest Service Planning DEIS
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COMMENTS PROPOSED RULE

"OVERVIEW"

(1) "The Organic Act," "Organic Administration Act" or "Forest Management Act" of June 4, 1897, amendment to the Sundry Civil Appropriations Act, (30 Stat. 34-44 (1897); 30 Stat. 908 (1899) and 31 Stat. 790 (1901) specified the purposes for which forest reserves (national forests) could be created: 1) to insure "a continuous supply of timber for the use and necessities of United States citizens"; and 2) to secure favorable conditions of water flows. (Note: In 1978, the U.S. Supreme Court in United States v. New Mexico, 238 U.S. 696, rejected assertions that the Act established a third purpose for which forests could be created - "to improve and protect the forest within the boundaries.") (Also note: In Sierra Club v. Hardin, 325 F. Supp. 99 - D. Alaska, 1971, the court ruled that the Secretary of Agriculture may also consider the economic well-being of the citizens of a state wherein timber is located in administering national forest lands "for the use and necessities of citizens of the United States.") The Act further directs the Secretary to make provisions against destruction of the forest reserves by fire and depredations (timber theft.)

The fundamental justifications to the States for the federal government being able to withdraw forest land from the settlement laws, thus creating vast un-taxable holdings in the western states were: 1) to insure "a continuous supply of timber for the use and necessities of United States citizens"; and 2) to secure favorable conditions of water flows. It was not to conserve wildlife, provide sustainable recreation, conduct ecosystem management, provide "ecosystem services" or "desired ecosystem functions." Let us make this clear, the Forest Service was to provide an economic function in insuring a "continuous supply of timber" and "favorable water flows" for lowland uses - urban and agricultural. It was to consider the economic well-being of local people in performing this function. It was also to prevent destruction of the forest by fire.

In addition, the Organic Act recognized the right to prospect, locate and develop minerals in the Forest Reserves, to construct roads to access homes and utilize property. It recognized rights of way for utilities and water conveyance. It recognized and protected vested private water rights and allowed for additional appropriation of water for use surplus to Forest needs. The act authorized discretionary administration of provisions of the Free Timber Act and Timber and Stone Acts of 1878 to permit settlers, miners and residents free use of as much timber and stone from the reserves as was needed for firewood, fencing, building material and for mining, prospecting and domestic use. These are the organic uses underlying our National Forests.

In 1960, the Multiple Use Sustained Yield Act added purposes supplement to the original Organic Act: “it is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of this Act are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as
set forth in the Act of June 4, 1897 (16 U.S.C. 475).”

“Sustainable Ecosystem Management” was the product of the Convention on Biological Diversity (Biodiversity Treaty) requiring participating nations to conform to protocols established by the Conference of the Parties. The Treaty also required the development of a Global Biodiversity Assessment (GBA) (Article 25) to provide the "scientific" basis for the COP's protocols. The principle of ecosystem management is deeply ingrained in the GBA. Article 8 of that treaty committed to protecting ecosystems and establishing a system of protected areas to conserve biological diversity. However, **the Senate refused to ratify the Convention on Biodiversity in 1994 so it is not binding.**

“Ecosystem Management” was the basis for President Clinton’s "Forest Plan for a Sustainable Economy and a Sustainable Environment." It was institutionalized by Vice President Al Gore as part of his National Performance Review. (See Improving Environmental Management, Accompanying Report of the National Performance Review (Washington: Government Printing Office, September 1993.) **I**n August 1993 the White House Office of Environmental Policy (OEP) took the lead for the federal initiative on ecosystem management by establishing the Interagency Ecosystem Management Task Force (IEMTF) to carry out Vice President Gore's mandate. In January, 1996, the White House executed a Memorandum of Understanding to Foster the Ecosystem Approach (OEP 1996) that was signed by the 14 federal agencies that had participated in the interagency task force on ecosystem management. Ecosystem Management was an initiative of the Clinton Administration, not a Congressional mandate. It should not drive Forest Service Planning to the detriment of actual Congressional directives such as the Organic Act and the Multiple Use Sustained Yield Act of 1960.

An “ecosystem” is not an actual living thing. It is a model construct for understanding complex inter-relationships. Living things are dynamic and there are evolutionary seral stages expressed through that dynamic. The composition of living communities also responds to large pressures such as climatic change and wildfire. There is no such thing as “ecosystem health” or ecosystem sustainability.

Ecosystem Management was the outcome of The World Conservation Strategy formulated in 1980 by the International Union for the Conservation of Nature and Natural Resources (IUCN) in cooperation with the U.N. Environmental Program (UNEP,) World Wildlife Fund (WWF), FAO and UNESCO. The overall strategy is to set aside core wild preserves (biosphere reserve) surrounded by a buffer area where multiple use can take place if it is compatible with maintaining the ecological values of the core area. This is set aside from areas of human settlement. Core areas are connected by wide biodiversity corridors contributing to regional mega-linkages. Outside of the buffer areas are transition areas or “areas of cooperation” where private land use is regulated to favor biodiversity, ecosystems and sustainability.

This biosphere reserve pattern was used by FEMAT for Forest use restrictions to protect the northern spotted owl. The Late Successional Reserves were the core reserves, the matrix land was the buffer area. True to pattern, the states were to establish corresponding conservation ecosystem objectives on private lands within the watershed. By listing the northern spotted owl as threatened under the federal Endangered Species Act, Conservation Biologists were intentionally selecting a "keystone," "umbrella," or "indicator species" for old growth forests. As a result, FEMAT actually considered 1,098 species in its Forest Ecosystem Management Assessment.

The concept of "sustainability" or "sustainable development" was outlined in Agenda 21, the action plan document which also came out of the 1992 Earth Summit in Rio de Janeiro and was a companion to the unratified Convention on Biological Diversity**.** As an ecocentric economic ideology, it seeks to change consumptive patterns and lifestyles to facilitate equitable redistribution to the poor, to reduce the use of materials and energy in production processes and to use economic instruments to influence consumer behavior. If sustainability is the capacity to endure, and this is desirable, the question arises as to how much change can be humanly affected before something becomes "unsustainable?" This concept is not the same as Sustained Yield or replacement potential of a resource in harmony with growth over a period of years. It apparently has more to do with human carrying capacity of the land at pre-European levels of hunter/ gatherers. "Unsustainable" appears to be whenever anyone wants to commercially or productively use, manage or develop the resources of the Forest for export use out of the area. As such, it is more of a political and religious (Gaia worship) agenda that a rational basis for management.

Sustainable development and the concept of "sustainability" was implemented by the Clinton Administration along with ecosystem management. It is not a Congressional Directive and should not drive the Planning Rule.

The conflicting goals of ecosystem management/sustainable development, the organic act and the Multiple Use Sustained Yield Act of 1960 have created a twenty year tug of war between Forest communities dependent upon the commitments of the Acts and Conservation Biologists who seek to preserve a network of large blocks of wild areas connected by broad corridors. Is management to be centered around the well being of human forest communities or some altruistic view of nature whose well-being depends upon nature being preserved in large regions beyond the influence of man?

Look at some of the objectives listed in the overview: "to maintain or restore ecosystem and watershed health and resilience; protect key ecosystem elements, including water resources on the unit; and provide for plant and animal diversity. " In the "Section by Section Explanation of the Proposed Rule" it states: "Plans would also guide management to provide people and

communities with a range of social, economic, and ecological benefits for the present and into the future, including clean water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural sustenance." There is no mention of the US Forest Service's primary organic Congressional mandate of: 1) ensuring "a continuous supply of timber for the use and necessities of United States citizens"; and 2) securing favorable conditions of water flows, while considering the economic well-being of local people and preventing the destruction of the forest by fire. There is no mention of the multiple uses of recreation, range and timber in the Forest.

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"SECTION –BY-SECTION EXPLANATION OF THE PROPOSED RULES "

(2) This section states "'*Ecosystem services'' is a term that is used today to describe many consumptive and nonconsumptive uses, as well as traditional and non-traditional uses, that people associate with national forests.* " Ecosystem services is a "sustainability" concept that allows for the use of economic instruments to facilitate regulatory compliance. It is a financial vehicle where someone is getting extremely wealthy – typically groups like the Nature Conservancy with $5.6 trillion dollars in tax free assets. The identification of ecosystem services, such as carbon sequestration, has created new dimensions to traditional compensatory mitigation, such as wetlands banking. There are now international trade markets for watershed, species, habitat, nutrient and biodiversity offsets to development or industrial impacts. http://www.ecosystemmarketplace.com/#close The whole conservation economy scheme could have very negative impacts on rural areas. As local resources are "set aside" in perpetuity or managed specifically to offset impacts elsewhere, they are unavailable to the local economy and to job creation. Even without the dimension of mitigation banking, highly populated areas as end users, could demand greater control over upland or up-river resources. Does the Forest Service intend to market its ecosystem services for compensatory mitigation? If so, this is likely to be to the great detriment of local natural resource users, communities and Counties.

"SECTION 219.3 ROLE OF SCIENCE IN PLANNING"

(3) " I wholeheartedly agree with the following statement: *"This proposed rule emphasizes the use of science as an important source of information for decisionmaking with the intent that the best available scientific information be used to inform, but not dictate, decisions. The term 'taking into account' is used because this term expresses that science is just one source of information for the responsible official and only one aspect of decisionmaking."* Unbiased science can provide decision makers with facts crucial in the formation of management options and in the probable consequences of the selection of a management choice. But Conservation Biology, "ecosystem management" and "sustainable development" comes pre-loaded with an agenda that obscures and colors facts and pre-selects choices in the decision-making process.

“SECTION 219.4 REQUIREMENTS FOR PUBLIC PARTICIPATION – PARTICIPATION OPPORTUNITIES”

(4)”*The Agency recognizes the need to engage a full range of interests and individuals in the planning process and the responsibility to promote environmental justice.”*

A 1994 Presidential Executive Order directed every Federal agency to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on "minority populations and low-income populations."

There are three fundamental environmental justice principles:

- To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
- To ensure the full and fair participation by all potentially affected communities in the decision-making process.
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

Siskiyou County, similar to many rural Forest-dependent counties, has a high low income population. We have a unemployment rate of 21%. In 2008, 16.4% of all residents in Siskiyou County lived in poverty and 25.4% of children under the age of 18 lived below the poverty line. The BEA (Bureau of Economic Analysis) indicates that in 2008, the average wage for jobs in Siskiyou County were 63% of the California average. In 2008, the Siskiyou County median income was $36,823 or 60% of the California median. Siskiyou County ranks 51 out of 58 California Counties in median income. In 2010, the economic impact of jobs at Human Services and entitlement benefits to County residents was is $71,581,874. This includes: $11.6 million in annual "assistance costs" (CalWorks/welfare, Foster Care;) $8.8 million in annual food stamps; $4.7 million in In-Home-Support-Services for the elderly and disabled; and $36.7 million in Medical Assistance/Medi-Cal. Recently, the Associated Press named Siskiyou County the 14th most economically stressed county in the nation.

It is important not only to “engage” low income populations but to take special care to address the effects of policies and plans on them. In my observation, this has certainly not been done in the past. (Ref. Northwest Forest Plan—The First 10 Years (1994–2003): Socioeconomic Monitoring of the Klamath National Forest and Three Local Communities: Mid-Klamath.) For instance, it was not a consideration in the scoping of this Planning Rule. Meetings were held during the day when normal people are at work and the nearest meeting to our area was by teleconference hours away in another county.

“COORDINATION WITH OTHER PUBLIC PLANNING EFFORTS”

(5) When Congress passed the National Forest Management Act of 1976 Title 16, Chapter 36, Subchapter I, Section 1604**.** National Forest System land and resource management plans it recognized the government to government relationship between the US Forest Service and the Counties by specifically stating:

“a) Development, maintenance, and revision by Secretary of Agriculture as part of program; coordination

As a part of the Program provided for by section 1602 of this title, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, **coordinated with the land and resource management planning processes of State and local governments** and other Federal agencies.”

The Act states quite clearly “coordination” – not collaboration or cooperation. Furthermore, it has a very specific meaning.

The default 1982 Planning Rule now in effect states:

TITLE 36 CFR--Parks, Forests, and Public Property CHAPTER II--FOREST SERVICE, DEPARTMENT OF AGRICULTURE PART 219--PLANNING (1982)

Section 219.7 Coordination with other planning efforts. (a) sets forth “coordination” as follows:

"**The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes."** (c) states that "The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan. The review shall include -

(1) Consideration of the objectives of other Federal, State and local governments, and Indian tribes, as expressed in their plans and policies; (2) An assessment of the interrelated impacts of these plans and policies; (3) A determination of how each Forest Service plan should deal with the impacts identified; and, (4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution."

(d) Requires the responsible line officer to "meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian governments at the beginning of the planning process to develop procedures for coordination."

(e) States that: "In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area."

The Court confirmed in CA Resource Agency v. USDA (US District Ct. N. CA. case No. C 08-3884 MHP):

" ...Those regulations require a number of specific actions, including: giving notice to state agencies, 36 C.F.R. § 219.7(b) (1982); reviewing the State's planning and land use policies and documenting the results of such review, id. § 219.7(c); meeting with responsible state officials, id. § 219.7(d); seeking state input regarding management concerns and areas where additional research is needed; id. § 219.7(e); and giving consideration to the effects of National Forest management on nearby lands, including those managed by the State, id. § 219.7(f)."

So, the USFS in its Forest Planning must: (1) Meet with local County governments at the beginning of the planning process to develop procedures for coordination; (2) Review County land use plans, policies (resolutions and letters) and objectives; (3) Assess the interrelated impacts of County plans and policies with Forest Service plans and policies; (4) Give consideration to the effects of National Forest management on nearby lands; (5) Seek input from County government to solve management concerns and identify additional research needs; (6) Determine how to resolve identified impacts; (7) Where conflicts between County and Forest Service planning are identified, consider alternatives for their resolution; (9) Display the results of the review in the environmental impact statement for the plan.

The Federal Land Management Planning Act was passed by the same Congress. The implementing code defines "coordination" as follows: Title 43 Subtitle B Chapter II Part 1600 § 1610.3-1 - Coordination of planning efforts

a) In addition to the public involvement prescribed by §1610.2, **the following coordination is to be accomplished with other Federal agencies, state and local governments,** and federally recognized Indian tribes. The objectives of the coordination are for the State Directors and Field Managers to:

(1) Keep apprised of non-Bureau of Land Management plans;

(2) Assure that BLM considers those plans that are germane in the development of resource management plans for public lands;

(3) **Assist in resolving, to the extent practicable, inconsistencies between Federal and non-Federal government plans;**

(4) Provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and federally recognized Indian tribes, in the development of resource management plans, including early public notice of final decisions that may have a significant impact on non-Federal lands; and

Under the presumption of consistency, the word "coordination" should mean the same thing in both codes, which would include the directive for resolving inconsistencies to the extent practicable.

In addition, The Forest and Rangeland Renewable Resources Planning Act of 1974 [As Amended Through Public Law 106–580, Dec. 31, 2000] SEC. 6. ø16 U.S.C. 1604¿ NATIONAL FOREST SYSTEM RESOURCE PLANNING. states—

"(a) As a part of the Program provided for by section 4 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, **coordinated with the land and resource management planning processes of State and local governments and other Federal agencies."**

As a long time County Supervisor, I have attended meetings with my counterparts in Forest communities in the Cascade, Sierra Nevada and southern Oregon region. All of them expressed a need to have greater influence on the Forest Planning process for the benefit and social and economic survival of local communities and people. They all expressed frustration at the clout that out of area environmental groups seemed to wield in destroying projects that would provide wildfire protection for communities and much needed job opportunities. National politics appears to bounce local Forest community interests around like a –piece of flotsam on a roiling sea. Many expressed concern at the out of hand dismissal they were given by Forest Service Management who relegated their ideas and concerns to the status level of a minor special interest. Decisions appeared to be made in the courtroom and in concert with the rarefied air of major lobbiest in Washington DC, but not in the context of the local communities whose well-being is so intimately dependent upon them. County government is just that, a government. Its representatives are elected by many thousands of local residents. It has joint jurisdiction over individuals who use the Forest and over environmental planning. It is not a special interest and it should be given the status that it is due through the coordination protocols.

"SECTION 219.5 PLANNING FRAMEWORK"

(6) Coordination with Counties should begin in the development, revision or amendment phase long before public involvement and the proposed action takes shape. In the development, revision, or amendment phase, the rule states that "the responsible official would work with other government agencies, Tribes, and the public." Counties are governed by Boards or Commissions elected by the People. These Boards have legislative, administrative and quasi-judicial powers. They hold "police powers" of regulation over individuals within their boundaries. They are not agencies, the public, stakeholders or special interests. They are elected representative governments and should be recognized separately as such in a government to government relationship.

It is inappropriate to have special interests and members of the public given the same weight regarding planning input as a local representative government. It is inappropriate to have joint

“fact-finding” sessions where elected representatives are seated at the table with individuals. That is why coordination is a separate government to government process. Coordination is conducted in an open public meeting where individuals may observe the proceedings.

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“PROCESS REQUIREMENTS”

(7) *“The responsible official would also be required to coordinate with the regional forester, and agency staff from State and Private Forestry, Research and Development, as well as other governmental and nongovernmental partners to consolidate existing information and develop strategies for satisfying any additional information needs.”*

“Coordination” has a specific meaning and applies to government to government relationships, including local government. It is not a status that applies to “nongovernmental partners.”

SECTION 219.7 PLAN DEVELOPMENT OR PLAN REVISION *“PROCESS REQUIREMENTS”*

(8) Coordination meetings with County government officials should occur at the beginning of the process to draft a proposed plan. Public input alone should not shape the plan and cannot supersede the Forest Service’s obligation to coordinate by: (1) Meeting with local County governments at the beginning of the planning process to develop procedures for coordination; (2) Reviewing County land use plans, policies (resolutions and letters) and objectives; (3) Assessing the interrelated impacts of County plans and policies with Forest Service plans and policies; (4) Giving consideration to the effects of National Forest management on nearby lands; (5) Seeking input from County government to solve management concerns and identify additional research needs; (6) Determining how to resolve identified impacts; (7) Where conflicts between County and Forest Service planning are identified, considering alternatives for their resolution; (9) Displaying the results of the review in the environmental impact statement for the plan.

“PLAN COMPONENTS”

(9) “Desired conditions” must include the US Forest Service’s primary organic Congressional mandate of: 1) ensuring "a continuous supply of timber for the use and necessities of United States citizens"; and 2) securing favorable conditions of water flows, while considering the economic well-being of local people and preventing the destruction of the forest by fire. It must include support for the multiple human uses recreation, range and timber mandated under the Multiple Use Sustained Yield Act of 1960 (MUSY.)

Our local National Forests comprise about 63% of our local land base. Access, as well as commercial and private use of Forest Resources are essential to local social and economic well-

being. In many ways, local people are dependent upon interactions with the National Forest and, as such, should have a greater say in creating the vision of something that sits in our backyard. It is apparent that, according to Conservation Biologists, the desired future condition of our area is to have most federal land set aside from human use in large wilderness, roadless or restricted areas such as monuments, connected by broad corridors and regional linkages. Wide River buffers are to be set aside and rivers are to be free flowing. Human use is to be at the level of a hunter gatherer in core areas and extremely limited in matrix areas. Access is to be limited. All natural fire is to be considered good and not suppressed or managed Transition area use of private lands is to be set backward in time to an era of limited impact with no commercial development of natural resources.

This is definitely not consistent with the Organic Act, MUSY or the needs of local people for reduced fuel loading, commercial access to timber, forage, minerals and biomass as well as recreational use. The National Forest were created to be working forests – not wildlife preserves. The Planning Rule should not incorporate the Conservation Biologists view in its very fiber. This is a point of view with an agenda – not empirical science. Management goals have already been given by law through the Organic Act and the MUSYA. These are not taken into consideration in the viewpoint of Conservation Biology/Ecosystem Management/Sustainable Development. Components need to reflect the viewpoint set forward by Congress in the law, not that of an ungratified treaty IUCN, the UN and the World Wildlife Federation.

“SECTION 219.8 SUSTAINABILITY”

(10)*“The intent is for plans to guide management so that NFS lands are ecologically sustainable and contribute to social and economic sustainability, with resilient ecosystems and watersheds, diverse plant and animal communities, and the capacity to provide people and communities with a range of social, economic, and ecological benefits for the present and future generations.”*

“Sustainable,” from the Latin sustinere, means to keep in existence, to endure. National Research Council: “meeting human needs while conserving the Earth’s life support systems and reducing hunger and poverty” (NRC 1999) Using this definition, the management of National Forests in our area over the past twenty years have not been sustainable. According to the California “Very High Fire Severity Zones” map http://frap.cdf.ca.gov/webdata/maps/siskiyou/fhszl_map.47.pdf , the National Forests in Siskiyou County are at very real risk of burning to the ground. More than 200,000 acres burned in my district alone in 2008. This is surely not sustainable management.

The Klamath NF has a standing inventory of 13.5 billion board feet of timber. It is growing another 654 Million Board Feet (MMBF) of timber a year. In 1988, the KNF harvested 311.66

MMBF in 2003 –12.2 MMBF. Projected annual harvest going forward next year in the Klamath National Forest is somewhere around 20 MMBF of timber, which includes salvage and firewood sales. This means a net addition of 634 million board feet a year to contribute to already unhealthy overstocked forest conditions. This is a far cry from the levels promised under the Northwest Forest Plan. Under the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528-531) "sustained yield" meant the" achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land." Under this definition of "sustainability," management of local Forests has failed miserably.

According to presentations I have attended, the pre-European stocking level of trees on high southwestern facing slopes Of the Klamath and Trinity mountains was 10 trees per acre. There are currently thousands of trees per acre in the Klamath Trinity mountains. Fire under these conditions can be a stand replacing event. Under the new climate change scenarios and with the frequency of fire re-entry, it is likely that many of these currently forested lands will be set back to permanent brush land. Brush will grow up in the 20 year interval between fires and provide tinder for dead and dying standing timber. A reburn will destroy new emerging trees and eliminate the forest structure. Climate change will ensure that the desertification process results in permanent brush land. This is not sustainable management by any ones definition. Thinning to more sustainable levels, active fuel reduction and the removal of salvage trees can move management to the level of sustainable carrying capacity, intercepting the processes of desertification. However, there is great resistance to active management under the tenets of Conservation Biology.

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The National Forest resources should be used to improve the human condition. Social and economic goals should not be subordinated as an afterthought to "ecosystem management." According to economic reports, over the past twenty years since ecosystem management was employed, management of the National Forests in Siskiyou County has heavily contributed to local poverty conditions associated with higher substance abuse and violent crime. Siskiyou County has Forest-dependent settlements. Their entire historic economy has pivoted around the local lumber mill. When the Northwest Forest Plan shut down the Forest, there was no replacement for that economic driver. People just descended into greater poverty. This is not an isolated phenomenon. In my meetings with the County Supervisors of the Cascade/Sierra Nevadas and the Commissioners of Southern Oregon, the story is almost identical. If sustainable means that people are economically starved off the land until they are forced to move and dehabit an area, then it should not be something we strive for in America. (http://users.sisqtel.net/armstrng/social_and_economic_information.htm)

Demographic Trends – Age distribution: The census indicates that between 1990 and 2008, Siskiyou County experienced a 25% loss in the population of children under the age of 18. The County saw a 45% increase in the population age 45-64 and an 18% increase of those age 65

and older. This shows that our population is aging dramatically, and younger family wage earners are migrating elsewhere.

Income Trends; The BEA (Bureau of Economic Analysis) indicates that in 1987, the average wage for jobs in Siskiyou County were 73% of the California average. There was a steady decline down to as low as 57% in the year 2000, then the percentage stabilized at 61 % with an increase to 63% in 2008. This shows that our wages are depressed, not keeping pace with inflation and the rest of the state.

Unemployment – The EDD statistics indicate that from 1990-2009, the highest rates of unemployment occurred in individual months in 1991-1993 (19.3-21.1%.) The average rate of unemployment for 1991 was 13.2, for 1992 – 15.8 and for 1993 -15.6. This high rate likely reflects the closure of the four timber mills in Siskiyou County between 1989-1999. The rate of unemployment then very gradually decreased each year until it plateaued around 2001 -2007 at 8-9.5% It climbed to an average of 10.2% in 2008 and was at 15.8% average in 2009. The current rate is around 21%.

Median Household Income The census (SAIPE) reports that in 1989, the median household income of Siskiyou County residents was $22,077. This was 66% of the California median, (down $11,000 from the CA median.) In 2008, the Siskiyou County median was $36,823. It had decreased to 60% of the California median, (down $24,000 from the CA median household income.) Siskiyou County ranks 51 out of 58 California Counties in median income.

Poverty Rates – The census (SAIPE) reports that in 1989, 14.4% of Siskiyou County residents lived below the poverty line. This was 1.7% higher than the poverty rate for California in general. In 1989, 23.5% of children under 18 in Siskiyou County lived in poverty. This was 2.2% higher than the California rate. In 2008, 16.4% of all residents in Siskiyou County lived in poverty. This is a 2 percent increase in the rate over that of 1989 and is 3.1% higher than the California rate. In 2008, 25.4% of children under the age of 18 in Siskiyou County lived in poverty. That is a 2 percent increase in the rate over that of 1989 and is 6.9% greater than the California rate.

Timber Harvest Levels on the major national Forests in Siskiyou County Comparisons from pre –Pacific Northwest Forest Plan volume of timber sold (1978-1989) is dramatic from sales in 180-250 MMBF median range down to the 20 MMBF range. Failure to meet budgeted target sales is also noted. http://users.sisqtel.net/armstrng/timber%20harvest%20NF.htm

Timber Harvest Relationship to Jobs – This illustration converting the value of timber harvest level to jobs uses Klamath National Forest harvest levels times a direct job factor of 11 jobs per MMBF and a 2.35 indirect job multiplier. This illustrates the substantial loss in timber jobs corresponding with the decrease in federal timber sales.
http://users.sisqtel.net/armstrng/harvest%20to%20jobs.htm

Siskiyou County Mill Jobs (Wood Products Manufacturing) This table was created by a local survey. It shows a decrease in mill jobs from 920 in 1990 to 380 in 2007.
http://users.sisqtel.net/armstrng/timber%20economy.htm

916 Logging Jobs lost in Western Siskiyou County
http://www.klamathbasincrisis.org/forestsandlogging/2010/timberjoblossWaddell102610.htm

Siskiyou County Wood Products Manufacturing According to Censtats/Census, there has been a drop in wood products manufacturing establishments from, 13 in 1993 to 6 in 2007

Logging, Forestry and Support Establishments. According to Censtats/Census, there has been a drop in logging, forestry and support establishments from 53 in 1993 to 38 in 2007 (-28%.)

Siskiyou County's share of harvest and timber value in California. This information from the Board of Equalization shows that increased harvest from private lands in Siskiyou County have slightly offset the substantial loss of federal timber harvest.
http://users.sisqtel.net/armstrng/timber%20harvest%20public%20private.htm

Northwest Forest Plan - the First Ten Years (1994-2003) Socio-economic monitoring of the Klamath National Forest and Three Local Communities (Cumulative effects)
http://www.fs.fed.us/pnw/pubs/pnw_gtr764.pdf

The question arises, just what is the U.S. Forest Service's definition of "sustainability?" This is particularly disconcerting when we find out that local timber harvest curtailment for the sake of the northern spotted owl has apparently been in vain. The spotted owl is being displaced by the barred owl; and, uh oh, their LSR's are burning to the ground; and, oh, woops, we didn't need the level of canopy closure we previously thought; and, oh gee, I guess we need to place even more Forest off limits to use in the future to save the remaining birds. Just what is "sustainability" when federal actions to protect the environment impose greater and greater economic and social costs on society? If well over 3,000 square miles of Forest cannot provide for the economic well-being of a total population of 45,000 people, there is something wrong.

"WATER"

(11*)" One of the original purposes for establishing the NFS was to protect our Nation's water resources"*

The Organic Act stated that one of the primary purposes for establishing the Forests was "to secure favorable conditions of water flows." This meant flows for use downstream in cities and in irrigation on agricultural lands. This includes managing the forest so that it is not overstocked. There are many studies that show that proper silvaculture increases and releases stream flows. (Forests and Water, :A State-of-the-Art Review for Colorado; The Herger-Feinstein Quincy Library Group Project Impacts of Vegetation Management on Water Yield.)

In addition, back in the early 20th century, more than a dozen local high mountain lakes were managed with dams to release summer cold water to the lowlands. Now those lake structures are no longer maintained because they are in set aside Wilderness. As a result, they are no longer able to contribute to late summer and early fall stream flows for salmon. That does not appear to be a policy that is in tuned with the Organic Act.

"The proposed rule also requires that plans establish a default width within which those plan components apply. The width of such zones is usually measured from the edge of the water, extending outward to the adjacent upland areas, and it could be a standard width for all riparian areas or it could vary based on the type of waterbody" Does this mean that you would designate the riparian area as the entire floor of a valley or plain until it meets uplands? This could be feet or miles.

"SOCIAL AND ECONOMIC SUSTAINABILITY"

(12) "*The requirements for ecological sustainability would require responsible officials to provide plan components to maintain or restore elements of ecological sustainability. The requirements for social sustainability would require plan components to guide the unit's contribution to social and economic sustainability. sets of requirements recognizes the Agency has more influence over the factors that impact ecological sustainability on NFS lands (ecological diversity, forest health, road system management, etc.) than it does for social and economic sustainability (employment, income, community wellbeing, culture, etc.). National Forest System lands can provide valuable contributions to economic and social sustainability, but that contribution is just one in a broad array of factors that influence the sustainability of social and economic systems."*

I strongly disagree with this statement. As is shown in the statistics provided above, (http://users.sisqtel.net/armstrng/regulatory%20impacts.htm and in the report Northwest Forest Plan - the First Ten Years (1994-2003) Socio-economic monitoring of the Klamath National Forest and Three Local Communities,) how the Forest is managed, access to and productive use of Forest Resources, particularly timber, is a critical component of the economic and social fabric of Forest Counties. For instance, the entire Klamath River corridor in my district has never recovered from the economic decimation it experienced with the closure of the Forest from the Northwest Forest Plan and the resultant closure of the mills at Happy Camp and Yreka. There is a direct demonstrable, undeniable correlation between timber harvest levels and the economy and social state of Forest communities. To deny that is hubris.

Also, local Native American cultures need access to their traditional gathering sites for basketry. Families of historic Italian immigrant ancestry here use gathering spots for mushrooms. Ranchers depend on access to grazing lands in summer to provide forage in their traditional Western base ranch high summer pasture operations. If summer pasture is

reduced/eliminated, many historic heritage ranches developed under this 160 year old traditional system would no longer be viable. Locals hunt and mine to supplement income. You cannot live in a County like Siskiyou with a tax and economic structure as illustrated on this map http://www.co.siskiyou.ca.us/Docs/Siskiyou_County_Taxation_Map.pdf and not be heavily impacted by how the Forest Service Manages its lands.

In addition, how the Forest doesn't manage its lands also affects Forest communities. The failure to reduce fuel loads caused in the wake of the Northwest Forest Plan and new wildfire management directives to reduce fire suppression efforts invited wildfire of hundreds of thousands of acres in size in 2008. Communities such as Happy Camp, Weaverville, Junction, Sawyers Bar and Somes Bar are periodically threatened with destruction by these fires. Famers suffer reduced yields and the local tourism industry suffers losses from the smoke. The fuel loads are so bad from failure to manage that Siskiyou County (as well as Trinity County) has declared the state of National Forests to be a public nuisance and requested abatement. http://users.sisqtel.net/armstrng/Siskiyou%20Co%20Fire%20Resolutions.pdf Closing roads only makes it even harder to use the Forest (as was mandated by Congress) and to control the extensive wildfires. Locking up thousands of acres in set asides has only encouraged Mexican cartels to establish huge marijuana grows in the Forest, threatening the health and safety of local communities and Forest users. On the whole, the Forest can be a lousy neighbor.

The basic mission of the Forest Service as outlined in the Organic Act is economic. If the USFS in unable to perform the objectives established by Congress as the fundamental justification for removal of these lands from private economic development: to insure "a continuous supply of timber for the use and necessities of United States citizens"; to secure favorable conditions of water flows; to provide for supplementary uses of forage and recreation; and to prevent the destruction of the forests by wildfire,) then perhaps these lands should be thrown open to private development/free enterprise that will support a local tax base, supply home markets with energy and raw resources, create family wage jobs, revitalize local communities and restore forests to health.

On the other hand, there are large natural processes that effect the Forest that management has less to do with. Flooding can cause mass erosion and landslides. Lightning strikes cause wildfire, and although management can reduce the fuels, flame size, whether it is likely to become a canopy fire and access routes to control the fires, this will not effect the weather. Broad climatic factors are having huge impacts on Forests and species in our area. (See such reports as: Climate Change: Recommendations and Guidance for Western Forests ; The State of the Dry Forest Zone and its Communities ; SECURE Water Act Section 9503(c) – Reclamation Climate Change and Water 2011,) Climate change can effect hydrology, carrying capacity, species range and all sorts of large impacts over which the Forest Service has little control. Insect infestations, disease such as sudden oak, root rot C-shasta and parvacapsula minibicornus affect populations and there is little the forest can do to prevent them –unless it is to remove the infected areas to protect spread to the rest.

It is instructive to note that, despite all the social, economic and ecological turmoil cause by the Northwest Forest Plan for the past twenty years, the northern spotted owl is now worse off than it was in the beginning. The study highlighted in the April 2011 issue of the Journal of Wildlife Management: “Barred owl occupancy surveys within the range of the northern spotted owl” by J. David Wiens, Robert G. Anthony, and Eric D. Forsman, observes that the barred owl is simply out-competing the NSO. Unfortunately, the LSR/Matrix strategy of putting large areas off limits to logging has resulted in catastrophic wildfires reducing more and more LSRs to miles of burnt sticks, which is not helping..

In addition, despite all the habitat restoration and limitations put on logging, access, range and other uses to benefit Southern Oregon Northern California Coastal Coho Salmon, the population has failed to respond and continues in steep decline. The sttudy - SECURE Water Act Section 9503(c) – Reclamation Climate Change and Water 2011 indicates that the effect of climate change on the Pacific decadal oscillation, patterns of upwelling, water temperatures and hydrologic patterns is wreaking havoc on population levels. The agency has little influence, if any, over these trends.

“THE FINE-FILTER APPROACH” and *“ENDANGERED SPECIES”*

(13*) “The intent would be to provide plan components that identify specific habitat needs of species, when those needs are not met through the coarse filter. These species are threatened and endangered (T&E) species, candidate species, and species of conservation concern”*

As discussed in the previous section, efforts to preserve and restore spotted owl habitat and threatened SONCC coho have basically served to put enormous areas of the Forest off limits to productive economic use by humans, destroying the social and economic well-being of local Forest-dependent communities and the county tax base. It has resulted in increased loss of forest habitats to catastrophic high intensity wildfires and resultant erosion. The amount of standing fuel, the frequency of high intensity wildfire and resultant long term smoke and emissions have posed a genuine repeated threat to local public health and safety. Set asides and protected areas are now precluding development of alternative energy resources such as wind, solar, geothermal and biomass, as well as needed energy transmission lines .

It is no secret that there was an intentional strategy by the Clinton Administration under the 1994 Strategic Plan for the US Biosphere Reserve Program to establish preservationist ecocentric management schemes. These typically followed the pattern of UNESCO’s Man and the Biosphere (MAB) program with the set-aside of "protected” or “core” areas; "managed use areas" or “buffer zones”; and "zones of cooperation" or "transition Areas." These strategies were adopted under FEMAT for the Pacific Northwest, as well as the Sierra Framework.

The “Wildlands Project” and its associated NGOs have worked politically and through litigation in the West to implement the strategy. Activists used information from GAP analysis to identify the protected/stewardship status of public and privately held land. They have identified and

mapped all existing protected areas including federal and state wilderness areas, parks and wildlife refuges, heritage areas, monuments, BLM Areas of Critical Concern (ACC) and USFS Research Natural Areas (RNA). After activists laid out all the protected areas onto a single map, they overlaid a map of large roadless areas. Roadless areas, also called Big Outside Areas, are defined as roadless areas of 100,000 or more acres in the West, and 50,000 or more acres in the East. These roadless areas include state, federal and private land.

The comparison of protected and unprotected areas has provided a ready target for lands to be included in future legislation or for acquisition by various wealthy conservancies. By 1994, the Wildlands Project had identified 38 areas in the western United States where minor road closures would create large roadless areas of more than a million acres. These activists have repeatedly pushed for legislation to place additional roadless areas into Wilderness. They have pushed for Presidential declarations of new National Monuments, initiation of new travel management plans and the closure of additional roads to create ever expanding roadless areas. The Wildlands Project's developed maps to assist regional groups in their work. In addition to legislation, these maps also establish the priorities for appeals and litigation. These legal challenges rarely target fragmented lands.

As another strategy, the activists have identified rare, threatened and endangered, candidate species, and species of conservation concern. They select focus species that are “keystone,” ”umbrella,” large carnivores/predators or charismatic/”flagships” species that would require large, unique or critical protected areas to survive. Recent filings have been made to add hundreds of new species as threatened or endangered to substantial existing lists. Thousands of appeals and lawsuits have been filed against the federal government by environmental activist groups on the basis of protection of habitat for listed species, or species of concern – all with the aim of thwarting, limiting or preventing human economic use (timber, grazing, mining and recreational access) of and to Forest resources.

This has been combined with the use of the Wild and Scenic Rivers Act, the imposition of Total Maximum Daily Loads under the Clean Water Act, the movement for dam removal to create free flowing rivers, the use of Public Trust and the Endangered Species Act to wrest “environmental water” from irrigated agriculture – all to restrict use in buffer and private land transition areas to push people off the land in rural forested areas.

It is obvious to anyone that the goals and strategic tactics of Conservation Biology have become largely incompatible with the Congressional intent and purpose for Forest lands - to insure "a continuous supply of timber for the use and necessities of United States citizens"; to secure favorable conditions of water flows; to provide for supplementary uses of forage and recreation; and to prevent the destruction of the forests by wildfire. As these goals and concepts of Conservation Biology were initiated internally by the Clinton Administration as part of an unratified treaty (Convention on Biological Diversity) why are they persisting to this day in this Planning Document in contravention of clear Congressional directive? The management of our Forest resources has been turned into a farce at the whims of activists who grow rich under the perverse incentive of the EAJA (Equal Access to Justice Act,) which pays them to file suit.

<u>“PROVIDING FOR DIVERSITY WITHIN THE FS AUTHORITY AND THE CAPABILITY OF THE PLAN AREA”</u>

(14*) "Additionally, it is important to note that the proposed rule is not limited to ''vertebrate'' species as required under the 1982 provisions. The proposed rule would include native plants and native invertebrates (fungi, aquatic invertebrates, insects, plants, and others) for which the Agency currently has very minimal biological information on their life histories, status, abundance, and distribution. However, maintaining or restoring ecosystem diversity within the plan area is the best opportunity to conserve these little-known species."*

With expressed goals and strategies by certain environmentalists to stop human use of the Forest, why would the USFS create additional requirements that could be used by activists as further leverage to preclude human use of resources and set us further from Congressional intent for use?

"SECTION 219.10 MULTIPLE USES"

(15) "including ecosystem services" – These were never included under the MUSYA of 1960.

"MUTLIPLE USE BACKGROUND"

(16) "*The Agency believes that MUSYA anticipated changing conditions and needs. In particular, the Agency's understanding of what is meant by the ''several products and services obtained'' from the national forests has changed since 1960, and incorporates all values, benefits, products, and services the Agency now knows the NFS provides, and what are now more typically identified as ecosystem services."* See prior comments of sections 2 and 15.

"INTEGRATED RESOURCE MANAGEMENT"

(17*) "responsible officials to consider opportunities to coordinate with neighboring landowners to link open spaces and take into account joint management objectives where feasible and appropriate. The responsible official would also be required to consider the landscape-scale context for management as identified in the assessment and the land ownership and access patterns relative to the plan area. These requirements reflect the ''all-lands'' approach the Agency is taking to resource management."*

This approach is not new. FEMAT Report VIII-14-27 talked about shifting from an ownership boundary to a watershed scale for research, assessment, planning, implementation of ecosystem management and monitoring. It also talked about regional scale "provincial' planning – shifting from a local elected governance structure to a mixed agency and NGO driven model, such as the Klamath Coordinating Council. Presumably any sacrifices of private property rights, self-determination and the local control affected by a locally elected government would be sacrificed for the greater benefit of society in the name of ecosystem management as outlined in FEMAT VIII-38-40. No doubt, state government level cooperation would be sought to impose a series of heavy regulations on private land to render management in "buffer" and "transition" areas

compatible with the goals of ecosystem/ watershed management and sustainable development including: the imposition of best management practices; increased permitting and mitigation requirements; more restrictive forest practices regulations; conservation easements; invasive species control; private road closures; abandonment of inholdings; land trades; forced species and riparian protection; and redirection of water use from agriculture to instream uses. Even though it is twenty years later, the goals and strategies of Conservation Biology remain dogmatically the same, the emphasis has just shifted from watersheds to the landscape level.

"RECREATION"

(18) *"Recreational opportunities could include non-motorized, motorized, developed, and dispersed recreation on land, water, and in the air.''* Recreation must include dispersed camping opportunities, including the ability to park more than one car length off the road. This has been a traditional use of the forest by our local people for the past 150 years. Access for wood gathering and hunting must be facilitated. Use of back country trails by horsemen is another use that is a great part of the local ranch oriented culture. Off-highway vehicle users need designated looped areas in which to ride. This may include multi-vehicle use roads. Although hiking trails are important, it must be remembered that we are an aging society and there needs to be increased vehicular access to recreational sites. The popularity of areas such as Kangaroo Lake for families, the handicapped and adults of all ages proves more such facilities are needed.

"CULTURAL HISTORIC RESOURCE"

(19*) "This section would require that plans would contain plan components designed to protect cultural and historic resources and uses."* Siskiyou County has more than a 160 year heritage as a mining and ranching culture. Continued access to federal lands for these activities must be recognized as important to local culture and continued. Wood gathering has also been a traditional practice, as has hunting.

Gold mining was the motivation for early non-Indian American settlement in Siskiyou County. The County was a major gold producing area. Suction dredge mining and hard rock mining continue to be important economic activities in the county. Our County seat is known as the "Golden City" and our Courthouse hosts a large gold exhibit.

Many Siskiyou County Ranches have been recognized by the state of California as "Century Ranches" – some which have been in the same family for 5-6 generations. The traditional historic ranch set up was to establish a base ranch with associated high mountain customary summer rangelands. Homesteads were limited to 160 acres. In the arid west, this was insufficient grazing land to establish a viable operation. Open mountain rangelands were secured by RS2477 ditch rights of way and state recognized water use rights. (The validity of these valuable rights as private property have been recognized in Hage v. United States.)

Livestock would be transferred to mountain pastures from spring to fall while grass hay was made on the base ranch for winter feed. This system existed long before the Forest Reserves were ever created. Ranching has an associated landscape and a series of traditional cultural properties that includes livestock, developed springs, wells, and watering tanks in the uplands. Fencelines, wild horse traps, corrals, ranch houses, sheep herding camps, shearing pens and loading chutes that contribute to the 'built environment' of the traditional western ranching culture."

It is important that these traditional and historic uses are preserved and continued at levels to ensure their viability. (See Siskiyou County Comprehensive Land and Resource Management Plan for a definition of historic customs and cultures of Siskiyou County.) Because of the 160 acre homestead limit, in the 1850s, partners often went in together on a 320-480 acre homestead and took turns mining and developing the ranch. Quite often, one partner would "quit the mines," leaving the entire holding to the remaining interests or the partners would be related and consolidate claims. Beef and dairy products were in steady demand with the local miners.

Most of the far "western" portion of the county is characterized by a mosaic of mixed conifer forests broken by mountain meadowlands and a "rugged" highly variable terrain draining into fast moving streams. Some of this area has highly erodible soil. The western-central region includes an long alluvial valley on a river running east to west and then south to north. The Scott Valley bulges out into smaller pocket valleys fringed by dry foothills to the east and higher mountains and forest to west, north and south.

One of the limiting factors on early ranchers in this area was the rapid manner in which the confined area was settled and the unavailability of land for expansion. Although mining stimulated the early establishment of a system of ditches for irrigation, climatic realities created a need for winter hay or summer grass in times of drought. The adaptation of early ranchers was to drive cattle up into the surrounding high mountains of the west, north and south. This allowed them to harvest home pastures and access lush patches of meadow with more moisture available at higher elevations with a later melting snow pack.

Some beef ranchers in more arid eastern central areas of Scott Valley moved livestock on long treks far south in the spring to Shasta County where large mountain meadows could be found and brought the herds back each fall.

The eastern central region includes the Shasta River running south to north through a broad volcanic valley of dry rolling hills. To the south lies the volcanic Mt. Shasta and forests ranging from dense conifers and meadowlands to juniper and sage. To the north lies dry climbing rolling hills. The northeastern section is separated from the eastern central section by forested mountains.

Dairy ranchers in this sector of Siskiyou County took advantage of ice caves and lush meadows to the north and south to drive livestock into the mountains for refrigeration of dairy products during summer. Some of the first livestock ranchers used the nearby dry grasslands to the north for summer forage while harvesting for winter. Sheep herders used the sage and juniper foothill rangelands of the east. This area borders one of the principal mining districts and the county seat of Yreka, and was rapidly settled near the town.

In the high desert basin area of northeastern Siskiyou County, forage was more sparse and the Native Americans aggressive against settlers. (The Modoc Indian War transpired in 1872-1873.) The area is rimmed by mountains to the south and west and lava beds to the east. Several large shallow alkaline wetland areas are found there.

Early family settlement tended to be concentrated in the south of the basin against the mountains. Later, large year-round ranching operations covering thousands of acres of surrounding public domain were secured by scattered privately homesteaded ranch holdings and private treaties with local tribes. Crews of "buckaroos" or cowboys roved through the rangeland, separating and moving cattle to forage. These large ranches provided cattle for the stockyards in the San Francisco Bay area. As homesteaders fought to secure a foothold, range wars ensued until the matter was settled by a severe winter that took thousands of livestock and bankrupted most of the larger operators. Some of the surviving remnants of these large holdings were later sold to the Bureau of Reclamation in development of the Klamath Reclamation project and to the Butte Valley Wildlife Area/National Grasslands.

Toward the end of the nineteenth century, railroad stations at central Montague and Gazelle/Grenada provided shipping points north and south for regional ranchers who drove large herds cross-country from as far as southern Oregon.

Most of the dairies and sheep are have been replaced by cow/calf operations. Although the season of use has been restricted to late summer and fall, and the allotments are generally smaller, many public land ranching families of the county today use the same rangeland areas for forage as did their ancestors. Although highway use permits and restrictions have begun to impact the practice in favor of large cattle trucks, many public land grazers still drive their herds to their allotments. With a warning car at the head and rear, family and friends on horseback with dogs nudge the slow-mooooving procession along back country roads to trails leading to their allotments.

Most still monitor rangelands and move salt blocks on horseback. In the fall, they still round-up the herd, search for stray and drive them back to home pasture. Calves are usually born in late spring, weaned in the fall and sold before winter in rhythm with the grazing cycle. Like those of five generations ago, facing the same limiting factors of climate, topography and space, public grazers continue to employ the same adaptations.

Private land ranchers have adapted in other ways. Earlier ranches have been consolidated into larger holdings, a limited number of ranches held by widows and inherited by non-ranchers are leased, cattle are transported by truck hundreds of miles north or south to leasable pasture. Many private beef producers have diversified into alfalfa production. A few have small family dairies. Some raise dairy heifers or specialty livestock and horse breeds.

“WILDERNESS, WILD AND SCENIC RIVERS, AND OTHER DESIGNATED AREAS”

(20) “*and for the protection of recommended wilderness and eligible or suitable wild and scenic rivers in order to protect the ecologic and social values and character for which they may at some point be included in the system(s).”*

Congress is the body that designates Wilderness and Wild and Scenic Rivers, not the Administration. The Clinton Administration's roadless rule is a violation of the Wilderness Act of 1964 because the timber harvest and road construction prohibitions constitute establishment of *de facto* Wilderness. The organic purpose of the National Forests to ensure "a continuous supply of timber for the use and necessities of United States citizens"; secure favorable conditions of water flows, while considering the economic well-being of local people and preventing the destruction of the forest by fire. Supplemental recognized uses include range and recreation. The Administrative lock up of millions of acres of Forest from the productive uses for which Congress created them is fundamentally wrong. Candidate areas should not be managed as Wilderness and Wild and Scenic Rivers with attendant restrictions unless so designated by Congress.

"SECTION 219.11 TIMBER REQUIREMENTS BASED ON THE NFMA"

(21) *"The proposed rule includes an additional requirement that would prohibit timber production where it is not compatible with the achievement of desired conditions and objectives established by the plan, including those desired conditions and objectives designed to meet requirements for plan development or revision (§ 219.7); social, economic, and ecological sustainability (§ 219.8); plant and animal diversity (§ 219.9); multiple uses (§ 219.10); and timber (§ 219.11)."*

The primary organic mandate for management of these Forests is 1) ensuring "a continuous supply of timber for the use and necessities of United States citizens"; and 2) securing favorable conditions of water flows. As long as it is not causing irreversible damage to soil, slope, or other watershed conditions or substantial and permanent impairment of the productivity of the land, the potential for timber harvest should take precedence among other objectives of the plan such as recreation and aesthetic resources.
National Forests are working forests, not wildlife preserves or National Parks.

The Klamath NF alone has a standing inventory of well over 13.5 billion board feet of timber. It is growing another 654 Million Board Feet (MMBF) of timber a year. Currently, it is harvesting around 15-20 MMBF, which includes salvage and firewood sales. This means a net addition of 634 million board feet a year to contribute to already unhealthy overstocked forest conditions. It is obvious that there is a great deal of land suitable for timber. The amount available for harvest has been reduced to obscenely low levels because of other agendas. The primary purpose of these lands as established by Congress is no longer being met to the risk of loss of the resource by catastrophic wildfire. It is the same on the Shasta Trinity, Six Rivers, and Rogue NF and, I imagine, most National Forests in the west.

"MONITORING"

(22) Carrying out Sec. 219.12 will be impossible without investing a lot of money. The Forest Service says it will only do what it can afford to do, but the Courts are not likely to agree that is what the Proposed Rule requires. Instead of focusing on "climate change and other stressors" and "carbon stored above ground" (Sec. 219.12(a)(5)), the agency should be looking at timber outputs, AMU's, recreational visitor days and water quality and quantity. A formal monitoring process under the Forest Plan is unnecessary. The "biennial evaluation" should be eliminated. The language in Alternative C, in so far as consistent with the above comments, should be the Final Rule.

Thank you for the opportunity to comment.

Marcia H. Armstrong
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OT	S	RT	DT	EA	F	RI	CE

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Individual(s)

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May 16, 2011

RE: Comments on Proposed Forest Service Planning Regulations
(76 Fed.Reg.8480)

The following comments are submitted on behalf of the residents of **Valley County, Idaho** by their lawfully elected **Board of County Commissioners (Board)**, regarding the proposed National Forest System Land Management Planning regulations, 36 CFR Part 219 published on Feb. 14, 2011 in the Federal Register.

The Board takes seriously the responsibility to protect the interests of the citizens of Valley County. The vast majority of land held within this County is under the management of the National Forest. The management of these lands directly affects the customs, culture, economy, resources and environment of Valley County and its Citizens. It is the duty and obligation of the Board to protect these local values and interests.

The Board is encouraged by the Agency's recognition that *"The instability created by the history of the planning rule has had a significant negative impact on the Agency's ability to manage the NFS and on its relationship with the public."* This impact is a reality, it is experienced everyday in Valley County, and any new rule must address these issues. Given these facts, the Board has the following concerns and comments to the proposed planning rule changes.

It is common knowledge that litigation has become the main driver for Agency direction and continues to be an obstacle to any kind of effective management of our public NFS lands. A new planning rule should try to limit the amount of litigation, not increase the opportunities for litigation. The new document has used wording which is a departure from common terminology and will be used as basis for future litigation. Of concern:

holistic management, spiritual sustenance, social sustainability, spiritual, educational and cultural sustenance, aesthetic values, ecosystem functions, climate change, best available science and other undefined and un-definable terms. This is an open invitation to special interest activists to define these terms in ways detrimental to the County and its citizens. Our concern is that this will lead to the same stalemate, obstructionism and dysfunction that exist today.

The summary states that the 1982 planning rule process was "complex, had significant costs, was lengthy, and was cumbersome for the public to provide input," and that the revised 2000 rule was "costly, complex, and procedurally burdensome." Our fear is that this revision is cut from the same cloth. Reducing costs to balance the budget has become a major burden for Valley County. Over 85% of Valley County is public land managed by the Forest Service. These lands historically provided income to the County in the form of timber sale receipts to offset the lack of tax base. Currently, the Forest Service contributes little or nothing to the County and at the same time, a large portion the existing resource has burned to the ground. Worse yet, funds that are made available are just tax dollars recycled back to the County. This planning rule needs to provide an incentive, not just an opportunity or consideration for economic viability and sustainability to the County.

Given that costs are one of the most important considerations for the new planning rule, there does not seem to be any clear direction concerning keeping costs down or increasing revenues to offset new costs. Instead, a completely new set of expenses will come with the collaborative process, which will introduce more agency cost, as well as public and private cost. How can an agency, which manages such a vast, renewable resource, not be able to cover the costs of that management? Even though the cost/benefit analysis shows a decrease in the analysis/decisions category, which in turn seems to reduce the overall costs, history would indicate that government costs would go up, not down. Any new plan should include a requirement to cover the costs of National Forest Service management and administration.

Of great concern is the reduction of County status within the planning process. Counties are reduced to that of a public participant. The rule requirement is only to provide the opportunity for "input" from the County. Furthermore, the plan specifically states that if it is deemed that local government plans cannot be incorporated into Agency plans or are in conflict with Forest Service planning objectives they will most likely be summarily dismissed.

The planning rule must reflect that local government is the only entity, which directly represents the stakeholders most affected by public land management decisions. These stakeholders have the most to lose from bad decisions. No other level of government has the ability to work directly with all segments of the community on contentious issues. Local government must take the lead in the debate and attempt to achieve a consensus. Federal agencies need to embrace this potential instead of ignoring it. Only this kind of cooperation can keep minority groups with no local interests, from lobbying at the federal level to achieve objectives which ultimately hurt these communities.

It is imperative that all land use planning of public lands consider the impacts on the culture and economy of the surrounding communities. The only way to achieve this is to have coordination with local citizens through their elected officials. Counties should have influence, not just input, in these plans.

Valley County hereby endorses the analysis and concerns expressed by Fred Kelly Grant, LTD and Sean Curtis in the attached comment letter.

Thank you. We will continue to monitor the progress of the Planning Rule Update, how it will affect the lives of our citizens and our economy.

Sincerely,

Gordon L. Cruickshank
Chairman, Valley County Commissioners

0775

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And

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Dear Chief Tidwell and Director Tooke:

This is a statement, report, analysis and comment that Sean Curtis and I have prepared regarding our recommendation that the proposed Section 219.4 of the 2011 Planning Rules proposal be replaced with the language of the existing, applicable Section 219.7 of the 1982 Planning Rules.

We propose that the following specific changes be made to Section 219.4 of the Proposed Rules:

Either replace the whole of Proposed Section 219.4 with Sections 219.6 (public participation) and Sections 219.7 (coordination with State, Indian Tribal, and local governments);

Or, Divide proposed Section 219.4 into two parts, the first setting forth the public participation language of the

Section and the second setting forth the language of current Section 219.7 setting forth the protocol for coordination.

Either change would reflect the Congressional mandate that sets local government in a status separate from and more intimately involved than the general public. It is a Congressionally mandated separation that makes sense. Local governments represent the interests of all citizens of their jurisdictions, not just specific interest.

Local governmental officials have the responsibility for maintaining economic stability and the social cohesiveness of their communities. They are responsible for, and have the authority to exercise, protection of the police powers reserved by the Tenth Amendment, the protection of public safety, health and welfare.

If they fail to protect the stability of their jurisdictions, the Forests will suffer as they have near the communities that have died because of loss of the timber business. The Forest Service will suffer from a public credibility standpoint, at a time when the Congress is listening to citizens again.

As you know from our prior talks, I have been working with local governments to implement the "coordination" communication and negotiation process connecting federal agencies with local governments for over two decades. My efforts began with Owyhee County, Idaho, and from a rocky beginning the County and Bureau of Land Management have developed a mutually beneficial dialogue which is continual.

Using the same process, the County has established a successful dialogue status with the Fish and Wildlife Service, the Idaho Department of Environmental Quality (acting for EPA) and other agencies. The Forest Service has no land management responsibilities in the County. Major land use conflicts have been resolved, and the coordination process laid the base for the Owyhee Initiative, as I explained during the Andrus Conference which you, Chief Tidwell, attended.

Sean Curtis began working with Modoc County in California shortly after I began the effort with Owyhee County. Modoc faced problems with the BLM and the Forest Service. He, Carolyn Carey, June Roberts and a courageous Board of Supervisors led by Nancy Huffman, established a coordination protocol which continues today. Sean continues to assist Modoc County in

successful communication with the Forest Service, BLM, and Fish and Wildlife.

Sean and I have seen the coordination process as defined by Congress in the Federal Land Policy Management Act and mandated for the Forest Service by the National Forest Management Act work. The Secretary of Agriculture's protocol set forth in the currently applicable Section 219.7 parallels the Congressional definition and has worked in a mutually beneficial manner in every local government where Forest Service personnel have followed the law.

We are engaged in a serious effort to persuade you to resist the temptation to change the Secretary's definition in Section 219.7 which mirrors the Congressional mandate. We have seen the 219.7 protocol work. We have also seen the "cooperating agency" status encouraged by the proposed Section 219.4 fail the citizens of local governments. That status benefits only the Service, paid planners, and local government officials who do not believe that they have the authority to stand firm for their citizens who deserve real, meaningful representation at the table with federal agencies.

This report, analysis and comment is a two fold effort. It constitutes Sean and my personal position regarding the effectiveness of the currently applicable Section 219.7 and the interest of many counties and units of local government who seek meaningful representation at the table with your personnel.

I respect the belief in collaboration that you two have, and the fact that you have shown that belief in the national and regional meetings that you have provided. But, the units of local government that have signed on to this report were not specifically represented in those meetings. No local government association can represent the interests of the citizens of specific local governments.

The National Association of Counties does not represent the citizens of the counties that have signed on to this report and analysis. No State Association of Cities or Counties represent the citizens of the local governments that have signed on this report and analysis. Such associations represent the counties and cities who are members, but they do not represent the local citizens. Congress recognizes that fact, thus has specifically qualified local governments for special recognition and representation with the Forest Service and other federal agencies.

The second impact of this report and analysis is that many units of local government have shown interest in signing on to this report as their local plan and policy for the protocol to be followed in the coordination process mandated for your Service by Congress. They will expect that coordination be implemented in accord with their local plan and policy adopted by endorsing replacement of Section 219.4 of the Proposed Rules by Section 219.7 of the 1982 Planning Rules.

It is from that dual standpoint that we submit this report, analysis, comment and statement of local plans and policies as to the protocol for coordination between local governments and the Forest Service.

I. PERSONAL ANALYSIS, REPORT AND COMMENT AS TO SECTION 219.4 OF THE 2011 PROPOSED FOREST SERVICE PLANNING RULES SUBMITTED BY SEAN CURTIS AND FRED KELLY GRANT:

Sean Curtis is a Natural Resource Analyst who is assisting local governments to implement the coordination process with all federal agencies. His work with Modoc County historically has already been discussed; his work with that County continues today. He is knowledgeable regarding management of natural resources as well as the mutually beneficial coordination process. His knowledge and experience with the actual management of land uses and natural resources makes him especially effective in implementing coordination not just from a protocol standpoint, but from a management standpoint.

Fred Kelly Grant initiated the first coordination process with the BLM which has continued without interruption for two decades in Owyhee County, Idaho.

Together, based on their personal experiences, they submit this report, analysis and comment requesting that the proposed Section 219.4 be replaced with Section 219.7 of the 1982 Planning Rules for the coordination process, and by Section 219.6 of the 1982 Planning Rules for public participation.

In the alternative, they request and suggest that the Proposed Section 219.4 be separated into two parts: the first containing public participation as set forth in the proposal (removing the governments of States, the Tribes and local entities of government from the public participation language),

and the second as to coordination containing all provisions of Section 219.7 of the 1982 Planning Rules.

We urge reconsideration of the text of Section 219.4 of the Proposed 2011 Planning Rules as to coordination. The Section alters dramatically the elements of mutual participation that make up the Congressional requirement that the Forest Service "coordinate" with local governments. We urge that Section 219.7 of the 1982 Planning Rules be substituted for the proposed Section 219.4 as to coordination. Section 219.7 complies with the Congressional mandate of coordination and definition of coordination.

II. LOCAL PLAN AND POLICY REGARDING THE COORDINATION PROCESS SUBMITTED BY SIGNATORY COUNTIES AND LOCAL GOVERNMENTS:

Many counties and local governments have signed on to our report, analysis and comment. The signatory counties and local governments submit this report as their "coordination protocol", their local plan and policy as to the protocol by which coordination is implemented, not as a mere comment such as those submitted by Curtis, Grant and other members of the general public.

III. THE PROPOSED RULES HAVE NOT BEEN DEVELOPED IN COMPLIANCE WITH THE 1982 PLANNING RULES BECAUSE THEY HAVE NOT BEEN DEVELOPED IN COORDINATION WITH THE LOCAL GOVERNMENTS THAT HAVE SIGNED THIS REPORT AND ANALYSIS.

The Secretary of Agriculture served Notice that the 2011 Proposed Planning Rules would be prepared in accordance with the 1982 Planning Rules. Section 219.7 of those 1982 Rules requires that the Forest Service "coordinate" development of the Rules with local governments. That Section must be followed in the final review and adoption of Planning Rules, but it has not been followed to this point---at least as to the local governments signatory to this report and analysis.

Section 219.7 should have been followed even in the development of the draft Rules, but it was not. Chapter 4 of the Proposed Rules lists hundreds of organizations and individuals who were consulted and involved in the development of the Rules. But, the coordination with individual and

specific local governments required by Congress was not implemented.

The specific elements of coordination set forth in Section 219.7 have not been followed with the signatory counties and entities of local government. So, to this point, the Service has failed to comply with the Congressional mandate of coordination and failed to comply with regulatory direction from the Secretary of Agriculture.

Unless the Service remedies its non-compliance by adequately coordinating with the signator counties and local governments with regard to the proposed Planning Rules, they will no doubt suffer the same judicial fate as the prior two sets of proposals that have been rejected for non-compliance with the law.

The counties and local governments signatory to this analysis submit the document as their local policy as to how coordination should be implemented. They submit that Section 219.7 of the 1982 Planning Rules should be substituted for Section 219.4 of the 2011 Proposals. In so doing, they represent to the Chief and to the Secretary that the provisions of Section 219.7 constitute their local plan and policy for implementing coordination. By submitting the language of Section 219.7, they expect that the Service will coordinate with each of them in attempting to resolve the conflict between their 219.7 policy and the proposed Section 219.4.

IV. SECTION 219.4 OF THE PROPOSED 2011 PLANNING RULES SHOULD BE REPLACED BY THE EXACT LANGUAGE OF SECTION 219.7 OF THE EXISTING AND APPLICABLE 1982 FOREST SERVICE PLANNING RULES.

In Section 219.7 of the 1982 Planning Rules, the Secretary of Agriculture carefully set forth all the elements of coordination required by Congress in the only Congressional definition of "coordination" or "coordinate" enacted into natural resource management law.

Section 219.7 of the 1982 Planning Rules closely parallels the Congressional definition of "coordination" and "coordinate" contained in the Federal Land Policy Management Act. FLPMA was enacted one day prior to enactment of the National Forest Management Act which requires the Forest Service to engage in "coordination" with local governments. Until Congress changes that definition, it is the definition that has the force of law.

Counties and other entities of local government throughout the west have utilized the coordination communication process with the Forest Service to the mutual benefit of local officials and Forest Service personnel. Where Forest Service personnel have followed the Secretary's process, management has progressed well without expensive, wasteful litigation.

Where Forest Service personnel have followed the Rules, the Service has benefitted from having a clear roadmap to successful communication and resolution of conflicts. Section 219.7 very clearly identifies when and how coordination takes place in the planning process. It clearly identifies who is responsible for developing the coordination process, the manner in which the planning documents should display and discuss local government plans and policies, and how the Forest Service should review local plans and policies to find inconsistencies or conflicts with federal plans and assist in resolving such conflicts.

It identifies one major element of coordination as defined by Congress: the need to meet with local officials and communicate with them regarding issues and resolution of conflicts. That element of meeting, of face to face discussions, is sadly missing from the proposed Section 219.4. Whether to meet government to government is left by the Section's language totally to the discretion of the local "responsible officer". Congress never sublimated coordination to the discretion of a local line officer.

The section is the very core of coordination. It sets in place the protocol through which local governments and the Service can find mutually beneficial resolution of conflicts. The Council on Environmental Quality, charged with oversight and control of NEPA planning processes, requires that NEPA processes be put in place "as early as possible" in the planning effort so that conflicts can be identified and resolved early, prior to issuance of a final document that must be challenged through litigation---administrative or judicial. Section 219.7 provides the means for the Service to comply with CEQ's regulations. If it is left in place, and the Service's personnel follow it, there will never be question as to whether the Service has complied with the law as set forth by NEPA and CEQ.

Those counties and entities of local government that have engaged the Forest Service in coordination have proven that the process works to the advantage of both parties. Modoc County in

California, Glen Lake Irrigation District in Montana, Custer County in Idaho, and Fremont County in Wyoming, among others, have utilized the 219.7 process to engage the Service in discussions that have so far negated the need for litigation.

Wherever Forest Service personnel are willing to comply with the Congressional mandate and definition of coordination with local government, Section 219.7 presents a clear path to compliance. The proposed Section 219.4 **DOES NOT. THE PROPOSED SECTION 219.4 DOES NOT PROVIDE A PROCESS THAT COMPLIES WITH THE CONGRESSIONAL MANDATE OF COORDINATION.**

Make no mistake, as we demonstrate hereinafter, Congress has ordered that the Forest Service coordinate, in the true sense of that word, with local government. Section 219.7 of the 1982 Rules sets forth the definition of coordination that Congress has provided by statute. The proposed Section 219.4 DOES NOT. If the proposed Section 219.4 is adopted, the signatory counties and entities of local government will still insist on coordination as defined by Congress, not as set forth in 219.4. We will prevail, and the Service personnel will have no clear protocol in their own rules to follow.

We urge that the Secretary leave in place the provisions of Section 219.7 of the 1982 Planning Rules related to coordination with local governments.

The signatory counties and local governments insist that Section 219.7 of the 1982 Planning Rules, which constitutes their local plan and policy for coordination be substituted for Section 219.4 of the Proposed 2011 Planning Rules.

V. PROPOSED LANGUAGE TO REPLACE SECTION 219.4 OF THE PROPOSED 2011 RULES:

Section 219.7, which should replace proposed Section 219.4, as to coordination with local governments, provides as follows:

Sec. 219.7 Coordination with other public planning efforts.

(a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(b) The responsible line officer shall give notice of the preparation of a land and resource management plan, along with a general schedule of anticipated planning actions, to the official or agency so designated by the affected State (including the Commonwealth of Puerto Rico). The same notice shall be mailed to all Tribal or Alaska Native leaders whose tribal lands or treaty rights are expected to be impacted and to the heads of units of government for the counties involved. These notices shall be issued simultaneously with the publication of the notice of intent to prepare an environmental impact statement required by NEPA procedures (40 CFR 1501.7).

(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include--

(1) Consideration of the objectives of other Federal, State and local governments, and Indians tribes, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the impacts identified; and,

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

(d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced.

(e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities

on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.

[47 FR 43037, Sept. 30, 1982, as amended at 48 FR 29122, June 24, 1983]

Section 219.7 was issued by the Secretary of Agriculture as compliance with Section 219.1 that set forth the principles to guide Forest Service planning. Those principles included the following:

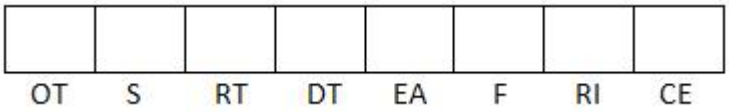
(9) Coordination with the land and resource planning efforts of other Federal agencies, State and local governments, and Indian tribes;

(10) Use of a systematic, interdisciplinary approach to ensure coordination and integration of planning activities for multiple-use management

VI. THE LANGUAGE OF SECTION 219.7 OF THE 1982 PLANNING RULES COMPLIES WITH THE CONGRESSIONAL MANDATE TO COORDINATION AND WITH THE CONGRESSIONAL DEFINITION OF COORDINATION.

A. The Provisions of the Forest and Rangeland Renewable Resources Act, the Federal Land Policy Management Act and the National Forest Management Act, and the Legislative History of Said Acts Makes It Patently Clear That Congress Defined "Coordination" In Terms That Require a Process Such as That Set Forth in Section 219.7 of the 1982 Planning Rules.

The language of Section 219.7 was intended to, and did, implement the mandate by Congress that Forest planning be performed in "coordination" with local governments. The legislative history of the various Forest Management Acts, beginning with the Multiple Use Sustained Yield Act of 1960 demonstrates that Congress intends that "coordination" be a principle by which Forest planning is conducted----not "cooperation", not "collaboration", but "coordination.



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Comments

Please see attached comments from the Council of Western State Foresters.

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May 16, 2011
Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, UT 84010

RE: Comment on the Notice of Proposed Rulemaking for a new National Forest System Land Management Planning Rule

The Council of Western State Foresters (CWSF) respectfully submits the following comments in response to the USDA Forest Service (USFS) publication of the Notice of Proposed Rulemaking for a new National Forest System Land Management Planning Rule (proposed rule) published in the Federal Register on February 14, 2011 (Fed. Reg. Vol. 76, No. 30). The CWSF membership includes the directors of the state forestry agencies in the western United States and Pacific Islands. We work to promote science-based forest management that serves the values of society and ensures the health and sustainability of western forests. We appreciate the opportunity to provide comment on the proposed rule and request that you carefully consider our comments in revising the proposed rule.

I. General Comments

Because of the interconnected nature of the threats to western forests and the substantial federal ownership in the West, the CWSF has a strong interest in the management of National Forest System (NFS) lands, and therefore a strong interest in efforts to create a new planning rule. The ultimate measure of success of any planning rule will be on-the-ground accomplishments that improve forest health and the health and sustainability of local communities and economies. To be successful, a planning rule must afford enough flexibility for regions and forests to address their unique set of issues while providing a solid framework for management activities needed to ensure the ecological, social and economic sustainability of western forests. We believe that state foresters can and should play a unique role in the planning process. As outlined below, we encourage revisions to the proposed rule to ensure that Statewide Forest Resource Assessments and Strategies are more effectively incorporated into planning efforts and that state foresters are tapped to provide local expertise as the USFS looks to advance alllands" management.

II. Comments on Proposed Rule

§219.3 Role of science in planning

The proposed rule mandates that "[t]he responsible official shall take into account the best available scientific information …." Fed. Reg. Vol. 76, No. 30 at 8515. In addition to introducing a standard of "best available science" the proposed rule goes further to require the responsible official to document the process, sources and type of information considered in reaching the determination as to what constitutes the most accurate, reliable and relevant scientific information. *Id.* While the acknowledgment of the important role of science in preparing forest plans is laudable, we have concerns over the practical impact of the language of the proposed rule in this section as it is currently written.

First, it is important to recognize that scientific studies are generally conducted on discrete parcels of land and typically provide answers to a very narrow set of questions, the development and answers to which are highly influenced by specific conditions within the original study area. Of course, the true value of scientific studies comes from utilizing these findings outside of the original study area to inform management decisions for similar forest or habitat types. However there is a level of uncertainty in extrapolating scientific findings from one site to another and this uncertainty grows as the scientific findings are moved further away from the original study. This uncertainty is compounded by the scope

of forest plans which oftentimes cover a staggeringly diverse set of forest types within one plan, and by the growing focus of the USFS on "all-lands" management, which has and will continue to broaden the scope and variety of landscapes included in planning scenarios.

In addition to the considerations outlined above, it is also important to acknowledge that scientific knowledge is constantly improving and changing. While it is important that the best and most up-to-date information be used in making management decisions, requiring ongoing documentation of each and every study used in making a decision presents the responsible official with a sizeable task. As written, the best available science standard puts the responsible official in a difficult position of having to marshal a large number of discrete studies into a planning document to support management decisions and meet the new burden established under §219.3. At best, this standard creates a new and substantial workload for the responsible official to document each and every scientific study considered at least every two years when compiling the monitoring and evaluation report and during any forest plan revision, amendment or assessment process. At worst, this section could subject the USFS to an entirely new standard of review relative to the scientific information used in forest planning documents.
In *Lands Council v. McNair*, 537 F.3d 981 (9th Cir. 2008) (*en banc*) the U.S. Court of Appeals for the Ninth Circuit addressed the role of courts in reviewing decisions involving matters within the scientific expertise of an agency. The Ninth Circuit concluded that under the Administrative Procedures Act (APA) the courts owe the greatest deference to agency decisions involving scientific determinations within the agencies area of expertise, affirming that the appropriate standard of review under the APA for such decisions is the arbitrary and capricious standard. *Id.* Nonetheless, as written and discussed by USFS personnel at proposed rule public forums, the proposed rule would place a duty on the responsible official to demonstrate that the most accurate, reliable and relevant information for any given decision was appropriately considered in reaching planning decisions. This duty to demonstrate that the best available science was considered in planning decisions is likely to prove costly and could result in the agency having plans challenged in court because of a new duty placed on the agency through its own rulemaking process.

Given the complications with best available science as outlined above and the creation of a new duty that is likely to alter the traditional deference afforded to agency decisions concerning matters of science, we are concerned that this standard may ultimately cause additional expense in both agency time to meet the documentation standards, in defending against possible attacks to the sufficiency of the documentation itself, and in meeting a new burden of proof in court established by this section relative to proving appropriate consideration of the best available science.

The use and dissemination of scientific information by federal agencies is addressed by the Federal Data Quality Act (P.L. 106-554 §515) and subsequent guidelines from the Office of Management and Budget (http://www.whitehouse.gov/omb/fedreg_reproducible). Because the Federal Data Quality Act provides protections and assurances for the quality of scientific information used and distributed by federal agencies, we request that §219.3 be revised to remove language creating a new legal duty on the responsible official to document how each and every piece of scientific information used was determined to be among the most accurate, reliable and relevant as this duty would likely prove both time consuming and costly for the agency, as outlined above, and is duplicative with the assurances provided under the Federal Data Quality Act.

§219.4 Requirements for public participation
We are concerned that the role of tribes, states and local governments may be weakened under the proposed rule language included at §219.4(b)(1) pertaining to "[c]oordination with other public planning efforts." Section §219.7(a) of the 1982 planning rule states that "[t]he responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal

agencies, State and local governments, and Indian tribes." However, §219.4(b)(1) of the proposed rule states that "[t]he responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal Agencies, and State and local governments, **to the extent practicable and appropriate.**" (emphasis added). Our concern stems from the inclusion of the final clause providing the ambiguous caveat to the requirement to coordinate with other tribal and governmental efforts.

Any decision by the responsible official to exercise the discretion afforded under the ambiguous language of the proposed rule to not coordinate with an otherwise qualifying entity could become the subject of costly and time consuming litigation that could usurp resources that would be better utilized through onthe-ground management. We would like to see the language of §219.4 strengthened to ensure that this coordination and collaboration will, at the very least, continue as envisioned under the 1982 rule. The coordination section of the Resource Management Planning regulations for the Bureau of Land Management (43 CFR §1610.3-1) provides an example of stronger language relative to coordination and collaboration with other federal, state and local governments and Indian tribes. Section 1610.3-1 provides flexibility to address inconsistencies between federal and non-federal government plans, to develop management plans in collaboration with cooperating agencies, and further mandates that plan developers invite outside agencies to participate as cooperating agencies and that other federal, state and local and Indian tribes are provided "opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs." We request that the agency consider similar language in providing opportunities for other federal, state and local governments and Indian tribes to take more active role in the planning process.

§219.6 Assessments

As outlined in prior informal comments shared with the USFS on the planning rule blog, the CWSF continues to advocate for the explicit inclusion of Statewide Forest Resource Assessments and Strategies in the development of forest plans. In June of 2010 state forestry agencies in every state and U.S. territory completed Statewide Forest Resource Assessments and Strategies that provide important localized data on the current state of forests across all management boundaries within a state. These documents were an important outcome of the 2008 Farm Bill and have been reviewed and approved by the Secretary of Agriculture. Statewide Forest Resource Assessments and Strategies are living "all-lands" assessments that will be updated periodically and are uniquely situated to inform the USFS planning process.

While the reference to Statewide Forest Resource Assessments and Strategies under §219.6(b)(2) covering Assessments is a solid start, we are concerned that, as written, the proposed rule does not recognize the unique role and contribution to planning efforts that can come from continued collaboration with state and local partners who have already undertaken targeted planning efforts; such as State Foresters and Statewide Forest Resource Assessments and Strategies. In §219.6(b)(2) considering the content of the required assessment under the proposed rule language, the responsible official is required to "[i]dentify and consider relevant information contained in governmental or non-governmental assessments …." The proposed rule continues stating that "[s]uch documents **may** include State forest assessments and strategies ...." (emphasis added). While we are encouraged by the reference to the Statewide Forest Resource Assessments and Strategies included in the proposed rule, we believe that the reference should be strengthened to ensure that they are included in the content of assessments for each and every forest plan.

We strongly believe that these Statewide Forest Resource Assessments and Strategies can and should be utilized by the USFS in forest planning efforts; however, under the proposed rule there is no guarantee of such consideration of the Statewide Forest Resource Assessments and Strategies. As such, we request

that an additional subsection be included under §219.6(b) to require the responsible official to consider information contained in the applicable Statewide Forest Resource Assessments and Strategies in conducting the required assessment under the planning rule.

§219.7 New plan development or plan revision

Under the 1982 planning rule, only standards are legally enforceable. The creation of a new planning rule may be the appropriate time for the agency to consider providing additional force to both goals and desired future conditions as laid out in this section. These pro-active plan components could be important tools for the agency to use in developing and defending management decisions by looking at the long term trends of the forest and undertaking actions that may result in short-term impacts but are important in achieving the goals or desired future conditions stated in the forest plan.

§219.8 Sustainability

In the explanation of the proposed rule, the USFS states that "[t]he proposed rule considered the ecological, social, and economic systems as interdependent systems, which cannot be ranked in order of importance." Fed. Reg. Vol. 76, No. 30 at 8491. However, in the same section of the proposed rule explanation, the USFS goes on to state that "the agency has more influence over the factors that impact ecological sustainability on NFS lands (ecological diversity, forest health, road system management, etc.) than it does for social and economic sustainability (employment, income, community well-being, culture, etc.)." *Id.* It is this position that leads to the disparate treatment of social and economic systems versus ecological systems in the proposed rule.

In reference to ecological sustainability in §219.8(a) the proposed rule requires plan components to "**maintain or restore** the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area …." (emphasis added). However in §219.8(b) in reference to social and economic sustainability, the rule requires only that "[t]he plan must include plan components **to guide the unit's contribution** to social and economic sustainability …." (emphasis added). The CWSF continues to support the initial assertion of the agency that social, ecological and economic considerations are not competing values; rather they are truly interdependent and all play an important role in effectively implementing landscape scale restoration.

Even if the assertion that the agency has more influence over factors influencing ecological sustainability than those influencing social or economic sustainability is true, this does not support the language in the proposed rule which elevates ecological considerations above social and economic considerations. The agency asserts that the proposed rule treats the three elements of sustainability as interdependent and further, that none of the elements can be ranked in order of priority. Nowhere does the agency say that factors cannot be ranked in order of importance unless the agency has differing abilities to influence the factors.

Further, we find the assertion that the agency has more influence over factors influencing ecological sustainability suspect. In the explanation of this section in the proposed rule, the agency lists a host of factors influencing ecological sustainability that are outside the control of the agency including "climate change, extreme disturbance events, and urbanization on lands outside of or adjacent to NFS lands." Fed. Reg. Vol. 76, No. 30 at 8490. This is not an insubstantial list of factors outside of the agencies control, and says nothing of the agency's ability to actively manage NFS lands in light of the near constant threat of litigation facing management activities on federal lands. The decline in the forest industry throughout the west and the corresponding social and economic benefits closely coincides with the increase in the threats to ecological sustainability stemming from the lack of management on federal lands. These ecological threats include fires outside the historical range of variability and spread of native and invasive pest species at historic levels (extreme disturbance events) and are some of the primary factors

currently influencing the ecological health and sustainability of western forests. The agency's ability to impact factors influencing social and economic sustainability is clear from the impact on these systems following the decline in management on federal lands. What is not clear is that the agency is in a better position to impact factors influencing ecological sustainability than those influencing economic or social sustainability.

Because the USFS is in a position to have a substantial impact on all of the factors influencing ecological, social and economic sustainability, we request that the proposed rule recognize this and include language for plan components that maintain or restore all three elements of sustainability, being ecological, social and economic.

§219.9 Diversity of plant and animal communities

The proposed rule language on maintenance of viable populations in §219.9(b)(3) significantly expands the realm of species that may be considered under the proposed rule by not limiting species of conservation concern to vertebrate species as the current rule does. As this is a contentions and litigious issue under the current planning rule, we are concerned that the proposed rule has done little to reduce the likelihood of future conflicts. Specifically, the proposed rule contains no reference to meeting overall multiple use objectives in light of providing for species viability. This reference to overall multiple use objectives from the 1982 rule has been relied upon in court decisions to uphold agency decisions related to management indicator species and should be included in this proposed rule.

Both §219.8 (sustainability) and §219.9 (diversity of plant and animal communities) contain the same language at the opening of the sections that "[w]ithin Forest Service authority and consistent with the inherent capability of the plan area, the plan must include plan components to …" either provide for sustainability or plant and animal diversity. However, the two subsequent sections, §219.10 (multiple use) and §219.11 (timber requirements based on the [National Forest Management Act] NFMA) contain very similar language with one notable addition to the language of the "fiscal capability of the unit.…" This language sets up a disparity whereby the provision of multiple uses and timber requirements under the NFMA are subject to the additional caveat of the fiscal capability of the unit while efforts to provide for sustainability and species viability are not. We are concerned that the language of the proposed rule in this section goes even further than the flaws discussed above relative to the disparate treatment of ecological, social and economic sustainability to, in practice, subjugate social and economic sustainability to ecological sustainability, despite the agency's statement that the three are interrelated and should not be ranked in order of importance. As such, we recommend that the additional limiting language in §219.10 and §219.11 be eliminated. Alternatively, the fiscal capability language could be added to §219.8 and §219.9 to ensure that all elements of sustainability are truly recognized as equal and interdependent factors in the rule.

§219.12 Monitoring

Adequate monitoring is absolutely necessary to support the adaptive management framework chosen in the proposed rule. Unfortunately, we are concerned that the monitoring framework included in the proposed rule will ultimately become a costly burden on the agency as we all face shrinking budgets. We have already seen proposed cuts in the President's fiscal year (FY) 2012 budget proposal for the Forest Inventory and Analysis (FIA) program, which acts as the nation's forest census. At the funding levels proposed in the President's budget, several states in the West will continue to go without FIA data, and others are likely to be impacted by longer cycles between inventories and cessation of higher resolution sensing projects. With these cuts in mind, we believe it is important to continue forward with "all-lands" monitoring efforts (as envisioned under the proposed rule's course lens approach) to make sure we can build upon our current knowledge of all forest ecosystems, regardless of ownership.

We were encouraged to both read in the proposed rule and to hear from members of the USFS planning rule team at national and regional forums that they intend to leverage outside monitoring efforts being conducted by other government and non-governmental parties. We believe this is another opportunity for State Foresters and Statewide Forest Resource Assessments and Strategies to play an important role in forest planning efforts. With this in mind, we believe that the language of §219.12(c)(5) should be strengthened to require the responsible official to look to State Foresters and Statewide Forest Resource Assessments and Strategies by including specific reference to State Foresters in §219.12(b)(2). Collaboration is an important part of continuing to improve the efficient and effective use of limited monitoring resources.

Subpart B – Pre-Decisional Administrative Review Process
§219.50-62
We support the use of the pre-decisional administrative review process for land management plan proposals as set forth in the proposed rule. We are hopeful that this review process would lead to more collaborative decisions and ultimately save litigation costs and allow the agency to more efficiently implement management on the ground.

III. Conclusion
The CWSF appreciates the efforts of the planning rule team at the USFS to develop a rule that will provide a solid framework to implement on-the-ground management and address the pressing threats to western forests. As the USFS moves forward in considering comments and revising the proposed rule, we ask that you consider our comments. Again, thank you for the opportunity to provide comment on the proposed rule, we look forward to continuing to work with the agency to ensure that all western forests are managed to serve the values of society and ensure the health and sustainability of western forests.

Sincerely,

John C. Maisch
Alaska State Forester and
Chair, Council of Western State Foresters

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 209.162.215.101
Form Letter:

Comments

See Attachments

Individual(s)

Organization Type	Individual
Organization	
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Country	UNITED STATES
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Organization Type	Public Interest Group/Political Party
Organization	ASSOC OF NORTHWEST STEELHEADERS
Email Address	
Title	DIR
Name	RUSSELL BASSETT
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City	MILWAUKIE
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Country	UNITED STATES
Created On	5/20/2011 10:50:00 AM
Organization Type	Public Interest Group/Political Party

Organization	BARK
Email Address	
Title	EXEC DIR
Name	ALEX BROWN
Address 1	
Address 2	
City	PORTLAND
State	OREGON
Zip	
Country	UNITED STATES
Created On	5/20/2011 10:51:00 AM
Organization Type	Public Interest Group/Political Party
Organization	CASCADIA WILDLANDS
Email Address	
Title	CONSERVATION DIR
Name	FRANCIS EATHERINGTON
Address 1	
Address 2	
City	ROSEBURG
State	OREGON
Zip	
Country	UNITED STATES
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Organization Type	Public Interest Group/Political Party
Organization	CENTER FOR BIOLOGICAL DIVERSITY
Email Address	
Title	ENDANGERED SPECIES COORDINATOR
Name	NOAH GREENWALD
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Address 2	
City	PORTLAND
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Zip	
Country	UNITED STATES
Created On	5/20/2011 10:52:00 AM
Organization Type	Public Interest Group/Political Party
Organization	CRATER LAKE INSTITUTE
Email Address	

Title	EXEC DIR
Name	ROB MUTCH & RON MASTROGIUSEPPE
Address 1	
Address 2	
City	CRATER LAKE
State	OREGON
Zip	
Country	UNITED STATES
Created On	5/20/2011 11:02:00 AM
Organization Type	State Government Agency/Elected Official
Organization	OR STATE SENATE DIST 19
Email Address	
Title	SENATOR
Name	RICHARD DEVLIN
Address 1	
Address 2	
City	TUALATIN
State	OREGON
Zip	
Country	UNITED STATES
Created On	5/20/2011 11:03:00 AM
Organization Type	Other Organization
Organization	ECUMENICAL MINISTRIES OF OR INTERFAITH NETWORK FOR EARTH CONCERNS
Email Address	
Title	DIR ENVIRONMENTAL MINISTRIES
Name	JENNY HOLMES
Address 1	
Address 2	
City	PORTLAND
State	OREGON
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Country	UNITED STATES
Created On	5/20/2011 11:04:00 AM
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Organization	ENVIRONMENT OREGON
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Title	PRESERVATION ASSOCIATE
Name	DAVID MATTHEWS

Address 1	
Address 2	
City	PORTLAND
State	OREGON
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Country	UNITED STATES
Created On	5/20/2011 11:04:00 AM
Organization Type	Public Interest Group/Political Party
Organization	FRIENDS OF MT HOOD
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Title	CHAIR
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City	MT HOOD
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Country	UNITED STATES
Created On	5/20/2011 11:04:00 AM
Organization Type	Public Interest Group/Political Party
Organization	FRIENDS OF THE COLUMBIA GORGE
Email Address	
Title	CONSERVATION DIR
Name	MICHAEL LANG
Address 1	
Address 2	
City	PORTLAND
State	OREGON
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Country	UNITED STATES
Created On	5/20/2011 11:05:00 AM
Organization Type	Public Interest Group/Political Party
Organization	FRIENDS OF THE ELK RIVER
Email Address	
Title	
Name	JIM ROGERS
Address 1	
Address 2	

City	PORT ORFORD
State	OREGON
Zip	
Country	UNITED STATES
Created On	5/20/2011 11:05:00 AM
Organization Type	Public Interest Group/Political Party
Organization	GIFFORD PINCHOT TASK FORCE
Email Address	
Title	EXEC DIR
Name	BILL WEILER
Address 1	
Address 2	
City	PORTLAND
State	OREGON
Zip	
Country	UNITED STATES
Created On	5/20/2011 11:06:00 AM
Organization Type	Public Interest Group/Political Party
Organization	HELLS CANYON PRESERVATION CNCL
Email Address	
Title	EXEC DIR
Name	GREG DYSON
Address 1	
Address 2	
City	LA GRANDE
State	OREGON
Zip	
Country	UNITED STATES
Created On	5/20/2011 11:06:00 AM
Organization Type	Public Interest Group/Political Party
Organization	LOWER COLUMBIA CANOE CLUB
Email Address	
Title	CONSERVATION CHAIR
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Address 1	
Address 2	
City	PORTLAND
State	OREGON

Zip	
Country	UNITED STATES
Created On	5/20/2011 11:07:00 AM
Organization Type	Public Interest Group/Political Party
Organization	MAZAMAS
Email Address	
Title	EXEC DIR
Name	PEGGIE SCHWARZ
Address 1	
Address 2	
City	PORTLAND
State	OREGON
Zip	
Country	UNITED STATES
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Organization Type	Public Interest Group/Political Party
Organization	AUDUBON SOCIETY OF PORTLAND
Email Address	
Title	CONSERVATION DIR
Name	BOB SALLINGER
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Address 2	
City	PORTLAND
State	OREGON
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Country	UNITED STATES
Created On	5/20/2011 11:08:00 AM
Organization Type	Public Interest Group/Political Party
Organization	NW SPORTSFISHING INDUSTRY ASSOC
Email Address	
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Address 2	
City	OREGON CITY
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Country	UNITED STATES

Created On	5/20/2011 11:08:00 AM
Organization Type	Public Interest Group/Political Party
Organization	OREGON KAYAK & CANOE CLUB
Email Address	
Title	CONSERVATION & ACCESS CHAIR
Name	RUSS PASCOE
Address 1	
Address 2	
City	PORTLAND
State	OREGON
Zip	
Country	UNITED STATES
Created On	5/20/2011 11:09:00 AM
Organization Type	Public Interest Group/Political Party
Organization	OR NATURAL DESERT ASSOC
Email Address	
Title	EXEC DIR
Name	BRENT FENTY
Address 1	
Address 2	
City	BEND
State	OREGON
Zip	
Country	UNITED STATES
Created On	5/20/2011 11:09:00 AM
Organization Type	Public Interest Group/Political Party
Organization	OREGON
Email Address	
Title	
Name	SCHLAES EXEC DIR
Address 1	SCOTT
Address 2	
City	PORTLAND
State	OREGON
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Country	UNITED STATES
Created On	5/20/2011 11:10:00 AM
Organization Type	County Government Agency/Elected Official

Organization	CITY OF EUGENE
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Address 2	
City	EUGENE
State	OREGON
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Country	UNITED STATES
Created On	5/20/2011 11:10:00 AM
Organization Type	State Government Agency/Elected Official
Organization	OR ST REP DIST 27
Email Address	
Title	REP
Name	TOBIAS READ
Address 1	
Address 2	
City	BEAVERTON
State	OREGON
Zip	
Country	UNITED STATES
Created On	5/20/2011 11:10:00 AM
Organization Type	Public Interest Group/Political Party
Organization	SISKIYOU PROJ
Email Address	
Title	EXEC DIR
Name	SHANE JIMERFIELD
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Address 2	
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State	OREGON
Zip	
Country	UNITED STATES
Created On	5/20/2011 11:11:00 AM
Organization Type	Public Interest Group/Political Party
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Email Address	

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Country	UNITED STATES
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Organization Type	County Government Agency/Elected Official
Organization	LANE COUNTY COMMRS
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Country	UNITED STATES
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Organization Type	State Government Agency/Elected Official
Organization	OR ST REP DIST 41
Email Address	
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Country	UNITED STATES
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Organization Type	Public Interest Group/Political Party
Organization	UMPQUA WATERSHEDS
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Name	CINDY HAWS

Address 1	
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Country	UNITED STATES
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Organization Type	Public Interest Group/Political Party
Organization	WILD ON WILDERNESS COMMITTEE
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Country	UNITED STATES
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Organization Type	Public Interest Group/Political Party
Organization	WILD SALMON CENTER
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City	YONCALLA
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Country	UNITED STATES
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Organization Type	Public Interest Group/Political Party
Organization	WILD STEELHEAD COALITION
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Title	PRES
Name	RICH SIMMS
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State	WASHINGTON
Zip	
Country	UNITED STATES
Created On	5/20/2011 11:15:00 AM

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Association of Northwest Steelheaders ~ Audubon Society of Portland ~ Bark ~ Cascadia Wildlands Center for Biological Diversity ~ Crater Lake Institute ~ Senator Richard Devlin Ecumenical Ministries of Oregon's Interfaith Network ~ Environment Oregon ~ Friends of Mt. Hood Friends of the Columbia Gorge ~ Friends of the Elk River ~ Gifford Pinchot Task Force Hells Canyon Preservation Council ~ Lower Columbia Canoe Club ~ The Mazamas Northwest Sportfishing Industry Association ~ Oregon Kayak & Canoe Club Oregon Natural Desert Association ~ Oregon Wild ~ Mayor Kitty Piercy ~ Rep. Tobias Read Siskiyou Project ~ Soda Mountain Wilderness Council ~ Commissioner Pete Sorenson Rep. Carolyn Tomei ~ Umpqua Watersheds ~ Wild on Wilderness Committee ~ Wild Salmon Center Wild Steelhead Coalition

Honorable Tom Vilsack
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

March 25, 2011

Re: National Forest Management Act

Dear Secretary Vilsack,

In creating the National Forest System over a century ago, President Theodore Roosevelt had the foresight to protect America's national forests and grasslands – including over 15 million acres in Oregon such as Mt. Hood, Rogue, and Willamette National Forests - from destruction at the hands of short-sighted provincial interests. Sweeping new National Forest management rules recently released by the Obama administration provide a unique opportunity to continue the conservation legacy of President Theodore Roosevelt.

This proposed rule is likely to be one of the most lasting and consequential conservation legacies of this administration and is of great importance to Oregonians. We urge you not to miss this opportunity to retain and strengthen basic mandatory protections for clean water, wildlife, and opportunities for traditional quiet recreation. We also urge you to ensure the public is able to continue to play a meaningful role in participating in the management of our National Forests.

Despite good intentions, as proposed, this new forest policy appears to be a step in the wrong direction by affording fewer clear protections for our National Forests than the regulations issued by President Ronald Reagan in 1982 and currently in use.

The new regulations must require basic protections for healthy fish and wildlife populations and their habitats. The regulations must secure safe, clean water by creating clear mandatory national management standards to protect and restore streams, rivers and watersheds. The Obama administration must uphold its commitment to science by requiring the use of the sound science at all levels of the planning rule. Finally, it is critical that the role of meaningful public involvement and intervention be retained.

Oregon's National Forests are a critical part of our state's identity. The wildlife, clean drinking water, and world class recreational opportunities they provide are critical to our economy, security, and way of life. They are also one of our best tools for combating climate change. The opportunity to protect our National Forests as an enduring legacy for future generations is one that President Obama and the American people can not afford to lose.

We look forward to working with you to develop a new framework for managing our national forests in Oregon and nationwide.

Sincerely,

Russell Bassett, Executive Director
Association of Northwest Steelheaders
Milwaukie, OR

Bob Sallinger, Conservation Director
Audubon Society of Portland
Portland, OR

Alex Brown, Executive Director
Bark
Portland, OR

Francis Eatherington, Conservation Director
Cascadia Wildlands
Roseburg, OR

Noah Greenwald, Endangered Species Coordinator
Center for Biological Diversity
Portland, OR

Rob Mutch, Executive Director
Ron Mastrogiuseppe, Founder & President
Crater Lake Institute
Crater Lake, OR

Senator Richard Devlin
State Senator, District 19
Tualatin, OR

Jenny Holmes, Director, Environmental Ministtries
Ecumenical Ministries of Oregon's Interfaith Network
for Earth Concerns
Portland, OR

David Matthews, Preservation Associate
Environment Oregon
Portland, OR

Barbara Wilson, Chair
Friends of Mt. Hood
Mt. Hood, OR

Michael Lang, Conservation Director
Friends of the Columbia Gorge
Portland, OR

Jim Rogers
Friends of the Elk River
Port Orford, OR

Bill Weiler, Executive Director
Gifford Pinchot Task Force
Portland, OR

Greg Dyson, Executive Director
Hells Canyon Preservation Council
La Grande, OR

Russ Pascoe, Conservation Chair
Lower Columbia Canoe Club
Portland, OR

Peggie Schwarz, Executive Director
The Mazamas
Portland OR

Liz Hamilton, Executive Director
Northwest Sportsfishing Industry Association
Oregon City, OR

Russ Pascoe, Conservation & Access Chair
Oregon Kayak & Canoe Club
Portland, OR

Brent Fenty, Executive Director
Oregon Natural Desert Association (ONDA)
Bend, OR

Scott Schlaes, Executive Director
Oregon Wild
Portland, OR

Mayor Kitty Piercy
City of Eugene
Eugene, OR

Rep. Tobias Read
State Representative, District 27
Beaverton, OR

Shane Jimerfield, Executive Director
Siskiyou Project
Grants Pass, OR

Dave Willis, Chair
Soda Mountain Wilderness Council
Ashland, OR

Commissioner Pete Sorenson
Lane County Commissioner
Lane County, OR

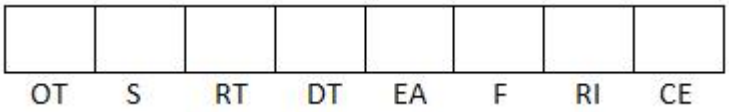
Rep. Carolyn Tomei
State Representative, District 41
Milwaukie, OR

Cindy Haws, Executive Director
Umpqua Watersheds
Roseburg, OR

Susan Applegate, Chair
Wild on Wilderness Committee
Yoncalla, OR

Guido Rahr, President & CEO
Wild Salmon Center
Portland, OR

Rich Simms, President
Wild Steelhead Coalition
Kirkland, WA



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Delivery Type: W - Web-based submission
IP Address: 205.168.78.66
Form Letter:

Comments

The attachments to this email represent Montrose County position on specific provisions of the preposed. Please make subatantive changes in order to address this position to produce a rule that is simpler and quicker, understandable, flexiable, responsive to site-sprcific forest conditions, and most importantly a rule that is defensible in court. The budget deficiits at all levels of government make it essintal to stream line regulations and to assure job growth in the local ecomonies home to these national forests. As written, this rule posses great risks to many long term multiple-use activities on and in our forests.

Individual(s)

Organization Type	County Government Agency/Elected Official
Organization	MONTROSE CNTY BD OF CNTY COMMRS
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Organization	MONTROSE CNTY BD OF CNTY COMMRS
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Organization	MONTROSE CNTY BD OF CNTY COMMRS
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City	MONTROSE
State	COLORADO
Zip	81401
Country	UNITED STATES
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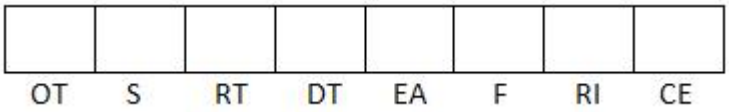

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IP Address: 208.98.160.167
Form Letter:

Comments

See Attachments

Individual(s)

Organization Type	County Government Agency/Elected Official
Organization	CUSTER COUNTY COMMISSIONERS
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Zip	83226
Country	UNITED STATES
Created On	5/16/2011 1:57:00 PM

CUSTER COUNTY COMMISSIONERS
PO BOX 385
CHALLIS, ID 83226
(208) 879-2360
(208) 879-5246 (fax)

May 13, 2011

Forest Service Planning
NOI
C/O Bear West Company
172 E500S
Bountiful, UT 84010

Re: National Forest System Land Management Planning

To Whom It May Concern:

Please accept the following comments from the Board of County Commissioners, Custer County, Idaho related to the USDA Forest Service Notice of Intent (NOI) to prepare an environmental impact statement to analyze and disclose potential environmental consequences associated with a National Forest System Land Management Planning Rule.

Foremost we believe that local government participation needs to be more consistent across the Forest Service nationwide. We believe there should be consistent procedures for inviting local governments to participate (coordinate) in the preparation of documents governed by NEPA. We believe planning efforts undertaken by the federal government should consider existing state and local plans and ordinances. Communities located adjacent to public lands should be invited to coordinate in regards to travel management, wildfire protection, water quality and other critical issues that affect the livelihood of local communities, industries and businesses.

We believe the Proposed Rule in particular as it affects the cattle industry will be costly and cumbersome compared to the existing rule, putting at jeopardy the rangeland program and ranchers' ability to continue their livestock grazing practices.

The Proposed Rule focuses on only a select few of the many multiple uses the Forest Service is congressionally mandated to oversee, and fails to give appropriate weight to NFS lands' role in providing social and economic sustainability. We believe that social, environmental and economic considerations are not competing values, but rather interdependent components, all of which play an important role in effectively managing NFS lands.

If the Proposed Rule is implemented, all multiple uses on NFS lands are at risk. The Proposed Rule threatens to place even greater burdens on agency resources because of its vague, complex, and unrealistic requirements, both substantive and procedural.

Because of the concerns established in these comments, I request that the Forest Service revise the Proposed Rule to be consistent with its authority under NFMA and the MUSYA and to appropriately consider all of its multiple-use objectives, including providing range resources. The Forest Service's ability to provide range resources and to manage for sustainable and healthy forest lands is integral to the success of ranching operations and entire communities across the west.

Thank you for the opportunity to comment regarding the 2011 proposed Planning Rules.

Sincerely,

Wayne F. Butts, Chairman

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 216.226.180.2
Form Letter:

Comments

See Attachments

Individual(s)

Organization Type	State Government Agency/Elected Official
Organization	AL DEPT OF CONSERVATION & NATURAL RESOURCES
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State	ALABAMA
Zip	36104
Country	UNITED STATES
Created On	5/16/2011 2:03:00 PM

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STATE OF ALABAMA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
WILDLIFE AND FRESHWATER FISHERIES DIVISION

64 North Union Street, Ste. 567
P.O. Box 301456
Montgomery, AL 36130-1456
Phone: (334) 242-3465 Fax: (334) 242-3032
www.outdooralabama.com

The mission of the Wildlife and Freshwater Fisheries Division is to manage, protect, conserve, and enhance the wildlife and aquatic resources of Alabama for the sustainable benefit of the people of Alabama.

May 16, 2011

Forest Service Planning DEIS
C/O Bear West Company
172 E 500 S
Bountiful, UT 84010

RE: National Forest System Land Management Planning: Proposed Rule (Federal Register Volume 76, No 30, February 14, 2011. The following comments are offered for consideration.

Dear Forest Service Team:

Appropriate personnel from the Alabama Division of Wildlife and Freshwater Fisheries (WFF) have reviewed the U.S. Forest Service (USFS) Draft National Forest Service Land Management Planning Rule (Rule), 36 CFR Part 219 published in the Federal Register on February 14, 2011 and has the following comments.

- We believe it is imperative that the authority of the State Fish and Wildlife Agencies in managing the fish and wildlife resources on National Forest System lands be clearly stated. This is a long standing cooperative relationship that should be recognized and affirmed.

- We are pleased to see that the proposed Forest Planning Rule contains language that recognizes that all National Forests are not the same and should have differing guidelines as needed. USFS lands in Wyoming or California are certainly not the same as those found in eastern forests.

- WFF also approves of the framework concept of Assessment, development/revision/amendment, and monitoring in the Rule as well. This approach is rational and allows the USFS to have a working adaptive strategy in handling land use activities associated with National Forest Lands.

- WFF primary concern is over the deviation of the USFS from the long standing management concept of conservation, as defined by Gifford Pinchot, Aldo Leopold and Teddy Roosevelt, to the new concepts of sustainability (ecologic, social and economic). Conservation of renewable natural resources is a concept that has long been used within the land management community, and largely

accepted within the court system, meaning the "wise use of natural resources." "Conservation" as defined in the Rule is "protection, preservation, management, and restoration." §219.19. This is a far cry from conservation as described by Pinchot, Leopold and Roosevelt.

- The historically accepted definition of conservation, as opposed to the new concepts of environmental, social and economic sustainability, allows the Planning Rule to meet the mandated statutes associated with the Multiple Use and Sustained Yield Act (MUSYA), 16 U.S.C. §528. There appears to be a pronounced tilt toward "preservation" and ill defined "sustainability" that is contrary to these applicable principles that have served the National Forest System, the natural resources and historic users of these lands since the agency's inception.

- The historic concept of conservation, when appropriately followed, can provide for sustainable social activities as well as economic activities. If social or economic activities or considerations exceed the wise use concept, environmental conditions will show degradation and require changes in order to be viably maintained. As such the environmental component (based on sound science) should carry an over riding position to all other concerns, whether social or economic.

- WFF believes that the new terms of ecological sustainability, social sustainability and economic sustainability may well open the USFS to extensive litigation as these terms seem to be largely nebulous in their definition, with only the term ecologic sustainability possibly coming anywhere near the longstanding definition of conservation.

- WFF does not see anything within these acts specifically referring to terms such as, "social sustainability", holistic management", "ecosystem functions". These subjective terms provide no tangible guidelines, or measureable components as compared to the tangible objectives that are prescribed in the MUSAY, involving subjects such as "outdoor recreation" and "wildlife and fish." Primary emphasis must be placed on making management decisions involving resources that can be tangibly evaluated using objective scientific principles and guidelines as prescribed by law.

- Another case for concern exists in requirement to use information such as "local and indigenous knowledge" when developing a forest plan. Both of these terms again appear to carry no solid tangible definition. Local knowledge or information that is not backed up by historic or scientific documentation could simply be the personal opinion of an individual or group, or stemming from such things as local folk lore and as such should not be considered on the same level as scientifically or historically based information.

- An additional area of concern appears within the regulatory provision directing the USFS to consider the availability of nearby non-forest lands when considering particular activities that may be conducted on USFS lands. The implication in that statement is that if an activity is available on nearby non-forest lands then the

USFS should potentially consider not allowing the activity on forest lands. Although activities may be ongoing on adjoining lands they may or may not be available to the general public on these lands. In the southeast it is highly likely that activities on private land are not available to the general public. This thought process appears totally foreign and contradictory to the multiple use and conservation concepts that USFS lands have been managed on for decades.

- Wilderness – Contrary to the statement at 76 FR 8496 of the preamble, designated Wilderness Areas are not "refuges" for wildlife. The "Wilderness Act" (16 U.S.C. 1131 note), Short Title - Use of wilderness areas, Sec. 4 (d) Special provisions, subsection (7) State jurisdiction of wildlife and fish in national forests states, "Nothing in this chapter shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests (16 U.S.C. 1133)." There should be no implications that Wilderness Areas within national forests are "sanctuaries" and therefore closed to hunting.

- Best Available Scientific Information – The language in §219.3 regarding the "Role of science in planning" that the best available scientific information shall be taken "into account" in the planning process is reasonable and prudent. This philosophy should be the guiding principle when considering all management actions associated with Forest Planning.

- Plant and Animal Diversity – When considering species "diversity" consideration should be included regarding the maintenance of the diversity of age groups of plant communities within forested ecosystems. Compositions and or actual presence of many plant and animal species in eastern forests are currently under represented due to a lack of early successional forest stages.

- Wildlife Habitat Management – WFF supports the language in §219.11(b) (2) that recognizes the value of timber harvest and management for improving wildlife habitat. In subsection (d) (2) we would recommend that references to "aesthetic resources" be removed. Active management projects both for timber and wildlife are typically geared around setting the current forest stage back to an earlier successional condition. Activities such as timber harvest, prescribed fire, wildlife clearings and others may for a time create less than appealing aesthetics but are an integral part of creating and sustaining high quality wildlife habitats and populations.

We appreciated the opportunity to comment on the proposed rule.

Sincerely,

Gary H. Moody, Chief
Wildlife Section

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 199.192.8.67
Form Letter:

Comments

See Attachments

Individual(s)

Organization Type	State Government Agency/Elected Official
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0790

New Hampshire
Fish and Game Department

11 Hazen Drive, Concord, NH 03301-6500
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Web site: www.WildNH.com

TDD Access: Relay NH 1-800-735-2964
FAX (603) 271-1438
E-mail: info@wildlife.nh.gov

Glenn Normandeau
Executive Director

May 11, 2011

Forest Service Planning DEIS
C/O Bear West Company
172 E 500 S
Bountiful, UT 84010

RE: National Forest System Land Management Planning: Proposed Rule (Federal Register volume 76, No 30, February 14, 2011, 8480-8528)

Dear Forest Service Planning Team:

The New Hampshire Fish and Game Department is responsible for the management of New Hampshire's wildlife on all lands in the State including the White Mountain National Forest. Our Department has had a proactive cooperative working relationship with the White Mountain National Forest since at least 1948 when we undertook a study to determine how the Forest Service might improve habitat for big game through timber harvest.

We recognize the significant role the White Mountain National Forest plays as the largest block of essentially unbroken forest land in New Hampshire under one ownership. As such it serves as an important block of habitat in New Hampshire's greater landscape. An integrated and landscape scale approach to conservation is certainly consistent with Forest Service philosophy, but additionally this approach will ensure that fish and wildlife survive landscape level impacts such as a changing climate. Connecting public land efforts with associated private lands will be essential, as the Forest Service proposal acknowledges.

In New Hampshire, our Department was deeply involved in developing, and have been strong supporters of, the current WMNF Forest Management Plan. We have been a staunch supporter of Forest Service programs and timber management objectives that serve to enhance wildlife habitat and consider the Forest Service a valued and integral partner in natural resource conservation here in New Hampshire. The WMNF used this inclusive, collaborative process for developing the Plan, which resulted in wide-spread support among user groups. This model works, and should be applied nation-wide.

Managers on the White Mountain National Forest rely on our State wide and regional perspective regarding the management of fish and wildlife species and their habitat within Forest boundaries. Forest planners have always looked to us as the lead

agency for furthering the health and well being of New Hampshire's wildlife resource relying on our in-house expertise, data and resources to help inform their decisions. Our Wildlife Action Plan is widely respected and frequently referenced by Forest managers and further helps to guide managers on the WMNF.

In New Hampshire, wildlife biologists play an active role on Forest Service interdisciplinary teams providing valuable insight in the design of timber sale prescriptions to enhance and protect wildlife habitat. Teams benefit from the State perspective our biologists bring to the field and not infrequently timber harvest prescriptions and other management actions are adjusted accordingly. It is our desire to influence management actions on the Forest more by being referenced specifically as having management responsibility for wildlife resources on the WMNF. A planning rule that recognizes the state fish and wildlife agencies as a true statutory partner will help guide development of land management plans that protect and restore resiliency of the full range of fish and wildlife habitats, and also ensure their connections with adjacent or downstream habitats on public and private lands.
Specific to the Proposed Rule we note that in 219.7(d)(1) there are 5 "components" listed. We believe it is an omission not to have included a category of Current or Existing Condition as the 1st of 6 components to inform the decision making process. In any planning it is essential to identify and acknowledge what the current state is in order to understand how best to achieve the "Desired condition" component. While this is addressed to some degree in an example given in the rule referencing an "assessment" we feel that the inclusion of an "Existing Condition" component elevates the importance of this step vital to all resource management planning efforts.

In the first sentence of Section 219.9 Diversity of plant and animal communities, we suggest the following underlined language be included. To wit, "Within Forest Service authority and consistent with the inherent capability of the plan area, and in cooperation with the respective State fish and wildlife agency, the plan must include plan components to maintain the diversity of plant and animal communities, as follows:". The Forest Service manual and/or a Chief's Directive could be used to amplify the meaning of "in cooperation with the respective State fish and wildlife agency." We are aware that the Association of Fish and Wildlife Agencies has offered to assist in the drafting of that language.

Further, under 219.9, under the sub-heading "Integrated Resource Management", the Forest Service espouses its proposed approach that differs significantly from the 1982 rule. Specifically, on page 8495, the Forest Service observes that "The Agency believes that an interdisciplinary process is the best way to achieve integration of all resource concerns, recognizing that ecosystems are complex communities of interconnected and interdependent resources and systems that function as a whole. To be effective, land management strategies must take into account a wide range of resource conditions and values and strive to achieve multiple benefits while managing the risks of adverse effects to interconnected systems." We fully endorse this approach and would again remind the Forest Service of the value and merits of engaging early and often the state fish and wildlife agencies in informing and contributing to the success of this approach.

We are very concerned that Section 219.12 Monitoring, seems overly burdensome and contradictory. Section 219.12(4) states that the responsible official has the discretion to set the scope and scale of the unit monitoring program, subject to the requirements of 219.12(5) which sets out standards that must be included which make the monitoring at a minimum very expensive, if not unattainable. We are concerned that

these new standards would be required on all units with existing plans within 4 years while budgets will not accommodate these increased monitoring and reporting requirements. We are very supportive of a monitoring program that allows evaluation, learning and adaptation of management actions. We are concerned, however, that this section as written will result in unnecessary negative impacts on other program areas due to an inability of the unit to meet monitoring and reporting requirements. And in so doing, effectively bring active management to a halt compromising/limiting the ability of the unit to achieve fish and wildlife goals that are dependent on active management. Further this could be utilized by non-management advocates as a back door approach to Wilderness designation, which we do not support.

Thank you for the opportunity to comment on the Proposed Rule, and we urge you to consider our comments strongly to improve the draft rule.

Sincerely,

Glenn Normandeau
Executive Director

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 204.124.13.151
Form Letter:

Comments

See Attachments

Individual(s)

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0796

JEFFRY T. NIERMEYER
DIRECTOR

SALT LAKE CITY CORPORATION

DEPARTMENT OF PUBLIC UTILITIES
WATER SUPPLY AND WATERWORKS
WATER RECLAMATION AND STORMWATER

RALPH BECKER
MAYOR

May 16, 2011

Electronic Submittal
"Planning Rule"

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, UT 84010

Salt Lake City Comments, Proposed Forest Service Planning Rule

Dear Planning Rule Team:

This letter transmits Salt Lake City's general comments regarding the proposed Forest Planning Rule (36 CFR Part 219) presented in the Federal Register, Vol. 76 No. 30, dated February 14, 2011. Salt Lake City is a municipal water provider, through its Department of Public Utilities, serving about 500,000 residents. Sixty-percent of Salt Lake City's water supply comes from high mountain watersheds comprised primarily of National Forest System lands in the Uinta-Wasatch-Cache National Forest. Travel time for water stored in snowpack in the high mountain elevations, down mountain streams and through the City's treatment facilities, to a customer's tap, can take as little as 24 hours. Healthy watersheds are critical to Salt Lake City, and we are actively engaged in their management and protection.

The Uinta-Wasatch-Cache National Forest is ranked in the top five National Forests in the country for recreation use. The Salt Lake City watersheds within this National Forest produce among the highest quality water in the nation, but several events specific to these watersheds have highlighted that water quality and yield in these watersheds are vulnerable to development and recreation over-use. The National Forest lands that comprise Salt Lake City's watersheds are extraordinarily important and valued by our community for their intrinsic environmental, recreation, and economic values. These watersheds are visible from anywhere in our City and can be accessed by our residents in less than 30 minutes. As such, there is a balance of uses and ecosystem services these National Forests provide that sustain our quality of life.

The State of Utah projects that the Salt Lake Metropolitan Area will double in the next 20 to 30 years. This increase of population, from 1.2 to 2.4 million people will simultaneously create additional demand for water resources and additional demand for more recreation use of our local National Forest areas. As is likely the case in other areas of the country, our interdependencies associated with our National Forest System lands continue to increase. In addition, Salt Lake City is actively involved in assessing climate change impact scenarios with

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respect to water supply and water quality, and is concerned about watershed health and hydrologic changes associated with climate change.

Salt Lake City commends the Forest Service for its transparent and highly participative public process in bringing its Planning Rule up to date. We were pleased to have participated in one of the Regional Roundtable workshops sponsored by the Forest Service. The following are the substantive comments we would like to highlight with respect to the Proposed Planning Rule. We have not commented on every section of the proposed rule, but attempted to comment on those that seemed most relevant to our relationship and experience in working with the Forest Service.

SUBPART A – National Forest System Land Management Planning

1. **Section 219.3 *Role of science in planning***

Salt Lake City supports the use of best available scientific information throughout the planning process, and the documentation required with respect to the use of scientific information. We urge the Forest Service to work with local and state government organizations as well as non-governmental organizations in the collection and analysis of scientific information.

2. **Section 219.4 *Requirements for public participation***

Salt Lake City supports the intention of public participation requirements found in the Proposed Planning Rule. We strongly urge the Forest Service to place more emphasis in the Planning Rule clearly recognizing and requiring municipal and local government participation, including local public water suppliers.

Since the formation of the Uinta-Wasatch-Cache National Forest in 1904, Salt Lake City and the US Forest Service have worked in tandem with a shared goal of municipal watershed protection and restoration. Two Federal laws in 1914 and 1934, as well as Utah law, have established mechanisms for Salt Lake City and the Forest Service to co-manage the municipal watersheds. Salt Lake City currently budgets more than one-million dollars annually for watershed management. Salt Lake City also charges a one dollar fee to our water ratepayers that generates an additional one-million dollars annually for acquisition of private land inholdings within National Forest management boundaries for watershed land conservation purposes; since 1989 we have acquired thousands of acres of inholdings for permanent protection.

Stronger language in the rule recognizing the role and interdependecies of local governments and the National Forest, and requiring an elevated level of coordination, would help responsible officials from both sectors in planning processes, and would enhance partnership and stewardship opportunities between the Forest Service and downstream users and communities.

3. **Section 219.5 *Planning framework***

Salt Lake City understands and supports the iterative planning framework of assessment, plan amendment/revision/development, and monitoring. We feel this directly applies to and provides

a positive correlation with respect to watershed health and water quality, two of our most significant concerns.

While we understand the intention behind allowing a full range of NEPA analyses (e.g., CE, EA, EIS) for plan amendments, we urge the Forest Service to conduct more comprehensive NEPA analyses for plan amendments in areas that include watersheds for public water supplies, and actively include and coordinate with local governments and public water suppliers in the assessment phase of a plan amendment to ensure adequate consideration of the direct, indirect, and cumulative impacts plan amendments may have on watersheds. Plan amendments can set precedences that, cumulatively, and over time, have impacts to watershed health and that create vulnerabilities with respect to water quality and water yield. Without appropriate environmental review and coordination, the types of administrative, policy, and legislative precedences created by plan amendments can cause unintended negative consequences across the municipal watershed area.

For instance, the Uinta-Wasatch-Cache National Forest has accepted a ski area special use permit expansion proposal that will ultimately require a plan amendment process for final approval since ski area expansion and development are currently prohibited by the relevant forest plans, as well as by local plans. Salt Lake City is very concerned that the single ski area expansion project being proposed, on its own, will have a significant impact to our watersheds. Of equal concern is that a plan amendment implemented to facilitate this ski area expansion will set precedence for, and ultimately facilitate, thousands of acres of ski area expansions within Salt Lake City's municipal watershed boundaries. This example shows the importance of elevating the plan amendment review process to the highest level (an EIS) when the amendment impacts a municipal watershed.

Salt Lake City strongly supports the requirement of the highest level of NEPA review (an EIS) for plan revision processes within the Proposed Planning Rule. Forest plan revisions are substantial processes with numerous substantive requirements. An EIS affords a more comprehensive evaluation, as well as a more transparent and engaged public process. Therefore, we believe that requiring an EIS for plan revisions is appropriate.

4. **Section 219.8 *Sustainability***

Salt Lake City supports the triple-bottom line sustainability provisions required in the Proposed Planning Rule and especially appreciates the inclusion of public water supplies as an ecosystem element that must be included in plan components.

5. **Section 219.10 *Multiple uses***

Salt Lake City strongly urges the Forest Service to add and clearly specify public water supply as a required consideration under both (a) *Integrated resource management* and (b) *Requirements for plan components for a new plan or plan revision.* This underscores the importance of public water supply as a multiple use, and more clearly allows water supply to be a consideration in the balance of multiple uses.

6. **Section 219.12 *Monitoring***

Salt Lake City supports monitoring to evaluate measurable changes related to climate change found in (a)(4)(v). Salt Lake City respectfully requests that coordination requirements for monitoring plan development found in (a) be broadened to include other applicable state and local government agencies and public water suppliers. Limiting the requirements for coordination in monitoring can result in issues ranging from repetition of data acquisition to significant complications in data sharing.

SUBPART B – Pre-Decisional Administrative Review Process

7. **Section 219.50 *Purpose and Scope***

Salt Lake City strongly supports the intention as stated in this section that "gives an individual or organization an opportunity for an independent Forest Service review and resolution of issues before the approval of a plan, plan amendment, or plan revision".

Thank you for the opportunity to comment on the Proposed Planning Rule. Please do not hesitate to contact us for clarifications or any further discussion.

Sincerely,

Jeffry Niermeyer
Director

cc: Ralph Becker, Salt Lake City Mayor
Harv Forsgren, Regional Forestor, Intermountain Region
Brian Ferebee, Forest Supervisor, Uinta-Wasatch-Cache National Forest
Florence Reynolds, Water Quality Adminstrator, SLCDPU
Mike Wilson, General Manager, Metropolitan Water District of Salt Lake and Sandy
Diane VanDe Hei, ED, Association of Metropolitan Water Agencies
Tom Iseman, Western Governor's Association

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 63.198.28.28
Form Letter:

Comments

Please see attached Butte County comment letter on the proposed USFS Planning Rule

Individual(s)

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Department of Public Works

County of Butte

FRD-0798

J. Michael Crump, *Director*
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(530) 538-7681
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May 13, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S
Bountiful, UT 84010

Dear Sir or Madam:

Please accept the following comments from the County of Butte regarding the new forest planning rule proposed by the United States Forest Service.

On January 12, 2010, the Butte County Board of Supervisors adopted Resolution 10-002, implementing Coordinated Agency Status and notifying federal and state agencies of Butte County's expectation that other agencies coordinate their plans and projects with the County as required by various federal and state laws. In particular, the National Forest Management Act (NFMA) requires that forest plans be coordinated with the land and resource management planning processes of state and local governments. The provisions of the 1982 planning rule that address coordination (§219.7) provide an appropriate framework for coordination with other public agencies, and those provisions should be carried forward in the new planning rule without alteration. Areas of particular concern include the following:

- §219.7(b) of the current planning rule requires county governments to be given direct notice of forest plan revisions and schedules of anticipated planning actions. Providing a mechanism for direct notice is a vital means of ensuring engagement in planning processes, and we are strongly opposed to the elimination of the county notice requirement in the proposed rule.

- §219.7(e) of the current planning rule requires the Forest Service to seek input specifically from local governments to help resolve management concerns in the planning process. This requirement for direct consultation stems from NFMA's mandate for coordination with local agencies and confers a status in planning processes that acknowledges the contributions and responsibilities that are in many ways unique to local agencies, including representation of the local electorate, institutional memory, and planning responsibilities for the private lands that fall under the "all lands" umbrella.

The County of Butte supports retaining the coordination provisions of the 1982 rule and requests that this provision not be changed in the proposed new planning rule.

We do support the provisions of the new rule that seek to provide earlier and greater opportunities for public input and to give greater discretion to local Forest Service staff to determine what forms of outreach and interaction are appropriate for a particular planning process. Unfortunately, these improved opportunities for the public are proposed at the expense of local government coordination. There is no need for such a trade-off; the public can be given the opportunities that are included in the new rule, while the role of local government can be respected by retaining §219.7 of the 1982 rule.

Sincerely,

Mike Crump
Director of Public Works

cc: Board of Supervisors, Paul Hahn, Chief Administrative Officer

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 24.237.152.108
Form Letter:

Comments

Please find the attached letter from Sealaska Corporation re: Forest Service Planning Rule Draft Environmental Impact Statement Published February 14, 2011

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A NATIVE CORPORATION
SEALASKA

May 16, 2011

DELIVERY VIA E-MAIL AND OVERNIGHT DELIVERY

http://www.govcomments.com/

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S.
Bountiful, Utah 84010

Re: Forest Service Planning Rule; Sealaska Corporation Comments on Proposed Rule and Draft Environmental Impact Statement Published February 14, 2011

Dear Secretary of Agriculture and Forest Service representatives:

This letter provides comments on behalf of Sealaska Corporation ("Sealaska"), an Alaska Native Corporation, regarding the above referenced proposed rule, published in the Federal Register at 76 Fed. Reg. 8480-8528 (Feb. 14, 2011) (to be codified at 36 C.F.R. Part 219) ("Proposed Rule"). These comments are based on our review to date of the Proposed Rule and accompanying information in the Federal Register, and review of the Draft Environmental Impact Statement ("DEIS") and associated documents available on the Forest Service website. These comments also reflect participation by Sealaska representatives in the USDA Forest Service "collaborative" process for this rulemaking that preceded the Proposed Rule publication, and subsequent public forum meetings held in Washington, D.C. and Juneau, Alaska.

I. OVERVIEW

A stated objective of the current rulemaking is to produce a workable, affordable, and enduring regulation. As Assistant Secretary of Agriculture Robert Bonnie has publicly stated in remarks at the March 10, 2011 Washington, D.C. forum meeting, the new Planning Rule must be durable and achievable; it must not be so cumbersome that it obstructs getting management done on the ground. The Proposed Rule in its present form *fails* to meet that objective. The Forest Service's own published economic analysis indicates that the Proposed Rule will provide little if any cost savings or efficiencies compared to the overly cumbersome 1982 regulations that the Administration seeks to replace. Overall, the Proposed Rule appears more likely to perpetuate rather than resolve the process "gridlock" that has crippled planning and management on the Tongass in Alaska as well as other national forests. The Nation as well as Sealaska and its Alaska Native Tribal member shareholders cannot afford this. The Proposed Rule must be substantially modified in order to provide a framework for national forest planning and management that will work reasonably well in practice for all concerned.

The Proposed Rule contains other major flaws that gravely concern us. These include:

1. insufficient attention to Alaska Native dependence upon subsistence and commercial use of national forest areas;

2. broader bias in favor of "ecosystem," plant and animal species "diversity" and similar concepts, to the detriment of multiple use and sustained yield management to produce tangible goods and services for human use;

3. other excessive detail, complexity, and jargon that increase costs and encumber rather than enable beneficial management on the ground.

The Proposed Rule does recognize and cannot derogate Alaska Native legal rights such as consultation regarding national forest planning and management, access to and across national forest lands, and the additional unique rights provided to Sealaska and its Tribal member shareholders in the Alaska Native Claims Settlement Act ("ANCSA") and Alaska National Interest Lands Conservation Act ("ANILCA"). However, the Rule needs to be improved and better supplemented in Forest Service Manual ("FSM") and Forest Service Handbook ("FSH") directives, to more specifically assure adequate attention by the Forest Service to these special rights and related opportunities to collaborate with Native Corporation and Tribal organizations in national forest planning and management.

These and other points are addressed in more detail in our comments below. These comments should not be construed as a substitute for continuing the direct one-on-one consultation regarding the Planning Rule that Sealaska requested in the July 20, 2010 letter from Sealaska President and Chief Executive Officer Chris McNeil to Harris Sherman, USDA Under Secretary for Natural Resources and Environment. In an August 17, 2010 letter, Sealaska submitted comments to assist the Forest Service in preparing a proposed rule. Sealaska participated in a December 3, 2010 Alaska Region consultation meeting between Forest Service representatives and representatives of several Alaska Native Corporation and Tribal organizations, conducted in Anchorage. After that meeting, Sealaska submitted additional comments to be considered for a proposed rule, in a December 13, 2010 letter. Sealaska representatives also engaged in a January 26, 2011 consultation meeting with Forest Service representatives in Juneau. We look forward to engaging in further, meaningful consultation prior to USDA determinations regarding the content of the final rule.

II. SEALASKA'S RIGHTS, INTERESTS, AND PERSPECTIVES

As set out in the July 20, 2010 letter, Sealaska is the Regional Corporation for Southeast Alaska established under ANCSA, the purpose of which was a fair and just settlement of Alaska Native land claims in conformity with the real economic and social needs of Alaska Natives. Sealaska represents approximately 20,000 Tribal member shareholders, including 10,000 families living in Southeast and throughout Alaska. Our shareholders are descendants of the original Tlingit, Haida, and Tsimshian inhabitants of Southeast Alaska, and our people have been stewards of the lands and waters of Southeast Alaska for the past 10,000 years. These lands and waters, including the area now managed

as the Tongass National Forest, are our ancestral and traditional homeland and the foundation of our history and culture.

Sealaska is entitled under ANCSA to select and receive title to acreage to meet the cultural and socioeconomic needs of its Tribal member shareholders. The Sealaska ANCSA entitlement will exceed 375,000 total acres in Southeast Alaska within or adjacent to the boundaries of the Tongass National Forest. Sealaska is the largest nonfederal owner of forest lands in Southeast Alaska; with more property boundaries adjacent to the Tongass than any other landowner. The U.S. Congress is currently considering legislation, S. 730, 112th Cong. 1st Sess. (2011) and H.R. 1408, 112th Cong. 1st Sess. (2011), to resolve and complete Sealaska's ANCSA land entitlement in a configuration that is environmentally, economically, and culturally sustainable.

Sealaska is a leader in forest land management stewardship on its own lands. We cooperate with ANCSA Village Corporations, the State of Alaska, Forest Service and other stakeholders in sustainable, environmentally sound management of other forest lands in Southeast Alaska.

Sealaska is a leader in the forest product and broader economy of Alaska. Sealaska and its contractors, collectively, have historically comprised the single largest private for-profit employer in Southeast Alaska, annually providing from 500 to 700 direct and indirect jobs with an annual corporate spending of from 28 to 48 million dollars. These operations and expenditures sustain the broader forest industry and service infrastructure in the region. This infrastructure has declined over the past two decades to an alarming, marginal state, in large part due to lack of reliable economic timber supply in Southeast Alaska that is attributable to Tongass management, and is at a critical juncture.

Sealaska is leading efforts in Alaska to address climate change and innovative uses of forest biomass. This year Sealaska is converting the heating plant for its Juneau headquarters to forest biomass fuel. This is an example that can be replicated throughout Southeast Alaska if sufficient biomass can be made available from national forest and other lands to warrant the investment.

Sealaska is also a civic and cultural leader. Through the Sealaska Heritage Institute and other avenues, Sealaska has led efforts to resurrect and protect the languages and culture of the Tlingit, Haida, and Tsimshian people of Southeast Alaska, including protection and stewardship for historic and sacred sites within the boundaries of the Tongass National Forest.

In the above roles, Sealaska has been an active and interested participant in the national forest planning process since before the original Tongass forest plan was issued in 1979. Sealaska has participated actively in the incredibly arduous process of revising and further amending the Tongass plan. This process has been ongoing since 1987, yet remains to be finally resolved. Sealaska has participated actively in the Tongass Futures Roundtable and other collaborative efforts to reach consensus on a reliable management plan for the Tongass that sustains ecosystems, resource uses, and Alaska communities and business enterprises.

Sealaska continues to evaluate the "Transition Framework" announced for the Tongass in late May 2010 by USDA and the Forest Service. At least some of the components of this announced strategy will likely require a further amendment or revision of the Tongass forest plan to implement. As set out in separate correspondence to Secretary Vilsack dated August 4, 2010, Sealaska has sought direct consultation with the USDA regarding the "Transition Framework" in addition to consultation regarding the Planning Rule. An initial consultation meeting between Sealaska and Forest Service Alaska Region representatives regarding the "Transition Framework" took place on January 26, 2011 in Juneau. We expect to continue this consultation with representatives of the Secretary's office as well as Forest Service representatives.

Thus, Sealaska on behalf of its Alaska Native Tribal member shareholders has important interests and concerns regarding federal government actions that can affect planning and management of the Tongass National Forest, Sealaska property, and other lands and waters in Southeast Alaska. We have been actively engaged for many years with the Forest Service on issues regarding national forest planning and management, and hope to continue to do so. We are vitally concerned about the current Proposed Rule. Sealaska represents the unique and special relationships that the original occupants and stewards of Southeast Alaska lands and waters have with these natural resources. We offer a perspective that is distinct from other participants in the rulemaking process, based on literally thousands of years of experience, and looking ahead to the needs of future generations.

III. COMMENTS

A. Regulatory Background

The Proposed Rule is intended to revise and update the current Forest Service regulations codified at 36 C.F.R. Part 219, which govern national forest land and resource management planning under the National Forest Management Act of 1976, 16 U.S.C. § 1600 et seq. ("NFMA"). The regulations currently in effect date nominally from 2000, but under the transition provisions of those regulations, the requirements that remain in use for development, revision, and amendment of national forest plans are those in the 36 C.F.R. Part 219 regulations issued in 1982, nearly 30 years ago.

Plans for existing national forests were completed under the 1982 regulations (the initial Tongass NFMA Plan actually was completed in 1979, prior to the promulgation of the 1982 regulations). Most of these plans, including the Tongass Plan, have been revised and amended under those regulations since. However, both the 1982 and 2000 Planning Rule regulations have been identified as too cumbersome and problematic for continued use for further revision and amendment. 76 Fed. Reg. at 8481-82; DEIS at 4, 5. The Tongass Plan revision consumed more than 10 years and many millions of dollars in taxpayer and stakeholder funds to get to an initial Record of Decision ("ROD") in 1997, and remains embattled after another decade of resulting litigation and related further amendments. Rulemaking efforts in 2005 and 2008 to simplify and modernize the regulations have been challenged in court and found deficient procedurally under the National Environmental Policy Act ("NEPA") and Endangered Species Act ("ESA").

Once a final updated Planning Rule is issued and effective, it is expected to replace the 1982 regulation framework for further revising or amending the Tongass as well as other national forest plans. The Tongass Plan in turn provides the management direction framework that guides and in many ways constrains forestry, transportation, energy, mineral, recreation, and other undertakings within and adjacent to national forest lands. Projects and activities undertaken by the Forest Service or requiring an authorization from the agency must be consistent with the Tongass Plan, subject to valid existing rights.

B. General Points Regarding Update of the Planning Rule

1. General Approach and Content

The Planning Rule provides a national level framework for preparation, revision, and amendment of forest plans in conformance with the NFMA, Multiple Use Sustained Yield Act ("MUSYA") and other applicable law. The 1982 Planning Rule may have provided an adequate framework for the original development of forest plans to meet NFMA requirements. However, particularly since such plans are now in place for virtually every existing unit of the National Forest System, an updated Planning Rule can focus upon amendment and revision of existing forest plans.

An updated Rule, to be accepted by the broad range of stakeholders interested in national forest management and to endure, must meet the minimum content requirements outlined in § 6(g) of the NFMA, but should otherwise focus upon providing a relatively concise and clear but flexible, adaptive, and general framework to guide cost-effective amendment and revision of existing forest plans. An updated Rule should enable rather than encumber getting needed management done on the ground that provides tangible goods, services, and other benefits to citizens and communities. An updated Planning Rule that is overly detailed, complex, or prescriptive will almost certainly spawn more litigation and controversy, and be the target for replacement at a much earlier date than a more elegantly crafted and concise Rule.

The update of the Planning Rule must provide a framework that moves us past the gridlock that has plagued planning and management on the Tongass and other national forests. We cannot afford another plan revision process like the last on the Tongass. The Proposed Rule in its present form does not meet this need.

2. Providing for Alaska Native Corporation and Tribal interests

Alaska Natives and other Native Americans own and manage millions of acres of lands intermingled with or adjacent to national forests along many miles of common boundaries; have strong, ancient ties to these lands; and have unique insights and expertise regarding natural resource management for public benefits. Particularly in Alaskan rural communities, Native people rely heavily on harvest of fish, game, berries, bark, wood, and other resources found on national forest lands and waters for individual health and cultural as well as economic sustenance.

In the Proposed Rule as well as roundtable meetings and Tribal conference calls, the Forest Service does appear to recognize that Alaska Native Corporations, Tribes, and other Native American entities and their role in national forest planning and management are distinct from general public "stakeholders." The Forest Service has stated an intent that the Planning Rule and forest planning be "science-based" and "stakeholder driven", but Alaska Native Corporations and Tribes should be explicitly recognized as important sources of information and "drivers."

Consultation with Alaska Native Corporations as well as Tribes regarding national forest planning and other federal agency actions affecting their interests is legally required under current statute as well as Executive Order. See, e.g., Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 161, 118 Stat. 3, 452 (2004), as amended by Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 518, 118 Stat. 2809, 3267 (2004), 25 U.S.C. § 450 note; Executive Order 13175, 65 Fed. Reg. 67249 (Nov. 9, 2000). The Forest Service appears to recognize these legal requirements by providing for consultation with Alaska Native Corporations as well as Tribal organizations in the planning process. The final Planning Rule must recognize and provide for direct consultation regarding forest plan amendments and revisions with affected Alaska Native Corporations and Tribal entities. This is a separate obligation and process from collaboration with other stakeholders and the general public. Consultation must commence at an early stage and continue in a meaningful way to be effective.

Alaska Native Corporations and their shareholder Tribal members have additional unique and special legal rights protected by ANCSA, ANILCA and other law. Update of the Planning Rule must provide a framework that accommodates and supports implementation of the Sealaska and other Alaska Native Corporation land entitlements in accordance with ANCSA, currently and into the future. Application and implementation of the Planning Rule in Alaska must otherwise be subject to these and other laws regarding Alaska Natives and management of the Tongass and Chugach National Forests, as well as subject to trust and other legal obligations of the federal government to Tribes and Native Americans nationwide. In Alaska, these rights include access to and across national forest lands under Titles VIII and XI and Section 1323 of ANILCA as well as other law (*see, e.g.*, 16 U.S.C. §§ 3121, 3169-71, 3210(a)), cultural and historic site protections; rural resident subsistence hunting, fishing, and gathering; and other rights that are essential for Native Alaskans.

The update of the Planning Rule must in the same vein provide for Alaska Native Corporation and Tribal entities to truly partner and collaborate with the Forest Service in national forest management. The final rule should therefore embrace and provide a framework for entrusting stewardship of appropriate areas of national forest and related programs to Native Corporations, Tribes, and other qualified Native people entities, through co-management agreements, contracting, and other mechanisms. The final rule should recognize and provide for Alaska Native Corporation and Tribal participation in managing sites of cultural and historic significance to Native Americans, including sacred sites. The rule should likewise provide a framework for Sealaska and other Alaska Native organization participation in implementing access, subsistence, and other provisions of ANILCA in the forest planning process.

Such provisions, like other components of the Planning Rule, can be relatively concise in Rule text as long as they are strong and clear. Details and specifics can be further set out and explained in Rule preamble or FSM/FSH directive material and periodically updated.

3. Alaska Native Use of National Forest Resources

Continued sustainable subsistence as well as commercial harvest of fish, game, berries, bark, logs, and other resources from Tongass National Forest lands and waters by Sealaska's Tribal member shareholders and other residents is much more important for individual health and community cultural and economic sustenance than many people realize. The Forest Service has recognized this importance. For example, in a recent video on the Forest Service national website, "Living off the Land", the agency featured berry, deer, and salmon harvest by Alaska Natives in and adjacent to the Tongass, noting that the subsistence use of such resources for food in Alaska is the highest in the U.S.—approximately 375 pounds per person per year, and emphasizing the vital cultural as well economic purposes it serves in Southeast Alaska Native communities.

The final updated Planning Rule must fully provide for continued subsistence and other sustainable harvest of national forest resources to meet Alaska Native and rural community needs and purposes, including free and open access for such uses under ANILCA and other law. These uses must not be slighted in favor of "ecosystem diversity," "sustainable recreation," or other nonconsumptive use and passive, preservationist management concepts that appear to be overly emphasized in the Proposed Rule. The final rule must provide a flexible, non-prescriptive framework that allows plans for each national forest to be adapted to unique local conditions and needs such as those on the Tongass. Unlike most if not all national forests in the lower 48 states, communities throughout Southeast Alaska are largely surrounded by national forest lands, and depend predominantly on resources from the Tongass for actual survival as well as economic and social prosperity.

4. "Ecosystem" or "Biodiversity" Concepts and Multiple Use/Sustained Yield Management

More generally, the Planning Rule and forest plans must provide for human *use* as well as protection of natural resources comprising each national forest. The Organic Administration Act of 1897, as reinforced by the MUSYA and NFMA, requires that national forests be established and managed for the use and needs of the people of the United States, not as biological preserves. 16 U.S.C. § 475. The USDA and the Forest Service cannot emphasize "ecosystem services," plant and animal species "diversity" or "viability" or other concepts to the detriment of the multiple use and sustained yield legal requirements that apply to planning and management of national forests under the NFMA and MUSYA, or unique and special rights such as rural resident subsistence use of federal land resources that is protected by law in ANILCA.

Providing "ecosystem services" from national forest lands, including water supply and quality, carbon sequestration, fish and wildlife, and other benefits, has an important place in national forest management. However, this is not to the detriment of supplying, on a sustainable and high level basis,

timber, harvestable food from grazing and fish and wildlife populations, water for agriculture and municipal use, and other goods as well as recreation and other tangible services from national forest lands and waters, as required by the MUSYA and NFMA.

The Rule must be clear to not derogate or confuse the statutorily named multiple uses and sustained yield production requirements in relation to ecological or other concepts. The Rule must provide a framework for forest plans to support economic and social sustainability, particularly for locally and regionally dependent communities, equal to and in balance with sustaining ecological integrity within national forest units. The Proposed Rule in its present form does not strike this balance. Among other flaws, it appears to elevate "ecological" sustainability above economic and social sustainability and multiple use. It also mistakenly extends 1982 Planning Rule requirements regarding maintenance of "viable" populations of species to invertebrate species such as fungi and other "species of conservation concern." A species "viability" provision is not required by NFMA and is unnecessary to add to ESA mandates.

5. Cost of Participation in the Forest Planning Process.

The cost of revising the Tongass and many other national forest plans has not been affordable for Native Corporations, other participants, or taxpayers. The Planning Rule should sufficiently simplify the planning process and related requirements to render further revisions and amendments much less costly in time as well as dollars. If the Forest Service is instead going to continue with expensive and elaborate planning processes, federal funding should be provided for Alaska Native Corporation, Tribal, and other eligible participant stakeholders. With the federal deficit at alarming levels and lack of federal revenue due to current restrictions and costs for national forest management, such funding is not likely to be available anytime soon. The USDA and Forest Service must recognize this in crafting a final rule.

On this point, the Proposed Rule is overly long, detailed, and encumbered with inflexible mandatory requirements and jargon that preclude it from being a workable, affordable, and enduring Planning Rule. The Proposed Rule is not consistent with the "Improving Regulation and Regulatory Review" Executive Order recently issued on January 18, 2011 by President Obama, as well as previously existing requirements for cost-effective, less burdensome, and flexible regulations, such as the Regulatory Flexibility Act. The January 18, 2011 Executive Order requires that regulations must be tailored to "impose the least burden on society, consistent with obtaining regulatory objectives" and that agencies are to review and change or eliminate rules that may be "outmoded, ineffective, insufficient, or excessively burdensome." 76 Fed. Reg. 3821 (Jan. 21, 2011). Yet the Forest Service's own analysis of the proposed rule, as further described in our comments on the DEIS later in this letter, confirms that at best it will be only slightly less costly than the overly burdensome 1982 Planning Rule. See, e.g., 76 Fed. Reg. at 8507-08; DEIS at 43; January 25, 2011 Cost-Benefit Analysis at 30-36.

Further, the cost of the proposed rule presented by the Forest Service analyses may well grossly underestimate total cost. The proposed rule emphasizes and contains numerous procedural and

documentation requirements regarding collaboration, which can yield better consensus results than traditional agency approaches to public participation, but which is by no means faster or easier than traditional approaches. The proposed rule contains similar burdensome detail regarding "best" scientific information, species viability, assessment, and monitoring. These and other provisions are likely to spawn new, costly, delaying litigation regarding plans and projects beyond that which has occurred and in at least some respects been resolved regarding the 1982 rule.

As also further discussed in our comments on the DEIS later in this letter, the DEIS analysis confirms that there are readily available alternatives to the proposed rule that are far less costly and complex, and which still meet NFMA requirements and the agency's stated purpose and need for a new Planning Rule. The overly detailed, burdensome rhetoric and mandates in the proposed rule can be eliminated without any loss of useful, nationwide programmatic guidance for national forest land management planning. Detail regarding basic concepts and requirements in the Planning Rule should be instead included in the FSM and FSH, where it can guide and facilitate national forest planning rather than burden the agency, national forest users, dependent communities, and taxpayers with unnecessary, restrictive, and confusing regulatory mandates.

It is more consistent with the adaptive management approach incorporated in the proposed rule to include such details in the FSM/FSH directive system, where content can more easily be clarified, refined and updated than when promulgated as a formal rule in the Code of Federal Regulations. The difficulty of updating overly burdensome published regulations is confirmed by the persistence of the 1982 Rule for nearly thirty years, despite several past attempts to replace it.

As an example of material that belongs in the FSM/FSH, most if not all of the content in the "sustainability" and "diversity of plant and animal communities" sections of the proposed rule is already included in substantially similar form in FSM ID No. 2020-2010-1, Ecological Restoration and Resilience, and FSH 1909.12-2000-5, Chapter 40—Science and Sustainability. Section 219.1(d) of the proposed rule already requires the Forest Service to establish procedures for the Planning Rule in the FSM/FSH. Much of the detailed content in the proposed rule, with appropriate changes to simplify and conform it to NFMA and MUSYA principles, can be moved to the FSM/FSH with ease.

6. "Best" Available Science

The Planning Rule should not create a target for additional controversy by using or defining the term "best available science" or "best available scientific information." The provision in § 219.3 and other parts of the proposed rule regarding use of "best available scientific information" is likely to fuel further disputes and lawsuits that will obstruct and bog down planning and management activities that are environmentally necessary and beneficial.

Sound science has an important part in national forest planning and management. Sealaska has been a leader and supporter of objective scientific research for forest management in Alaska. However, which science is "best," as illustrated in ESA litigation as well as NFMA and other disputes, can be extremely subjective and highly politicized.

The NFMA statute does not use or require use of the term "best available science" or "best available scientific information" in the Planning Rule. Neither does NEPA. The Ninth Circuit Court of Appeals has affirmed that these laws do not require a determination of whether national forest planning or project-level NEPA documents are based on "best" available science or methodology, that disagreements among scientists are routine, and that requiring the Forest Service to resolve or present every such disagreement could impose an unworkable burden that would prevent needed management. Lands Council v. McNair, 537 F.3d 981, 993-94 (9th Cir. 2008) (en banc); Salmon River Concerned Citizens v. Robertson, 32 F.3d 1346, 1359 (9th Cir. 1994).

Further, legally compliant national forest planning and management must reflect more than "western" or European culture academic science and scientist opinion. Native American and other traditional local knowledge along with other practical expertise, collaborative consensus reached through the planning process, and other considerations are critical to environmentally, economically, and socially sound forest planning and plan implementation.

Thus, the Planning Rule must not require the Forest Service to do more than take into account available, relevant scientific information along with other factors in the development, amendment, or revision of national forest plans, without reference to which information is "best."

We recognize that seeking out and using "best" available science is stated as an objective in various mission and vision statements and other guidance issued by the White House, Secretary, and individual agencies. Such statements are fine as aspirational goals and guidance. However, more harm than good follows from unnecessarily codifying such statements as legal mandates in published regulations, spawning unnecessary litigation and delay for environmentally as well as economically and socially beneficial forest management actions. Such results do not serve science or the Nation well. Forest Service use of scientific information is already adequately covered by the Federal Data Quality Act, Pub. L. 106-554, § 515 and implementing guidelines.

Proposed § 219.3 should be deleted or greatly abbreviated and corrected accordingly, along with any other references to "best" available scientific information in the proposed rule.

7. National Environmental Policy Act

Serious consideration should be given to eliminating or substantially limiting EIS or environmental assessment ("EA") application to additional revisions and amendments, for at least the following reasons:

1. Forest plans are programmatic and do not commit to any particular actions on the ground with environmental effects. See, generally, Ohio Forestry Ass'n v. Sierra Club, 523 U.S. 726, 736-37 (1998).

2. One or more EIS processes have already been completed for the Tongass and other national forest plans; any additional environmental analysis should supplement and update the prior work, and only as needed to address truly significant issues.

3. The huge costs and delays associated with the EISs that have been produced outweigh the usefulness of the relatively general and programmatic analysis that has been generated; information and analysis often has become outdated before the planning process is even completed.

At the least, an updated Planning Rule should not dictate the level of NEPA process required for an amendment or revision of an existing forest plan. The full range of NEPA options should be available to the Forest Service, with the appropriate level of analysis determined according to existing criteria in the implementing NEPA regulations. This could range from: a) an EIS or supplement to an existing EIS for a major, relatively comprehensive revision of a forest plan; b) an EA for a lesser amendment; c) a categorical exclusion or simple "change analysis" documentation that no further EIS supplementation is required for a simple, limited amendment with clearly insignificant environmental effects. The existing flexibility should be maintained for evaluating plan amendments that are specific to a particular project or activity in the EA or EIS for that proposed project or activity.

The Rule should also not suggest restricting or departing from legislated exclusions from the NEPA process. For example, § 910 of ANILCA, 43 U.S.C. § 1638, excludes from EIS preparation land exchanges and other actions which lead to conveyance of lands to Alaska Native Corporations pursuant to ANCSA or ANILCA, irrespective of whether a forest plan amendment or revision would be required to adjust to the conveyances.

Our primary concern with the Proposed Rule regarding NEPA is its requirement that an EIS be prepared for all revisions of forest plans. At least some revisions may be limited in scope, sufficiently tiered to a prior EIS, or otherwise not indicate, at the programmatic level, a likely potential for significant environmental effects that would trigger the need for an additional EIS under NEPA. It would be more consistent with the objective of a cost-effective Planning Rule to leave the determination of the level of NEPA analysis and documentation required for each revision as well as each amendment of a forest plan to the existing Council on Environmental Quality and Forest Service NEPA regulations.

Our comments on the DEIS for the Proposed Rule appear in a separate section later in this letter.

8. Plan Amendment

The final rule should in particular provide for a simple and unencumbered process for timely amendments of existing forest plans to accommodate projects, programs or other adjustments that do not substantially alter land allocations or delivery of goods and services forest-wide. A simple and flexible amendment process is a must to facilitate timely development and implementation of innovative ecosystem restoration, renewable energy, and other projects that many people support.

These and other stewardship initiatives often result from collaborative efforts and are sorely needed if the restoration, climate change, and other goals espoused by USDA are going to be met.

In this regard, at least maintain if not improve the simplicity and flexibility of the forest plan amendment process contained in 36 C.F.R. § 219.10(f) of the 1982 Planning Rule. It is one component of the 1982 Rule that has worked reasonably well without successful legal challenge to date. The Proposed Rule may be generally adequate on this point, although we are receptive to further simplification and clarification in the final Rule.

9. Transition From Existing Plans and Approved Projects to Plans Updated Under the New Planning Rule

The Proposed Rule contains new requirements for assessments, monitoring, and other components of the forest planning process, and for the contents of forest plans. These requirements and the plan revisions or amendments pursued under an updated final Planning Rule will be subject to legal challenge and may take many years to successfully complete and implement on the Tongass and other national forests. In the meantime, national forest management needs to continue in reliance on existing forest plans. The NFMA provides for continued effectiveness of existing plans pending management under updated plans. 16 U.S.C. § 1604(c). Consistent with this provision, the final updated Planning Rule must provide clearly for the continued effectiveness of existing plans pending final approval and effectiveness of an updated revision or amendment under the new Planning Rule, including resolution of any appeals or litigation. Projects and activities approved under an existing plan should be explicitly deemed consistent with a subsequent amendment or revision of the Plan, unless clearly specified otherwise in the amendment or revision decision documents.

The final Planning Rule should also allow for the option of amending existing plans under either the existing planning regulations or the updated Planning Rule requirements, pending a revision of the plan under the updated Planning Rule. For recently revised plans like the Tongass, this is also an essential component of flexibility for a smooth transition to an updated forest plan that does not disrupt and confuse management, to the detriment of delivering goods, services, and other public benefits from the forest.

The Proposed Rule contains transition provisions, but they need to be clarified and strengthened in the final rule to meet the above objectives.

C. Section-By-Section Comments

References below, unless denoted otherwise, are to sections in the proposed rule as published in the February 14, 2011 Federal Register. These comments are not exhaustive. Our general comments above call for a thorough review and revision of the entire proposed rule that is not limited to the specific comments below.

Subpart A—National Forest System Land Management Planning

36 C.F.R. § 219.1. Purpose and applicability.

Section 219.1(b) adds "ecosystem services" to the list of multiple uses that the Forest Service manages the national forests to sustain, "consistent with" the MUSYA. "Ecosystem services" does not appear in the MUSYA list of purposes for which the national forests are to be managed ("outdoor recreation, range, timber, watershed, wildlife and fish"). 16 U.S.C. § 528. Use of the term "ecosystem services" in this manner in the proposed rule is not required or necessary for a sound rule that serves the full range of consumptive and nonconsumptive multiple uses of the national forests. Use of the term in this manner is confusing and contrary to the MUSYA. Delete it in the final rule.

Section 219.1(c) contains a lengthy statement of the objective of the Planning Rule:

> to guide the collaborative and science-based development, amendment, and revision of land management plans that promote healthy, resilient, diverse, and productive national forests . . . . so they are ecologically sustainable and contribute to social and economic sustainability, with resilient ecosystems and watersheds, diverse plant and animal communities, and the capacity to provide people and communities with a range of social, economic, and ecological benefits for the present and into the future, including clean water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural sustenance.

This verbose, opaque statement is not required by NFMA and provides no useful substantive or procedural content for the Planning Rule. It contains biases and flaws that are covered in our comments on other sections of the proposed rule below. Delete this statement or greatly simplify and shorten it. For instance, it could read as follows:

> The objective of this part is to guide the collaborative development, amendment, and revision of land management plans that promote healthy, diverse, and productive national forests and grasslands for multiple use and sustained yield purposes, based on science and other relevant factors.

Section 219.1(e) explicitly recognizes that the Planning Rule "does not affect treaty rights or valid existing rights established by statute or legal instruments." Such rights of course include Sealaska's ANCSA entitlement and other legal rights. ANCSA rights should be specifically recognized in the preamble explanatory material for the final rule or FSM/FSH implementing guidance, if not specifically in the rule text itself.

Section 219.1(g) explicitly recognizes that national forest plans must comply with all applicable laws and regulations. Such laws include ANCSA, ANILCA (including its amendments to ANCSA), and other laws particularly applicable to Alaska Natives and management of the Tongass National Forest.

ANILCA Title VIII subsistence and other provisions as well as ANCSA requirements should also be specifically recognized in the preamble for the final rule or FSM/FSH implementing guidance, if not specifically in the rule text itself.

36 C.F.R. § 219.2. Levels of planning and responsible officials.

This section states that a forest plan provides a framework for integrated resource management for guiding project and activity decision making on a national forest; that the plan does not authorize projects or activities or commit the Forest Service to take action, but that a forest plan may constrain the agency from authorizing or taking actions; and that projects and activities must be consistent with the plan. We note that under NFMA and other law, the project and activity consistency requirement is subject to valid existing rights, and the final Planning Rule text must clearly recognize this.

This section omits the provision for Forest Service "regional guides" that was in the 1982 Planning Rule but which had fallen into disuse many years ago; we support this change.

This section allows for the forest supervisor to be the "responsible official" for approving a new forest plan, amendment or revision. This is a change from the 1982 regulations, which specified the regional forester as the lowest level decision maker for approving forest plans, and we support this change also.

The first sentence of § 219.2(b)(2) should be clarified to state: A plan *and its components do* not authorize projects or activities or commit the Forest Service to take action." (changes shown in italics).

36 C.F.R. § 219.3. Role of science in planning.

This section requires the Forest Service to "take into account the best available scientific information" throughout the forest planning process. It requires the responsible official to "determine what information is the most accurate, reliable, and relevant to a particular decision or action" and to document that consideration, with content requirements for that documentation.

This requirement is not in the 1982 regulations or required by the NFMA statute. As indicated in our general comments above, this and other sections of the proposed rule referencing "best" available scientific information should be deleted or modified in the final rule to eliminate requirements to consider or make determinations regarding what is "best."

For example, this section could be greatly abbreviated to read:

> The responsible official shall take into account relevant available scientific information along with other relevant considerations, when developing, revising, or amending forest plans under this subpart.

36 C.F.R. § 219.4. Requirements for public participation.

This section is relatively lengthy and can be shortened and simplified without losing essential elements like consultation with Alaska Native Corporations and Tribes. Below are some specific additional recommended changes.

Clarify and strengthen the last sentence of § 219.4(a)(5) by changing it to read:

> The responsible official shall engage in timely and meaningful consultation with any interested or affected federally recognized Indian Tribes and Alaska Native Corporations, in accordance with Executive Order 13175, 25 U.S.C. § 450 note, and other applicable law.

Add the following sentence at the end of § 219.4(a)(6):

> The responsible official shall seek assistance from interested federally recognized Indian Tribes and Alaska Native Corporations to help address management issues or opportunities.

Strengthen § 219.4(b)(1) to read as follows:

> The responsible official shall coordinate land management planning with the relevant planning efforts and land use policies of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, to achieve consistency to the extent practicable.

In this section or elsewhere in the final rule, require national forest plans to be consistent with:

1. maintaining access across national forest lands for Native Corporation and other adjacent non-federal lands, under ANCSA, ANILCA and other law;

2. adequate management of national forest lands to protect adjacent lands from the spread of damaging wildfire and insect and disease infestations, in accordance with the Tribal Forest Protection Act and other authority;

3. other treaty and statutory rights applicable to national forest lands, including ANCSA rights and ANILCA subsistence and access provisions.

36 C.F.R. § 219.5. Planning framework.

This section outlines three basic phases of forest planning: 1) "assessment" (further described in § 219.6); 2) "developing, amending, or revising a plan" (further described in §§ 219.7 and 219.13); and 3) "monitoring" (further described in § 219.12). These phases are described as "iterative" and "complementary" and which "may overlap." This section could be shortened, simplified, and otherwise improved. Specific recommendations appear below.

Section 219.5(a) includes a statement that the above framework is intended "to create a responsive and agile planning process that informs integrated resource management and allows the Forest Service to adapt to changing conditions, including climate change, and improve management based on new information and monitoring." This statement may be laudable and helpful in interpreting the actual requirements of the Planning Rule, but is not a regulatory requirement itself, and should be moved to the preamble explanation to shorten and simplify the final rule.

"Climate change" is listed or described in several other places in the Proposed Rule as one of the factors or stressors to be considered by the Forest Service in planning and management. These references to "climate change" and other examples of such factors and stressors should likewise be moved to the preamble explanation; they are unnecessary and subject to becoming outdated if included in the final rule text. If the Rule is going to endure without substantial change over time, it must not be encumbered with principles, objectives, or themes that are not described in the NFMA and which may change periodically with Administrations, evolving science, or popular opinion. This comment is not to debate whether climate change is occurring or its degree of current importance; it only points out that the significance or relevance of such factors or themes to forest planning can vary greatly over time and by individual forest.

The last sentence of § 219.5(a)(2)(i) states that a new plan or plan revision requires preparation of an EIS. The last sentence of § 219.5(a)(2)(ii) provides for a full range of NEPA documentation that may be appropriate for a plan amendment. These sentences should be replaced with a single provision that references existing Forest Service NEPA procedures to determine what level of NEPA documentation is appropriate for a new plan, revision, or amendment, depending on the scope and likely effects of the particular plan action. For example, this provision could be a separate subsection as follows:

> (4) *National Environmental Policy Act compliance.* The appropriate NEPA documentation for a new plan, plan revision, or plan amendment shall be determined in accordance with Forest Service NEPA procedures.
>
> (i) Under these procedures, a new plan or revision may generally require the preparation of an environmental impact statement (EIS) or a supplement to an existing EIS.
>
> (ii) Under these procedures, an environment assessment or a categorical exclusion may be appropriate for many plan amendments,

depending on the scope and scale of the amendment and its likely effects, and the existing NEPA documentation available for tiering or incorporation by reference.

(iii) Assessment and monitoring reports may be used or incorporated by reference, as appropriate, in applicable NEPA documents.

36 C.F.R. § 219.6. Assessments.

This section contains more detailed requirements for assessments. This section can be substantially shortened and simplified.

Section 219.6(c)(1) provides that plan amendments must be based on a documented need to change the plan, but that preparation of an assessment, as opposed to a monitoring report or some other documentation, is optional for amendments. It also leaves the scope, scale, process and content of any assessment prepared for an amendment to the discretion of the responsible official. Section 219.6(c)(2) provides that when a plan amendment is concurrent and limited to project or activity decision, the analysis for that project or activity may serve as the documented need to change the plan. We support these components of a flexible, simple approach to plan amendments.

36 C.F.R. § 219.7. New plan development or plan revision.

In this proposed section, new plan development is limited to new national forest units. However, a plan revision is described as creating a new plan for a national forest, whether it differs from the prior forest plan to a small or large extent, and the process for a plan revision is the same as for a new plan. The descriptions of the plan development/revision process and content requirements in this section should be shortened and simplified. Specific recommendations for changes are below.

Delete or modify the last sentence of § 219.7(c), which states that an EIS is required for a new plan or plan revision, in accordance with the changes regarding NEPA compliance described in the comments regarding § 219.5 above. As indicated above, requiring a new EIS is not appropriate for at least many plan revisions, and the statement in this section is redundant and unnecessary if the changes recommended in the comments regarding § 219.5 above are incorporated in the final rule.

Section 219.7(d)(1) describes both "standards" and "guidelines" as required components of each new or revised forest plan. Further, the description of "guidelines" in § 219.7(1)(iv) confuses "guidelines" with the "standards" that are described in § 219.7(d)(1)(iii), and appears to make "guidelines" at least "quasi" standards that are mandatory constraints upon project and activity decision making. Consistent with common understanding as well as case law, correct the final rule to make "standards" clearly mandatory and "guidelines" clearly guidance that does not impose mandatory constraints upon agency discretion. See, e.g., Greater Yellowstone Coal., Inc. v. Servheen, 672 F. Supp. 2d 1105, 1114 (D. Mont. 2009); Miller v. United States, 163 F.3d 591, 594, n. 1 (9th Cir. 1998). To make this correction, incorporate changes such as the following in the final rule:

> § 219.7. New plan development or plan revision.
>
> . . . .
>
> *(iii) Standards.* A standard is a mandatory constraint on project and activity decisionmaking, specifically identified in the plan as a "standard," and established to help achieve or maintain desired conditions, objectives, or legal requirements.
>
> *(iv) Guidelines.* Guidelines provide information and guidance for project and activity decision making to help achieve or maintain desired conditions, objectives, or legal requirements, but are not mandatory constraints.

Section 219.7(d)(2) describes "goals" as the single optional component for plan content, and should be deleted. "Goals" as described in this section add nothing to "objectives," which are described as a required plan component in § 219.7(d)(2)(ii). If no "optional" plan components are listed or described in the Planning Rule, it still will not prohibit a forest plan from containing "goals" or other content in addition to the minimum required components. Optional content in the plan is already adequately covered by § 219.7(e)(2).

36 C.F.R. § 219.8. Sustainability.

The Planning Rule must provide a framework for economic and social sustenance of local communities through production of goods and services from nearby national forests, as well as sustaining ecosystems for enduring benefits. An economically viable forest industry infrastructure is essential to maintain in Southeast Alaska and other regions to accomplish ecosystem as well as economic and social objectives for national forest lands. Vegetative treatments needed to perpetuate healthy and diverse forest ecosystems for human benefits cannot be accomplished effectively otherwise. The Planning Rule must provide a framework that allows for investment in infrastructure and a supply of available wood sufficient to support economic timber harvest, thinning, and other treatments.

Proposed § 219.8 requires a forest plan to provide for "social, economic, and ecological sustainability" within "Forest Service authority and consistent with the inherent capability of the plan area." The preamble explanation for the Proposed Rule states that the proposal "considered the ecological, social, and economic systems as interdependent systems, which cannot be ranked in order of importance." 76 Fed. Reg. at 8491. However, contrary to this statement in the preamble, further actual text in § 219.8 incorrectly emphasizes "ecological" over "social" or "economic" sustainability. For "ecological sustainability," § 219.8(a)(1) requires the plan to include components "to maintain or restore the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area," considering listed factors. Section 219.8(a)(2) requires that components be included to "maintain, protect, or restore" several listed "ecosystem elements." For

"social and economic sustainability," the provisions in § 219.8(b) are much shorter, requiring the plan to include components that only "guide the unit's contribution to social and economic sustainability," taking into account a list of various factors.

In the preamble for the proposed rule and recent public meetings, the Forest Service has explained this disparity and bias as a recognition that the agency has more influence over the factors that affect ecological components of national forest lands than influence to affect social and economic conditions in human communities that use the national forest. See, e.g., 76 Fed. Reg. at 8491. This reasoning is severely flawed. The Forest Service generally does not have dominant management influence over ecological, social, or economic sustainability; "ecosystems" as well as human communities extend far beyond national forest boundaries. The agency in fact lists a multitude of factors influencing ecological sustainability that are outside its control, including "climate change, extreme disturbance events, and urbanization on lands outside of or adjacent to NFS lands." 76 Fed. Reg. at 8490. This is not to mention the "gridlock" and associated backlog of uncompleted and ecologically needed management activities on national forest lands due to chronic threatened and actual litigation over forest plans and projects.

Any difference in influence or control is a question of degree and varies widely by national forest unit. For example, a national forest in the eastern or southern portion of the United States may consist of noncontiguous parcels intermixed with nonfederal lands and have a relatively minor role in both ecosystem as well as social and economic sustainability compared with larger, more contiguous national forests in the western United States that local communities and regional economies depend upon. The Tongass is an example of a national forest that virtually surrounds communities and dominates the entire region in Southeast Alaska. This not only implicates a major role in ecosystem management, but also an essential and dominant role in the sustainability of the region's social and economic infrastructure and fabric, particularly in the rural communities where so many of Sealaska's Alaska Native shareholders live. These communities simply will not survive without dramatically improved management of the Tongass that serves sustained commercial and subsistence use of the national forest at least equal to "ecological" objectives.

The controlling national forest management principles of multiple use and sustained yield of goods and services to benefit people and communities are set out and firmly established in the MUSYA as adopted in the NFMA. The bias towards "ecological" sustainability in § 219.8 and other portions of the proposed Planning Rule is contrary to these laws, and must be eliminated in the final rule.

If the final rule is to include a "sustainability" section, correct and simplify it in accordance with the above legal principles. An example of such text follows:

> § 219.8. Sustainability.
>
> Within Forest Service authority and consistent with the inherent suitability and capability of the plan area, overall multiple use objectives

> and § 219.10, the plan must provide for social, economic, and ecological sustainability, as follows:
>
> (a) *Ecological sustainability.* The plan must include components to contribute to sustaining ecological systems. These shall include components to contribute to maintaining or restoring characteristics of healthy and resilient terrestrial and aquatic ecosystems, watersheds, and riparian areas in the plan area.
>
> (b) *Social and economic sustainability.* The plan must include components to contribute to sustaining social and economic systems. These shall include components to contribute to maintaining or restoring the plan area's sustained contribution of goods and services to local, regional, and national communities and economies.

36 C.F.R. § 219.9. Diversity of plant and animal communities.

This section is promulgated under the NFMA requirement for the Forest Service to specify "guidelines" for forest plans which:

> provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives of a plan . . . provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan.

16 U.S.C. § 1604(g)(3)(B). The statute does not contain any text regarding "viable" populations of animal or plant species. As confirmed and emphasized in recent Ninth Circuit Court en banc precedent, NFMA does not require the Forest Service to improve a species' habitat to show that it is maintaining wildlife viability. Lands Council, 537 F.3d at 995. The NFMA "diversity" provision explicitly incorporates multiple use principles, and is worded to assure flexibility and discretion in implementation. See, e.g., Sierra Club v. Robertson, 810 F. Supp. 1021, 1027-28 (W.D. Ark. 1992), aff'd, 28 F.3d 753 (8th Cir. 1994).

Proposed § 219.9 in general takes an "ecosystem" and "habitat management" approach to providing plant and animal diversity, which we believe is much sounder and more workable than attempts to manage for individual species or wildlife populations. However, it modifies and appears to expand upon the 1982 regulation provision regarding maintaining viable populations of fish and wildlife species within the plan area, which has been the subject of widespread and prolonged litigation and problems in implementing the Tongass and other forest plans for many years. Section 219.9 is among the most flawed and problematic in the proposed rule.

Section 219.9 requires the forest plan to include components to maintain the diversity of plant and animal communities, within Forest Service authority and consistent with the "inherent capability" of the plan area. However, in §§ 219.9(a) and (b), the "ecosystem diversity" and "species conservation" provisions are *not* expressly tempered or qualified by the "multiple-use objectives" text that is found in the NFMA statute provision quoted above. With respect to diversity of tree and other plant species, § 219.9(c) appears to generally but not accurately track the applicable text of the NFMA statute, which for one thing is limited to tree species.

The 1982 regulation "viability" provisions were limited to vertebrate species. Section 219.9(b) of the proposed rule notably extends "viability" provisions to invertebrate as well as vertebrate "species of conservation concern," despite the Forest Service acknowledging that there is little known about such invertebrate species. 76 Fed. Reg. at 8494. "Species of conservation concern" are defined in § 219.19 as any species for which the responsible official has determined there is "evidence demonstrating significant concern about its capability to persist over the long-term in the plan area," exclusive of species already federally listed as threatened, endangered or candidate species.

This "viability" provision does not appear to allow for any prioritization among non-listed species. This will likely foster inordinate attention to a multitude of all sorts of naturally marginal species that are not federally listed, distracting and encumbering management of national forests to the detriment of other, more valuable species as well as human use and benefits. Even nuisance insects, fungi, and bacteria species would be eligible for protective measures as "species of conservation concern." Without prioritization or reference to a multiple use context and objectives, maintaining habitat or ecological conditions for all or even most eligible species is not scientifically credible or possible; increases in habitat for late seral species, for example, decreases availability for early seral species. See, e.g., April 2011 "Science Review of the United States Forest Service Draft Environmental Impact Statement for National Forest Management—Summary Report" ("Science Review Report") at 11-12.

Provisions in § 219.9(b)(2) regarding candidate species for listing under the ESA appear to overlap the provisions regarding "species of conservation concern." These provisions have the clear potential to incite excessive, numerous additional petitions for ESA listing of various species by advocacy groups, just to label them as "candidate" species and trigger an obligation for forest plans to "conserve" them. The term "species of conservation concern" itself is likely to generate confusion with similar lists of species maintained by other agencies and subject to frequent change. Examples of agency lists are U.S. Fish and Wildlife ("USFWS") "Species of Concern" and "Birds of Conservation Concern" lists and the Alaska Department of Fish and Game "Alaska Species of Special Concern" list. An example of another "Species of Conservation Concern" list that includes a large number of bird species in a wide range of habitats is contained in The State of the Birds 2010 Report on Climate Change, available at http://www.state-of-the-birds.org. A number of agencies and advocacy groups participated in this report, including the USFWS, Association of Fish & Wildlife Agencies, The Nature Conservancy, and the Audubon Society. The Forest Service and other planning participants could easily be overwhelmed with a great volume of conflicting information and advocacy for various species.

Section 219.9 and related provisions appear to have been developed by conservation biology advocates without sufficient interdisciplinary involvement, legal review, or attention to basic MUSYA and NFMA statutory directives. To be consistent with the statutes and otherwise workable, and to avoid feeding yet more counterproductive litigation, this section and other sections of the proposed rule addressing plant and animal community diversity must be reformed. Below is an example of a corrected and simplified provision that adequately addresses diversity and viability concerns in accordance with the MUSYA and NFMA, and without duplicating ESA requirements:

> § 219.9. Diversity of plant and animal communities.
>
> Within Forest Service authority and consistent with the inherent suitability and capability of the plan area, overall multiple use objectives, § 219.8 and § 219.10, the plan must include components to provide for the diversity of plant and animal communities, as follows:
>
> (a) *Ecosystem Diversity.* The plan must include components to contribute to maintaining or restoring characteristics of healthy and resilient ecosystems in the plan area.
>
> (b) *Species Conservation.* The plan components must include steps to maintain or restore ecological conditions in the plan area to:
>
> (1) Contribute to meeting Endangered Species Act requirements for threatened and endangered species; and
>
> (2) Contribute to conserving species of conservation concern that are identified in the plan as a priority to meet multiple use objectives. When developing such plan components, the responsible official shall coordinate to the extent practicable with other federal, state, tribal, and private land managers having management authority over lands where the population exists.
>
> (c) *Diversity of tree species.* The plan components must include steps within the plan's multiple use objectives to preserve, where appropriate, and to the extent practicable, the diversity of tree species similar to that existing in the plan area.

36 C.F.R. § 219.10. Multiple uses.

This section requires a forest plan, in meeting the sustainability, diversity, and multiple use requirements of §§ 219.8-219.9, and "within Forest Service authority, the capability of the plan area, and the fiscal capability of the unit," to "provide for multiple uses, including ecosystem services, . . .," according to provisions in its various subsections. This section appears to elevate vaguely defined

"ecosystem services" above the several multiple uses listed in the MUSYA and confuse "ecosystem services" with some or all of the uses listed in the statute. It inexplicably subjects providing multiple uses to "fiscal capability of the unit" while not subjecting sustainability requirements in § 219.8 or diversity/viability requirements in § 219.9 to the same qualifier. It contains other provisions that derogate rather than promote multiple use management, and must be reformed to be consistent with NFMA and the MUSYA. It contains text and structure that in places is otherwise confusing or awkward. Below is an example of changes to this section that would simply, clarify, and conform it to statute.

§ 219.10. Multiple Uses.

Within Forest Service authority and consistent with the inherent suitability and capability of the plan area, the plan must provide for coordinated, sustained yield of multiple uses, including outdoor recreation, range, timber, watershed, wildlife and fish, as follows:

(a) *Integrated resource management.* When developing plan components for integrated resource management, the responsible official shall consider, to the extent relevant to the plan area:

. . . .

(5) Habitat conditions for wildlife, fish, and plants in the plan area which are enjoyed and used for subsistence, commercial, sport, or other purposes;

. . . .

(b) *Requirements for plan components for a new plan or plan revision.* (1) The plan components for a new plan or plan revision must provide for:

(i) Sustained yield of multiple uses, considering opportunities and access for a range of uses.

(ii) Management of cultural and historic resources for protection in accordance with applicable law;

(iii) Management of areas of tribal importance;

(iv) Management of Congressionally designated wilderness, wild and scenic rivers, or other areas in accordance with the applicable designation; and

(v) Appropriate management of other designated or recommended areas that exist in the plan area, including research natural areas.

(2) The plan may include other plan components for integrated multiple use resource management.

36 C.F.R. § 219.11. Timber requirements based on the NFMA.

Like proposed § 219.10, this section selectively limits providing timber and other multiple uses to the "fiscal capability" of a national forest unit, and confuses "ecosystem services" and the multiple uses listed in the MUSYA. This section also does not appear to adequately allow for flexibility in harvest of timber in accordance with applicable NFMA provisions codified at 16 U.S.C. §§ 1604(g)(F)(iv), (k), (m) and 1611-- perhaps most importantly with regard to salvage or sanitation harvest of timber which is substantially damaged by fire, windthrow or other catastrophe, or in imminent danger from insect or disease attack. Some examples of corrections in particular portions of 219.11 to correct these flaws follow.

§ 219.11. Timber Requirements based on the NFMA.

Within Forest Service authority and consistent with the inherent suitability and capability of the plan area and § 219.8 and § 219.10, the plan must provide for timber, among other multiple uses, as follows:

. . . .

(b) *Harvest of trees on land not suitable for timber production.*

(1) . . .

(2) . . . . Examples of using timber harvest on lands not suited for timber production may include, but are not limited to, ...

(c) *Harvest for salvage, sanitation, or public health or safety.* Notwithstanding any other provision in this section, timber harvest may also be approved for salvage, sanitation, or public health or safety, where consistent with applicable NFMA requirements (16 U.S.C. 1604(g)(F)(iv), (k), (m) and 1611).

(d) *Limits on timber harvest on suitable and non-suitable lands. . .*

. . . .

> (5) Limit the regeneration harvest of even-aged stands of trees to stands that generally have reached the culmination of mean annual increment of growth. . . . . Exceptions that meet the requirements in 16 U.S.C. 1604(m) shall be deemed consistent with the forest plan. . . . .

36 C.F.R. § 219.12. Monitoring.

This section contains relatively detailed provisions regarding monitoring—substantially more detailed than the 1982 Planning Rule. The forest supervisor is required to develop a "unit monitoring program" to include in the forest plan. The regional forester is required to develop "broader-scale monitoring strategies" for forest "unit" monitoring questions that can best be answered at a geographic scale broader than one forest. The "unit" monitoring programs in a Forest Service Region and "broader-scale" strategies are to be coordinated with one another.

Sound, cost-effective monitoring and the feedback it provides for adaptive planning and management is important. However, proposed § 219.12 appears to add to the procedural and content requirements for national forest monitoring work. This is proposed after decades of experience showing that the Forest Service has not been able to perform a lesser amount of monitoring with the personnel and funding available, and without assurance that the requirements proposed will facilitate any more efficient or focused monitoring. This section and related monitoring provisions can and should be shortened and simplified in the final rule. Most of the content can at least be moved to FSM/FSH handbook guidance where it can be more readily adapted over time to changes in capabilities, budgets, and experience. More particular comments on this section follow.

Section 219.12(a)(5) requires the unit monitoring program for each forest to contain one or more monitoring questions or indicators addressing each of several listed items. Only one of these parameters—recreation-- appears to be aimed at tracking actual output of goods and services serving one of the statutory list of multiple uses. There is no reason to highlight or emphasize this use as a monitoring program requirement, to the potential derogation of commercial wood production, subsistence harvest of fish and wildlife, or other uses. Another of the listed parameters is "carbon stored in above ground vegetation," without reference to tracking the continued carbon storage and other benefits of management, harvest and use of trees and other vegetation. The list is sufficiently biased and flawed overall that it should be deleted or modified to be a suggested list of examples for monitoring rather than a required minimum list.

The requirements in § 219.12(b) for regional broader-scale monitoring strategies are brief and general, and this subsection requires the regional forester to ensure that such strategies are within the financial and technical capabilities of the region and complement other monitoring efforts. The same requirements should expressly apply to the national forest unit monitoring program.

Sections 219.12(a)(7) and (b)(4) specify that the Planning Rule unit and regional monitoring requirements do not apply to projects and activities, and that a unit monitoring program or broader-scale strategy is not a prerequisite for carrying out projects or activities. This point is essential, to

avoid inadvertent and unnecessary delays in getting needed management completed on the ground while monitoring under the updated Planning Rule gets underway and during periods where difficulties in completing monitoring are encountered.

Section 219.12(c)(4) requires the Forest Service to "ensure" that scientists are involved in design and evaluation of unit and broad scale monitoring. Delete this vague requirement. It is unnecessary, elevates "scientists" above other professionals needed to comprise the interdisciplinary planning teams required by NFMA, and is otherwise likely to foster counterproductive litigation. FSM/FSH directives can include adequate guidance for involving scientists and other interdisciplinary professionals in monitoring design and evaluation.

Section 219.12(c)(5) provides for unit and broad scale monitoring to be designed to take into account opportunities to design and carry out monitoring with Alaska Native Corporations and Tribes, as well as other Forest Service units, other government agencies, scientists, partners, and members of the public. We support this provision. Sealaska is proud of its leadership and collaborative approach to monitoring and research regarding forest management in Southeast Alaska, and plans to continue to cooperate with the Forest Service and others regarding monitoring where practicable and appropriate. However, we note that this and other Planning Rule provisions must not be used to shift costs of monitoring from the Forest Service or other federal agencies to Sealaska or other nonfederal entities. The Planning Rule must instead be interpreted to support the opportunity to contract with Sealaska and other Native Corporations and interested parties for cost-effective federally funded monitoring.

36 C.F.R. § 219.13. Plan amendment and administrative changes.

This section appears to maintain plan amendment as flexible in scope and process, and requiring no more NEPA evaluation or documentation than that required in separate existing Forest Service NEPA regulations. It allows for use of a categorical exclusion (from preparing an EIS or EA) for amendments with little or no potential for significant environmental effects. This section also includes a provision for "administrative changes," to a plan document, including changes to the monitoring program, without the need for NEPA or other process beyond public notice. We support this approach.

36 C.F.R. § 219.14. Decision documents and planning records.

This section also references Forest Service NEPA regulations for preparation of an appropriate decision document to prepare for a new plan, revision, or amendment approval. It can and should be shortened and simplified in its description of decision document content and other provisions. Section 219.14(a)(1) is an example of a requirement for documenting consideration of "best" scientific information which should be deleted, as indicated in our general and specific comments regarding § 219.3 above.

36 C.F.R. § 219.15. Project and activity consistency with the plan.

This section appears to recognize and provide, as required by NFMA and the 1982 Planning Rule, that project and activity consistency with an existing, revised, or amended plan remains subject to valid existing rights. Protection of existing adjacent property owner, ANCSA, and other legal rights throughout the Planning Rule is essential.

For projects and activities authorized prior to a new plan, revision, or amendment, § 219.15(b) provides that the decision document for the new plan, revision, or amendment must expressly state whether the decision allows any prior approval for occupancy and use. If not so stated, then the permit, contract, or other authorizing instrument for the use or occupancy must be made consistent as soon as practicable, subject to valid existing rights. Change this provision in the final rule to instead provide that new plans, revisions, or amendments apply only prospectively to projects and activities authorized after the effective date of the changes to the plan, and thus previously authorized projects and activities are deemed consistent, unless the decision document for the updated plan specifically states otherwise. A presumption of consistency for prior authorized projects and activities will be less confusing and far more workable and less costly and disruptive of ongoing needed management.

Section 219.15(c) provides that projects and activities authorized after a new plan, revision, or amendment decision are required to be consistent with applicable plan components. However, like the 1982 regulations, this subsection provides the option to amend the plan contemporaneously with the approval of the project or activity to achieve consistency, including an amendment that is limited to just that project or activity. This provision is essential to maintain flexibility and adaptivity in implementing plans and management on the ground.

Section 219.15(d) contains unnecessary detail regarding determination of project or activity consistency with the forest plan, including additional language treating "guidelines" as at least quasi-standards. Replace this section with shorter, simpler text such as the following:

> (d) *Determining consistency.* A project or activity approval document must describe the how the project or activity is consistent with applicable plan components.

Section 219.15(e) allows for "resource plans" in addition to the forest plan. We believe this is contrary to NFMA and its requirement that "[p]lans developed in accordance with this section shall—(1) form one integrated plan for each unit of the National Forest System. . . ." 16 U.S.C. § 1604(f)(1). It is daunting and expensive enough for Sealaska and others to keep up with and participate in forest planning efforts, without the additional burden and confusion of addressing separate resource plans and whether they are consistent with the forest plan. Replace § 219.15(e) with a provision that prohibits new resource plans and specifies a transition period for existing resource plans to be integrated into the forest plan no later than the next revision of the forest plan.

36 C.F.R. § 219.16. Public notifications.

This section contains relatively detailed provisions regarding public notice of various planning actions. However, it provides for public notice as well as other process for plan amendments that are specific to a particular activity or project to be combined with notice for that project and activity. It otherwise appears to retain flexibility and discretion regarding scope and character of public notice for administrative and monitoring program changes, monitoring evaluation reports, and other lesser planning actions. While this section could be shortened and simplified, we support the relatively flexible approach that it appears to follow for amendment, monitoring, and other administrative adjustments.

36 C.F.R. § 219.17. Effective dates and transition.

Under proposed § 219.17(a), new plans, revisions, and amendments are generally effective 30 days after publication of the notice of approval. Under § 219.17(b)(1), the next revision of the Tongass or other forest plans that are initiated after the effective date of the new final rule will be completed under the new Planning Rule requirements. Under § 219.17(b)(2), plan amendments initiated within 3 years after the final rule effective date may be completed under either the 1982 Planning Rule or the new Planning Rule. Under § 219.17(c), once the final rule is effective, it supersedes any prior planning regulation. For a previously issued plan, no obligations remain from prior planning regulations "except those that are specifically included in the plan." Id.

This proposed section could be shortened and simplified, but its approach appears to be generally sound and reasonable. However, as indicated in our general comments above and to help assure smooth transition periods, the final rule should expressly and clearly provide that the prior forest plan remains effective until such time as a new plan, revision, or amendment becomes finally effective, including during the time period of any appeal or litigation that challenges the new plan, revision or amendment decision. Similarly, as indicated in our general comments and comments on proposed § 219.15 above, the final rule should expressly and clearly provide that projects and activities authorized under the previous plan may proceed as consistent with the new plan, revision, or amendment, unless the decision document for the new plan, revision, or amendment specifically states otherwise. Finally, as indicated in our comments on § 219.15(e) above, provide a transition period for eliminating separate individual resource plans.

36 C.F.R. § 219.18. Severability.

No comment at this time.

36 C.F.R. § 219.19. Definitions.

If the final rule is simplified and reformed as recommended in our general and more specific comments above, many of the definitions in this proposed section can be deleted. Many can also be appropriately placed in FSM/FSH guidance rather than the codified Planning Rule. Further specific comments follow.

Connectivity (as used in the sustainability, diversity, and other sections of the proposed rule; not defined or used in the 1982 Planning Rule). Delete this definition in particular to conform to our other recommendations for the final rule. This term is not necessary or appropriate to use in other sections of the Planning Rule, is a likely trigger for counterproductive litigation, and can be employed as appropriate in FSM/FSH guidance.

Ecosystem Services. Delete this definition also in particular to conform to our other recommendations for the final rule, and as indicated regarding the "multiple use" definition below. This term can be defined and employed as appropriate in FSM/FSH guidance.

Multiple Use. This definition repeats verbatim and references the statutory definition in the MUSYA, which begins: "The management of all the various renewable resources of the [National Forest System] . . . ." However, the proposed rule adds the following sentence: "Ecosystem services are included as part of the various renewable resources of the [National Forest System]." Delete the sentence regarding "ecosystem services," which is current jargon that is not included in or authorized by the MUSYA definition, confuses the statutory definition, and is otherwise unnecessary to add.

Sustainable recreation: Delete this definition in particular to conform to our other recommendations. Like "connectivity" and "ecosystem services," it is not necessary or appropriate to use in other sections of the Planning Rule, is a likely trigger for counterproductive litigation, and can be employed as appropriate in FSM/FSH guidance.

Viable population: Delete this definition in particular to conform to our other recommendations. A "viability" requirement is not contained in or warranted by the "diversity" section of NFMA. The "viability" provision in the 1982 Planning Rule appears in a wholly separate "fish and wildlife resource" section from the "diversity" provision, and remains a lightning rod for litigation and other unwarranted inefficiencies and failures in national forest planning and management.

Subpart B—Pre-Decisional Administrative Review Process

This component, proposed as 36 C.F.R. § 219.50 et seq., would establish an "objection" process for a new forest plan, revision, or amendment where individuals or organizations who participated by submitting comments in the relevant planning process would have an opportunity for an "independent" Forest Service review and resolution of issues of concern prior to the final decision approving the plan, revision, or amendment. The objection process set out in the proposed rule is similar to the "objection"

process set out in 36 C.F.R. Part 218 for proposed hazardous fuel reduction projects under the Healthy Forests Restoration Act of 2003.

We believe that this proposed Subpart B could be shortened and simplified. However, we support the concept of replacing the current post-decisional administrative appeal process for forest planning with a pre-decision objection process like that described. We believe that the Forest Service could consider further expanding this pre-decisional objection process to also replace the current 36 C.F.R. Part 215 post-decision appeal process for Forest Service project, activity, and other decisions to which those regulations currently apply.

D. Comments On The Draft EIS For The Proposed Rule

1. Overview

We did not complete an exhaustive review of the DEIS in the time available to date. We agree with the Forest Service that the NEPA process is not particularly instructive when evaluating a programmatic Planning Rule and alternatives. The proposed Planning Rule and alternatives, at least if formulated within NFMA authority, each merely establishes a national level framework for preparing forest plans that itself does not commit to any projects or activities on the ground.

The U.S. Supreme Court described the nature of land and resource management plans in Ohio Forestry Ass'n v. Sierra Club, supra., explaining that plans are "tools for agency planning and management." Id., 523 U.S. at 733. The Court recognized that the provisions of such plans "do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability; they create no legal rights or obligations." Id. The Supreme Court repeated its characterization of analogous Bureau of Land Management plans as strategic, without any immediate on the ground impacts in Norton v. S. Utah Wilderness Alliance, 542 U.S. 55, 69-71 (2004) observing that "land use plans are a preliminary step in the overall process of managing public lands—designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses." Id. at 69 (internal quotations and citation omitted).

Thus, the Planning Rule is at least two steps removed from any decision that portends predictable likely environmental effects. Consequently, the proposal and alternatives for the Planning Rules have little or no direct effect on the human environment. The "effects" analysis in the DEIS Chapter 3 generally consists of predictions based upon varying degrees of assumptions.

That being said, the DEIS does not appear to be any more adequate in level of detail or quality of evaluation of environmental effects than the EIS for the 2008 version of the Planning Rule, found deficient under NEPA in Citizens for Better Forestry v. U.S. Dep't. of Agriculture, 632 F. Supp. 2d 968 (N.D. Cal. 2009). The level of detail and complexity of the current Proposed Rule implicates substantially more environmental change emanating from implementing the proposed rule than the shorter and simpler 2008 Rule. Thus, we believe the Proposed Rule and accompanying DEIS present

as much or more NEPA deficiency as the 2008 Rule, if the Citizens for Better Forestry federal district court decision criteria are applied.

2. Alternatives

a. Of the alternatives presented in detail in the DEIS, Alternative C is superior.

The DEIS recognizes that a less cumbersome and expensive planning rule is needed. DEIS at 7. Yet the Forest Service's own analysis confirms that even under very favorable assumptions, the Proposed Rule will be only slightly less costly than the 1982 Planning Rule that has been identified as overly burdensome—i.e. approximately $1.5 million less per year than the $104 million annual cost of the 1982 Rule. DEIS at 43. The DEIS and accompanying analysis for the Proposed Rule confirm that there are readily available alternatives that are far less costly and burdensome, and which still meet NFMA requirements and the agency's stated purpose and need for a new Rule.

For example, Alternative C in the draft EIS would, according to the Forest Service analysis, cost nearly $24 million (24%) less per year than the Proposed Rule (Alternative A) to implement. Draft EIS at 43. As the DEIS indicates, Alternative C is intentionally designed to be non-prescriptive. The flexibility provided by this alternative would likely increase efficiency and allow opportunity for units to better focus assessment, monitoring, revision or amendment to address the critical or unique needs of the unit. "The consequence of planning cost has an inversely proportional effect on the number of plans that could be revised [or amended] at one time and possibly the length of time to complete revision. For example, a 25 percent increase in cost might mean 25 percent fewer plans would be revised over a given time period." DEIS at 159. Accordingly, Alternative A, the Proposed Rule would likely result in substantially more backlog and less on-the-ground benefits than Alternative C.

b. The 2008 Planning Rule should have been evaluated as an alternative in the DEIS.

The 2008 Planning Rule is another alternative that would appear to meet most or all of the stated purpose and need for an updated Rule. It contains most of the same basic concepts as the Proposed Rule but is only half the length (7 pages of Federal Register text compared to 14 pages for the proposed rule). The 2008 Rule has its flaws from our perspective, but was enjoined by a federal district court only for procedural shortcomings in the EIS and Endangered Species Act § 7 consultation completed for the rulemaking, and not any inadequacy in meeting NFMA requirements. Citizens for Better Forestry, supra. Yet the 2008 Rule appears to be completely excluded from analysis in the DEIS.

The exclusion appears to be a dramatic shift from previous planning rule analyses. For example, the 2008 Rule EIS considered and compared previous versions of Forest Service planning rules. It analyzed the 2000 Rule as it existed before promulgation of the 2005 Rule (Alternative B), the 1982 Rule as it existed before promulgation of the 2000 Rule (Alternative C), and modified versions of the

2005 Rule (Alternatives D, E & M). There does not appear to be any explanation in the DEIS for the current Proposed Rule regarding why the 2008 Rule is not evaluated in detail. Particularly absent some explanation, we believe that the 2008 Rule, or something similar to it, clearly belongs in the range of reasonable alternatives evaluated in detail and circulated for public and agency comment in the EIS for the current Proposed Rule.

c. The final selected alternative needs to incorporate the recommendations in this letter.

We believe that Alternative C, the 2008 Rule, or the Proposed Rule can be further modified to include the changes that we have recommended in this letter, to achieve a final rule that is more effective and enduring than any of these alternatives. We believe that this modified alternative would still fully meet the basic elements of the stated purpose and need in the DEIS, and engender even further cost savings and ultimate benefits in forest plans and on the ground compared to the proposed rule or any of the other alternatives displayed in the DEIS. We support this modified alternative as the preferred and selected alternative for the final EIS and an updated Planning Rule.

3. The economic analysis is not sufficient.

As indicated in our general comments above regarding costs, the DEIS evaluation and accompanying January 25, 2011 Cost-Benefit Analysis of the economic impacts associated with the Proposed Rule appears to be based on very favorable, overly optimistic assumptions regarding implementation. This analysis needs to be reviewed and revised or supplemented with more realistic estimates of time, effort, and cost to non-federal participants as well as the Forest Service in implementing the complex, confusing, esoteric requirements included in the Proposed Rule.

This analysis needs to address the renewed litigation and other delay and similar costs associated with attempting to implement such a scheme, and the resulting reduced benefits on the ground and otherwise to the ecosystem health of national forests and yield of multiple-use goods and services to the public. This revised analysis needs to include comparison of the Proposed Rule with realistic costs and benefits associated with the modified alternative that we have recommended above as the final selected Planning Rule.

4. The analysis of Alaska and other impacts is otherwise not sufficient.

As our comments earlier in this letter indicate, the issues and impacts associated with national forest planning and management in Alaska are in many ways unique from the remainder of the nation. The plan revision process for the Tongass under the 1982 regulations is a prime example of the need for a much less costly and more effective, adaptive, and flexible planning process. Yet, based on the "unique environment" in Alaska, the Forest Service deliberately excluded both the Tongass and Chugach forest plans from the sampling of plans used to compare effects under the 1982 regulations and the action alternatives in the DEIS. DEIS at 54-55. That uniqueness merits added and distinct analysis for Alaska in the DEIS. That uniqueness is no excuse for excluding from the analysis two

forests of national as well as regional and local significance, comprising more than ten percent of the total national forest system land base. The DEIS analysis likewise excluded review of any plans in the Pacific Northwest Region, a region where if anything the effects of national forest planning and associated litigation and socioeconomic as well as ecological effects have been the most dramatic over the past 30 years. Id. at 54. These are major gaps in the DEIS analysis.

E. Comments On Use Of Science Reviews In The Rulemaking Process

Additional time is needed for rulemaking participants to review and comment upon the Proposed Rule with respect to the April 2011 Science Review Report recently made available by the Forest Service. We are aware of a request from numerous organizations for the public comment period on the Proposed Rule and DEIS to be extended 90 days beyond May 16, 2011, based in part upon questions about the Science Forum and Science Review Report. We support that request.

On April 26, 2011, via the Forest Service Planning Rule website, we first obtained a copy of the Science Review Report. The Planning Rule website information indicates that this report and its authors remained confidential until it was first made available to the Forest Service planning rule team on April 21, 2011. We had learned through the Washington, D.C. and Juneau March 2011 public forum meetings that the Forest Service had apparently convened a group of external scientists to review and provide advice to the agency regarding the proposed planning rule. However, we did not learn of the availability of the report, the nature of the review, or the identity of the reviewers until April 26, despite our consultant Robert Maynard being on the Forest Service list for notice of new postings on the website and earlier inquiries to the Forest Service to obtain more information about the review. The notice of the report being available on the website apparently was not sent out to persons on the list until April 27, 2011.

The information about the Science Review Report posted on the "Planning Rule Science Review" section of the Planning Rule website asserts that the Forest Service commissioned and will utilize the report, "along with input from the public, to improve the analytical and scientific foundation of the final environmental impact statement and the final rule." This section of the website and the report itself indicate that the Forest Service contracted with a "non-partisan" organization, RESOLVE, to coordinate an external science review of the DEIS. See, e.g., Science Review Report at i. The basic charge of the review process was to " 'evaluate how well the proposed planning rule [DEIS] considers the best available science.' " Id. RESOLVE in turn selected seven scientist reviewers employed at various universities to address three "key questions on the DEIS, regarding scientific caliber, treatment of uncertainty, and the comprehensiveness of the document." *Id.* The resulting Science Review Report is more than 100 pages in length, and includes analysis and opinion by RESOLVE regarding the reviewer comments as well as recommendations and other advice by each individual reviewer. It includes additional references by the reviewers to a multitude of publications and other sources.

We don't know yet whether the reviewers identified in the Science Review Report also participated in the Forest Service Science Forum that was summarized in a report dated March 29 - 30, 2010 prepared by Booz Allen Hamilton ("BAH Report"). The BAH Report is also posted on the Forest Service

Planning Rule website. However, the identity of the scientists participating in the Science Forum and their individual recommendations do not appear to be readily available. As stated in the "Planning Rule Science Review" section of the Planning Rule website, the Science Forum and the BAH Report have been undertaken and are being used by the Forest Service for advice as part of the agency's effort to solicit "the input of both internal and external science experts to ensure that the science behind the proposed rule and environmental analysis is current, relevant, accurate, and appropriately applied."

We appreciate the Forest Service efforts to promulgate an updated Planning Rule that is supported by sound, current science and also appreciate the agency making the Science Review Report and BAH Report publicly available. However, despite agency assertions of transparency and collaboration in the rulemaking process, we are at this point concerned that the review process and recommendations reflected in these reports raise serious questions regarding agency compliance with the Federal Advisory Committee Act, 86 Stat. 770, and 5 U.S.C. app. I ("FACE") and other law. If the Forest Service wishes to again convene a "committee of scientists" as was done for the 1982 Planning Rule process and on occasion for more recent prior versions of the Rule, the agency must comply with the requirements of FACE as well as § 6(he) of NFMA, 16 U.S.C. § 1604(he). If the Forest Service has convened or sought input regarding the Planning Rule from any other group that includes non-federal scientists, it must likewise comply with applicable FACE and NFMA requirements for seeking such advice. The Forest Service may be working through BAH and RESOLVE as contractors in an effort to avert these requirements, but we are not convinced that these statutory safeguards to assure objectivity, transparency, and credibility of scientist advice can and should be circumvented in this manner.

Moreover, Sealaska and other participants in the rulemaking process need to have the further opportunity and time to evaluate the Science Review Report in particular, in relation to the Science Forum and other information and factors, prior to finalization of an updated Planning Rule. The Science Review Report is lengthy, includes specific opinions regarding central elements of the Proposed Rule that may reflect erroneous assumptions or biased agendas, and is replete with references to additional publications, at least several of which are authored or co-authored by the reviewer referencing them. The report includes a conclusion by RESOLVE that each of the reviewers followed instructions to comment only on the science in the DEIS, and to avoid comments on management or policy. Science Review Report at 2. However, our initial review indicates that at least some of the reviewers' comments reflect value judgments about national forest management and its components, such as road construction and closure issues. See, e.g., Id. at 16-17. At least one of the reviewers has published articles concerning law and policy as well as science issues regarding the Planning Rule. Id. at 96 (Noon, B.R., P. Parenteau, and S.C. Trombulak. 2005. conservation science, biodiversity, and the 2005 U.S. Forest Service Regulations. Conservation Biology 19:1359-1361; Noon, B.R., and D.D. Murphy. 2005. Management of Spotted Owls: The Interaction of Science, Policy, Politics, and Litigation. Pages xxx. In Principles of Conservation Biology (third edition). G. Meffe, M. Groom, and R. Carrol, eds. Sinauer Associates, Suderland, Massachusetts). The Science Review Report was made available to the public only 14 working days in advance of the current May 16, 2011 deadline for public comment on the Proposed Rule.

Additional time for rulemaking participants to obtain more information about and review and comment upon the Science Review Report in relation to the Science Forum, DEIS and Proposed Rule is needed to help assure that the Forest Service and USDA are receiving objective advice from a fair spectrum of credentialed experts, and to at least be able to counter or supplement any opinions for which there are divergent viewpoints. As it stands, there is a serious substantive question about bias and undue influence by select groups or individuals in the Planning Rule process. Indeed, the § 219.8 "sustainability," §219.9 "diversity" and "viability," §219.10 "multiple use" and other sections of the proposed rule that we have commented upon above appear to suffer from such bias, to the detriment of workable, balanced planning and management of the national forests for the public good.

IV. CONCLUSION

Thank you for the opportunity to provide comments on the proposed Planning Rule as published in the February 14, 2011 Federal Register. We look forward to the USDA and Forest Service engaging soon in the further consultation with Sealaska described earlier in this letter. If you have any questions regarding the comments in this letter, please contact me at (907) 586-1512 or our consultant Robert A. Maynard at (208) 343-3434.

Sincerely,

Richard P. Harris/sm

Richard P. Harris
Executive Vice President, Natural Resources

cc: Janie Hipp, Senior Advisor to the Secretary of Agriculture
Harris Sherman, Under Secretary, NRE
Jay Jensen, Deputy Under Secretary, NRE
Tom Tidwell, Chief, Forest Service
Tony Tooke, Director, Ecosystem Systems Coordination
Beth Pendleton, Alaska Regional Forester, Forest Service
Chris McNeil, Jr.
Jaeleen Kookesh Araujo
Ronald R. Wolfe
Robert A. Maynard
Alaska Congressional Delegation

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
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IP Address: 206.16.97.176
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Comments

See Attachments

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Chugach Alaska CORPORATION

Forest Service Planning DEIS
c/o Bear West Company
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Bountiful, UT 84010

May 16, 2011

and via: http://www.govcomments.com

Re: Proposed Planning Rule
National Forest System Land Management Planning
36 CFR Part 219

Dear Planning Rule Team:

These comments on the above-referenced National Forest System Land Management Planning Proposed Rule (the "Proposed Rule") are submitted on behalf of Chugach Alaska Corporation ("CAC"), the Alaska Native Regional Corporation for the Chugach region, established pursuant to the Alaska Native Claims Settlement Act of 1971, as amended, 43 U.S.C. § 1601, et seq. ("ANCSA"). CAC owns or has valid selection rights to over 625,000 acres of surface estate and subsurface estate within the boundaries of the Chugach National Forest pursuant to ANCSA. In addition to ANCSA, CAC's rights with respect to its lands and adjacent Chugach National Forest lands are governed by the Alaska National Interest Lands Conservation Act of 1980, 16 U.S.C. § 3101, et seq. ("ANILCA"), and the 1982 Chugach Natives, Incorporated Settlement Agreement ("1982 CNI Settlement").

Consultation with Alaska Native Corporations

CAC would like to acknowledge and commend the changes in the Proposed Rule that address the Forest Services' legal obligation to consult with Alaska Native Corporations ("ANCs") to the same extent as Indian Tribes under PL 108-119 section 161, PL 108-447 section 518, and Executive Order No. 13175. Section 219.19 of the Proposed Rule now includes a definition of "Alaska native corporation", and sections 219.4(a)(5),(6) and (b)(2) now specify that the Forest Service will engage ANCs in consultation, encourage participation by ANCs in management plan development, and coordinate Forest Service management plans with the planning and land use policies of ANCs. Inclusion of ANCs in the plan development process is not only legally required, but consultation and consideration of existing ANC land plans and land use policies will help facilitate comprehensive and effective Forest Service management plans.

3800 Centerpoint Drive, Suite 601 Anchorage, Alaska 99503 Phone 907-563-8866 Fax 907-563-8402

The Proposed Rule addresses the need for the Forest Service to consider cultural issues, Native knowledge, and land ethics. Both sections 219.1(f) and 219.4(a)(7) indicate that such considerations should be made through consultation with Indian Tribes, or as part of tribal participation. As owners and managers of culturally significant land, ANCs should be expressly included in these sections.

Specific Revisions:

At Section 219.1(f) revised to read

(f) During the planning process, the responsible official shall comply with Section 8106 of the Food, Conservation, and Energy Act of 2008 (25 U.S.C. 3056), Executive Order 13007 of May 24, 1996, Executive Order 13157 of November 6, 2000, laws, and other requirements with respect to disclosing or withholding under the Freedom of Information Act (5 U.S.C. 552) certain information regarding burial sites or other information that is culturally sensitive to an Indian Tribe or Tribes, or to an Alaska Native Corporation.

At Section 219.4(a)(7) revised to read

(7) Native knowledge, indigenous ecological knowledge, and land ethics. As part of tribal participation and consultation as set forth in paragraphs (a)(5) and (6) of this section, the responsible official shall request information about native knowledge, land ethics, cultural issues, and sacred culturally significant sites from Indian Tribes, and Alaska Native Corporations.

Plans Must Comply with All Applicable Laws

Section 219.1(g) of the Proposed Rule states that plans must comply with all applicable laws and regulations. This section includes a list of applicable laws, but omits several highly significant federal statutes that dramatically impact land use and regulation within Alaska. Primary among these are ANCSA, and ANILCA, which have enormous impact on land in Alaska, as well as the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701 et seq.), the impact of which extends to public lands in all states. The two largest forests in the National Forest System, which comprise nearly 12% of the entire system, are located in Alaska and therefore subject to laws unique to Alaska which significantly impact management of the Tongass and Chugach National Forests. ANCSA and ANILCA are not mentioned in the Proposed Rule, yet few aspects of management and planning within the Tongass and Chugach National Forests can be considered without implicating these laws.

The list of "applicable laws" currently included in Proposed Plan section 219.1(g) is incomplete, and it should be modified to include additional federal statutes with significant impact on federal land management within Alaska.

Specific Revisions:

At Section 219.1(g) revise to read

(g) Plans must comply with all applicable laws and regulations, including, but not limited to, NFMA, MUSYA, the Clean Air Act, the Clean Water Act, the Wilderness Act, the Endangered Species Act, ANCSA, ANILCA, and FLMPA.

ANILCA Mandates Exclusion of Alaska Forests from Wilderness Study

ANILCA places serious constraints on the creation of new conservation system units, roadless area reviews and evaluations, and further public land studies for wilderness recommendation purposes within Alaska's national forests. Section 101(d) of ANILCA makes clear that Congress was satisfied with the conservation system units established under ANILCA, that they afforded "sufficient protection" for the national interest in conservation values, and that "the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby." 16 U.S.C. § 3101(d). Having provided, with the passage of ANILCA, sufficient protection for the national interest in conservation values on public lands in Alaska, Congress explicitly prohibited further roadless area review or evaluation without express congressional authorization:

> unless expressly authorized by Congress the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Alaska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

ANILCA § 708(b)(4). The prohibition in ANILCA section 1326(b) against "further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or for related or similar purposes" absent express congressional authorization is even more sweeping in its application. 16 U.S.C. § 3213(b). Both provisions are intended to make it plain that, unless Congress identifies the need for and expressly authorizes additional evaluation of lands for the protection of conservation values in Alaska, the substantial protections already afforded by the conservation systems established under ANILCA are sufficient. Because the Proposed Rule allows for the evaluation, identification and recommendation of these and other yet unnamed special

designations on Alaska's national forests, it violates applicable law and must be modified to bring the Proposed Rule into compliance with ANILCA.

Specific Revisions:

At Section 219.7(c)(2)(iv) revise to read

(iv) Identify potential wilderness areas, exclusive of the Tongass and Chugach National Forests, and consider whether to recommend any such areas for wilderness designation.

Access and Determination of Valid Existing Rights

As the largest private landowner of land within the Chugach National Forest, CAC has elevated concerns about protecting and maintaining access to CAC lands within the bounds of land managed by the Forest Service. CAC has existing valid rights in land within the bounds of the Chugach National Forest; recognition and consideration of those rights, as well as consideration of CAC's access to its privately-held land, are necessary elements of plan development, which are not currently reflected in the Proposed Rule. CAC acknowledges that Sections 219.4(b)(1) and (2) of the Proposed Rule do require coordination with Indian Tribes and Alaska Native Corporations "to the extent practicable and appropriate", and review of the land use policies of Indian Tribes and Alaska Native Corporations "where relevant." However, the Proposed Rule does not require consideration or recognition of valid existing rights of private landowners during plan development, nor does the Proposed Rule require issues of access and recognition of valid existing rights to Forest Service managed land to be addressed in the final plan.

The Proposed Rule should be revised in order to appropriately recognize and protect the valid existing rights of private landowners. The Proposed Rule should also require consideration, as part of any new plan development or plan revision, of the access requirements of private landowners of land within the bounds of National Forests.

Specific Revisions:

At Section 219.7(c)(2)(ix) add new subsections to read

(x) Identify valid existing rights on which the proposed new plan or proposed plan revision may have an impact.

(xi) Consider whether the proposed new plan or proposed plan revision may limit or impede access to privately held land within the area affected by the proposed new plan or proposed plan revision, and consider alternatives to any plan component that would limit or impede such access.

At Section 219.7(e)(1)(iv) add new subsection to read

(iv) Contain a statement identifying any valid existing rights that were taken into consideration during plan development, and how those rights have been accommodated by the plan provisions. This statement should address whether, and to what extent, access to privately-held land within the unit was considered in plan development, and the provisions of the plan that seek to preserve access rights.

Plans Should Include Strategy for Utilizing Public Easements over Private Land

An important goal of every plan developed by the Forest Service should be public access to all forests included in our National Forest System. All citizens should have reasonable access to benefit from lands in the National Forest System, and there should not be any area of our forests to which access is denied or is otherwise made so difficult or expensive that the area cannot be accessed or enjoyed.

Much of the property within the Chugach National Forest owned by CAC is affected by easements for public use. These easements were reserved to the United States and the State of Alaska under ANCSA and the Alaska Statehood Act. Many of these easements are not maintained or clearly identified as public access points, leading to underuse, or in some cases trespass across private land. In developing management plans for our National Forests, the Forest Service should identify easements across private property that are intended to provide public access to National Forests. These easements should be defined and maintained by the Forest Service, and made part of any Management Plan governing the National Forests to which they provide access. Including public easement management in individual Management Plans will ensure maximum public access, with minimal opportunities for trespass and damage to private property by those members of the public who wish to use these public easements.

Chugach Alaska Corporation appreciates the opportunity to comment on the Proposed Rule.

Sincerely,

Dave Phillips
Manager, Land and Resources

OT	S	RT	DT	EA	F	RI	CE

Attributes

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IP Address: 68.113.36.154
Form Letter:

Comments

See Attachments

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ERD-0807

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May 16, 2011

Re: Forest Service Draft EIS for National Forest Land Management Planning Rule

Dear Comments Coordinator:

Thank you for the opportunity to comment on the Forest Service's Proposed Planning Rule. We are making these comments on behalf of 16 National Forest Counties in the range of the Oregon and California Revested Land Grant Counties in western and south-central Oregon.

Forest Service (FS) planning is important to counties because of the reliance on shared receipts to help pay for schools and to maintain secondary and forest roads that provide access to National Forests (NF). Absent in the proposed rule is a discussion of the importance of Counties continuing to receive SRS "safety-net" (PL-110-343) funding in order to afford the road work and service levels previously supported by shared timber receipts, which are currently at historic lows due to Federal policy shifts.

The proposed rule fails to give equal weight to the three aspects of sustainability under the Multiple Use-Sustained Yield Act, "social, economic and ecological." Instead the rule lists only ecosystem services as a multiple use that contributes to local, regional and national economies in a sustainable manner. The proposed rule emphasizes the views of youth, low income and minority populations, and private landowners, all of which historically draw on county and local community services and yet the proposed rule fails to address rural timber dependent counties, education funding, local communities and forest users most affected by the rule. The rule also fails to discuss monetized ecosystem services such as carbon sequestration and recreation to contribute to the economies of effected counties local communities and school.

The NF system contains over 198 million acres containing vast timber and other natural resources, none of which is subject to state or local property taxes. In addition to being deprived of a taxable lands, local county governments must provide essential services benefitting NF lands and those who use them, including access road construction and maintenance, search and rescue, law enforcement, waste removal and fire protection, among others.

Congress recognized the adverse local impacts of retaining the NF lands in nontaxable federal ownership, and in 1908 and 1911 passed legislation requiring revenues from timber harvests on NF lands to be shared with county governments, for use supporting roads and schools. For 80 years, until the 1990s, a federal policy of forest management and wise use produced shared timber receipts that supported local governments, roads, schools, and other services.

In the early 1990s, the U.S. Government changed forest policy and reduced harvesting of timber on federal lands, in some cases by more than 85 percent. The result was the loss of tens of thousands of jobs in the wood products industry as well as a severe diminution of funds to operate county services and maintain the roads and schools in these timber dependent counties. In addition, the FS closed hundreds of District Offices, thus abandoning rural communities. For the most part counties view the FS as non-contributing absentee landlord of large tracks of lands within the counties.

In 2000, recognizing the harm from the new federal timber policies, Congress enacted the Secure Rural Schools and Community Self-Determination Act (SRS). This legislation benefitted more than 700 counties and thousands of schools in 41 states with federal forest lands. Counties and schools received payments to make up for the loss of shared timber receipts. SRS is now scheduled to end at the close of FFY 2011.

After FFY 2011, unless SRS is reauthorized, counties and schools will revert back to receiving shared timber receipts based on the previous 7 years rolling average, which are at extremely low levels. This will result in the huge decrease of funds for critical services such as public safety, roads, health services, and schools. This coupled with the new Integrated Resource Restoration strategy utilizing stewardship contracting as a tool to achieve landscape scale forest health, instead of timber sales, will only exacerbate community instability in counties with significant amounts of NF lands. Stewardship contracting by law produces no revenue to share with county governments or schools. Counties will be unable to provide services at levels necessary to sustain their communities, and will be unable to support services provided to NF lands and those who use such lands.

Either the SRS safety net legislation must be reauthorized for an extended period of years, or else federal forest policy must be modified so that timber harvests resume at some reasonable and rational levels, to support jobs and produce shared receipts for counties. Rural timber dependent counties already suffer from some of the highest unemployment rates in the nation. The proposed NF planning rule, and the management developed under such rule, must take into account the obligation of the federal government to support economies in timber-dependent communities.

Without safety net reauthorization, counties will have insufficient funds to maintain their forest road systems, which serve as the access routes for many or most NF lands. Access to large tracks of NF lands will eventually become inaccessible due to lack of

funding for county road maintenance and repair. In the absence of safety net reauthorization, the NF planning rule and NF management plans will have to address these access concerns.

Thank you again for the opportunity to share our concerns regarding critical funding challenges facing county governments and the impacts of the proposed planning rule in the areas where the FS is a major landholder. If you have any questions, please feel free to call me anytime.

Very truly yours,

Rocky McVay
For the Association of O&C Counties

cc: Kent Connaughton, Regional Forester, Region 6

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 156.98.33.13
Form Letter:

Comments

Please see attached comment letter from the Commissioner of the Minnesota Department of Natural Resources.

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May 16, 2011

USDA Forest Service Planning Rule Revision
Content Analysis Team
P.O. Box 8359
Missoula, Montana 59807

Subject: Proposed Rule for National Forest System Land and Resource Management Planning

Dear Content Analysis Team:

As with previous rules, the 2011 proposed rule is a complex regulation that makes it difficult to completely understand all the implications of its implementation. Our comments will therefore focus on key concepts in the proposed rule, and our perspective on advantages and concerns with those concepts.

General Comments

The number of alternatives presented in the 2011 Proposed Rule is appropriate. Even with the increased focus on public involvement in all phases of plan development and revision, we believe it is important to have several alternatives; the alternatives presented offer a reasonable number of choices on which stakeholders can comment. Overall, we accept the Proposed Alternative (A) as being the most practical, broadly acceptable, and consistent with the strategic direction of Minnesota Department of Natural Resources. This alternative is consistent with the current focus of natural resource management agencies at many scales of responsibility i.e., the desire to consider landscape impacts, foster more resilient ecosystems, incorporate adaptive management principles, and to involve other land owners and stakeholders in a collaborative process. Alternative B relies too heavily on the use of indicator species, usually vertebrates, and Alternative C has inadequate habitat management requirements that would be inconsistent with recent ecological and environmental research. Plan C also has a scientifically weak section on "Monitoring to Assess Effectiveness" that would lead to an insufficient monitoring plan for the Forest Service as a whole.

We recognize the need to reduce the time and cost of preparing National Forest Plans and plan revisions. In general we support increased flexibility for individual units, and the designation of a responsible official for each unit, as long as it is backed by clearly defined expectations and standards, adequate monitoring, and improved accountability. The stated intention of having the rule remain strategic, relevant, and useful even as conditions change, and of relying on procedures established in the Forest Service Directives System to provide implementation requirements and protocols that are more detailed than the Rule itself, is consistent with the concept of reducing revision time and cost. It is appropriate that flexibility be retained through the ability to update implementation direction as protocols and methods evolve and improve over time, without creating a need to revise the planning rule itself.

The increased focus of the proposed alternative on ecosystem resilience is consistent with current scientific thought about natural resource management. We believe that management for resilience can benefit not only a broad suite of species in the face of climatic uncertainty, but will also provide stability for recreational and economic interests dependent upon the health of forest ecosystems.

FRD-0814

We also recognize that the near future may see climate change moving from merely being a stressor to forest ecosystems, to causing shifts in ecosystems that are beyond the control of natural resource managers.

Specific Comments

We approve the way the proposed alternative treats National Forest Plans relative to NEPA. The reporting and public comment opportunities inherent in the NEPA process provide protections by allowing alternatives to be considered. The NEPA processes provide an opportunity for environmental, social, and economic consequences of plan revisions to receive appropriate scrutiny.

The proposed rule presents ecological, economic and social considerations as three interdependent (and more or less equal) components of sustainability. We continue to support an increased emphasis on ecological sustainability while at the same time assuring that economic sustainability and social sustainability are given appropriate consideration. We believe the proposed rule adequately addresses the ecological component of sustainability by 1) Including a requirement to identify and evaluate the special role and unique contributions of the NFS lands with respect to maintaining and restoring biological diversity in the larger landscape in which the plan area is embedded and 2) Emphasizing the maintenance and restoration of ecosystem diversity. We support the inclusion in the proposed alternative of both a coarse filter approach and a fine filter approach that uses focal species as defined on page 63 of *The Science Review of the United States Forest Service Draft Environmental Impact Statement for National Forest Service Land Management* (Resolve, 2011); increased monitoring linked to adaptive management; use of peer reviews; inclusion of non-vascular plants and invertebrates; cumulative impact assessment at the plan level; and clear standards, definitions and decision criteria.

The proposed rule places increased importance on the role of monitoring in measuring progress toward desired conditions, the results of adaptive management, and helping determine the need for plan amendment. Earlier (2002) proposed rules suggested there might be a need to forego or lessen monitoring if funding was insufficient; we were concerned that such an approach might be used to justify very little additional monitoring effort. We are pleased to see that the current proposed rule had taken a firmer stand on the integral role of monitoring in the adaptive management process.

We support the proposed rule's continued requirements for collaboration and consultation with state land management agencies (and others) early and often in the planning process. The proposed rule does not include a requirement for the FS to participate with others to cooperatively develop landscape goals (the 2000 rule did). The FS responsible official has the option to do this, but the preamble for the proposed rule stated it would not be appropriate for some units. While we may feel confident in Minnesota that the National Forests will continue to participate in the collaborative development of landscape goals, this may not be the case in other parts of the country. We are concerned that the FS will too often choose not to pursue common landscape goals where it is important to do so. The proposed rule does not have a requirement for the FS to form an advisory committee for each National Forest (Le., the 2000 rule did), although the Act gives the FS still the option to form one if the costs and staff time needed to administer a FACA committee are deemed appropriate for a given unit. Our comments on the 2000 rule suggested that the roles of advisory committees and members, and the criteria used to select advisory committee members be well defined. It would still be appropriate for these roles and criteria to be described somewhere in the rule or directives assuming that some forests will choose to form advisory committees. We support the proposed rule's provision encouraging participation by the FS in existing groups organized for public purposes to address resource issues.

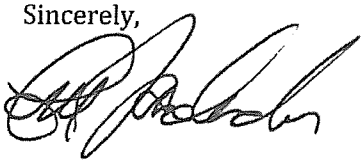
FRD-0814

The proposed rule requires identification of lands *not* suitable for timber production, but provides for that determination to be revisited every ten years, and allows harvest to take place on those lands when appropriate to meet other management objectives. Sustainable yield calculations for timber would be made on the remaining lands. There appears to be flexibility in the proposed rule that would allow timber harvest to take place on any land where a documented ecological objective would be met by doing so; we understand that this would allow management to improve the long term age-class distribution of forests on NFS lands, protect the public, or to restore degraded ecosystems. We support this changed approach that provides a picture of the *capability* of a national forest to provide a sustainable yield of timber and allows a determination to be made of the costs of managing for non-timber objectives.

Whichever alternative is adopted should be feasible within the desired time frames and budgets for the planning process. We urge the Forest Service to actively seek and communicate the importance of adequate funds to fully implement the requirements of existing statutes such as the NFMA, even as the revised planning rule is being implemented.

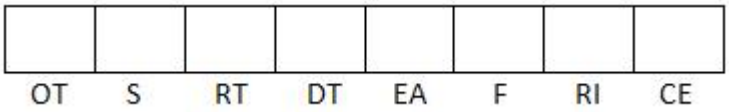
Thank you for the opportunity to comment on the proposed changes in the National Forest System Planning Rule. If you have any questions regarding these comments, please call Jon Nelson of my staff at (651) 259-5278.

Sincerely,



Tom Landwehr
Commissioner

Copy: DNR Mary McConnell, Dave Schad, Steve Hirsch, Ed Boggess, Dave Epperly, Jon Nelson



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IP Address: 209.78.2.38
Form Letter:

Comments

Eureka County comments attached as PDF.

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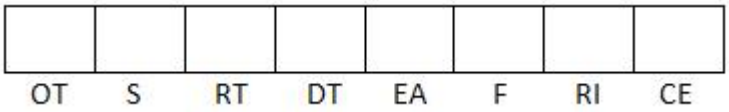

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Delivery Type: W - Web-based submission
IP Address: 136.181.195.27
Form Letter:

Comments

Please see attached pdf

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OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 209.40.75.62
Form Letter:

Comments

See Attachments

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May 16, 2011

USFS Planning NOI
c/o Bear West Company
172 E. 500 South
Bountiful, Utah 84010

Re: Forest Service Planning Regulations

Dear Forest Service Planning:

Recently the Forest Service issued a Notice of Intent ("NOI") to prepare an Environmental Impact Statement (EIS") relative to the issuance of a new planning rule for the National Forest System ("NFS"). On behalf of the Douglas County Board of County Commissioners (Douglas County, Oregon) we have reviewed the proposed action and offer the following comments and observations.

At the onset, we wish to clarify that an essential foundation of the NFS planning process must be the recognition of the important role of the local governments with respect to the management of the NFS. Both the Constitution and Congress have recognized these entities are to be afforded a particularized role in the forest management and planning activities.

To insure the role of the local governments and local communities is properly incorporated into the planning process, Douglas County is providing the following discussion relative to the role the local governments in the planning process and rule.

A. Local Role in NFS Planning:

The local governments recognize that the Forest Service's authority to manage the National Forest System lands is derived primarily from Article VI, cl. 2 ("Supremacy Clause") and from Article IV §3, cl. 2 ("Property Clause") of the United States Constitution.

Pursuant to the Property Clause, Congress has the:

> "power to dispose of and make all needful rules and regulations respecting the territory or the property belonging to the United States."[1]
>
> Article IV §3, cl 2.

While historically, the question of the nature and extent of federal power over the federal lands was highly controversial, the Supreme Court resolved the issue when it held that:

> "... we have repeatedly observed that "[t]he power over the public land thus entrusted to Congress is without limitations."

Kleppe v. New Mexico, 426 U.S. 529, 539 (1976)

Of particular significance to the NFS planning process is that the Supreme Court also recognized that the Property Clause does not automatically conflict with all State regulations relative to federal lands. The planning process must therefore incorporate the local laws, policies, and plans that do not conflict with the federal statutes.

We note that the federal agencies' authority over the public lands do not override the local laws, plans and policies unless there is a clear conflict. The Supreme Court explained that:

> "[a]bsent consent or cession a state undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause. And when Congress so acts the federal legislation necessarily overrides **conflicting** state laws under the Supremacy Clause."

(***Kleppe***, 426 U.S. at 580-581) (**emphasis** added)

The ***Kleppe*** decision reaffirmed that a state retains jurisdiction over federal lands within its territory until such time as the federal government exercises its full "power" to preempt the local government, or until the state cedes the authority to the federal government. (***Kleppe***, 426 U.S at 543).

As ***Kleppe*** noted, only when the federal legislation is in conflict with local plans and policies is the state process overridden. Local jurisdiction is therefore only precluded when local control

---

[1] As discussed supra, Congress has exercised this power in adopting the Organic Act; National Forest Management Act; Forest and Rangeland Renewable Resources Planning Act; Multiple Use Sustained Yield Act; various state compacts, and numerous other acts relating to the National Forest System.

would be inconsistent with full power of the United States to protect its lands, to control their use and to prescribe in what manner others may acquire the rights in them. ***Utah Power & Light Co. v. United States,*** 243 U.S. 389, 403 – 404 (1917).

The planning process will need to incorporate a process wherein the local plans and policies are identified and examined to determine if in fact there is inconsistency or preemption.

The Supreme Court has identified the tests for the occurrence of preemption as: a) when Congress in enacting a federal statute, expresses a clear intent to preempt state law; b) when there is outright or actual conflict between federal and state law; c) where compliance with both federal and state law is in effect physically impossible; d) where there is implicit in federal law a barrier to state regulation; e) where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law; or f) where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress. ***Louisiana Public Ser. Comm. v. FCC***, 476 U.S. 355 368-69 (1986).

Since the intent to pre-empt is not to be presumed lightly, and, absent persuasive evidence of such intent there is a presumption favoring the legitimacy of state and local legislation, the planning regulations must recognize that the state and local authorities have a significant and unique role in management of lands with the National Forest System. To insure these roles are identified and protected, the NFS planning processes will require close coordination with the local governments.

Further, in addition to the value of local governments in those areas wherein jurisdiction has been retained, Congress has also carved out a participatory role for the local government in the planning and decision making processes.

1) National Forest System:

Even where pre-emption may have occurred, Congress has nonetheless carved out special consideration and roles for the local governments. This role is recognized in the purposes of the original Organic Act, as well in subsequent legislation such as the National Forest Management Act ("NFMA"), Forest & Rangeland Renewable Resources Planning Act ("RRPA"); and, Multiple Use Sustained Yield Act ("MUSY").

The guiding document for the NFS is the Organic Act of 1897 wherein Congress authorized the creation of what became the national forests, however, Congress also committed that no new forests would be reserved:

> *"except to improve and protect the forests within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States."*

(See U.S. v. New Mexico, 438 U.S. 696,706 (1978)).

Legislative debates in 1897, directed that the forest reservations are to be created solely:

> *"to maintain favorable forest conditions, without excluding the use of these reservations for other purposes. They are not parks set aside for nonuse, but have been established for economic reasons."*

(*U.S. v. New Mexico*, 438 U.S. at 708).

Interestingly, in *New Mexico* wherein the United States argued that Congress intended to also reserved water for recreation and wildlife preservation, the Supreme Court found this argument inconsistent with Congress' failure to recognize these goals as purposes of the national forests. The Supreme Court also noted that the United States' arguments would defeat the very purpose for which Congress did create the national forest system. (*U.S. v. New Mexico*, 438 U.S. at 711-12).

While, the Multiple-Use Sustained-Yield Act of 1960 ("MUSY") allowed the Forest Service to manage the lands for various multiple uses, the Supreme Court found that since the MUSY did not repeal the Organic Act, the MUSY recreation, range, and fish purposes were "*supplemental to, but not in derogation of, the purposes for which the national forests were established.*" (*See U.S. v. New Mexico*, 438 U.S. at 714-15). In other words, the supplemental uses could only come into play if they did not detract from the primary uses –namely stream flows and continuous supply of timber – consistent with the compromises that led to the creation of these forest preserves.

Similarly, in *West Virginia Division of Izaak Walton v. Butz*, 522 F.2d 945 (1975), the appellate court noted that:

> "while the [Organic] Act as finally passed rejected the position of the extremists who wished to forbid all cutting in the forests, it specifically limited the authority of the Secretary in his selection of timber which could be cut. He could select the timber to be cut only from those trees which were dead, physiologically mature or large, and then only when such cutting would preserve the young and growing trees which remained."

In *West Virginia*, the Forest Service again unsuccessfully argued that the MUSY by implication repealed the restrictive provisions of the Organic Act; as with the Supreme Court decision in *U.S. v. New Mexico*, the appellate court rejected this interpretation and noted that the MUSY was supplemental to but not in derogation of, the purposes for which the national forests were established.

To resolve the timber sale issues created by the ruling in *West Virginia,* Congress passed the National Forest Management Act ("NFMA") providing that:

> "[t]he provision of the Act of June 7, 1897, as amended, dealing with the authority for timber sales on National Forest System lands is repealed and new provisions are added."

However, Congress also emphasized that the NFMA:

> "does not change the basic national forest management objectives and policies set out in the 1897 Organic Act and the Multiple Use-Sustained Yield Act of 1960".

The recognition that the original purposes of the Organic Act have survived this subsequent legislation is important for the planning process given that the Organic Act afforded special consideration of local issues and concerns.

At the time the majority of national forests were created in Oregon (*i.e.,* Cascade Preserve & Blue Mountain Preserve) the basic objective and policy under the 1897 Organic Act was to:

> "*improve and protect the forests within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States.*"

A review of the administrative regulations at the turn of the century also confirm the public understanding that the national forests were to be reserved for only these two limited purposes. For example, the Forest Service's 1905 regulations ("The Use Book") set forth the policy that:

> "all of the resources of the forest reserves are for use, and this use must be brought about in a thoroughly prompt and businesslike manner, under such restrictions only as will insure the permanence of these resources."

The importance of the forest preserves to the local communities was recognized in "The Use Book" by the reference that the:

> "Forest Service was to see to it that the water, wood, and forage of the reserves are conserved and wisely used for the benefit of the homebuilder first of all, upon whom depends the best permanent use of lands and resources alike. The continued prosperity of the agricultural, lumbering, mining, and live-stock interests is directly dependent upon a permanent and accessible supply of water, wood, and forage, as well as upon the present and future use of these resources under businesslike regulation, enforced with promptness, effectiveness, and common sense.
>
> In the management of each reserve local questions will be decided upon local grounds; the dominant industry was to be considered first, but with as little restriction to minor

> industries as possible; sudden changes in industrial conditions will be avoided by gradual adjustment after due notice, and where conflicting interests must be reconciled the question will always be decided from the standpoint of the greatest good of the greatest number in the long run."

(1905 The Use of the National Forest Reserves Regulations and Instructions, issued by the Secretary of Agriculture July 1, 1905).

From its inception the National Forest System was built upon and recognized, a strong commitment to the local communities.

2. Forest and Rangeland Renewable Resources Planning Act:

This requirement for local perspective was further recognized by Congress in the Forest and Rangeland Renewable Resources Planning Act of 1974 ("RRPA"); wherein, the Secretary of Agriculture was directed to develop and maintain land and resource use plans for the National Forest System that are

> "...**coordinated** with the land use planning processes of state and local governments and other Federal agencies."[2]

The Conference Committee noted that

> "... the National Forest Service plans are to be coordinated with the land use planning processes of state, **local**, and other Federal agencies to the extent they have such plans... It is desirable that plans on the lands within the System give **major** consideration to their impact on plans developed by state and **local** governments..."[3]

(**emphasis** added).

It is of more than passing interest that in adopting the RRPA, the Conference Committee deliberated between adopting the "consult" requirement (as found in NEPA) or to adopt the "coordinate" requirement. The Committee expressly elected to adopt the higher standard of "coordinate." This choice of words is significant and recognizes the local governments have a greater role than merely one of being consulted in the process.

[2] 1974 U.S. Code Cong & Adm. News 4065
[3] 1974 U.S. Code Cong & Adm. News 4071

3. National Forest Management Act:

This local role was further recognized in the 1976 National Forest Management Act ("NFMA")[4] wherein Congress required the Secretary of Agriculture to establish by regulation procedures that gave

> "... Federal agencies, state, and **local governmental agencies**, and the public, adequate notice and an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs."[5]

While this provision incorporated an "opportunity to comment" provision, it did not remove the RRPA requirement for coordination with the local plans and policies.

In response to the RRPA and NFMA requirements, the 1982 regulations added comment provisions while at the same time retaining the separate RRRPA coordination requirement by directing:

> "Regional and forest planning will be based on the following principles:
>
> (9) **Coordination** with the land and resource planning efforts of other Federal agencies, State and **local governments**, and Indian tribes..."

(36 CFR §219.1(9))(**emphasis** added).

The 1982 rules established a step by step process to insure the Forest Service in fact reviewed the planning and land use policies of local governments and revealed the results of this review in the EIS accompanying any land use plan.

Under the 1982 rules, the Forest Service was required to include in the planning process:

> "1) **Consideration of the objectives** of other Federal, State and local governments, and Indian tribes, as expressed in their plans and policies;
> 2) An assessment of the interrelated impacts of these plans and policies;
> 3) A determination of how each Forest Service plan should deal with the impacts identified; and,
> 4) Where conflicts with Forest Service planning are identified, **consideration of alternatives for their resolution**."

(36 CFR §219.7(c))(**emphasis** added).

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[4] 90 STAT 2949
[5] 1976 U.S. Code Cong & Adm News 6679

Further, the 1982 rules required that at the onset of any Forest Service planning process the responsible Forest Service line officer is to meet with the representatives of local government to develop procedures for coordination. Subsequent meetings are to be held after the public issues and management concerns have been identified and again prior to recommending the preferred alternative (36 CFR 219.7(d)).

The Forest Service is also required to seek input from the local governments in resolving management concerns in the planning process and to identify areas where additional research is needed. (36 CFR 219.7(e)).

We note that these existing requirements to coordinate and review with local governments are in addition to, and separate and apart from, the general public participation requirements.

As the Forest Service examines and revises its planning regulations, care must be taken to recognize the role of the local governments – a role reorganized in the 1982 regulations, RRPA, NFMA, and the Organic Act. A similar role should be incorporated into the proposed rules.

B. Federal Land Policy and Management Act:

While the 1982 planning regulations specifically reference they are applicable to the National Forest System lands (*See* 36 C.F.R. 219.1), it is important to recognize that the Forest Service also manages some of the revested O & C Railroad lands ("Controverted Lands"). If the new planning rules are to address the management of the Controverted Lands as well, then they will need to recognize that the legal requirements for management of the Controverted Lands are distinct from those of the NFS.

While the Forest Service manages the Controverted Lands, the guiding principles for these lands are not the same as those set forth in the Organic Act, MUSY or NFMA. These former O & C Railroad lands are managed with the primary use being timber production in conformity with the provision of sustained yield. (*Headwaters v. BLM* (9th Cir. (1990); *Skoko v. Andrus*, 638 F.2d 1154, 1156 (9th Cir. 1979)).

Historically, the O & C lands were granted to the O & C Railroad as a grant to enable the construction of a railroad from Washington to California; **and**, as a means to settle the area and provide for the economic upbringing of the communities. Upon revesting of the lands under the Chamberlain-Ferris Revestment Act of 1916, the lands were to be managed to provide the counties in which the O & C lands were located with a significant stream of revenue. (*Headwaters* at p.21). Congress subsequently adopted the O & C Sustained Yield Act in 1937 setting forth the direction that the revested lands were to be:

> "managed. . . for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield for the purposes of providing a permanent source of timber supply, protecting watersheds, regulating stream

> flow, and contributing to the economic stability of local communities and industries and providing recreation facilities."

While the "Controverted Lands" are managed by the Forest Service, they must still be managed to achieve the purposes of the O & C statutes – namely managed for the economic benefit of the O & C counties. The planning regulations need to clearly differentiate the management policies and goals of the NFS from those of the Controverted Lands.

C. National Environmental Policy Act:

While Congress has specifically recognized the role of local governments in the management of the National Forest System and Controverted Lands, the Forest Service must also follow the local government participation requirements of the National Environmental Policy Act ("NEPA").

We note that the Legislative History accompanying the National Forest Management Act expressly states that NFMA's provisions were not to alter to the responsibilities of the Forest Service to comply with NEPA and the Council on Environmental Quality ("CEQ") regulations.[6]

Under the NEPA implementing regulations, the agencies are to "**consult**... early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations..." when a private applicant or non-federal entity plans an action that requires federal involvement (40 CFR §1501.2(d)(2)(**emphasis** added)).

When a federal agency proposes a project, the agency is required, as part of the scoping processes, to "... invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons..." (40 CFR §1501.7(a)(1)).

Further, the draft and final environmental documents must include a discussion of the

> **"... c) Possible conflicts between the proposed action and the objectives of... State and local... land use plans, policies and controls for the area concerned..."**

(40 CFR §1502.16)(**emphasis** added).

Under 40 CFR §1502.19 and 40 CFR §1503.1, the draft and final environmental impact statement must be circulated to and comments requested from "... any appropriate Federal, State or local agency authorized to develop and enforce environmental standards."

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[6] 1976 U.S. Code Cong & Adm. News 6673

We note that the CEQ regulations require that as a means to:

> "... better integrate environment impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law." (40 CFR 11506.2(d)).

In addition, the CEQ has incorporated specific provisions relative to the local government being afforded status as a "cooperating agency". (*See* 40 CFR 1508.5 & 1501.6).

In summary, with respect to the involvement of local governments in the NFS, Douglas County suggests that you continue to use the provisions of the 1982 that clearly set forth the pathway that the Forest Service will follow to be consistent with both Congressional direction as well as the plans and policies of the local governments.

On behalf of the Douglas County Board of Commissioners, we appreciate this opportunity to address the issue of the role of local governments in the planning process of the National Forest System.

Sincerely,

Ronald S. Yockim

RSY/kb

cc. Douglas County

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 209.40.75.62
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Comments

See Attachments

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Country	UNITED STATES
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HARNEY COUNTY COURT
Steven E. Grasty, County Judge

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May 16, 2011

USFS Planning NOI
c/o Bear West Company
172 E. 500 South
Bountiful, Utah 84010

Re: Forest Service Planning Regulations

Dear Forest Service Planning:

Recently the Forest Service issued a Notice of Intent ("NOI") to prepare an Environmental Impact Statement (EIS") relative to the issuance of a new planning rule for the National Forest System ("NFS"). On behalf of the Harney County Court (Harney County, Oregon) we have reviewed the proposed action and offer the following comments and observations.

At the onset, we wish to clarify that an essential foundation of the NFS planning process must be the recognition of the important role of the local governments with respect to the management of the NFS. Both the Constitution and Congress have recognized these entities are to be afforded a particularized role in the forest management and planning activities.

To insure the role of the local governments and local communities is properly incorporated into the planning process, Harney County is providing the following discussion relative to the role the local governments in the planning process and rule.

A. Local Role in NFS Planning:

The local governments recognize that the Forest Service's authority to manage the National Forest System lands is derived primarily from Article VI, cl. 2 ("Supremacy Clause") and from Article IV §3, cl. 2 ("Property Clause") of the United States Constitution.

Pursuant to the Property Clause, Congress has the:

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While historically, the question of the nature and extent of federal power over the federal lands was highly controversial, the Supreme Court resolved the issue when it held that:

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As ***Kleppe*** noted, only when the federal legislation is in conflict with local plans and policies is the state process overridden. Local jurisdiction is therefore only precluded when local control

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would be inconsistent with full power of the United States to protect its lands, to control their use and to prescribe in what manner others may acquire the rights in them. ***Utah Power & Light Co. v. United States,*** 243 U.S. 389, 403 – 404 (1917).

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Since the intent to pre-empt is not to be presumed lightly, and, absent persuasive evidence of such intent there is a presumption favoring the legitimacy of state and local legislation, the planning regulations must recognize that the state and local authorities have a significant and unique role in management of lands with the National Forest System. To insure these roles are identified and protected, the NFS planning processes will require close coordination with the local governments.

Further, in addition to the value of local governments in those areas wherein jurisdiction has been retained, Congress has also carved out a participatory role for the local government in the planning and decision making processes.

1) **National Forest System**:

Even where pre-emption may have occurred, Congress has nonetheless carved out special consideration and roles for the local governments. This role is recognized in the purposes of the original Organic Act, as well in subsequent legislation such as the National Forest Management Act ("NFMA"), Forest & Rangeland Renewable Resources Planning Act ("RRPA"); and, Multiple Use Sustained Yield Act ("MUSY").

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> *"except to improve and protect the forests within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States."*

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Legislative debates in 1897, directed that the forest reservations are to be created solely:

> *"to maintain favorable forest conditions, without excluding the use of these reservations for other purposes. They are not parks set aside for nonuse, but have been established for economic reasons."*

(*U.S. v. New Mexico*, 438 U.S. at 708).

Interestingly, in *New Mexico* wherein the United States argued that Congress intended to also reserved water for recreation and wildlife preservation, the Supreme Court found this argument inconsistent with Congress' failure to recognize these goals as purposes of the national forests. The Supreme Court also noted that the United States' arguments would defeat the very purpose for which Congress did create the national forest system. (*U.S. v. New Mexico*, 438 U.S. at 711-12).

While, the Multiple-Use Sustained-Yield Act of 1960 ("MUSY") allowed the Forest Service to manage the lands for various multiple uses, the Supreme Court found that since the MUSY did not repeal the Organic Act, the MUSY recreation, range, and fish purposes were "*supplemental to, but not in derogation of, the purposes for which the national forests were established.*" (*See U.S. v. New Mexico*, 438 U.S. at 714-15). In other words, the supplemental uses could only come into play if they did not detract from the primary uses –namely stream flows and continuous supply of timber – consistent with the compromises that led to the creation of these forest preserves.

Similarly, in *West Virginia Division of Izaak Walton v. Butz*, 522 F.2d 945 (1975), the appellate court noted that:

> "while the [Organic] Act as finally passed rejected the position of the extremists who wished to forbid all cutting in the forests, it specifically limited the authority of the Secretary in his selection of timber which could be cut. He could select the timber to be cut only from those trees which were dead, physiologically mature or large, and then only when such cutting would preserve the young and growing trees which remained."

In *West Virginia*, the Forest Service again unsuccessfully argued that the MUSY by implication repealed the restrictive provisions of the Organic Act; as with the Supreme Court decision in *U.S. v. New Mexico*, the appellate court rejected this interpretation and noted that the MUSY was supplemental to but not in derogation of, the purposes for which the national forests were established.

To resolve the timber sale issues created by the ruling in *West Virginia,* Congress passed the National Forest Management Act ("NFMA") providing that:

> "[t]he provision of the Act of June 7, 1897, as amended, dealing with the authority for timber sales on National Forest System lands is repealed and new provisions are added."

However, Congress also emphasized that the NFMA:

> "does not change the basic national forest management objectives and policies set out in the 1897 Organic Act and the Multiple Use-Sustained Yield Act of 1960".

The recognition that the original purposes of the Organic Act have survived this subsequent legislation is important for the planning process given that the Organic Act afforded special consideration of local issues and concerns.

At the time the majority of national forests were created in Oregon (*i.e.,* Cascade Preserve & Blue Mountain Preserve) the basic objective and policy under the 1897 Organic Act was to:

> *"improve and protect the forests within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States."*

A review of the administrative regulations at the turn of the century also confirm the public understanding that the national forests were to be reserved for only these two limited purposes. For example, the Forest Service's 1905 regulations ("The Use Book") set forth the policy that:

> "all of the resources of the forest reserves are for use, and this use must be brought about in a thoroughly prompt and businesslike manner, under such restrictions only as will insure the permanence of these resources."

The importance of the forest preserves to the local communities was recognized in "The Use Book" by the reference that the:

> "Forest Service was to see to it that the water, wood, and forage of the reserves are conserved and wisely used for the benefit of the homebuilder first of all, upon whom depends the best permanent use of lands and resources alike. The continued prosperity of the agricultural, lumbering, mining, and live-stock interests is directly dependent upon a permanent and accessible supply of water, wood, and forage, as well as upon the present and future use of these resources under businesslike regulation, enforced with promptness, effectiveness, and common sense.
>
> In the management of each reserve local questions will be decided upon local grounds; the dominant industry was to be considered first, but with as little restriction to minor

> industries as possible; sudden changes in industrial conditions will be avoided by gradual adjustment after due notice, and where conflicting interests must be reconciled the question will always be decided from the standpoint of the greatest good of the greatest number in the long run."

(1905 The Use of the National Forest Reserves Regulations and Instructions, issued by the Secretary of Agriculture July 1, 1905).

From its inception the National Forest System was built upon and recognized, a strong commitment to the local communities.

2. Forest and Rangeland Renewable Resources Planning Act:

This requirement for local perspective was further recognized by Congress in the Forest and Rangeland Renewable Resources Planning Act of 1974 ("RRPA"); wherein, the Secretary of Agriculture was directed to develop and maintain land and resource use plans for the National Forest System that are

> "...**coordinated** with the land use planning processes of state and local governments and other Federal agencies."[2]

The Conference Committee noted that

> "... the National Forest Service plans are to be coordinated with the land use planning processes of state, **local**, and other Federal agencies to the extent they have such plans... It is desirable that plans on the lands within the System give **major** consideration to their impact on plans developed by state and **local** governments..."[3]

(**emphasis** added).

It is of more than passing interest that in adopting the RRPA, the Conference Committee deliberated between adopting the "consult" requirement (as found in NEPA) or to adopt the "coordinate" requirement. The Committee expressly elected to adopt the higher standard of "coordinate." This choice of words is significant and recognizes the local governments have a greater role than merely one of being consulted in the process.

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[2] 1974 U.S. Code Cong & Adm. News 4065
[3] 1974 U.S. Code Cong & Adm. News 4071

3. National Forest Management Act:

This local role was further recognized in the 1976 National Forest Management Act ("NFMA")[4] wherein Congress required the Secretary of Agriculture to establish by regulation procedures that gave

> "... Federal agencies, state, and **local governmental agencies**, and the public, adequate notice and an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs."[5]

While this provision incorporated an "opportunity to comment" provision, it did not remove the RRPA requirement for coordination with the local plans and policies.

In response to the RRPA and NFMA requirements, the 1982 regulations added comment provisions while at the same time retaining the separate RRRPA coordination requirement by directing:

> "Regional and forest planning will be based on the following principles:
>
> (9) **Coordination** with the land and resource planning efforts of other Federal agencies, State and **local governments**, and Indian tribes..."

(36 CFR §219.1(9))(**emphasis** added).

The 1982 rules established a step by step process to insure the Forest Service in fact reviewed the planning and land use policies of local governments and revealed the results of this review in the EIS accompanying any land use plan.

Under the 1982 rules, the Forest Service was required to include in the planning process:

> "1) **Consideration of the objectives** of other Federal, State and local governments, and Indian tribes, as expressed in their plans and policies;
> 2) An assessment of the interrelated impacts of these plans and policies;
> 3) A determination of how each Forest Service plan should deal with the impacts identified; and,
> 4) Where conflicts with Forest Service planning are identified, **consideration of alternatives for their resolution**."

(36 CFR §219.7(c))(**emphasis** added).

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[4] 90 STAT 2949
[5] 1976 U.S. Code Cong & Adm News 6679

Further, the 1982 rules required that at the onset of any Forest Service planning process the responsible Forest Service line officer is to meet with the representatives of local government to develop procedures for coordination. Subsequent meetings are to be held after the public issues and management concerns have been identified and again prior to recommending the preferred alternative (36 CFR 219.7(d)).

The Forest Service is also required to seek input from the local governments in resolving management concerns in the planning process and to identify areas where additional research is needed. (36 CFR 219.7(e)).

We note that these existing requirements to coordinate and review with local governments are in addition to, and separate and apart from, the general public participation requirements.

As the Forest Service examines and revises its planning regulations, care must be taken to recognize the role of the local governments – a role reorganized in the 1982 regulations, RRPA, NFMA, and the Organic Act. A similar role should be incorporated into the proposed rules.

B. National Environmental Policy Act:

While Congress has specifically recognized the role of local governments in the management of the National Forest System and Controverted Lands, the Forest Service must also follow the local government participation requirements of the National Environmental Policy Act ("NEPA").

We note that the Legislative History accompanying the National Forest Management Act expressly states that NFMA's provisions were not to alter to the responsibilities of the Forest Service to comply with NEPA and the Council on Environmental Quality ("CEQ") regulations.[6]

Under the NEPA implementing regulations, the agencies are to "**consult**... early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations..." when a private applicant or non-federal entity plans an action that requires federal involvement (40 CFR §1501.2(d)(2)(**emphasis** added)).

When a federal agency proposes a project, the agency is required, as part of the scoping processes, to "... invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons..." (40 CFR §1501.7(a)(1)).

[6] 1976 U.S. Code Cong & Adm. News 6673

Further, the draft and final environmental documents must include a discussion of the

> **"... c) Possible conflicts between the proposed action and the objectives of... State and local... land use plans, policies and controls for the area concerned..."**

(40 CFR §1502.16)(**emphasis** added).

Under 40 CFR §1502.19 and 40 CFR §1503.1, the draft and final environmental impact statement must be circulated to and comments requested from "... any appropriate Federal, State or local agency authorized to develop and enforce environmental standards."

We note that the CEQ regulations require that as a means to:

> **"... better integrate environment impact statements into State or local planning processes,** statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law." (40 CFR 11506.2(d)).

In addition, the CEQ has incorporated specific provisions relative to the local government being afforded status as a "cooperating agency". (*See* 40 CFR 1508.5 & 1501.6).

In summary, with respect to the involvement of local governments in the NFS, Harney County suggests that you continue to use the provisions of the 1982 that clearly set forth the pathway that the Forest Service will follow to be consistent with both Congressional direction as well as the plans and policies of the local governments.

On behalf of the Harney County, we appreciate this opportunity to address the issue of the role of local governments in the planning process of the National Forest System.

Sincerely,

Ronald S. Yockim

RSY/kb

cc. Harney County

OT	S	RT	DT	EA	F	RI	CE

Attributes

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Comments

Please see attached comments.

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STATE OF ALASKA

FRD-0827
SEAN PARNELL, Governor

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May 16, 2011

Forest Service Planning DEIS
c/o Bear West Company
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Bountiful, UT 84010

RE: Notice of Proposed Rulemaking, National Forest System Land Management Planning Rule (36 CFR Part 219)

The Citizens' Advisory Commission on Federal Areas is a 12 member commission which was re-established by the State of Alaska in 2007. The original Commission operated from 1982 until 1999. The Commission is directed by Alaska Statute 41.37.220 to "consider, research, and hold hearings on the consistency with federal law and congressional intent on management, operation, planning, development, and additions to federal management areas in the state [and] on the effect of federal regulations and federal management decisions on the people of the state." We have reviewed these proposed revisions to the 36 CFR Part 219 regulations and the *Draft Programmatic Environmental Impact Statement* (DPEIS) within that context and offer the following comments for consideration in developing final regulations.

The original Commission participated in numerous planning efforts for the two units of the National Forest System in Alaska: the Tongass National Forest and the Chugach National Forests. We also reviewed the 1991 Advance Notice of Proposed Rulemaking and the 1995 Proposed Rulemaking for the Part 219 regulations.

This Commission appreciates that for nearly 30 years the Forest Service has attempted to promulgate planning regulations that meet the numerous statutory requirements for managing the National Forest System. However, the agency's efforts to respond to 1989 *Critique of Land Management Planning*, which found that the 1982 planning rule process was complex, costly, lengthy and cumbersome for the public to provide input, has not been particularly successful. Almost every effort to revise the original planning regulations has been met with administrative appeals and legal challenges. The result is a patchwork of court orders, policy changes and revisions to the regulations that have complicated rather than simplified the entire planning process and which is confusing to the public.

It is commendable that the Forest Service is once again attempting to implement the requirements of the National Forest Management Act by updating the planning process. However, as demonstrated over the years, this process is complex and difficult. It also requires considerable time for agencies, user groups and the general public to evaluate, analyze and provide comment. The original intent was to create a transparent and dynamic process of assessment, action and monitoring that can respond to changes facing the national forests. Unfortunately our review found a labyrinth of planning language and procedural requirements that is not only difficult to understand, but will do little to encourage the general public to participate.

Furthermore, we are surprised by the agency's decision to release the Summary Report of the *Science Review of the United States Forest Service Draft Environmental Impact Statement For National Forest System Land Management (Science Review)*. In our considerable experience with reviewing proposed regulations and NEPA documents, we have never seen a document of this nature released by an agency in the middle of a public review and comment period.

While this document is presented as an objective and non-partisan review of the DPEIS the timing of the release is questionable and may actually prejudice the public review process. The *Science Review* would better serve as background information that should have been made available to the public at the same time the DPEIS was released. That would have given reviewers adequate time to analyze all available information, including this review. Release of this review only 3 weeks before the comment deadline is unacceptable. It is unlikely that the Forest Service will receive many substantive comments on this document. For this reason we request an extension of the comment deadline by an additional 60 days to allow for adequate review of this document.

Public Outreach

The Forest Service on its Planning Rule website is quite self-congratulatory on the public outreach effort for this rulemaking, citing the numerous "national and regional forums to provide stakeholders with information about the proposed rule and respond to questions." We are compelled to point out that the public outreach effort in Alaska was less than adequate. For example, according to the published meeting schedule, Region 1 had public meetings at 3 locations, Region 2 had meetings at 4 locations, Region 3 held meetings at 2 locations, Region 4 had meetings at 25 locations, Region 5 hosted meetings at 3 locations, Region 6 had meetings at 3 locations, Region 8 held meetings at 7 locations, and Region 9 had public meetings at 16 locations. Most of these meetings consisted of 2 separate sessions held at the same location at different times.

Region 10, Alaska, the largest state with the two largest National Forests, had a single meeting in Juneau, although there were two sessions held. This Commission requested a second meeting be held in Anchorage, but that request was denied. While the regional forum was webcast, we should point out that most people in rural Alaska lack the necessary high-speed internet service to participate in a webcast. We also would like to remind Forest Service personnel who may not be familiar with Alaska's geography that Juneau is accessible only by air or boat. Travel there would have been difficult and cost prohibitive for a two hour meeting.

We were also disappointed that the public was not allowed to make comments on the proposed regulations or the DPEIS at the meetings. Our experience demonstrates that members of the public, as opposed to organizations or interest groups, are more inclined to present verbal comments at a public meeting or workshop than they are to submit comments in writing. We note that the proposed regulations allow for oral comments to be submitted on a planning document or proposal.

Issues relevant to Alaskans are often quite different than in other states due to the provisions of the Alaska National Interest Conservation Act (ANILCA). Requirements and responsibilities of federal public land managers in Alaska are significantly different under this statute. The draft planning rule fails to specifically address these different requirements and should be revised as follows:

Section 219.1(g), Purpose and Applicability

While we understand this is not intended as a complete list of laws and regulations with which plans must comply, we request the Alaska National Interest Lands Conservation Act (ANILCA) and the Tongass Timber Reform Act (TTRA) be included, especially in recognition that the Wilderness Act (which is listed) is amended by ANILCA. A significant percentage of the Tongass National Forest is designated Wilderness. These designated areas, as well as the Nellie Juan-College Fiords Wilderness Study Area, are subject to the special management provisions of ANILCA. In addition, there are other important provisions in ANILCA, such as Title VIII *Subsistence Management and Use*, which apply to *all* federal public lands in Alaska. This important and unique law, which provides specific direction on the management of and planning for federal lands in Alaska, deserves explicit recognition in this planning rule.

Wilderness and Wild and Scenic River Reviews
Section 219.7(c)(iv) New plan development or plan revision.
ANILCA prohibits further wilderness studies on Forest Service lands in Alaska. Section 708(4) states: *Unless expressly authorized by Congress the Department of Agriculture* ***shall not*** *conduct any further statewide roadless area review and the evaluation of National Forest System Lands in the State of Alaska* ***for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.*** [emphasis added]

The final rule must reflect this prohibition. We suggest the following revision:
Except where preempted by law*, identify potential wilderness areas....*

Section 219.7(c)(v) New plan development or plan revision.
ANILCA also prohibits new Wild and Scenic River reviews in Alaska. In particular, Section 1326(b) states: ***No further studies*** *of Federal lands in the State of Alaska for the single purpose of considering the establishment of a* ***conservation system unit****, national recreation area, national conservation areas or for related or similar purposes* ***shall be conducted unless authorized by this Act or further Act of Congress.*** [emphasis added]

The definition of "*conservation system unit*" in Section 102(4) includes wild and scenic rivers. Congress designated numerous rivers with passage of ANILCA and provided no direction to study additional rivers that would defeat the general applicability of Section 1326(b).

We recommend modifying this section of the rule as follows:

***Except where preempted by law**, identify the eligibility of rivers...*

Section 219.10 Multiple Uses

Section 2(a) of the Wilderness Act states that the administering agency shall protect designated Wilderness by preserving its wilderness character. Section 2(a) also states "*... wilderness areas... shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness*" and "*... wilderness areas... shall be administered... for the gathering and dissemination of information regarding their use and enjoyment as wilderness.*" [emphasis added]

Section 4(b) of the Wilderness Act also states:

...Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

Similarly, Congressional direction found in the Wild and Scenic Rivers Act provides for protecting and enhancing the values that caused the river to be included in that system. However, the Act continues "*...without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.*" [emphasis added] In addition, the Act does include Congressional direction to protect "*rivers eligible for inclusion in the national wild and scenic rivers system*" as stated in the proposed rule.

By referring *only* to "protection" in sub-sections (iv) and (v), the proposed rule inappropriately reduces both Acts to a single protective purpose. In addition, in stating that plans must "*protect the ecologic and social values and character*" (219.10(b)(iv)), the rule inserts new terminology and direction not found in the Wilderness Act. As such, it appears the Service is infusing agency *policy* into a rulemaking intended to establish a *procedural framework* for planning."

The final rule should also include provisions for land exchanges (ANILCA Section 1302), conveyances (ANILCA Title IX) and boundary adjustments (ANILCA Section 103). The planning regulations should also recognize ANILCA Title XI – *Transportation and Utility Systems In and Across, and Access Into, Conservation System Units* for the permitting and development of transportation and utility system corridors and general public access in the case of designated Wilderness and Forest Service Monuments in Alaska. Access to inholdings within National Forests in Alaska (ANILCA Sections 1110(b) in the case of conservation system units and 1323(a) for the remaining National Forest lands) and recognition of the public's rights of access, including motorized access, for subsistence activities (ANILCA Section 811) and general access to conservation system units (ANILCA 1110(a)) should be included in the final planning regulations. Recognition of the access provisions in Title XI in the final planning regulations is particularly important since the Forest Service has never promulgated regulations to implement the permitting procedures and protections found there.

In closing, as a body that strives to protect the rights of Alaskan to use and access federal lands within Alaska as provided for in ANILCA, the Commission hears from concerned citizens on a regular basis that, "...I didn't hear about that issue." or " ...we need assistance on these issues.". We encourage the Forest Service to revise the proposed regulation at **§219.53** to broaden the scope of who may file an objection to a plan, plan amendment or plan revision. Provisions should also be made for an individual to submit an objection verbally. Definitions found in **§219.62** define *formal comment* as "Written comments submitted to, or oral comments recorded by, the responsible official...." Therefore, we believe that provisions need to be made for the filing of an objection or protest orally.

To have a truly transparent process any concerned party should be afforded the opportunity to comment at any point of the public process when comments are being sought. Opportunity to object to a plan, plan amendment or plan revision should not be limited only to those who previously submitted "substantive formal comments." This is particularly true when the proposed regulations provide no definition or even guidance on what constitutes a "substantive" comment.

We appreciate the opportunity to comment. We repeat our request for an additional 60 day comment period to allow public examination and analysis of the *Science Review*.

Sincerely,

Stan Leaphart

Stan Leaphart
Executive Director

OT	S	RT	DT	EA	F	RI	CE

Attributes

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Comments

May 16, 2011

To Whom It May Concern:

The New Mexico Association of Counties appreciates the opportunity to provide comments on the proposed US Forest Service Planning rule, on behalf of the thirty-three counties in New Mexico. Please see the attached document with specific language amendments for your consideration.

Sincerely,

Joy Esparsen

Individual(s)

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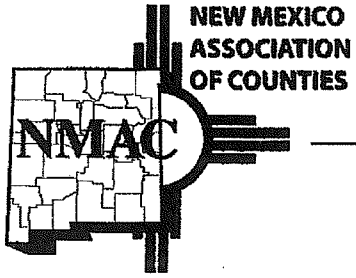

NEW MEXICO ASSOCIATION OF COUNTIES

May 16, 2011

Forest Service Planning DEIS
C/O Bear West Company
172 E 500 S
Bountiful, UT 84010

RE: Planning Rule

To Whom It May Concern:

On behalf of the New Mexico Association of Counties (NMAC), a non-profit, nonpartisan association representing and serving New Mexico's thirty-three counties, we appreciate the opportunity to provide comments on the proposed National Forest System Planning Rule and DEIS. New Mexico is part of the United States Forest Services (USFS) Southwest Region and includes 5 national forests, 19 wilderness areas, and 1 national grassland; comprising over 9.1 million acres. New Mexico's county governments are genuinely invested in and directly impacted by the management of public lands within and adjacent to their boundaries.

It is our understanding that the Agency's goal is to create a planning framework that will guide management of NFS lands so they are ecologically sustainable and contribute to social and economic sustainability. In an effort to support this objective, NMAC would like to provide the following comments:

§219.2 – Levels of planning and responsible officials
(b)(3) The supervisor of the national forest, grassland, prairie, or other comparable administrative unit is the responsible official for development and approval of a plan, plan amendment, or plan revision for lands under the responsibility of the supervisor, unless a regional forester, the Chief, the Under Secretary, or the Secretary acts as the responsible official. Two or more responsible officials may undertake joint planning over lands under their respective jurisdictions.

NMAC supports the designation of the unit supervisor as the responsible official for unit level plans. Direct interaction between the unit supervisor and local officials is the best way to initiate and maintain appropriate local-level collaboration for broad community planning. NMAC would recommend language clarifying the circumstances under which higher officials would be able override the unit supervisor as the responsible official.

§219.3 – Role of science in planning
The responsible official shall take into account the best available scientific information throughout the planning process identified in this subpart. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to a particular decision or action. The responsible official shall document this consideration in every assessment report (§ 219.6), plan decision document (§ 219.14), and monitoring evaluation report (§ 219.12).

NMAC supports ongoing monitoring to confirm scientific predictions of impact, to ensure that mitigation measures are effective, and to adapt projects to account for unintended consequences.

Such documentation must: (a) Identify sources of data, peer reviewed articles, scientific assessments, or other scientific information relevant to the issues being considered; (b) Describe how the social, economic, and ecological sciences were identified and appropriately interpreted and applied; and (c) For the plan decision document, describe how scientific information was determined to be the most accurate, reliable, and relevant information available and how scientific findings or conclusions informed or were used to develop plan components and unify other content in the plan.

NMAC recommends a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences as stated in the Federal Land Policy and Management Act. Although NMAC supports the proposed plan requirement to utilize the best available scientific information throughout the planning process, we recognize that scientific data is one of many factors influencing a plan decision.

§219.4 – Requirements for public participation
(a) Providing opportunities for participation. The responsible official shall engage the public—including Tribes and Alaska Native Corporations, other Federal agencies, State and local governments, individuals, and public and private organizations or entities— early and throughout the planning process as required by this part, using collaborative processes ~~where feasible and appropriate~~.

NMAC contends that local government involvement should always be deemed feasible and appropriate. New Mexico's county leaders are legally responsible for protecting the health, safety and well-being of all the people residing in their counties. Local government officials have been elected by the public majority to provide representation and their involvement should not be minimalized by comparing it to that of special interest groups. Too often, local communities have been unfairly burdened with rules and regulations that were developed with significant input from outside individuals who do not live in or near the impacted area.

(8) Participation opportunities for other Federal agencies, federally recognized Tribes, States, counties, and local governments. The responsible official shall provide opportunities for other government agencies to participate in planning for NFS lands. Where appropriate, the responsible official shall encourage federally recognized Tribes, States, counties, and other local governments to seek cooperating agency status in the NEPA process for a plan development, amendment, or revision. The responsible official may participate in planning efforts of States, counties, local governments, and other Federal agencies, where practicable and appropriate.

NMAC has collaborated with the Bureau of Land Management, US Forest Service and US Fish & Wildlife Services to host Cooperating Agency Status training in New Mexico in 2003, 2008 and 2011. NMAC supports the Agency's efforts to provide opportunities for other government agencies to participate in planning on NFS lands, specifically the requirement for the responsible official to engage local governments as cooperating agencies.

(b) Coordination with other public planning efforts. (1) The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, ~~to the extent practicable and appropriate~~ with a view toward achieving consistency between the proposed forest and local plans. Where the forest plan cannot be made consistent with local plans, the responsible official shall document how and why its plan is not consistent with local plans, as determined by local officials, and explain why its plan cannot be made consistent with local plans.

All of New Mexico's 33 counties have adopted comprehensive land use plans and NMAC believes it is always appropriate and practicable for the agency to coordinate with local governments. Federal land use plans should include consequential consideration of local planning efforts to encourage consistency. Only through meaningful collaboration and coordination among federal, state, local and private entities can the objectives of the proposed rule be properly addressed.

~~(3) Nothing in this section should be read to indicate that the responsible official will seek to direct or control management of lands outside of the planning area, nor will the responsible official conform management to meet non-Forest Service objectives or policies.~~

NMAC recommends that this language be omitted. In order to support collaboration and involvement of multiple stakeholders, the Agency must not negate existing collaborative initiatives and partnerships. All of New Mexico's 33 counties have approved Community Wildfire Protection Plans for areas designated as high risk for wildland urban interface fires. These documents have been developed and revised with extensive federal, state and community-based public input to provide for the protection of potentially affected citizens and should not be disregarded.

§219.7 – New plan development or plan revision

(d) Desired conditions. A desired condition is a description of specific social, economic, and/or ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed. Desired conditions must be described

in terms that are specific enough to allow progress toward their achievement to be determined, including reduction of Fire Regime Condition Class, but do not include completion dates.

According to NMSA 1978, § 4-36-11, the New Mexico Legislature recognizes that, in the absence of appropriate action by a federal agency to remove or eliminate conditions that create a risk to lives and property of the citizens in and adjacent to national forests within New Mexico, jurisdictional supremacy will be forfeited. This statutory language was prompted by catastrophic wildfires in the state that have contributed to climate change, jeopardized the national treasury, threatened fish and wildlife habitat, degraded both water and air quality, and caused devastation to forest dependent communities through loss of life, property, jobs, and the nation's timber resource.

§219.8 – Sustainability

Within Forest Service authority and consistent with the inherent capability of the plan area, the plan must coordinate with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, to provide for social, economic, and ecological sustainability, as follows:

NMAC supports requirements that the responsible official coordinate with government stakeholders to ensure that sustainable objectives are met.

(b) *Social and economic sustainability. The plan must include plan components to ~~guide~~ maintain the unit's contribution to social and economic sustainability, taking into account: (1) Social, cultural, and economic conditions relevant to the area influenced by the plan and the distinctive roles and contributions of the unit within the broader landscape; (2) Sustainable recreational opportunities and uses; (3) Multiple uses, including ecosystem services, that contribute to local, regional, and national economies in a sustainable manner; and (4) Cultural and historic resources and uses.*

The proposed rule considers the ecological, social, and economic systems as interdependent and without ranking in importance. Therefore, the social and economic interdependency should be assessed with a balanced approach. The unique demographics and culture of New Mexico are critical to consider in federal land use planning: it has been part of the Imperial Spanish viceroyalty of New Spain; part of Mexico; and a United States territory. It is the sixth most sparsely populated state in the nation. New Mexico has the highest percentage of Hispanics of any state in the nation, at 46 percent (2010 estimate), including descendants of Spanish colonists and immigrants from Latin America. Inhabited by Native American populations for many centuries, New Mexico also has the third-highest percentage of Native Americans, after Alaska and Oklahoma, and the fifth-highest total number of Native Americans after California, Oklahoma, Arizona, and Texas. The tribes in the state consist mostly of Navajo and Pueblo peoples. As a result, of these unique characteristics, many New Mexico citizens and their traditions are intrinsically dependent upon the sustainable use of natural resources. Federal decisions made without local understanding of these historic cultures could have significant unintended consequences.

NMAC would recommend language clarifying the agency definition of "sustainable" to ensure consistency between local and federal objectives.

§219.9 – Diversity of plant and animal communities

Within Forest Service authority under the National Forest Management Act and consistent with the inherent capability of the plan area, the plan must include plan components to maintain the diversity of plant and animal communities, as follows:

NMAC supports the diversity of plant and animal communities based on the requirements of the National Forest Management Act (NFMA), on the suitability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives of a land management plan. Disparities in environments and climates that affect plant and animal communities should be addressed with site specific insight. The Agency should not expand its responsibility or authority beyond the recognized requirements of NFMA or the Endangered Species Act.

§219.10 Multiple uses

In meeting the requirements of §§ 219.8 and 219.9, and within Forest Service authority, the capability of the plan area and the fiscal capability of the unit, the plan must provide for multiple uses, including ecosystem services, outdoor recreation, range, timber, watershed, wildlife and fish, as follows:

NMAC supports multiple uses of the national forest and supports language that recognizes the NFMA intent to ensure consideration of all of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resources, to provide for outdoor recreation, livestock, range, timber, watershed, wildlife, and fish.

(9)(b)(ii) Protection of cultural and historic resources;

NMAC supports language to protect cultural and historic resources from detrimental impacts caused by special interest groups which may advocate for environmental protection above these important resources. The rule must equally protect the interests of local agriculture and rural economies on public lands that are critical to the continued viability of numerous New Mexico communities.

§219.53 – Who may file an objection

(a) Individuals and organizations who have submitted substantive formal comments related to a plan, plan amendment, or plan revision during the opportunities for public comment as provided in subpart A during the planning process for that decision may file an objection. Objections must be based on previously submitted substantive formal comments unless the objection concerns an issue that arose after the opportunities for formal comment. The burden is on the objector to demonstrate compliance with requirements for objection. Objections from individuals or organizations that do not meet the requirements of this paragraph must not be accepted; however, objections not accepted must be documented in the planning record.

NMAC supports language that restricts objections to engaged parties who have submitted "formal comments" and are deemed relevant to the process.

NMAC maintains that local governments must be actively engaged in decisions that affect their constituents. Local officials are elected by the citizen majority and therefore are obligated to represent and protect the individuals they serve. The input of local government leadership must also be considered above any one representative individual or special interest group because they have been vested with the power to speak on behalf of the entire population. Any rules and regulations that are enacted within county boundaries must include and appropriately weigh the recommendations of these officials.

In closing, NMAC recognizes the importance of natural resources to New Mexico's local communities and the importance of working with our federal partners. We appreciate your consideration of our comments and the affect that these decisions have on the citizens of New Mexico. If you have any questions, please contact Paul Gutierrez at (505) 820-8112 or pgutierrez@nmcounties.org.

Sincerely,

Sarah Merklein
President

Paul Gutierrez
Executive Director

Attachment 1

New Mexico State Statutory Chapters
4-36-11. Findings; declaration of disaster; powers of county commissions.

A. The legislature finds that:
(1) numerous citizens and government officials in the state of New Mexico have repeatedly petitioned the United States forest service both collectively and individually at public meetings, by correspondence and by telephone to request that the forest service take appropriate action to remove or eliminate the conditions that have created a state of emergency caused by a present risk to the lives and property of citizens in and adjacent to national forests within New Mexico;
(2) all the petitions have for all practical purposes been either ignored or discounted by the United States forest service resulting only in what can be reasonably characterized as inaction on the part of the forest service to appropriately reduce, if not remove, the risk to the lives and property of the citizens of New Mexico;
(3) because the United States forest service has failed to exercise its responsibilities as a sovereign to protect the lives and property of the citizens of New Mexico and because it is a fundamental principle under the laws of any just society that the persistent failure of a sovereign to fulfill such obligations constitutes grounds for the forfeiture of jurisdictional supremacy, such a forfeiture must hereby be recognized and declared; and
(4) because of recognition and declaration of this forfeiture of jurisdictional supremacy, a jurisdictional vacuum has been created that requires the state of New Mexico to acknowledge its obligations as a sovereign power to protect the lives and property of its citizens and consequently to authorize any action it presently deems necessary to fill the vacuum created by the federal government by assuming jurisdiction to reduce to acceptable levels, if not remove, the threat of catastrophic fires posed by present conditions in national forests within its borders.

B. The legislature declares a disaster within those areas of the national forests of New Mexico that suffered severe fire damage, as determined by the local board of county commissioners, where large amounts of forest undergrowth have created the potential for damaging fires in the future. The legislature also declares that the disaster is of such magnitude that the police power of the state should be exercised to the extent necessary to provide the resources and services that will end the disaster and mitigate its effects.

C. After consulting with the state forester and the regional United States forester, taking surveys, holding those public hearings as may be necessary and developing a plan to mitigate the effects of the disaster, a board of county commissioners for a county in which a disaster has been declared pursuant to Subsection A of this section may take such actions as are necessary to clear and thin undergrowth and to remove or log fire-damaged trees within the area of the disaster. A county may enter into an agreement with a contractor, licensee or other agent to carry out the purposes of this subsection.

OT	S	RT	DT	EA	F	RI	CE

Attributes

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Comments

See Attachments

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SAN MIGUEL COUNTY

BOARD OF COMMISSIONERS

VIA FACSIMILE and Electronic Submission

May 16, 2011

US Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, UT 84010
Fax: 801-397-1605
Electronic submission: www.govcomments.com

Re: San Miguel County BOCC Comments on the draft proposed National Forest **PLANNING RULE** Revision

Thank you for the opportunity to provide comments on the draft proposed Forest Planning Rule. San Miguel County is 66 percent Federal lands, a substantial portion of which are National Forest Lands. San Miguel County's primary economic engine is tourism and recreation. Most of the County economy including real estate, construction, and tourism revolves around the regional public lands and the desirability of lifestyle they contribute. Consequently, the Board of County Commissioners (BOCC) is deeply invested in the outcome of the proposed changes to the Forest Planning Rule. The BOCC has the following comments and concerns which we request are addressed or incorporated into in the revised planning rule:

The BOCC agrees a new planning rule is needed to ensure that all plans will be responsive to issues such as the implications of climate change, the need for forest restoration and conservation, watershed protection, wildlife conservation and providing for sustainable use of public lands that supports vibrant communities in a rapidly changing environment.

While we agree that the responsible officials need some flexibility to develop plans the specific needs of their respective units, we are concerned the proposed rule gives them an excessive amount of discretion. Too much important detail that should be contained as standards within the rule is left to the Forest Service Directive System which can be changed at will by the agency, and will likely not result in the application of consistent enforceable policies.

The BOCC is concerned that the proposed rule will not adequately protect wildlife and plant species. The new rule must recognize the critical role of National Forest Lands in providing some of the largest areas of intact habitat remaining, without which several species are unlikely to survive. While the agency professes that the proposed rule utilizes both a coarse filter and fine filter approach, the emphasis seems to be on the former. We

agree with the agency's recognition that an important component of maintaining species and ecologic productivity is to maintain or restore the composition, structure, and ecological functions characteristic of ecosystems. Additionally, plans should include components to maintain or restore the structure function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area while maintaining the diversity of native species. However, the BOCC does not believe this coarse filter approach will adequately protect and maintain species with specialized habitat needs. The coarse filter approach is predicated on an understanding of the historic range of variability and of historical system dynamics and resilience. Nowhere in the proposed rule or supporting documentation does the agency describe how it would obtain such knowledge or how the agency would determine what constitutes the structure, composition, function and connectivity of ecosystems necessary to support wildlife and plant species. We believe a more robust fine filter approach must be included in the rule to protect rare and at risk plant and animal species.

The proposed rule requires that plans provide for the maintenance or restoration of ecological conditions to "Maintain viable populations of species of conservation concern within the plan area." Species of conservation concern are defined as: species other than federally listed threatened or endangered species or candidate species, for which the responsible official has determined that there is evidence demonstrating significant concern about its ability to persist over the long term in the plan area. This puts the decision of which species receive the designation of species of concern entirely at the discretion of the responsible official. This may result in many species being at risk not receiving necessary attention, declining, and eventually disappearing from the planning area.

Additionally, the proposed rule does not require populations of species of concern to be monitored. We do not believe that the protection of habitat alone, as required by the proposed rule, can ensure the viability of a species in the absence of actual population monitoring. The BOCC believes that the populations and trends of both species of concern and focal species need to be monitored to ensure their survival and develop an adequate understanding of their population dynamics. In fact, if the populations of these species would not be monitored, what would be monitored that would provide an indicative surrogate, and how would this be decided? If specific species are to serve as focal species indicative of ecosystem health, their suitability to serve this role should be required to be validated by monitoring and research.

Rather than monitoring the populations and trends of focal species, the agency is expected to take advantage of recent technological advancements in the monitoring of focal species, such as genetic sampling to estimate the area occupied by a species. We believe this approach will necessarily involve extensive capture, testing and sampling that may in itself be detrimental to sensitive species. It also seems likely that these techniques will be as expensive and difficult to administer as the agency believes direct counts and trend analysis would be. If the agency plans to use these methods, they would need to be

described in detail and evidence provided that they would be as effective in determining populations and trends as traditional methods.

The BOCC believes that the new rule must protect the viability of all native species to the extent possible. All new plans should contain a requirement that wildlife species be maintained "well distributed in the planning area" as required in the 1982 planning rule. We are concerned a "viable population," "need only be sufficient [for a population] to be resilient and adaptable." The rule must provide some guidance on what makes a population resilient and adaptable, and how resilient and adaptable one needs to be. The language in section 219.9(a) in Alternative D which would require the agency to "develop plans for and manage plan areas to provide viable populations of native and desired non-native species within the plan area" should be included in the new rule. In addition, the new rule should incorporate the language in Alternative D section 219.12(a) (5) (ii) requiring population monitoring of focal species. The new rule should use the definition of "viable population" found in Alternative D. We believe it is better than the language in the proposed rule as it specifies a time period (50 years) and requires the use of the "best available scientific information." If a decision is not made on the basis of the best available science, the agency should at a minimum, have a requirement to make a rational explanation for why such a decision is being made. The new rule should also incorporate the monitoring language found in Alternative E.

The BOCC is very concerned that the proposed rule does not ensure adequate protection for watersheds. Watersheds are a vitally important resource on national forest lands that warrant reliable, consistent protection as a primary objective of forest plans. The documents note that 18 percent of the total water supply for the nation originates on national forest land, with more than half of the water for the western U.S. provided by these lands. This is true in San Miguel County where approximately half the population is served by surface water from municipal watersheds originating on national forest lands. Past practices have caused many watersheds to fall into, or remain in poor or less than healthy condition. The DEIS states that of the more than 12,000 sixth code watersheds with significant portions on national forest land, 25 percent are rated in poor condition, and only 30 percent are rated in good condition. We find this unacceptable and an indication that an increased emphasis on watershed protection in new plans is required. It is an accepted maxim that it is more cost effective to protect water quality at the source than it is to provide treatment to remove contaminants through treatment from a municipal water supply. The agency needs to incorporate in its planning the enormous economic contribution healthy watersheds and protection of water quality provides to millions of citizens who rely on public lands for their water source. Protection of municipal watersheds and water quality should be identified in the rule as a primary consideration in forest planning. In San Miguel County we are very concerned that leasing of national forest lands for oil and gas development may lead to contamination of surface waters relied on for municipal use as well as groundwater serving private wells. The avoidance of the inevitable creation of this type of conflict needs to be an overriding

factor when determining the suitability of national forest lands for mineral and oil and gas leasing.

While the proposed rule requires plans to have components to maintain, protect or restore aquatic elements including public water supplies and water quality, it simply does not go far enough to ensure watersheds will receive adequate protection. This is particularly true with regard to protections for riparian areas. Special protections should be afforded to riparian areas because of their very high importance in maintaining watershed integrity, water quality and providing wildlife habitat. The DEIS concedes that less than 100 percent of riparian areas on national forests are in good condition. Indeed in the west, the percentage in good condition "is from more than 50 percent in more humid sections to less than 30 percent in semi-arid and arid areas" (DEIS at 155-156). As a county in a semi- arid region, with predictions of increasing temperatures and decreasing precipitation due to climate change, these are extremely troubling statistics. Plans should be required to establish a "default width" of at least 100 feet for riparian areas. The BOCC believes it would be more appropriate to provide the highest level of protection for all areas dominated by riparian vegetation, plus an additional buffer. In fact, we believe management in riparian areas should be limited to restoration activity and the rule should reflect this. In the proposed rule, plans would be required to identify watersheds that are a priority for maintenance and restoration, but the proposed rule contains inadequate further direction for maintaining, protecting or restoring these watersheds.

The BOCC believes this lack of direction is a serious deficiency that will lead to a great deal of variation in how watersheds are protected and will lead to inconsistent protection for watersheds across national forest lands. We believe more specific direction is needed to ensure that watersheds receive adequate protection. Generally, we prefer the watershed protection language contained in Alternative D. We do not believe this language sets up "rigid management prescriptions at the watershed scale", but rather ensures the proper focus on the elements and watersheds and riparian areas that are in the most need of protection. We believe meeting the requirements of Alternative D will lead to projects designed to protect and more proactively maintain and restore watershed condition rather than just mitigating the effects of other activities. Additionally, we believe that a more detailed monitoring of watershed condition is also needed in accordance with the language found in Alternative E section 219.

As the Preamble clearly recognizes (at 8497), monitoring is a critical part of the proposed planning framework that provides a feedback loop for adaptive management and is necessary to test assumptions underpinning management decisions, track conditions of resources on the unit, and gauge management effectiveness and progress toward achieving desired conditions and objectives. The BOCC acknowledges that some of the elements of monitoring under the proposed rule are good, such as development of a monitoring strategy beyond the planning unit, and to the extent they are required, the monitoring of carbon stored in above-ground vegetation, the status of focal species, and the status of select watersheds. However, since the population trends of focal species

would not have to be determined, it is questionable the monitoring of focal species, whatever that might entail, would be of value and result in improved management.

Indeed in the case of watersheds, the monitoring results might be of no consequence as there is no requirement in the proposed rule to take specific actions protecting watersheds identified as needing maintenance or restoration. Overall, this lack of required action to occur as a result of monitoring is a fatal weakness in the monitoring section of the proposed rule. While the monitoring section would require a biennial review evaluation that must indicate whether a change to the plan, management activities or monitoring activities may be warranted based on new information, there is no guidance for determining what information might trigger the need for action and what those actions should be.

The proposed rule specifically states that projects would not have to be monitored (219.12(a) (7). Although we recognize that the agency does not have the resources to monitor every project, we believe not having a requirement to use some data gathered from projects unduly limits what information would be used in a unit monitoring program. The BOCC believes some level of follow up monitoring is necessary at the project level to provide adequate justification to validate ecological response expectations and to inform and support future management decisions. The proposed rule should incorporate the monitoring requirements found in Alternative E which directs units to have much stronger monitoring programs. If the agency desires to implement an adaptive management strategy, this level of commitment to monitoring and specificity in management direction is an absolute necessity in the new rule.

The BOCC is concerned by an apparent lack of commitment to the protection of cultural resources implied by language in the proposed planning rule. The preamble states "Our intent in using the word protection is to ensure that the responsible official takes into account the effects of a plan may have on cultural and historic values and provides for these resources and uses, within the context of managing for multiple uses. The intent is not to create a preservation mandate; rather, where actions might impair the resource or use, the responsible official would seek to avoid or minimize the impact to the extent practicable. In some cases, damage may occur if necessary to achieve a different multiple use objective." We believe there are several legal and administrative policy prohibitions against allowing damage or destruction of cultural resources. In any case we find it difficult to envision what other multiple use objectives should override protection of these resources. The proposed planning rule should be amended to include language that reaffirms the agency's legal and moral commitment to protect cultural and historic resources.

The proposed planning rule requires guidelines that like standards are requirements. However, The BOCC has concerns regarding the definition of a guideline as "a constraint on project and activity decision-making that allows for from a departure from its terms so long as the intent of the guideline is met." This definition appears to create a great deal

of subjectivity regarding a determination if the intent of the guideline is being met. As proposed, guidelines are intended to replace standards and are open to interpretation as to whether their intent will be met. If this is to be the policy, "guidelines" need to very specific and clear regarding their intent and the desired outcomes.

The San Miguel County BOCC believes the new rule should require the designation of management areas. The rule as written appears to allow the designation of management areas, but does not require it. We believe the public would be best served if plans have management areas that specify what activities will be emphasized and allowed and what the desired future condition of all the lands within the unit would be. Some areas could be flexible with forest wide standards and guidelines. Other areas, for example roadless areas, riparian areas and research natural areas, should have site specific guidelines and standards, allowing a much more limited range of activities, to protect their unique values.

The proposed rule would require each plan to determine the suitability of lands only for timber production and allow, but not require, suitability of lands for other purposes. The BOCC believes at a minimum in addition to timber production, a suitability determination should be done for livestock grazing and mineral leasing if those uses are being considered. When lands are to be used for timber production in cases other than sanitation, thinning or salvage, trees should be required to have reached their culmination of mean annual increment of growth (CMAI) or their period of peak growth to maximize their economic and ecological value. These forests also play a critical role in carbon storage and sequestration. This function needs to be incorporated into management decisions in light of the requirement of the rule to address climate change. In the cases of thinning, sanitation and salvage sale, the agency should develop guidelines for when such sales would be allowed and providing rationale for the size of the cuts based on resource values or multiple uses that would be benefited.

Lands should be required to have a suitability determination for livestock grazing. Livestock grazing has historically been a ubiquitous activity on our western National Forest lands. In some cases this practice has had significant adverse effect on other important national forest values including habitat for native ungulates, native plant communities, water quality, stream bank stability and watershed integrity. It has also altered natural fire characteristics through alteration of vegetation, thereby increasing risks from unnaturally high fire severity. Plans should be required to identify allotments in poor or declining condition. In addition, specific monitoring requirements should be developed for these lands to ensure any future use by livestock would support rather than undermine the goals of restoration and watershed protection, both of which are part of the purpose and need of creating a new planning rule. This should be a use specific assessment that identifies poor and declining lands and assesses their suitability for continued livestock use. If use is continued, a provision for monitoring that demonstrates an improving trend and condition should be required. Lands currently grazed by livestock should not automatically be considered suitable for this activity. We do not

believe this use would be adequately addressed by the general provisions for assessment for plan development contained in 219.6(b).

Specific assessments should also be required for determination of the suitability of National Forest lands for mineral leasing. This use, when developed, effectively displaces the ability of these lands to support other multiple uses. It impacts wildlife habitat, visual character, travel management and other recreational opportunities. In addition, it has substantial off site impacts, most importantly air quality and water quality. As a county containing a former non-attainment area for particulate air pollution, air quality impacts are of deep concern to us. We are concerned that our regional ozone levels are approaching anticipated new human health standards. Our ozone perhaps already exceeds proposed environmental standards adversely affecting the forests and plant communities on public and private lands. Additionally, cherished vistas are being degraded by diminishing visibility, and our regional snowpack and hydrology are being altered by dust storms. These adverse affects have been linked to management of mineral leasing, grazing and travel management on public lands. All forest plan revisions should have guidelines for a comprehensive analysis on the potential air quality impacts of development of used allowed by the plan.

National forest lands within the municipal sourcewater area of one of the municipalities in San Miguel County were recently offered for lease for oil and gas development. This resulted in great concern by the public for degraded water quality challenging municipal treatment capabilities. Because of the scale of the impacts of mineral leasing, its ability to displace other uses, and the potential for large offsite environmental, social and economic impacts, this use warrants special consideration in an assessment process tailored specifically to this use in any forest plan revision. It should be made clear in the proposed rule that all assessments for plan revisions are required to be comprehensive and not leave the scope of the assessment to the discretion to the responsible official.

The BOCC appreciates the agency's attention to improved collaboration, consensus building and the support for frequent meetings with stakeholders to foster a less contentious planning process. We support the concept of a pre-decisional review process as this would seem to provide an improved opportunity to modify a proposed plan to resolve objections. This process would appear more likely to result in modifications than a post- decisional appeal considering all the time, money, and effort the agency has in invested in its preparation. However, the objection process needs improvement as the allocated time for objections is too short. Thirty days does not allow sufficient review opportunity for concerned local governments or citizens. These revised plans are typically large and complex volumes of information with many associated maps and technical documents. Even with concentrated effort, this is not enough time for elected officials to receive input on the proposals in a public forum and for staff to prepare well considered objections or responses. We believe the period for the public to file objections should be the same 90 days given to the reviewing officer for deciding objections. For less complex amendments, 45 days may be adequate. If the reviewing

officer requests an extension in addition to the 90 day period as allowed in the proposed rule, the same extension should be extended to the public and other interested parties. Additionally, the clock on the objection period starts with the "publication date of the public notice for a plan, plan amendment, or plan revision." The proposed rule should be clear that the relevant documents must be available for public review at the beginning of the comment period.

Interested parties should be allowed to participate in meetings between the agency and objectors, and to fully participate in the objection process and be notified of decisions on objections. Also, interested parties should be provided an opportunity to submit additional written comments following such meetings. Objection decisions should be required to be addressed on a point by point basis by the reviewing officer. In our view, lack of a requirement to address all valid points raised by objectors denies them a meaningful review. While we believe it is reasonable to require objectors to have participated throughout the process, any participant should be able to raise any germane objection during the approval process whether it was originally raised in their comments or not. Local governments often lack the expertise to make technical assessments of forest management proposals and need to rely on expertise of outside organizations. The BOCC believes a local government or any other concerned party that agrees with an objection raised by others, should be able have standing on the same issue as the process proceeds whether they had initially raised the objection or not.

The draft rule purports to develop "an independent review process." In fact, the draft rules would continue the current practice of giving review responsibility to the line officer at the next highest administrative level. A line office is by definition, not independent. The Forest Service should establish a review body that answers only to the Chief, or perhaps the Undersecretary that is insulated from the day to day decisions that are being made by the responsible official.

Thank you for the opportunity to provide input on the proposed Forest Planning Rule revision. We trust our comments and concerns can be incorporated into the final rule.

Sincerely,

SAN MIGUEL COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS

Joan May

Joan May, Chair

OT	S	RT	DT	EA	F	RI	CE

Attributes

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Comments

Please see attached comments submitted by the New Mexico Land Grant Council.

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Created On	5/16/2011 6:32:00 PM

The following document is submitted by the New Mexico Land Grant Council and the New Mexico Land Grant Consejo, as part of the public comment process established for consideration and application to the 2011 proposed Forest Service Planning Rule revision.

The New Mexico Land Grant Council (Council) is a executive branch unit of state government, established by the New Mexico Legislature under §49-11-1 NMSA 1978, for the purpose of establishing a land grant support program to provide advice and assistance to Spanish and Mexican community land grants and to serve as a liaison between those land grants and federal, state, and local governments.

The New Mexico Land Grant Consejo (Consejo) is a member based policy advocacy group whose voting membership is comprised of official representatives from Spanish and Mexican Community Land Grant Board of Trustees from throughout the State of New Mexico.

Spanish and Mexican community land grants are indigenous communities granted common land by the governments of Spain or Mexico prior to 1848. They are indigenous because their residents are in part descendents of Native American tribes and because they had established communities in the Southwest before the United States exercised sovereignty in the region. These communities were originally established through a grant of land by either the Spanish or Mexican government. Lands granted were to be managed by a board of trustees for the benefit of the community and the ownership of the vast majority of the lands granted were held in common by all. The Treaty of Guadalupe Hidalgo, which ended the Mexican American War, protects the property rights that were established when the land grants were originally granted by Spain and Mexico. The adjudication of those property rights by the United States, as called for in the Treaty, has been, at best inconsistent and at worst incomplete. The adjudication process resulted in the approximate loss of 5.7 million acres of common land by hundreds of communities throughout New Mexico. Of those 5.7 million acres lost approximately 3.4 million acres ended up under the direct control and management of the United States government. The vast majority of these lands are now under the direct control of the USDA – Forest Service.

The loss of these common lands had devastating social and economic consequences for rural communities throughout New Mexico. Of the 131 Spanish and Mexican community land grants established only approximately 35 remain in existence today. The reason so many Spanish and Mexican land grants became defunct is that these land based agrarian communities could not survive without the access and use of the common lands. Subsistence without natural resources from the common lands was no longer possible without the access to and ownership of the common lands. Utilization of natural resources included but was not limited to grazing, hunting, fishing, harvesting of firewood, gathering herbs,

berries and nuts for eating and medicinal purposes, using common waters for livestock and domestic use.

Comments, Questions and Recommended Changes on Proposed Planning Rule

The following sections contain comments and recommendations for changes to the proposed planning rule found in CFR Part 219 – Planning Subparts A and B. The comments (noted as **Comment**) provide opinions, by the submitting party, regarding material presented in the proposed planning revision. Recommendations for change (noted as **Recommendation**) provide language for a proposed language change or addition of new material for inclusion in the plan. The comments, questions and recommendations are laid out sequentially section by section in the same order as which they are laid out in the proposed planning rule revision.

Section 219.4 Requirements for Public Participation

(7) *Native knowledge, indigenous ecological knowledge, and land ethics.*

Comment: This subparagraph calls for a critical body of information to be collected from Native American Tribes and Alaska Native Corporations as part of the tribal participation and consultation. Like Native American Tribes, Spanish and Mexican community land grants are land based communities with hundreds of years of local knowledge and land ethnics relating to former common lands now managed by the US Forest Service. Spanish and Mexican land grant communities share a relationship to the land that is a part of the cultural make up of the people from those communities. These former common lands have a huge cultural significance to land grant communities in New Mexico and because of the, well documented, long history of use of these former common lands there exists today numerous sacred and culturally significant sites located on these lands.

In addition, many agricultural water systems used for irrigating crops (acequias), watering livestock, and providing community drinking water have their headwaters, man made points of diversion and portions of their delivery canals/lines located on former common lands now managed by the U.S. Forest Service. Throughout New Mexico communities that were settled as Spanish and Mexican Land Grants have water irrigation systems for that predate U.S. sovereignty in the Southwest. In New Mexico Acequias like Spanish and Mexican Community land grants are recognized units of local government. Acequias have governing boards that are elected to manage the delivery of water to users and to oversee the maintenance and up keep of the water delivery system. Maintenance of acequia systems include removal of sediment and silt at the bottom of the canals as well as the removal of trees and other vegetation encroaching on the banks of the canals and impeding the flow of water. As well,

land grants as established in Spanish and Mexican law and confirmed through state statute have the authority to manage the common waters of the grant.

Recommendation: Either amend subparagraph (7) or add a new section that will allow for collection of information about indigenous knowledge, land ethics, cultural issues, and sacred and culturally significant sites from "Non-Tribal indigenous government entities recognized by state or federal statute with pre-existing cultural and natural resource access, use and maintenance rights on land currently under the jurisdiction of the U.S. Forest Service." Language to this effect may also be inserted into subparagraph (8).

Addition of such language may necessitate the addition of "non-tribal indigenous government entities" in the definitions found under §219.19.

(8) *Participation opportunities for other Federal agencies, Federally recognized Tribes, States, counties, and local governments.*

Comment: Spanish and Mexican community land grants are among the oldest government structures in the Southwest dating back to the 1690's. In 2004, the state of New Mexico officially recognized Spanish and Mexican community land grants as political sub-divisions of the state. As newly recognized units of government under state law Spanish and Mexican community land grants are now eligible and eager to engage the US Forest Service in government-to-government dialogues relating to former common lands now controlled by the Forest Service. Land grants are also interested in entering into government-to-government agreements with the Forest Service regarding the management and use of those former common lands. This extends to the role that planning plays in management of the former common land by the US Forest Service. This being the case both the New Mexico Land Grant Council and the New Mexico Land Grant Consejo are concerned that language proposed under Sub-paragraph 8 does not adequately provide for local government entities to be included in the planning process. Particularly, the use of the language "The responsible official shall provide opportunities for other government agencies to participate in planning for NFS lands," is vague. As it stands a line officer could limit local government coordination to simply providing input at public forum. A better safeguard for local government coordinators should be in place.

As government entities Spanish and Mexican land grant units of government seek a higher level of participation in the planning process than is afforded the general public through "opportunities" such as public meetings. The current proposed language does not require the Forest Service to actively engage in a dialogue with local government entities but rather simply provide opportunities for participation. In reviewing the current planning rule developed in 1982 found in 36 CFR Ch. II (7-1-00 Edition) section 219.7 Coordination with Other Public Planning Efforts, the Council and Consejo found far stronger language in paragraphs (d) and (f) of that section. Both the Council and the Consejo prefer

use of the language found in paragraphs (d) and (e) over the current language found under subparagraph (8) of the proposed rule. The reason for the preference is that the current planning rule states "the responsible line office shall meet with. . . representatives of other local governments at the beginning of the planning process to develop procedures for coordination." It further clarifies that meetings with local governments can "be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced. " Finally, subparagraph (e) requires that the line officer in developing the plan "shall seek input form. . . local governments. . . to help resolve management concerns in the planning process and to identify areas where additional research is needed.

All of the above-mentioned requirements from the existing planning rule are important because of turnover among line officers within the Forest Service and quite often line officers have not been around long enough to fully appreciate the overall impact the Service has on local communities adjacent to its boundaries. Therefore it is critical that local communities through their representative local governments are involved and at the table from the onset of the development, revision or amend of a forest unit plan. Local governments typically have a good understanding of the role Forest Service land plays with regard to the social, ecological and economic health of their communities.

Recommendation: Replace subparagraph (8) with the following language: In development, revision or amendment of a Forest Service Unit land management plan, the responsible official shall meet with the representatives of all other Federal agencies, State agencies, local governments, and Indian Tribal governments that may be affected by the plan at the beginning of the planning process to develop procedures for coordination. At a minimum this includes all federal or state recognized local government entities and tribal governments with lands adjacent to the Forest Service Unit or that have pre-existing land and/or resource use right claims within the Forest Service Unit. Also at minimum such conferences shall be held during the assessment, development, and revision/amendment phases of the planning process. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced. In assessing, developing, revising or amending a Forest Service Unit plan the responsible official shall seek input from other Federal, State, local governments, and Indian Tribal governments, specifically those with lands adjacent to the Forest Service Unit or that have pre-existing land and/or cultural and natural resource access, use and maintenance rights or valid claims to those rights within the Forest Service Unit, to: help identify existing and future conditions, trends, stressor and opportunities; help identify areas where additional research is needed; help identify monitoring indictors to be measured during the life of the plan, and; help resolve management concerns that arise during development, revision, amendment and implementation of the plan.

Section 219.6 Assessments

(a) *Process for plan development or revision assessments.*

Comment: In keeping in line with the recommended changes for Section 219.4 subparagraph (8) language must be added to this section to ensure adequate coordination with local government entities in the assessment process.

Recommendation: Add an additional sentence to subparagraph (1) that reads as follows: Notify and meet with local governments entities with lands adjacent to the Forest Service Unit or that have pre-existing land and/or cultural and natural resource access, use and maintenance rights or valid claims to those rights within the Forest Service Unit to help identify existing and future conditions, trends, stressor and opportunities, areas where additional research is needed, and potential monitory questions.

(b) *Content of assessments for plan development or revision*

This section provides a critical opportunity for the Forest Service to obtain knowledge and information from local government entities and the communities, which they serve regarding use and importance of the Forest Service Unit within the context of the broader landscape as well as within the context of current and historical uses of lands located in the Unit.

In order to strengthen the Forest Service's ability to capitalize on this opportunity it is recommended the following language be added to the below subparagraphs of subsection (b)

Recommendation:

Under subparagraph (2) at the end of second sentence listing types of plans add: local government land use, zoning and comprehensive plans.

Under subparagraph (3) add a sentence that calls for the Forest Service to identify areas with preexisting cultural and natural resource access, maintenance and use rights by Tribal and non-tribal indigenous communities established prior to the U.S. establishing sovereignty within the area encompassed by the Unit and to the extent possible identify and list out with reasonable specificity the types of cultural and natural resource access, maintenance and resource use rights existing in areas identified.

Under subparagraph (4) amend the sentence to read as follows: Identify potential monitoring questions or information needs to inform the development or modification of the unit's **social, economic and ecological** monitoring program.

Section 219.7 New plan development or plan revision

(c) ***Process for plan development or revision***
Comment: In laying out the process for plan development or revisions it is important that the responsible official identify the relevant stakeholders that will be most impacted by the Unit plan. This includes the tribal and non-tribal indigenous local government entities and communities that have claims to or that have existing cultural or natural resource access, maintenance and use rights on the unit that predate the unit and the U.S. establishing sovereignty in the area or region where the unit is located. Below are recommendations for language that can be added to ensure that pre-existing rights as called for under §219.1 subparagraph (e) are identified and integrated into Unit plans for the protection of those rights.

Recommendation: Under subsection (c) item (2) of Section 219.7 add a new subparagraph which requires the responsible official to identify non-tribal indigenous local government entities which have claims to or established pre-existing access, maintenance and cultural and natural resource use rights located within the plan Unit.

Under the same section as sited above add a new subparagraph that requires the responsible official to work with non-tribal indigenous local government entities to identify preexisting cultural and natural resource access, maintenance and use rights and areas within the Unit subject to those rights.

Section 219.9 Diversity of plant and animal communities

Comment: Sustainability forest ecosystems and diversity of plant and animal communities are critical components to re-establishing and maintaining healthy forests and healthy watersheds. Watershed health is of the upmost importance to our long established land based communities. The relationship our communities had to the land prior to the establishment of the U.S. Forest Service and the land management practices derived from those relationships provided for a more harmonic balance within the forest eco-systems than exist today. Therefore we feel it important to include language in both sections 219.8 and 219.9 that recognizes the importance of historic and traditional practices that can still be applicable today.

Recommendation: In subsection (b) *Species Conservation* under subparagraph (3) in the last sentence add **local government** after tribal and before private land managers.

Add a new subsection (d) that calls for a component under this section to be informed by historic practices of pre-existing tribal and non-tribal indigenous communities that are consistent with diversity of plant and animal species within the Unit and the region.

Section 219.10 Multiple uses

(b) *Requirements for plan components for a new plan or plan revision.*

Comment: It is important that a component be added to address the management of areas of importance for non-tribal indigenous entities with pre-existing cultural and natural resource access, maintenance and use rights that are based on historical and documented claims to lands now managed by the Forest Service. This can be accomplished by adding the following recommended language.

Recommendation: Add a new subparagraph after subparagraph (iii) that reads as follows: Management of areas of importance to non-tribal indigenous entities.

Section 219.11 Timber requirements based on the NFMA

(b) *Harvest of trees on land not suitable for timber production.*

Comment: It is critical that the proposed planning rule make it clear that thinning for the maintenance, protection and improvement of preexisting community water delivery systems located within a planning Unit continue to be allowed in areas designated as not suitable for timber production. This type of thinning is not for production but rather for maintenance to ensure adequate delivery of water for irrigation and/or drinking water.

Recommendation: under subparagraph (2) of subsection (b) *Harvest of trees on land not suitable for timber production*, add the following example to the last sentence in the paragraph: improving or protecting the delivery of water along established preexisting water delivery systems.

Section 219.15 Project and activity consistency with the plan

(a) *Application to existing authorizations and approved projects or activities.*

Comment: There are numerous existing occupancies, uses and maintenance of sites within the Forest Service Units in New Mexico that are valid rights and which have never received official authorization or approvals. This includes location of cemeteries, sacred religious sites, man made points of diversion and water delivery systems that have existed prior to the United States establishing sovereignty in New Mexico but that now lie with the Forest Service boundaries. Many of these occupancies or uses have gone officially unnoticed or unmentioned and in some cases official attempts have been made to bar or deny the continuation of use. A large reason for inconsistencies in official policy related to these preexisting site and rights is that they are held or claimed by non-tribal indigenous entities without any official means of consultation with the U.S. Forest

Service. For this reason is necessary that the Forest Service specifically work with these non-tribal indigenous entities to properly identify all existing occupancies and uses so that they may be accounted for in the Unit plan.

Recommendation: Add the following two sentences to subsection (a) after the first sentence in that subsection that reads as follows: The responsible official shall meet with any non-tribal indigenous entities with documented claims or valid existing rights within the Unit to identify any and all occupancies, uses and activities related to those claims or rights. Upon receiving official notice from the Forest Service of a unit plan, development, revision or amendment, it shall be the duty of the all non-tribal indigenous entities to notify the Forest Service of their desire to meet for the purpose of identifying occupancies, uses and activities on lands within the Unit.

Section 219.16 Public notifications

(c) ***How public notice is provided***

Comment: Aside from general public notice it is important that the Forest Service provide direct notice to local government entities that will be affected by the plan, particularly any entities that have lands directly adjacent to the plan Unit or whose constituents have valid existing cultural or natural resource access, maintenance, or use rights for lands located within the plan Unit. Direct notification will ensure that relevant government stakeholders are involved in the assessment phase of the planning process, which will help mitigate unforeseen objections to a new plan, a revision or an amendment. In addition, early direct notice allows ample opportunity to address and resolve any issues identified during the assessment phase.

Recommendation: Under subsection (c) add a new subparagraph (6) that contains the following language: For a new plan, plan revision or amendment direct written notice shall be given to local government entities with ownership or management of lands directly adjacent to Forest Service Unit or with existing cultural and natural resource access, use and maintenance rights on the Unit.

Under subsection (c) subparagraph (2) add the following language after newspaper(s) of record: "and general circulation in the region of the Unit."

Section 219.19 Definitions

Comment: In order to incorporate the changes recommended throughout this public comment document it is necessary to add some new definitions to section 219.9.

Recommendation: Add new definition as follows:

Non-tribal indigenous entity – A local government entity, recognized by Federal or State statute, that represents a non-tribal community(ies)/group(s) and/or pre-existing cultural and natural resource access, maintenance and use right(s) established prior to United States sovereignty in the State in which a Forest Service Unit is located.

OT	S	RT	DT	EA	F	RI	CE

Attributes

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Comments

See Attachments

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On 14 February, 2011 the U.S. Department of Agriculture published a proposed rule for National Forest System Management Planning (Federal Register, vol. 76, no. 30, pp. 8480-8528. These comments on the proposed rule are being submitted by the Cañón de Carnué Land Grant-*Merced*, a political subdivision of the state of New Mexico in possession of common lands adjacent to the Cíbola National Forest in the areas of the communities of Carnuel, Tijeras, San Antonio, Cañoncito, Bartolome Baca, Sedillo, Yzarra, Juan Tomás, and Escobosa. The Cañón de Carnué Land Grant was first founded in 1763, and re-established in 1819, with common lands that include what is now part of the Cíbola National Forest. We have prepared these comments in conjunction with other land grants, and with the New Mexico Land Grant Council and the New Mexico Land Grant Consejo.

Spanish and Mexican community land grants are indigenous communities granted common land by the governments of Spain or Mexico prior to 1848. They are indigenous because their residents are in part descendents of Native American tribes and because they had established communities in the Southwest before the United States exercised sovereignty in the region. These communities were originally established through a grant of land by either the Spanish or Mexican government. Lands granted were to be managed by a board of trustees for the benefit of the community and the ownership of the vast majority of the lands granted were held in common by all. The Treaty of Guadalupe Hidalgo, which ended the Mexican American War, protects the property rights that were established when the land grants were originally granted by Spain and Mexico. The adjudication of those property rights by the United States, as called for in the Treaty, has been, at best inconsistent and at worst incomplete. The adjudication process resulted in the approximate loss of 5.7 million acres of common land by hundreds of communities throughout New Mexico. Of those 5.7 million acres lost approximately 3.4 million acres ended up under the direct control and management of the United States government. The vast majority of these lands are now under the direct control of the USDA – Forest Service.

The loss of these common lands had devastating social and economic consequences for rural communities throughout New Mexico. Of the 131 Spanish and Mexican community land grants established only approximately 35 remain in existence today. The reason so many Spanish and Mexican land grants became defunct is that these land based agrarian communities could not survive without the access and use of the common lands. Subsistence without natural resources from the common lands was no longer possible without the access to and ownership of the common lands. Utilization of natural resources included but was not limited to grazing, hunting, fishing, harvesting of firewood, gathering herbs, berries and nuts for eating and medicinal purposes, using common waters for livestock and domestic use.

Comments, Questions and Recommended Changes on Proposed Planning Rule

The following sections contain comments and recommendations for changes to the proposed planning rule found in CFR Part 219 – Planning Subparts A and B. The comments (noted as **Comment**) provide opinions, by the submitting party, regarding

material presented in the proposed planning revision. Recommendations for change (noted as **Recommendation**) provide language for a proposed language change or addition of new material for inclusion in the plan. The comments, questions and recommendations are laid out sequentially section by section in the same order as which they are laid out in the proposed planning rule revision.

Section 219.4 Requirements for Public Participation

(7) *Native knowledge, indigenous ecological knowledge, and land ethics.*

Comment: This subparagraph calls for a critical body of information to be collected from Native American Tribes and Alaska Native Corporations as part of the tribal participation and consultation. Like Native American Tribes, Spanish and Mexican community land grants are land based communities with hundreds of years of local knowledge and land ethnics relating to former common lands now managed by the US Forest Service. Spanish and Mexican land grant communities share a relationship to the land that is a part of the cultural make up of the people from those communities. These former common lands have a huge cultural significance to land grant communities in New Mexico and because of the, well documented, long history of use of these former common lands there exists today numerous sacred and culturally significant sites located on these lands.

In addition, many agricultural water systems used for irrigating crops (acequias), watering livestock, and providing community drinking water have their headwaters, man made points of diversion and portions of their delivery canals/lines located on former common lands now managed by the U.S. Forest Service. Throughout New Mexico communities that were settled as Spanish and Mexican Land Grants have water irrigation systems for that predate U.S. sovereignty in the Southwest. In New Mexico Acequias like Spanish and Mexican Community land grants are recognized units of local government. Acequias have governing boards that are elected to manage the delivery of water to users and to oversee the maintenance and up keep of the water delivery system. Maintenance of acequia systems include removal of sediment and silt at the bottom of the canals as well as the removal of trees and other vegetation encroaching on the banks of the canals and impeding the flow of water. As well, land grants as established in Spanish and Mexican law and confirmed through state statute have the authority to manage the common waters of the grant.

Recommendation: Either amend subparagraph (7) or add a new section that will allow for collection of information about indigenous knowledge, land ethics, cultural issues, and sacred and culturally significant sites from "Non-Tribal indigenous government entities recognized by state or federal statute with pre-existing cultural and natural resource access, use and maintenance rights on land currently under the jurisdiction of the U.S. Forest Service." Language to this effect may also be inserted into subparagraph (8).

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Addition of such language may necessitate the addition of "non-tribal indigenous government entities" in the definitions found under §219.19.

(8) *Participation opportunities for other Federal agencies, Federally recognized Tribes, States, counties, and local governments.*

Comment: Spanish and Mexican community land grants are among the oldest government structures in the Southwest dating back to the 1690's. In 2004, the state of New Mexico officially recognized Spanish and Mexican community land grants as political sub-divisions of the state. As newly recognized units of government under state law Spanish and Mexican community land grants are now eligible and eager to engage the US Forest Service in government-to-government dialogues relating to former common lands now controlled by the Forest Service. Land grants are also interested in entering into government-to-government agreements with the Forest Service regarding the management and use of those former common lands. This extends to the role that planning plays in management of the former common land by the US Forest Service. The Cañón de Carnué Land Grant-*Merced* is concerned that language proposed under Sub-paragraph 8 does not adequately provide for local government entities such as the Land Grant to be included in the planning process. Particularly, the use of the language "The responsible official shall provide opportunities for other government agencies to participate in planning for NFS lands," is vague. As it stands a line officer could limit local government coordination to simply providing input at public forum. A better safeguard for local government coordinators should be in place.

As government entities Spanish and Mexican land grant units of government seek a higher level of participation in the planning process than is afforded the general public through "opportunities" such as public meetings. The current proposed language does not require the Forest Service to actively engage in a dialogue with local government entities but rather simply provide opportunities for participation. In reviewing the current planning rule developed in 1982 found in 36 CFR Ch. II (7-1-00 Edition) section 219.7 Coordination with Other Public Planning Efforts, the Cañón de Carnué Land Grant found far stronger language in paragraphs (d) and (f) of that section. The Land Grant prefers use of the language found in paragraphs (d) and (e) over the current language found under subparagraph (8) of the proposed rule. The reason for the preference is that the current planning rule states "the responsible line office shall meet with. . . representatives of other local governments at the beginning of the planning process to develop procedures for coordination." It further clarifies that meetings with local governments can "be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced. " Finally, subparagraph (e) requires that the line officer in developing the plan "shall seek input form. . . local governments. . . to help resolve management concerns in the planning process and to identify areas where additional research is needed.

All of the above-mentioned requirements from the existing planning rule are important because of turnover among line officers within the Forest Service and quite often line officers have not been around long enough to fully appreciate the overall impact the

Service has on local communities adjacent to its boundaries. Therefore it is critical that local communities through their representative local governments are involved and at the table from the onset of the development, revision or amend of a forest unit plan. Local governments typically have a good understanding of the role Forest Service land plays with regard to the social, ecological and economic health of their communities.

Recommendation: Replace subparagraph (8) with the following language: In development, revision or amendment of a Forest Service Unit land management plan, the responsible official shall meet with the representatives of all other Federal agencies, State agencies, local governments, and Indian Tribal governments that may be affected by the plan at the beginning of the planning process to develop procedures for coordination. At a minimum this includes all federal or state recognized local government entities and tribal governments with lands adjacent to the Forest Service Unit or that have pre-existing land and/or resource use right claims within the Forest Service Unit. Also at minimum such conferences shall be held during the assessment, development, and revision/amendment phases of the planning process. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced. In assessing, developing, revising or amending a Forest Service Unit plan the responsible official shall seek input from other Federal, State, local governments, and Indian Tribal governments, specifically those with lands adjacent to the Forest Service Unit or that have pre-existing land and/or cultural and natural resource access, use and maintenance rights or valid claims to those rights within the Forest Service Unit, to: help identify existing and future conditions, trends, stressor and opportunities; help identify areas where additional research is needed; help identify monitoring indictors to be measured during the life of the plan, and; help resolve management concerns that arise during development, revision, amendment and implementation of the plan.

Section 219.6 Assessments

(a) *Process for plan development or revision assessments.*

Comment: In keeping in line with the recommended changes for Section 219.4 subparagraph (8) language must be added to this section to ensure adequate coordination with local government entities in the assessment process.

Recommendation: Add an additional sentence to subparagraph (1) that reads as follows: Notify and meet with local governments entities with lands adjacent to the Forest Service Unit or that have pre-existing land and/or cultural and natural resource access, use and maintenance rights or valid claims to those rights within the Forest Service Unit to help identify existing and future conditions, trends, stressor and opportunities, areas where additional research is needed, and potential monitory questions.

(b) *Content of assessments for plan development or revision*

This section provides a critical opportunity for the Forest Service to obtain knowledge and information from local government entities and the communities, which they serve regarding use and importance of the Forest Service Unit within the context of the broader landscape as well as within the context of current and historical uses of lands located in the Unit.

In order to strengthen the Forest Service's ability to capitalize on this opportunity it is recommended the following language be added to the below subparagraphs of subsection (b)

Recommendation:

Under subparagraph (2) at the end of second sentence listing types of plans add: local government land use, zoning and comprehensive plans.

Under subparagraph (3) add a sentence that calls for the Forest Service to identify areas with preexisting cultural and natural resource access, maintenance and use rights by Tribal and non-tribal indigenous communities established prior to the U.S. establishing sovereignty within the area encompassed by the Unit and to the extent possible identify and list out with reasonable specificity the types of cultural and natural resource access, maintenance and resource use rights existing in areas identified.

Under subparagraph (4) amend the sentence to read as follows: Identify potential monitoring questions or information needs to inform the development or modification of the unit's **social, economic and ecological** monitoring program.

Section 219.7 New plan development or plan revision

(c) *Process for plan development or revision*
Comment: In laying out the process for plan development or revisions it is important that the responsible official identify the relevant stakeholders that will be most impacted by the Unit plan. This includes the tribal and non-tribal indigenous local government entities and communities that have claims to or that have existing cultural or natural resource access, maintenance and use rights on the unit that predate the unit and the U.S. establishing sovereignty in the area or region where the unit is located. Below are recommendations for language that can be added to ensure that pre-existing rights as called for under §219.1 subparagraph (e) are identified and integrated into Unit plans for the protection of those rights.

Recommendation: Under subsection (c) item (2) of Section 219.7 add a new subparagraph which requires the responsible official to identify non-tribal indigenous local government entities which have claims to or established pre-existing access, maintenance and cultural and natural resource use rights located within the plan Unit.

Under the same section as sited above add a new subparagraph that requires the responsible official to work with non-tribal indigenous local government entities to identify preexisting cultural and natural resource access, maintenance and use rights and areas within the Unit subject to those rights.

Section 219.9 Diversity of plant and animal communities

Comment: Sustainability forest ecosystems and diversity of plant and animal communities are critical components to re-establishing and maintaining healthy forests and healthy watersheds. Watershed health is of the upmost importance to our long established land based communities. The relationship our communities had to the land prior to the establishment of the U.S. Forest Service and the land management practices derived from those relationships provided for a more harmonic balance within the forest eco-systems than exist today. Therefore we feel it important to include language in both sections 219.8 and 219.9 that recognizes the importance of historic and traditional practices that can still be applicable today.

Recommendation: In subsection (b) *Species Conservation* under subparagraph (3) in the last sentence add **local government** after tribal and before private land managers.

Add a new subsection (d) that calls for a component under this section to be informed by historic practices of pre-existing tribal and non-tribal indigenous communities that are consistent with diversity of plant and animal species within the Unit and the region.

Section 219.10 Multiple uses

(b) *Requirements for plan components for a new plan or plan revision.*

Comment: It is important that a component be added to address the management of areas of importance for non-tribal indigenous entities with pre-existing cultural and natural resource access, maintenance and use rights that are based on historical and documented claims to lands now managed by the Forest Service. This can be accomplished by adding the following recommended language.

Recommendation: Add a new subparagraph after subparagraph (iii) that reads as follows: Management of areas of importance to non-tribal indigenous entities.

Section 219.11 Timber requirements based on the NFMA

(b) *Harvest of trees on land not suitable for timber production.*

Comment: It is critical that the proposed planning rule make it clear that thinning for the maintenance, protection and improvement of preexisting community water delivery systems located within a planning Unit continue to be allowed in areas designated as not suitable for timber production. This type of thinning is not for production but rather for maintenance to ensure adequate delivery of water for irrigation and/or drinking water.

Recommendation: under subparagraph (2) of subsection (b) *Harvest of trees on land not suitable for timber production*, add the following example to the last sentence in the paragraph: improving or protecting the delivery of water along established preexisting water delivery systems.

Section 219.15 Project and activity consistency with the plan

(a) *Application to existing authorizations and approved projects or activities.*

Comment: There are numerous existing occupancies, uses and maintenance of sites within the Forest Service Units in New Mexico that are valid rights and which have never received official authorization or approvals. This includes location of cemeteries, sacred religious sites, man made points of diversion and water delivery systems that have existed prior to the United States establishing sovereignty in New Mexico but that now lie with the Forest Service boundaries. Many of these occupancies or uses have gone officially unnoticed or unmentioned and in some cases official attempts have been made to bar or deny the continuation of use. A large reason for inconsistencies in official policy related to these preexisting site and rights is that they are held or claimed by non-tribal indigenous entities without any official means of consultation with the U.S. Forest Service. For this reason is necessary that the Forest Service specifically work with these non-tribal indigenous entities to properly identify all existing occupancies and uses so that they may be accounted for in the Unit plan.

Recommendation: Add the following two sentences to subsection (a) after the first sentence in that subsection that reads as follows: The responsible official shall meet with any non-tribal indigenous entities with documented claims or valid existing rights within the Unit to identify any and all occupancies, uses and activities related to those claims or rights. Upon receiving official notice from the Forest Service of a unit plan, development, revision or amendment, it shall be the duty of the all non-tribal indigenous entities to notify the Forest Service of their desire to meet for the purpose of identifying occupancies, uses and activities on lands within the Unit.

Section 219.16 Public notifications

(c) *How public notice is provided*

Comment: Aside from general public notice it is important that the Forest Service provide direct notice to local government entities that will be affected by the plan, particularly any entities that have lands directly adjacent to the plan Unit or whose constituents have valid existing cultural or natural resource access, maintenance, or use rights for lands located within the plan Unit. Direct notification will ensure that relevant government stakeholders are involved in the assessment phase of the planning process, which will help mitigate unforeseen objections to a new plan, a revision or an amendment. In addition, early direct notice allows ample opportunity to address and resolve any issues identified during the assessment phase.

Recommendation: Under subsection (c) add a new subparagraph (6) that contains the following language: For a new plan, plan revision or amendment direct written notice shall be given to local government entities with ownership or management of lands directly adjacent to Forest Service Unit or with existing cultural and natural resource access, use and maintenance rights on the Unit.

Under subsection (c) subparagraph (2) add the following language after newspaper(s) of record: "and general circulation in the region of the Unit."

Section 219.19 Definitions

Comment: In order to incorporate the changes recommended throughout this public comment document it is necessary to add some new definitions to section 219.9.

Recommendation: Add new definition as follows:

Non-tribal indigenous entity – A local government entity, recognized by Federal or State statute, that represents a non-tribal community(ies)/group(s) and/or pre-existing cultural and natural resource access, maintenance and use right(s) established prior to United States sovereignty in the State in which a Forest Service Unit is located.

OT	S	RT	DT	EA	F	RI	CE

Attributes

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Comments

See attached uploaded file

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UTAH ASSOCIATION OF COUNTIES
A Unifying Voice for County Government

May 16, 2011

Tom Tidwell
Chief, U.S. Forest Service
1400 Independence Avenue, S.W.
Washington, D.C. 20250-0003

Forest Service Planning DEIS
C/O Bear West Company
172 East 500 South
Bountiful, UT 84010

Re: Proposed Planning Rule – U.S. Forest Service 76 FR 8480
(36 CRF Part 219) and Draft Programmatic EIS

Dear Sir or Madame:

Utah Association of Counties (UAC) appreciates the opportunity to submit the following comments on the proposed National Forest System Land Management Planning Rule (Planning Rule). UAC represents the 29 counties of the State of Utah, all of whom have a strong interest in the health, vitality and productivity of Utah's national forests.

Section by Section Analysis

§219.1 – Purpose and Applicability
There is in this section and throughout the draft Planning Rule, a patent over-use of the term "ecosystem services" in an apparent effort to skew, dilute and water-down the Congressionally honored and sanctioned "multiple use" mission of the National Forests. This section and entire planning rule should be purged of this unfortunate term that lacks legal grounding in the Congressional statutes governing the management of NFS lands. *See, e.g.,* the Multiple Use Sustained Yield Act of 1960 (MUSYA), which declares as the policy of Congress "that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed and wildlife and fish purposes." Strikingly absent from any of the statutory authorities, is authority to perform management for ecosystem services.

§219.2 – Levels of planning and responsible officials
The Forest Service must proactively seek out and establish a pattern of coordination and cooperation with elected county officials of all counties in which the given planning area exists. Elected county officials are the only legally accountable representatives of the "public" at the local level, and they deserve active and good faith coordination and consistency with their local plans and policies throughout the planning process. This section should be amended accordingly.

This section should be amended further to ensure that planning takes place at the most local level of the Forest Service agency structure, the unit manager level, as opposed to the region,

district or national level. Such higher level planning is a colossal duplication of effort and therefore a colossal waste of resources which the Forest Service simply does not have in this era of strained and depleted budgets and out-of-control national debt.

§219.2(b)(3) should be amended to guard against unaccountable and unpredictable take-over of local unit supervisor roles by higher, more remote and less knowledgeable and less accountable national authorities within the National Forest System.

§219.3 – Role of science in planning
The role of science is important in the planning process. But the Planning Rule itself should not hold Forest Service to a hopelessly unattainable standard of undue scientific documentation for every detail. That will only lead to unproductive litigation. The Planning Rule should accord the local unit supervisor sound discretion to determine the quantity and quality of science deemed "best" and appropriate for each planning situation.

§219.4 – Requirements for public participation
Early and throughout the planning process, thorough collaboration, coordination and consistency with local government officials in the planning process are essential, and the language of this section should be amended to ensure this will happen. The agency should give increased weight to local communities directly impacted by the plan and to the local governments who legally represent such communities, as opposed to various non-governmental special interest groups. NEPA requires cooperation with local government officials. So does the guidance from the White House Council on Environmental Quality (CEQ).

The phrase "to the extent practicable and appropriate" should be stricken from §219.4(b)(1) and replaced with "to achieve consistency the maximum extent practicable between the proposed forest and local plans." It is always appropriate and practicable for the agency to coordinate and achieve consistency with local governments. In the spirit of the NEPA and CEQ requirements quoted above, the Forest Service as a matter of good sense and good policy ought to amend this section and adopt the standard used in the Federal Land Policy Management Act for BLM land management planning purposes: "Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." 43 U.S.C. 1712(c)(9). This section should also add the following: "Where the forest plan may not be made consistent with local plans, the responsible official shall document how and why its plan is not consistent with local plans, as determined by local officials, and explain why its plan cannot be made consistent with local plans."

§219.6 – Assessments
Where gaps exist in the available science, this section should be written to shield and protect the local unit manager from lawsuits for not engaging new scientific studies to push the scientific frontier further. This section of the Planning Rule should ensure the local unit manager has some flexibility to fill in those gaps using best practices and his or her experience and judgment.

§219.7 – New plan development or plan revision
All Forest planning efforts should require the reduction of the Fire Regime Condition Class (FRCC) to meet local government desired levels and objectives, in order to protect the populations, livestock and infrastructure of each affected county in the planning area. NFS lands should be actively managed to reduce the threat of wildfire and the unnecessary release of Co2, and this section of the Planning Rule should be amended to give NFS maximum flexibility in this regard, both at the planning level and the every-day management level. Reduction of FRCC 3 to FRCC 2 and FRCC 1 is the best outcome both economically and environmentally. Catastrophic wildfires yearly are destroying much of NFS habitat, not to mention valuable water shed and timber resources on which counties are so dependent.

The 1984 Utah Wilderness Act, Public Law 98-428, enacted a hard release of all non-wilderness Forest Service lands in Utah from any de facto wilderness treatment. The Planning Rule in general, and this section in particular, should be amended to provide that no local unit manager, and no higher up Forest Service official for that matter, shall ever include in any forest plan, a provision for the de facto administrative wilderness management or "roadless management" (wilderness management by another name) of lands in any State, such as Utah, where Congress through past legislation has determined there shall be "no more wilderness" unless Congress so acts.

§219.8 – Sustainability
This section, while strong on ecological sustainability, is weak on economic and social sustainability. This section needs major re-working to strengthen and ensure sustainability in the economic and social aspects of Forest Service management. The rule needs to provide maximum support for logging and timber activities, because these will help ecological sustainability as well. This section is far too excessive in its favoring of "ecosystem services," and falls far short of the needed clarity and strength of direction toward social and economic health and prosperity of communities in and around each planning area. This section should be amended to ensure the forest planning area will be used in a way to increase the vitality of local communities.

§219.9 – Diversity of plant and animal communities
This section in its draft form threatens to put Forest Service on a never-ending legal slippery slope to manage species and ensure their outcomes and populations, when NFS's only statutory duty is to manage the habitat. USFS is not a biological preserve management entity. It manages the Forest, and by law just as much if not more so for human kind as for various non-human species. This section as presently written will subject NFS to unattainable standards of species attainment and biological preserve guaranties, that will subject NFS to endless litigation. It is crucial to amend this section to back off from species management and get NFS back into managing the habitat.

§219.10 – Multiple Uses
This section erroneously and unlawfully provides for the protection of *recommended* wilderness areas and *eligible* wild and scenic river segments. Congress gave NFS no legal authority to perform such interim management in contravention of the multiple use mandate

of MUSYA. This assertion of authority to protect so-called *recommended* wilderness and *eligible* wild and scenic river segments runs directly contrary to the 1984 Utah Wilderness Act, wherein Congress expressly stated that one of its purposes was to "insure that certain other national forest system lands [other than those lands the Act designated as Wilderness] be available for non-wilderness multiple uses." Public Law 98-428 at Sec. 101(b)(2). Congress in the same Act further provided that Forest Service lands in Utah not designated as wilderness by the date of the Act "shall be managed for multiple use in accordance with land management plans pursuant to [applicable law including NFMA]." *Id.* at Sec. 201(b)(3). This section of the Planning Rule should be amended to recognize and comply with the foregoing Congressional authorities. Otherwise this Section and the entire Planning Rule are rendered *ultra vires.*

Nor may Forest Service use any statewide roadless inventory subsequent to the Roadless Area Review Evaluation (RARE II (1979)) to identify more alleged "roadless areas" above and beyond those identified in RARE II and manage such lands as "roadless areas" (aka de facto wilderness areas) absent Congressional authority. See, *id.,* at Sec. 201(b)(5): "[U]nless expressly authorized by Congress, Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of national forest service lands in the State of Utah [above and beyond that conducted in RARE II] for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System."

§219.19 – Definitions
Ecosystems should not be put on the same par as multiple uses under the Multiple Use and Sustained Yield Act (MUSYA). The proposed rule defines ecosystem services too broadly and improperly elevates ecosystem services to the same level of importance as multiple uses under MUSYA. To the extent this section authorizes ecosystem services to trump the multiple uses in the MUSYA, this section constitutes an improper end run around MUSYA without an subsequent act of Congress. The section should be amended to put multiple uses under MUSYA back on their proper legal and statutory footing.

Other
Only those who have submitted "formal comments" related to a plan, plan amendment, or plan revision during public participation opportunities provided in the planning process, should be allowed to file objections thereto.

Also, objections should be based on the substance of the objector's formal comments, unless the objection concerns an issue that arose after opportunities for formal comment.

It is appropriate that the burden falls on the objector to demonstrate compliance with these requirements.

Concurrence With and Incorporation of Comments from State and Local Governments

UAC concurs with and incorporates herein by this reference the written comments on the above-referenced planning rule submitted by the State of Utah and the written comments

on the above-referenced submitted by Duchesne County, Garfield County and Washington County, Utah.

Sincerely,

UTAH ASSOCIATION OF COUNTIES

J. Mark Ward
Senior Policy Analyst and Public Lands Counsel

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 216.67.131.1
Form Letter:

Comments

See Attached Email

Individual(s)

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Monday, May 16, 2011

Mr. Richard Rine, Assistant Director
National Forest System
Ecosystem Management Coordination
Yates Building, 3CEN
201 14th Street Southwest
Washington, DC 20250

Dear Mr. Rine:

Please accept this letter and the attached comments from the Coalition of Local Government as Sweetwater County's comments on the United States Forest Service's proposed Forest Planning Rule.

Based on Sweetwater County's review of the proposed Forest Planning Rule and the Coalition of Local Government's comments, Sweetwater County emphasizes that it strongly supports the "No Action Alternative". Sweetwater County supports this alternative for the followings reasons:

- There is no clear evidence that the revised planning rule will reduce land use planning costs. From Sweetwater County's experience, revised rules rarely translate into a reduction in costs. This is especially true if the Forest Service adds NEPA compliance to the planning process. Also, the proposed rules do not address factors that add to costs such as poor data, controversial actions, and litigation.

- There is no clear evidence that the Forest Service's proposed Forest Planning Rules will have any meaningful impact on climate change. Sweetwater County believes it is important for scientists to continue research that validates climate change and its causes and effects. Without this validating scientific research, the County believes that it is premature for the Forest Service to establish planning rules that claim to influence climate change. It is difficult for Sweetwater County to understand how the Forest Service can base its proposed Forest Planning Rules on assumptions that are not yet established as scientific proof.

If you have any questions regarding Sweetwater County's comments states above or Sweetwater County's support of the attached CLG comments, please contact me at 307-872-3897.

Sincerely,

/s/

Mark Kot, Supervisor
Sweetwater County Community Development

Attachments: CLG comments

cc Coalition of Local Governments.

May 16, 2011

SUBMITTED ELECTRONICALLY: http://www.regulations.gov

Forest Service Planning DEIS
Ric Rine, U.S. Forest Service
Assistant Director for Planning
Ecosystem Management Coordination
Washington, D.C. 200**

c/o Bear West Company
132 E. 500 S
Bountiful, UT 84010

Dear Sir or Madam:

CLG is a voluntary association of local governments established to educate, guide and develop federal land policy in the affected counties. CLG members include county commissions and conservation districts, organized under the pertinent statutes of Wyoming. Current members include Lincoln, Sublette, Sweetwater, and Uinta Counties, and the Lincoln, Little Snake River, Popo Agie, Star Valley, Sublette, Sweetwater, and Uinta Conservation Districts.

These comments are divided into general topics that are not addressed in the proposed rulemaking and specific issues relating to the proposed rules. When appropriate, CLG refers to specific incidents and cases on units of the National Forest System to illustrate the comment. These examples are illustrative not exhaustive.

The CLG members requested cooperating agency status when it submitted its scoping comments on February 16, 2010. It never received even the courtesy of a response.

The Forest Service failure to grant cooperating agency status violates the clear direction by the Council on Environmental Quality (CEQ) that state and local government agencies are to be given cooperating agency status for Environmental Impact Statement (EIS) documents. The Forest Service failure to properly handle the cooperating agency issue has led courts to set aside EIS. *State of Wyoming v. USDA*, 570 F. Supp.2d 1309 (D. Wyo. 2008).

The agency's failure also suggests that the claimed desire to collaborate in the rulemaking documents is false. Indeed, the Forest Service record of not responding to or granting cooperating agency status to local governments does not reflect well on the agency. Apparently Forest Service officers have been told they can pick and choose

the public officials to coordinate with and ignore those that may not agree with the agency's policies. Careful review of CEQ direction shows that agreeing with a federal agency is not a criteria for cooperating agency status. Sadly even the Washington Office of the Forest Service will support denial of cooperating agency status until after the close of the comment period on the draft EIS.

CLG understands that other states and local governments also requested cooperating agency status. The Forest Service failure to honor this requirement also raises questions about its compliance with the National Environmental Policy Act (NEPA) and its commitment to honoring public participation and local government coordination mandates from CEQ rules and the National Forest Management Act (NFMA).

Sincerely,

/s/ Kent Connelly, Chairman
Coalition of Local Governments

I. OVERRIDING ISSUES

1. Rationale to Revise Planning Rules Unsubstantiated

The Forest Service claims that the rules needed to be changed to address the impacts of climate change and to reduce costs. *Id.* at 8481. There is no clear evidence that the revised planning rule will reduce land use planning costs. Experience suggests that this rule will be even more expensive. If the Forest Service adds NEPA compliance to the planning process, it would seem that there will be no cost-savings. The factors that add to costs, such as poor data, controversial actions, and litigation are not resolved in the proposed planning rules.

Similarly, the issue of climate change is barely addressed in the planning rules. This makes sense since there is no data showing that climate change is more than a theory and more relevant there is no data documenting the likely impacts on National Forest System management. The theories that there will be more drought and warmer temperatures is little more than speculation. It is difficult to understand how the land use plan could be based on these assumptions when there is no evidence that they are true. Nor is there any research on how to change land management to adjust to changes in climate.

For this reason alone, CLG supports the no action alternative.

2. Proposed Planning Rule Is About Process and "Values" Not Science

The rulemaking preface states:

> Science is one source of understanding and knowledge that informs planning and decision-making. Much of planning also involves consideration of public values in land management. This proposed rule is very much a science-based rule and establishes a strong requirement for consideration and use of best available scientific information in planning.

Id. at 8481.

Unfortunately, nothing in the proposed rules is based on science. The planning rule does not adopt any scientific standards or criteria, as compared with the Committee of Scientists whose work was the basis for the 1982 rule. The Forest Service incorrectly states that the 1982 rule was to mitigate the impacts of 'resource extraction activities.' *Id.* NFMA was written to establish criteria for logging and revegetation, and these criteria are the core elements of the 1982 rule. Neither logging or grazing is a 'resource extraction activity' since both are renewable.

The rulemaking preface states: "The Agency needs a planning process that helps units identify their unique roles in the broader landscape and create land management plans to guide proactive contributions of the unit and of management to ecological, social, and economic sustainability." *Id.* The proposed planning rule incorrectly assumes that the 1982 rules did no mitigation and did not provide for 'proactive' management that would promote sustainability. The 1982 rules provided for species diversity, and minimum management requirements to protect, soils, vegetation and watersheds. It appears that the rule's authors know very little about the 1982 rules or the plans written under those rules.

This lack of understanding is then followed by describing the planning rule as unstable and then asserting that this rule, unlike others reflects an 'improved understanding of science and sustainability.'

Confusingly, the Forest Service states that proposed rules also will "establish requirements and constraints for on-the ground management decisions;" *Id.* at 8484. This is exactly what the 1982 planning rule did when it provided for minimum management requirements to protect diversity of species, water quality and vegetation. 36 C.F.R. §219.29 (1982).

The reliance on collaboration and references to values also shows that the proposed rule is based on feelings and process not science or data. The premise appears to be that the current plans have not provided the public with social, economic and ecological benefits, clean water, fish and wildlife habitat, or 'opportunities for recreational, spiritual, educational and cultural sustenance.' The Forest Service offers no evidence to support the need for change. Moreover it is worth noting that no statute directs the Forest Service to provide spiritual, educational or cultural sustenance or clean water.

Elsewhere the Forest Service also attempts to justify the rule revision based on

> a growing concern about a variety of risks and stressors impacting resources, services, benefits, and uses on NFS lands. Issues included, for example: Climate change; insects and disease; recreation, timber, and shifts in other local demands and national market trends; population growth and other demographic shifts; water supply protection; and other ecosystem support services.

Id. at 8483.

There are undoubtedly many more stressors but those listed above are largely the product of Forest Service management policies that have been adopted over the last 20 years. Insects and disease reflect increased fuel loads. The fuel loads rose when logging ceased. The Forest Service has steadily abandoned the timber industry, thus leaving the National Forest System with timber that has become a huge fuel load filled with insects and disease. The drought which is entirely predictable coupled with stagnant stands of timber led to insects and disease. The Forest Service's more recent efforts to address these stands have been tentative and insufficient as shown by the catastrophic wildfires in Arizona, California, New Mexico, Oregon, Montana and Utah to name a few states. Wyoming is very much aware that it is next for catastrophic wildfire as a large percent of the western Wyoming forests are dead or dying.

Recreation is directly affected by Forest Service efforts to restrict and end motorized vehicle use. This policy became explicit with the adoption of a new roads rule in January 2001. Thus there are fewer areas for recreation since access is constrained. Ski areas and ski area expansion are also limited as witnessed by the denial of a proposed expansion of the Crested Butte ski resort in 2010.

When the Forest Service decreased logging, it had predictably disastrous impacts on rural communities. Little has improved despite direct funding to compensate for the billions lost.

More importantly, nothing in the proposed rule will actually address the above issues. The Forest Service is not indicating that it will resume logging as part of its commitment to community stability and to provide timber for the needs of the citizens of the United

States. 16 U.S.C. §475. The proposed rules do not provide for increased recreation access.

3. Cooperating Agency Direction and Rules Largely Ignored

The Forest Service failed to acknowledge or grant cooperating agency status that was requested as part of this rulemaking. The failure to respond violates the clear direction by the Council on Environmental Quality (CEQ) that state and local government agencies are to be given cooperating agency status for Environmental Impact Statement (EIS) documents. The Forest Service failure to properly handle the cooperating agency issue has led courts to set aside the roadless rule EIS. *State of Wyoming v. USDA*, 570 F. Supp.2d 1309 (D. Wyo. 2008).

The agency's failure also suggests that the claimed desire to collaborate in the rulemaking documents is false. Indeed, the Forest Service record of not responding to or granting cooperating agency status to local governments does not reflect well on the agency. Apparently Forest Service officers have been told they can pick and choose the public officials to coordinate or cooperate with and ignore those that may not agree with the agency's policies. Careful review of CEQ direction shows that agreeing with a federal agency is not a criteria for cooperating agency status. Sadly even the Washington Office of the Forest Service has supported denial of cooperating agency status, claiming it was up to the Supervisor. Some local governments have been threatened with denial of future cooperating agency status if they continue to express disagreement with Forest Service policies.

4. National Environmental Policy Act (NEPA) Compliance

The major change effected in the 2001 planning rule was to disengage land use planning from NEPA. The Forest Service rationale was that NEPA compliance was too cumbersome and costly. Because land use plans did not actually make a decision, there was no final agency action and thus no need to complete NEPA review.

The proposed planning rules are confusing on this critical issue. Sections 219.5 and 219.7 appear to provide that land use plans will have NEPA compliance, such as an EIS. 76 Fed. Reg. 8501 (For plan development or revision, the decision document would also be accompanied by a final EIS. A plan amendment would be accompanied by appropriate NEPA documentation.); 8511; 36 C.F.R. §§219.5, 219.7 (proposed).

If we correctly understand the rules, then the question is why are state, tribal, local governments not identified as cooperating agencies? The Forest Service NEPA rules do not provide for cooperating agency status but adopt by incorporation the CEQ rules which do. 36 C.F.R. §220.1(a). Given the Forest Service failure to actively seek out and grant cooperating agency status, the planning rules need to be amended to conform.

Significantly, the emphasis on public participation also marginalizes the state and local governments. The state and local governments enjoy a higher status due to the fact that the Forest Service cannot preempt local government functions where it lacks the authority. As explained in these comments, the Forest Service, as a matter of practice, either does not understand or will not accommodate the mandate to coordinate under NEPA. By equating public involvement with coordination with local governments or the obligation under cooperating agency rules and policies, the Forest Service avoids recognizing local government jurisdiction and avoids having to deal with state and local government officials.

Access in the travel planning process is one area where this is especially important. The Forest Service has studiously ignored county road documentation preferring instead to close roads to all motorized use without regard to case law or how the road arose. CLG members appealed the Ashley National Forest Travel Management Plan on these grounds. The Forest Service issued its final decision 30 days after the close of the comment period and rejected both Utah and Wyoming appeals summarily. The DPG continues to resist coordinating with local governments on its travel plan and instead persists in using the EA process to keep the comment period to 30 days even though the plan covers more than 1.2 million acres of land.

5. Other Statutory Direction Omitted

a. Omission of mineral resources

The planning rules are largely silent on mineral development and rights-of-way. The Department of the Interior administers minerals but the Forest Service must review surface impacts. Thus, the planning rules should acknowledge this important fact and address the role of mineral development and how it may affect planning.

Alternatively the planning rule omission is a deliberate effort to exclude mineral development from the National Forest System. This would be unlawful. The National Grasslands are specifically identified as being managed for energy development. 7 U.S.C. §1001. *See also* Energy Security Act, 42 U.S.C. §8855; Mining and Minerals Policy Act, 30 U.S.C. §21a.

b. Management Direction for National Grasslands

While the National Grasslands are part of the National Forest System, the management objectives differ and should be reflected in the planning rule. The National Grasslands are to be managed as demonstration projects for grassland agriculture and for energy development, among other uses.

c. Omission of Healthy Forests Mandates

The proposed planning rules fail to incorporate the Healthy Forests Restoration Management Act. There is next to nothing about how the plan will identify forest conditions and proceed to meet the act's criteria. Given the recognized risks of catastrophic wildfire, particularly in the Rocky Mountain States, this omission is unwarranted.

6. Role of National Forest System in Economy

The planning rule identifies the important role that National Forest System management has on social and economic factors. It fails, however, to correctly reflect either the statutory direction or original commitment to contributing to the stability of dependent communities.

The Organic Act provides in relevant part:

> No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States;

16 U.S.C. §475.

As explained in early Forest Service manuals, the Forest Service was to ensure that the land management policies took into account and provided for community and economic stability. [**Gifford Pinchot quote]. The concept of ensuring community stability was established in the Forest Service rules as part of the timber program, 36 C.F.R. Part 223; and in the statutes allocating 25 percent of National Forest System revenues to the local communities. 16 U.S.C. §500. The Secure Rural Schools and Community Self-Determination Act of 2000 which was renewed through 2011 replaced the previous act. With the ever-shrinking timber program the Forest Service revised the rules to delete reference to this objective. [**CITE].

7. No More *de facto* Wilderness

CLG members also believe that the time is long past for the Forest Service to continue to expand the lands that will be managed as if they were wilderness. The 1982 planning rules were amended to provide for wilderness study and review after the Ninth Circuit Court of Appeals set aside the national roadless area review. 36 C.F.R. §219.27 (1983).

Since 1983, however, Congress has adopted numerous National Forest wilderness bills, and released the other lands to multiple use management. This is especially true for Wyoming, where Congress expressly released all of the roadless lands to multiple use management. Pub.L. 98-550, Title II, § 201(a)(10), Oct. 30, 1984, 98 Stat. 2809, Wyoming 1984 Wilderness Act. In 2008, the Wyoming District Court concluded that the Forest Service inventoried roadless area conservation rule was unlawful, both for lack of authority and violation of NEPA. *Wyoming v. U.S. Dept. of Agriculture*, 570 F. Supp.2d

1309 (D. Wyo. 2008). Notwithstanding the law and court decision, the Forest Service continues to use the planning process as a basis to expand wilderness management. The Wilderness Act gave the Forest Service 15 years to complete its review and recommendations. The time has long since passed for an end to the continued expansion of *de facto* wilderness management.

8. Planning Rules Need Definitions

The planning rules use a lot of terms and it is not clear that the ordinary meaning is the same that the Forest Service is using.

a. Economic sustainability

For instance, economic sustainability could mean managing the National Forest System to sustain local and state economics or it could mean shutting out particular land uses like livestock grazing on the theory that it was not economically sustainable. Unfortunately, the planning rules are coy about what is actually meant thereby frustrating meaningful public comment.

b. Monitoring; See also §219.12, proposed

The CLG strongly supports monitoring the response of resources to management as part of the land use plans. Unfortunately, the public has learned that the Forest Service definition of monitoring differs from that used by the land use community. For decades, monitoring has been defined as measuring the response of the resources to changes in land management over time. Vegetation monitoring in particular has focused on

tracking particular sites and evaluating the site's responses to management (or lack thereof).

More recently, Region 1 has adopted a very different definition. Monitoring data are now equated with an initial base-line assessment or with a one-time inventory of a resource. Thus monitoring is pretty much any review of the resource without regard to measuring the response of the resources to management or changes in management over time. A valid and defensible monitoring program is essential to adaptive management.

As a result, we believe that the definition of monitoring needs to be revised to capture the concept of measuring the response of resources to land management over time. *Id.* at 8481.

Another important aspect of monitoring is the fact that there is no penalty or consequence, if monitoring is not done. While the Forest Service has been writing land use plans pursuant to MUSYA and now NFMA for more than 50 years, it has only sporadically monitored the effects of its management plans. While the revised planning rules would make monitoring a cornerstone of land management, there is no trigger or consequence, if monitoring is not actually done.

As one example, more often than not management of grazing allotments is not evaluated by monitoring unless the permittees do it themselves. And even then the Forest Service is reluctant to accept data from a third party. When the permit is to be renewed, the Forest Service has no data to document the resources responses to management over time. If challenged, the Forest Service has few facts to defend its decisions and the livestock permittees bear the brunt of this lack of information.

CLG also questions whether the Forest Service will allocate the funds and staff for a monitoring program. It has not in the past. The proposed rule is promoted as saving money, thus suggesting that the Forest Service will not in fact allocate the necessary funds and staff to make monitoring part of its management scheme.

9. Ecosystem Services, §§219.8, 219.10 proposed

Planning rules attempt to evade the terms of the multiple use sustained yield act by defining planning in terms of ecosystem services.

> Ecosystem services'' is a term that is used today to describe many consumptive and nonconsumptive uses, as well as traditional and non-traditional uses, that people associate with national forests. In the proposed rule we use the phrase ''multiple uses, including ecosystem services'' in certain places to show an association between the terms so both are recognized in the rule and within our statutory authority as part of land management planning. The management of the multiple uses described by the MUSYA of 1960 (outdoor recreation, range, timber, watershed, and wildlife and fish purposes) has broader application in today's context.

Id. at 8484.

The Forest Service cannot revise the statutory management directives. It is important to remember that the National Forests were reserved to "to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water

flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States." 16 U.S.C. §475. The additional and supplemental purposes include "outdoor recreation, range, timber, watershed, and wildlife and fish purposes." 16 U.S.C. §528. As noted above, these are not 'consumptive' or non-consumptive uses, they are the primary land uses that the Forest Service is mandated to provide on the National Forests. The National Grasslands have similar but different objectives and they are:

> The Secretary is authorized and directed to develop a program of land conservation and land utilization, in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety, and welfare.

7 U.S.C. §1010.

None of the above statutory objectives resemble in any shape or form the terms that the Forest Service would adopt in the proposed rule. Given the clear statutory direction, decades of implementation, it is apparent that the Forest Service is unlawfully attempting to revise the law through rulemaking. This exceeds the agency's power.

II. SPECIFIC COMMENTS

1. Plan Framework page 8481

The planning rules need to add a step of 'assessing planning assumptions and making adjustments.' Theoretically this would be included in adaptative management. But our experience is that the Forest Service does not employ adaptive management to reconsider plan assumptions. A particularly telling example is found in North Dakota where the Forest Service assumed in the Dakota Prairie Grasslands Plan (DPG) that the grasslands could achieve a visual obstruction rating (VOR) of 3.5" for all of the National Grassland units in North Dakota and northern South Dakota with only 800 pounds per acre of production. Based on that assumption, the plan adopted a mandatory VOR of 3.5" even though a significant segment of the scientific community noted that it was unlikely that the grasslands could produce sufficient vegetation to achieve 3.5" VOR. The Forest Service further contended that the VOR reading would not lead to significant reductions in livestock grazing. The Forest Service even did an elaborate test drive which showed no grazing reductions Now the Forest Service is implementing the plan with an average of 25% reductions in grazing in each Ranger District.

These reductions are occurring because the National Grasslands cannot achieve a VOR of 3.5" unless the site produces more than 2300 pounds of forage. The Forest Service sponsored a study by the North Dakota State University to evaluate VOR ratings. The data showed that most sites will not produce 2300 pounds of forage, even before grazing and during an abnormally wet year. In areas that might achieve that production, it would require removing most of the livestock grazing. Needless to say, had this information been available when the plan was adopted, the Forest Service could not have been able to maintain that no significant reductions would occur. Rather than acknowledge that the plan assumption was incredibly wrong, the Forest Service has maintained that it will continue to 'implement the plan' without regard to the

incorrect assumptions and without regard to the significant impact on one of the primary users. Even the Chief of the Forest Service has flatly stated it will implement the plan regardless of errors in the assumptions and impacts.

If the Forest Service is to have any scientific credibility, it needs to acknowledge when planning assumptions are wrong and make changes. Hunkering down and not making changes has put the Forest Service in decades of litigation.

2. Directives In Lieu of Rules Violates NFMA and the Claimed Commitment to Public Participation, §219.* proposed

CLG finds it ironic that the proposed rules would allow the Forest Service to make significant changes in the planning process by the non-public avenue of directives. The directive system is very difficult to access, is not indexed, and, of course, is adopted without notice and public comment. Forest Service rules only require public involvement for directives in narrow and self-defined cases. 36 C.F.R. §216.**. Despite repetitious references to 'collaboration' the Forest Service proposes to hijack the planning process by implementing land use planning through these secret directives.

This violates NFMA, since the Forest Service is required to use rulemaking to implement its provisions, which address the land use planning process. 16 U.S.C. §1613. The Agriculture Secretary must also provide for "an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs." 16 U.S.C. §1612(a). Using the nonpublic directive system to implement planning flatly contradicts this clear direction.

3. Role of Science in Planning, §219.3 proposed

The planning rule falls short of the Information Quality Act or the USDA criteria. While the proposed rules use the term 'best available scientific information' that is not sufficient under the Information Quality Act. 44 U.S.C. §3516 note. As noted elsewhere in these comments, the Forest Service will often rely on old data, such as 20-year monitoring data for rangeland conditions, on the basis that it is the 'best available.' Similarly, the Forest Service will use assessment information in lieu of monitoring data, because it lacks such data. In North Dakota the DPG attempted to use computerized data estimating conditions and this was found to be so flawed that it could not be used at the project level for decisions by the Scientific Review Team.

The federal court cases frequently set aside Forest Service decisions when they rely on flawed data, on the basis that it is the best available.

The Information Quality Act requires that each federal agency follow guidelines that will ensure and maximize "the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency." Pub. L. No. 106-554 (Dec. 21, 2000) (published at 44 U.S.C. §3516 note). The Forest Service "must use the "best available, peer reviewed science and supporting studies conducted in accordance with sound and objective scientific principles." 42 U.S.C. 300g-1(b)(3)(A) & (B)."

This was the issue in *Ecology Center, Inc. v. U.S. Forest Service*, 451 F.3d 1183 (10th Cir. 2006). The United States Court of Appeals for the Tenth Circuit vacated the Forest Service's decision because the agency failed to demonstrate that the best available science was applied, even though the Forest Service ultimately had the discretion to decide what constituted the best available science. *Id.* at 1193, 1194 n.4 (identifying scientific controversy and holding that the "best available" science is "not just whatever

the Forest Service finds on the shelf. . . [I]t still must be good science-that is reliable, peer-reviewed, or otherwise complying with valid scientific methods").

The proposed rule apparently qualifies the need to even comply with the Information Quality Act.

> the best available scientific information could be the result of expert opinion, panel consensus, or observations, as long as the responsible official has a reasonable basis for relying on that information. Regardless of the source of the information, the Office of Management and Budget (OMB) Information Quality Bulletin on Peer Review may apply.

Id. at 8485. None of the items in the above list conforms to the Information Quality Act. A single expert opinion without peer-review analysis is not sufficient nor would observations or panel consensus. CLG also notes that the Forest Service appears to assume that the Information Quality Act does not apply, when it clearly applies to all information disseminated by an agency.

Elsewhere the Forest Service notes that science only informs but does not dictate a decision. *Id.* 8485. It is difficult to understand how to reconcile putting science secondary and yet insisting that this is a science-based planning rule. The explanations within the proposed rulemaking are contradictory.

Similarly deferring the use of science to the directive system is also problematic. *Supra* at 13-14.

4. Requirements for Public Participation, §219.4 proposed

This section is notably silent about state and local governments. This issue was raised in scoping but the Forest Service fails to address it satisfactorily.

Since the rules will incorporate NEPA, then the Forest Service has no choice but to invite all state and local governments to participate. 40 C.F.R. §§1501.2(d)(3), 1506.2. CEQ direction further requires federal agencies to affirmatively bring state and local government agencies into the process. [CEQ Directive CITES]

Rather than conform, the planning rules focus on tribal relations and ignore other governmental entities. Referring to NEPA collaboration ignores earlier and explicit direction.

The text further indicates the Forest Service want to substitute collaboration or public involvement for cooperating agency process. *See e.g. Id.* at 8486.

> The proposed rule specifically would require the responsible official to encourage participation by the public, Tribes, governments, scientists, and other individuals by sharing knowledge, ideas, and resources. It is also expected that the responsible official would rely on proactive, contemporary tools, such as the Internet, to encourage widespread participation.

The Forest Service compliance with cooperating agency relationships has been disparate and inconsistent. Region 4 resisted local government cooperating agency status for the Utah Wild and Scenic Rivers Act study, saying that the Governor of Utah

would represent the Wyoming local government interests. Since the Utah Governor has no relationship with the Wyoming counties, this was clearly not the case. On the other hand, Region 4 forests have recognized cooperating agency status for travel management plans. Region 1 has also varied with counties enjoying cooperating agency status for the Beaverhead but being rejected for the DPG. There is no clear or consistent direction to follow the law and this leads to the exclusion of many local governments in the EIS process.

5. Land Use Planning Coordination and Consistency

The forest planning rule is also inconsistent with the NEPA rules. Instead of recognizing that CEQ rules require coordination, the Forest Service writes:

> The proposed rule would require that during the plan development or plan revision process, the responsible official would review the planning and land use policies of federally recognized Indian Tribes and of other Federal, State, and local governments and document the results of the review in assessments conducted by other Federal agencies, statewide forest resource assessments, community wildfire protection plans, or state wildlife action plans. The review would consider the objectives of federally recognized Indian Tribes, and of other Federal, State, and local governments, as expressed in their plans and policies, and would assess the compatibility and interrelated impacts of these plans and policies. The review would include a determination of how each Forest Service plan should address the impacts identified or how each plan might contribute to joint goals.

76 Fed. Reg. at 8486-87.

The CEQ rule states that when evaluating environmental consequences a federal agency must consider "Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See §1506.2(d).)" As additional explanation, the CEQ rules further state:

> (d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). ***Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.***

40 C.F.R. §1506.2(d).

The proposed rule fails to require reconciliation of the proposed plan with the state or local government plan. Instead, the proposed rule assumes that it supersedes state and local plans and there is no obligation to resolve the inconsistency. The Forest Service instead states that consistency would reduce Forest Service management flexibility. 76 Fed. Reg. at 8487. It is apparent that the Forest Service will continue its current inflexibility regardless of contrary law or rule. As is clear above, the Forest Service lacks the authority not to comply with the CEQ rules. *Andrus v. Sierra Club*, 442 U.S. 347, 357 (1979).

6. Planning Framework, §219.5 proposed

The proposed rule calls for an assessment that would identify "a potential need to change the unit's plan." It is not clear how the assessment would differ from the 'analysis of the management situation' that was used in the 1982 rules. CLG supports both the assessment and public involvement but notes that the public needs access to the assessment and the underlying record before commenting.

The proposed rule does not limit or tie any land use management changes to the assessment. Unfortunately, on many occasions, the Forest Service lacks the necessary data or information to write an assessment. [E.g. Bridger-Teton National Forest lacking allotment management data showing resource conditions in conjunction with wildlife, big game or livestock or historical assessments of healthy forests). On other occasions, the Forest Service has prepared a detailed AMS but ignored it when it did not support major changes that reflected political rather than resource objectives. *See e.g.* DPG where rangeland health was improving and meeting original planning standards but DPG wanted to reduce livestock grazing. In short, the 'need for change' was political, not resource based.

If the Forest Service is prepared to rely on data and science rather than politics, then it needs to tie the assessment to later planning decisions. Otherwise, politics of the moment will continue to be the basis for forest management decisions.

The discussion implies that the public would have access to the assessment data but does not address how.

> The assessment phase would allow for early public participation—well before a proposed action—so that stakeholders could engage in joint fact-

> finding and develop a mutual understanding of the interconnections among social, economic, and ecological communities and systems. The development/ revision/amendment element of the framework responds to the public desire to help develop and provide meaningful input to proposals for land management plans.

76 Fed. Reg. at 8487.

The proposed rule does not address how that information will be shared. Currently, the Forest Service will not provide such information to state or local governments without a Freedom of Information Act (FOIA) request and will often assess prohibitive search and copying costs. When local governments request a fee waiver, the Forest Service will routinely deny the requests on the basis that the local governments may benefit financially or fail to show how their request will promote the public interest. North Dakota counties have a fee waiver request appeal that has been pending before the Chief's office since 2005. The documents sought addressed Forest Service records of road ownership and control, a major issue in the land use plan and the pending travel management plan. Notably here also, the DPG did not invite state and local governments to 'collaborate' or be cooperating agencies and would have imposed a bill for more than $20,000 for the requested records. It is not sufficient that the Forest Service provide a time for comment, it must be prepared to openly share the records upon which a decision will be based and to end the practice of imposing fees as a barrier to the information.

7. Assessments,§219.6 proposed

a. Lack of clear criteria

As written the value of the assessment is severely undercut by the qualification that each unit can decide what kind of assessment is done.

> The responsible official would have discretion to set the scale and scope of the assessment but would engage the public early and would encourage participation in the assessment process. The content of assessments would be used to develop new plans and plan revisions, to develop monitoring questions, and to provide a feedback loop.

Id. at 8487.

This explanation demonstrates how the assessment phase could quickly lose any value. It would, for instance, allow a Supervisor to decide not to use its vegetation monitoring data but instead use only satellite imagery because it was easier to use although less accurate. It would allow the Supervisor to simply write rangelands are in poor condition and do not meet habitat requirements, without any evidence supporting such a conclusion. Without clear standards for assessments, this step will have little value in the planning process.

> Assessments should provide useful information to the responsible official to develop plan components and other content for a new or revised plan, to identify gaps in needed information that might be filled by a monitoring program, to identify changing conditions that the Agency might need to track, or to identify assumptions that should be tested later.

Id.

The foregoing language is even more troubling. First, information gaps cannot be filed by a monitoring program unless the planning process would be suspended for 10 years. Each plan now has a monitoring program so the question should be what does monitoring show. If the units are not actually implementing monitoring, then there should be a good explanation about why this is not occurring. Without monitoring is it unlikely that the Forest Service can substantiate resource conditions or any changes within the accepted scientific meaning of the term.

Finally, the proposed rule needs to state that the Forest Service cannot rely on one time assessments in lieu of monitoring data. Moreover, the Forest Service should be required to accept data from other entities. State university systems and other research departments have important work and studies that should be used rather than discarded because they do not fit the political objectives or were not done by the Forest Service.

b. Reliance on "existing information"

The potential value of the assessment phase is compromised because it must 'use existing information and be conducted rapidly in order to respond to changing conditions." *Id*. at 8487.

First, it is well-established that the Forest Service more often than not has little or no existing information. In most cases it has not implemented the monitoring objectives from the prior plans. Indeed, the second generation of plans often defaults to 20 and 30-year old data because that was the last time that the agency had vegetation monitoring.

Similarly, there is little credible forest health data, since that information used to be generated by the timber program. It is too late to assess forest health after the fire.

The proposed rule further permits the use of one-time assessments rather than monitoring data. "However, nothing in this section would restrict the responsible official from gathering new information to address the issues or questions for the assessment." *Id.* 8488. This does not ensure unbiased data development. Instead, it would override monitoring data. The danger is as follows. If the assessment is a windshield review of vegetation in a drought, then the plan will be strongly biased against grazing or recreation and not representative of actual vegetation. A quick and dirty riparian area assessment would suffer from the same infirmities, since it would not establish the causal factors or be based on soils or climate, which also affect riparian area conditions. In short this rule does nothing to improve information or data used for forest management.

8. Plan Development §219.7 Proposed

a. Process

CLG supports the direction to reach out to state and local governments. But as noted above, this will not be meaningful unless the Forest Service is willing to share information and not impose cost-prohibitive barriers to such information. As noted above there is no role for cooperating agency status because the process folds the state and local governments into the public.

b. Plan components

The proposed rule would require plans to adopt "desired conditions, objectives, standards, guidelines, and suitability of areas. Plans could also contain goals, an optional plan component." *Id*. This comes straight out of the 1982 planning rules. If properly used and based on information, it can be an acceptable format. CLG members experience instead shows that standards and guidelines are applied rigidly. Thus, it is ironic that elsewhere in the rulemaking the Forest Service pushes for flexibility but in fact opts for rigid management without regard to specific circumstances or site capability.

CLG previously recommended adopting performance objectives and providing for flexibility on how they are achieved. The proposed rule stays with standards and guidelines which are implemented without exception, even when the assumptions upon which the standards and guidelines are based are proven to be wrong.

Finally nothing in the above format is consistent with adaptive management. The rulemaking preface refers to adaptive management, the planning rule does the opposite.

i. Desired Conditions and Objectives

Nothing in the proposed rule reflects capability or location of the unit of the National Forest System. It may not be possible to achieve native vegetation, especially on acquired lands where revegetation efforts introduced non-native species. Thus, the diversity objective for native species may not be achievable and set all land uses to fail to achieve the desired conditions.

The proposed rule further fails to define if and when such desired conditions must be achieved. As written, they must be achieved immediately, even if the new desired condition is not within the site capability and without regard to the fact that resource conditions changes require time, often several decades. Most current plans provide that the land uses (project level actions) are consistent with the plan, if the objectives are met or there is progress towards meeting the objectives. Here again, some forest units, *e.g.* adopt project level plans that penalize land users if the objectives are not met now, even though the plan provided for making progress towards meeting the desired conditions or objectives.

This is a very significant distinction, since it is probable that the objectives in a plan are not met in the numerical sense but conditions are and will continue to improve. The proposed rule needs to expressly state that objectives are not mandatory in the sense that if not met land uses will end or must be immediately change. Alternatively, the Forest Service will have to significantly revise objectives to fit actual conditions, rather than the programmatic estimates currently used.

CLG notes that elsewhere the preface describes desired conditions and objectives as aspirational. "Objectives and desired conditions are long-term aspirations whose achievement would depend on the cumulative effect of a number of agency actions, and often on factors outside the agency's control." *Id.* at 8501. Unfortunately, CLG members have learned that Forest Service employees will arbitrarily use these aspirational condition and objectives to justify grazing reductions or removal. There needs to be a lot more education of Forest Service officers at the supervisory and district ranger level.

In the same context, the proposed rule explicitly states that a project must either move resource conditions toward objectives or not preclude eventual achievement of desired conditions or objectives. *Id.* at 8501. CLG agrees with this general statement. It is important however that at least in region 1, the Forest Service is allowing implementation that requires each project to achieve the desired conditions or objectives within five years. This is not only harsh but is a deliberate effort to remove or punish livestock grazing use. The Forest Service owes it to the public and local governments to end this type of arbitrary agency action.

ii. Standards and Guidelines

The preface claims that guidelines will be requirements but are flexible. This statement belies more than 25 years of Forest Service implementation history. It is entirely disingenuous. The rigidity is found in the example regarding longleaf versus loblolly pine forests. *Id.* 848*. The standard does not consider the feasibility of changing the plant species, which is more than just burning a few acres and letting nature take its course. The imposition of a specific percentage further limits flexibility in management, even if the assumption that fire will readily restore the longleaf pine turns out to be wrong.

Moreover, the proposed rule does not limit standards to legal criteria, such as limiting nonpoint source water pollution. Instead the Forest Service is free to invent any standard that it wants to without regard to the impacts on multiple use such as motorized recreation, snowmobiling or livestock grazing.

The adoption of rigid management through standards and guidelines is not adaptive management; it is the opposite of adaptive management.

c. Goals

As defined, the goals are indistinguishable from objectives. When the 1982 planning rules were first implemented, goals were understood to be the long-term or 50-year planning horizon. Without this qualification, the planning rule is both confusing and meaningless.

9. Other Plan Content §219.7 proposed

i. Monitoring plans

CLG supports monitoring but notes that since the Forest Service has never met this objective it seems risky to make it such an important part of the planning rules. Unless the Forest Service is prepared to actually budget and staff the monitoring program, it will not occur.

The emphasis on rapid change is even more questionable. Monitoring measures the change in resource conditions over time. Sound monitoring practices do not support abrupt management changes based on how conditions look this year. Rapid changes only invite mistakes, since it is not possible to understand all of the causal factors with a one-time assessment that might affect resource conditions. There are numerous occasions when the assumption that land uses are the cause are found to be incorrect. The proposed planning rules makes those kind of mistakes inevitable.

b. Identification of priority watersheds

The proposed planning rule focuses on watershed management even though the Forest Service has very limited authority over water quality and no jurisdiction over water quantity. The Organic Act requires the Forest Service to manage the land to provide favorable conditions for water flows. 16 U.S.C. §475. This language requires the Forest Service to manage the forests to increase water flows, which occur when logging is allowed. CLG assumes that is not the objective of the proposed rule

No other statute grants the Forest Service jurisdiction to manage watershed for water quality. The only authority is to follow a particular state's nonpoint source water pollution rules. Water quality regulation belongs to EPA and is delegated to the respective states. The Forest Service has no such authority.

This provision is based on proposed §219.8, 'water-based sustainability.' Again nothing in any federal law authorizes the National Forest System to be managed for water-based sustainability. In the western states, the legal authority over all surface and groundwater lies with the states by constitutional direction.

CLG members reluctantly conclude that this initiative in particular is aimed at further reducing the multiple uses that may possibly affect the watershed, such as motorized recreation, motorized travel, skiing, livestock grazing, and, of course, logging. Similarly such management focus will spell the end to mining and energy development in the National Forest System units, even though these are the statutorily authorized land uses for the National Forest System.

10. Sustainability, §219.8 proposed

The only apparent standard in the planning rules calls for ecological, social and economic sustainability. No law uses this term and the rules do not adequately define what the Forest Service thinks is sustainable. There would be a significant difference between sustainable indefinitely, notwithstanding factors that we cannot predict, versus sustainable over the life of the plan.

The discussion confuses rather than enlightens.

> require the development of plan components that maintain or restore the structure, function, composition, and connectivity of these systems as a whole and that maintain, protect, or restore key elements within each system.

Id. at 8490.

What kind of function are we talking about. Does structure mean soils or vegetation or both. What is the scope of 'composition.' Connectivity suggests that the Forest Service wants to manage land outside of the National Forest System unit boundaries, when it lacks any authority to do so. Nor is there any guidance on exactly how the Forest Service will identify key elements and what they will emphasize.

a. Wildland Fire

The Forest Service has embraced the concept of 'restoring the role of fire in the ecosystem.' At the same time, the largest component of the Forest Service budget has gone to fighting wildfires. More significantly, we do not see any serious discussion of the adverse impacts of wildfire or fire for that matter on the ecosystem.

The biological opinion for Region 3 is a notable exception where it documents the adverse impacts of fire on habitat for Threatened and Endangered Species. [CITE]. Fires lead to significant soil erosion since it is rarely, if ever, possible to revegetate a fire site before winter rains or snow. The soil erosion leads to increased sediment [pollution] in the water systems. Revegetation is not magically limited to native plant species. Instead wind, birds, and wildlife bring a host of invasive plant species that will out complete native vegetation. So while the land looks green in the press photos, a closer examination will show a significant percent of invasive species. *See e.g.* Forest Service discussion of invasive species on ** Allotment, which burned in 2004 in the Picnic Fire and has been in nonuse.

Fire also displaces and kills wildlife and big game as well as significantly altering or destroying habitat. More recently, sage grouse biologists have questioned the previous wisdom that sage brush needed to be burned to regenerate this habitat component.

b. Water sustainability *Id.* at 8491.

As noted above, the Forest Service has no water regulatory authority, other than to maintain favorable conditions for water flows. 16 U.S.C. §475. Nevertheless, the planning rules attempt to hijack state and federal regulatory schemes by grossly exaggerating the role of the National Forest System management on water systems. Indeed, the Forest Service has affirmatively tried to impede both the operation and expansion of water systems on the National Forests.

It is ironic that it now claims to 'administer more than 90,000 water rights in cooperation with the states. *Id.* at 8491. This is flatly untrue. The Forest Service enjoys a reserved water right for the primary purposes of the forest reservation as determined at the time

of the original reservation. US v. New Mexico, ** U.S. ** (1976). Otherwise, the Forest Service has applied for and received specific water rights for consumptive uses, e.g. range improvements, campgrounds and administrative facilities. In no case does the Forest Service 'administer' the water right, it is granted a water right. Only the respective western states administer water rights.

On the issue of access to and for hydro operations, CLG members have found the Forest Service to be a less than willing 'partner.' Many water cooperatives and rural electric associations operate under special use permits from the Forest Service. While these are of long-duration, the Forest Service regulatory process impedes management and maintenance of water systems on the National Forest System.

The conclusion that there are areas on National Forests where water resources are degraded is one of those general statements without any meaning when made out of context. One could say insufficient vegetation on 10 feet of a riparian area is 'degraded' but what does that mean in the context of thousands of miles of riparian areas? The statement may be technically true but it is not accurate and misrepresents the resource conditions. In comments on the Rangeland Reform Rule EIS, the livestock industry demonstrated that National Forests riparian areas had significantly improved.

Nor does the Forest Service provide any data supporting the premise that current management of the National Forest System currently contributes to poor water quality. While many of the National Forests are headwaters for major water systems, such as the Colorado River or the Missouri River, there is no basis to conclude it is current forest management that has caused problems.

There are many speculative reports that climate change will lead to longer and more severe drought. Any student of American history will understand that the western states have seen numerous periods of drought. None of the reports provides any data to support the theory other than it might happen.

If the Forest Service wanted to increase water flows, it need only resume logging or increase timber sales to increase water yields. For more than 25 years, the Forest Service has reduced its timber program to a mere shadow of its former size. Logging would also address the extreme fuel loads and disease that now threatens a significant number of the National Forests.

c. Riparian areas

Current range management already calls for restoring and maintaining riparian areas. It is unclear what more the planning rule would require.

Planning rules also fail to recognize that many riparian areas are not flowing waterways. The mandatory width is not supportable from a factual or scientific basis and must be deleted.

d. Social and economic stability

Until recently, the Forest Service recognized that it had a statutory obligation to maintain the economic stability of the adjacent communities. 36 C.F.R. §223.88 (1985). The Forest Service erased the role of addressing the impacts on stability of dependent communities during the Clinton Administration along with severing payments to counties from timber sale revenues.

Notwithstanding the agency's efforts to divorce itself from this principle, it is based on the Organic Act and the original intent of the National Forest System. The Organic Act states in part that the forests are to be managed to provide timber for the needs of the citizens of the United States.' 16 U.S.C. §475. Gifford Pinchot, the first Chief of the Forest Service directed the managers to first consider the needs and desires of the local communities. [Pinchot at **]. From this language and direction, the Forest Service adopted regulations that tailored the timber sale program to consider the stability of the dependent communities. 36 C.F.R. §223.**.

CLG believes that the Forest Service efforts to divorce itself from the local communities was unfortunate and should be reversed. It is not clear that this is what the proposed rule actually does. If the terms were ensuring that the forest management sustained the social and economic structure of adjacent communities, then CLG would support it. As written however, it is apparent that the Forest Service proposes to dictate to the communities what is socially and economically sustainable. This is entirely outside the purview of a federal land managing agency.

e. Custom and culture

Along the same lines, the planning rule purports to consider custom and culture but actually will dictate changes in local custom and culture. It is also significant that the proposed rule only recognizes tribal and Alaska native culture and dismisses rural custom and culture. *Id.* 8492.

The Forest Service invites comments on 'cultural sustainability.' Again this is entirely outside of the agency's authority and one issue that it is poorly equipped to deal with.

One need only look at how the Forest Service proposes to transition southeast Alaska away from timber much like how the Forest Service transitioned the Pacific Northwest from timber in the 1990s. The rural towns affected by mill closings never recovered. Minimum wage tourism jobs are not the same as mill or logging work that pays more. They also contribute less to the overall community.

Recreation access is a huge cultural issues. CLG members have seen nothing but road closures on the National Forest System units in Wyoming as well as Utah and Colorado. Despite thousands of signatures on petitions for maintaining motorized access, the Forest Service continues to unilaterally close roads, either independent of travel planning or as part of a travel plan. The Ashley National Forest is a case in point, where it decided it was 'too hard' to inventory the roads to be closed but closed them anyway. This type of action demonstrates that the Forest Service is institutionally incapable of respecting rural custom and culture and proceeds without regard to the consequences of its actions.

11. Diversity of Plant and Animal Communities, §219.9 proposed

NFMA directs that plans:

> provide for diversity of plant and animal communities ***based on the suitability and capability of the specific land area*** in order ***to meet overall multiple-use objectives***, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan;

16 U.S.C. §1604(b). The planning rule notably drops two important qualifications with respect to species diversity, site capability and to achieve multiple use objectives. Instead, the proposed rule makes species diversity a stand-alone objective without regard to multiple use management and without regard to ***the suitability and capability of the specific land area***.

The proposed rule also assumes without any basis in fact that preservation of native tree species will preserve all other native plants. *Id.* at 8493.

This proposed rule also does not consider the fact that NFMA does not require native plant species only plant and animal diversity. Many areas on the National Forest System were acquired and revegetated. The National Grasslands are a case in point where USDA planted crested wheatgrass to restore soils and vegetation following severe drought during the Great Depression. Crested wheatgrass is a persistent non-native plant and while not politically desirable remains valuable for wildlife habitat and forage. As written the proposed rule would require conversion of the National Grasslands to all native vegetation; a huge and impractical undertaking that would certainly not succeed.

CLG agrees with other comments that the Forest Service has no authority to mandate species viability on the National Forest System. No federal law provides the Forest Service with wildlife management authority. Moreover, more than 20 years of litigation history suggest that the Forest Service cannot get this right.

Along the same lines, the Forest Service has no authority under the Endangered Species Act, and the U.S. Fish and Wildlife Service defines recovery and habitat needs.

12. Multiple Uses, §219.10 proposed

The proposed rulemaking makes an impassioned but entirely wrong case for changing the definition of multiple use based on changing conditions and needs. *Id.* at 8494. Moreover, the Forest Service fails to show that there is no longer a need for timber, recreation, livestock grazing, or habitat for fish and wildlife. Indeed just the opposite is true, the United States citizens continue to need wood products, food, and a place to recreate that does not involve the time and effort that wilderness or non-motorized recreation would require.

Even though Congress recognizes the right of entities to develop the federal mineral estate on National Forest System units, the proposed rule is entirely silent on mining or mineral leasing. 30 U.S.C. §226(g) and (h); Energy Conservation Act, 42 U.S.C. §8855 ("It is the intent of the Congress that the Secretary of Agriculture shall process applications for leases of National Forest System lands and for permits to explore, drill, and develop resources on land leased from the Forest Service, notwithstanding the current status of any plan being prepared under section 1604 of Title 16."). It is also notably silent about rights-of-way.

Given this fact, one must assume that the Forest Service intends to sunset all mineral development on the National Forest System units, perhaps with the notable exception of the Bridger-Teton or the Little Missouri National Grassland, which produces most of the oil and gas on the National Forest System.

13. Monitoring, §219.12 proposed

CLG notes that 'broad-scale' monitoring is not actually monitoring, since it is unlikely that broad scale assessments will accurately measure resource responses to management changes. The move to broad scale, which is not defined is indicative of Forest Service proposals to use satellite imaging or other broad scale estimates in lieu of actual monitoring. If the Forest Service were not making such significant decisions based on the data, CLG would not object but it does. For instance, Region 4 recently released a direction threatening permit action, suspension or cancellation, if a permittee were to exceed utilization anywhere in the allotment or if grazing occurs before range ready or any other infraction of annual operating instructions or forest plan direction. If the Forest Service were to base a decision that utilization was exceeded based solely on satellite photos or a windshield assessment, then that is not monitoring and is not credible.

Moreover, satellite imagery is both expensive and unlikely to yield the detail necessary to identify causal factors or site capability.

a. Scope of monitoring

The preface suggests that monitoring will address only sustainability and diversity, not the traditional multiple uses. *Id.* at 8498. This too is equally problematic.

The discussion of species to monitor is equally unsatisfactory. Under the 1982 rules, the Forest Service tended to define management indicator species based on popularity

rather than associated habitat. The proposed rules adopt a new term 'focal species' without any useful criteria.

Moreover, the Forest Service lacks any jurisdiction to management wildlife or fish, but has only authority to managed the habitat for fish and wildlife.

Concept of monitoring does not include assessment and documentation of causal factors. To this day, for instance, Forest Service employees will conclude that livestock grazing is the sole or primary cause of degradation to riparian areas or sites, when further investigation would have revealed heavy use by elk or the fact that the site was an abandoned sheep bedding ground that never returned to native plant species. Similarly, the Forest Service identified grazing as the cause of a riparian area segment not meeting proper functioning condition (PFC) when the changes were due to use a road acres the area for energy exploration. Similarly the default solution is to remove livestock grazing, not to manage the other resource impacts, such as excess elk or moose populations.

14. Plan amendments and administrative changes, §219.13 proposed

a. Rapidity sacrifices accuracy despite adverse impacts on users

The proposed rules again appear to promise rapid decisions, regardless of the impacts or information limitations. This rule documents the failure to actually propose or implement adaptative management. Adaptative management would use desired conditions and continue to change objectives and standards and guidelines based on careful monitoring. The rapid change concept uses broad scale assessments in lieu of monitoring but promises change without revising objectives or standards and guidelines.

It is apparent that the outcome will be the further removal of the multiple uses for the National Forest System, motorized recreation, livestock grazing, timber, and mineral development. Even the retired Forest Service employees recognized that the objective of the proposed rule is to convert the National Forests to a hybrid of wildlife refuges and park, while excluding public use to the greatest extent possible. This contradicts the statutory scheme.

b. Vague direction gives Supervisors broad power to make changes without factual basis

Consistent with the claimed rapidity, the proposed rules would allow the Supervisor virtually unlimited discretion to effect changes with or without an assessment documenting the need for change and with limited collaboration. For instance, the preface explains the supervisor could decide that the standards and guidelines are insufficient to protect a riparian area and could just do an amendment, e.g. remove livestock grazing. *Id.* 8500. This authorizes arbitrary and capricious action, as noted above in past Forest Service actions. A one time assessment often fails to consider or document other causal factors, such as lack of experience on the part of Forest Service employees.

15. Planning records, §219.14 proposed

The rule calls for the Forest Service to prepare a planning record, which has always been the case. It does not address agency policy of charging groups it does not like for providing a record that should otherwise be free of charge. This must change and be explicit.

16. Consistency with Plan, §219.15 proposed

NFMA directs that all permits be consistent with the land use plan. 16 U.S.C. §1604(i). This proposed rule takes the consistency issue to the extreme, thereby negating any pretense of adaptive management. The proposed rules return to enforcing standards and guidelines as if they were mandatory regulations. "The Forest Service's position has been that a project's consistency with a land management plan could only be determined with respect to standards and guidelines, because an individual project by itself could almost never achieve objectives and desired conditions." *Id.* at 8501.

Consistency direction would appear to preclude mineral development and certainly biases forest management against the multiple uses that led to the establishment of the National Forest System. The preface states:

> However, even when a project is proposed for a reason other than to meet a desired condition, objective, or goal (for example, an unexpected proposed use such as a new permit application), the project would be consistent if and only if it does not foreclose the possibility of achieving any desired conditions, objectives, and goals of the plan.

Id. at 8501. If the Forest Service applies achievement of objectives within the next five years as is the case in Region 1 or some other arbitrary time frame, most if not all mineral development activities will be foreclosed. This is especially true since the Forest Service is redefining multiple uses to ecological sustainability and species diversity and viability. This will have severe and adverse impacts on local communities and ultimately on the National Forest System. Without aggressive management,

consultants to CLG members conclude that much of the National Forest System in western Wyoming will burn in catastrophic wildfires. This will displace the agriculture and tourism industry, as well as big game and wildlife. Tentative efforts for a few logging projects will not address a problem of this size or scale. The proposed rule, especially §219.15 will ensure that these wildfires occur.

III. Subpart B Predecisional Administrative Review Process

1. Introduction

CLG disagrees that the Forest Service has either a sound history of resolving issues or that review is unbiased. Instead, in dealing with the Forest Service on issues relating to roads, public access or agriculture, it has always been apparent that the reviewing officer was fully briefed by the deciding officer and there was nothing independent in the review. Only a year ago, for example, the Forest Service planned major reductions for a grazing permit but had not provided for public comment on the EA. The reviewing officers comments during the 'resolution' strongly defended the process, thereby showing no independence whatsoever. This was also true for the counties' appeal of the Ashley National Forest travel plan.

Unless and until the Forest Service adopts an administrative review process used by the Department of the Interior, it will not conform to Administrative Procedure Act principles of due process.

2. Plan Objections, §219.51 proposed

The proposed rule will restrict objectors not only to those filing written comments but to the specific comments made. *Id.* at 8504. This exceeds even the APA standard, where parties have standing to sue if the issue was raised within the comment period. Again one more indication that the proposed rule is designed to limit public processes not enhance them.

3. Objections §219.56 proposed

The proposed rule would impose very short time frame of 30 days and it would be from publication rather than receipt. This short time period is completely unreasonable if applied to a lengthy EIS. The time periods should be tied to the decision, *e.g.* 30 days if categorically excluded, 60 days for an EA and 90 days for an EIS.

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
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Form Letter:

Comments

See Attached

Individual(s)

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Created On	5/16/2011 7:09:00 PM

White River Conservation Districts
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MEMORANDUM

To: Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S.
Bountiful, UT 84010

From: White River Conservation Districts

Date: May 16, 2011

Re: Comments on the USDA Forest Service 2011 Draft Planning Rule

The White River Conservation Districts (WRCD), as duly elected representatives from jurisdictions directly involved with public lands, appreciate this opportunity to engage the United States Forest Service (USFS) and help provide our experience and thoughts in regard to the preparation of a new USFS Draft Planning Rule. The WRCD represents landowners within the eastern portion of Rio Blanco County, Colorado. Many of our landowners depend on USFS system lands for an array of multiple uses, including forage, fiber, water, wildlife, recreation, aesthetic and related resources. USFS system lands contain key watersheds that are critically important for supplying our water needs. USFS lands, and therefore USFS planning, are critical to our future.

Any planning policy, directing planning and management on our public lands will have serious and significant impacts on our local Conservation District, families, and individuals. The WRCD is an integral part of the natural resources management in Rio Blanco County as we provide technical services and support to help manage natural resources for long term sustainability.

The WRCD respectfully submits the following comments to be included in review and discussions related to the proposed USFS Draft Planning Rule.

If the Proposed Rule is implemented, all multiple uses on NFS lands are at risk:

- The Forest Service's authorizing statutes, the National Forest Management Act (NFMA) and the Multiple Use-Sustained Yield Act (MUSYA), provide that "the Secretary **shall** assure that (Forest Service) plans" provide for "multiple use and sustained yield" of products and services including "outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness".

- The Proposed Rule dedicates an entire section to wildlife; focuses on climate change (which the agency lacks the statutory authority to regulate) and carbon sequestration; and even highlights the role NFS lands play in "spiritual sustenance". It lists only "ecosystem services" as a multiple use that "contributes to local, regional, and national economies in a sustainable manner." However, it ignores the NFMA provisions concerning other forest resources, such as grazing and timber, which are the lifeblood of many rural

communities. The Proposed Rule should be rewritten to give equal weight to all multiple uses and to all three aspects of "sustainability": "social, economic and ecological".

The Proposed Rule threatens to place even greater burdens on agency resources because of its vague, complex, and unrealistic requirements, both substantive and procedural:

- **"Guidelines" as legally enforceable standards:** The rule states that all projects "must comply" with the "guidelines". This change throws away management flexibility and the Forest Service's hard fought victories establishing that guidelines are discretionary—not mandatory. The resulting procedural and litigation costs will take away from other programs. Many elements being put into the Rule would be better placed in the Forest Service Manual or Handbook, where they can more easily be adjusted if they are not workable.

- **Use of "best available science":** The use of sound science is integral to forest planning. However, the proposed requirements for documenting the consideration of "the best available science" will slow the planning process and create a new legal burden on the Forest Service to provide proof that they did, in fact, consider the "best available science". I recommend that the Planning Rule simply require that the Forest Service take into account available, relevant scientific information, along with other factors, in the amendment or revision of forest plans—without any reference to which information is "best."

- **Heightened monitoring requirements:** Monitoring is an integral part of land management and land management planning. However, we recommend that you eliminate the requirements in the Proposed Rule to monitor "measurable changes on the unit related to climate change and other stressors"; to evaluate monitoring information on a biennial cycle instead of the current five year cycle; and to develop a "broader scale" monitoring strategy. These added requirements will increase costs and personnel at the expense of on-the-ground management. We would also recommend that monitoring plans include outputs, such as animal unit months (AUMs), timber sales, recreation visitor days and miles of trails.

- **The "viable population" requirement:** The "viability" requirement is unattainable, procedurally impossible, and currently one of the most frequent claims in forest plan litigation. While the term "maintain viable populations" does not occur in NFMA, the Proposed Rule would nonetheless require the Forest Service to "maintain viable populations of species of conservation concern within the planning area." There is no scientific consensus on what level of population is "viable" or how it is to be "maintained". Thus, using these words (especially as applied to *all* species including fungus and moss, as the Proposed Rule would do) will perpetuate and likely increase the amount of lawsuits filed against the Forest Service. Species viability is the responsibility of the states, not the Forest Service.

- **Definition of "Species of Conservation Concern":** The Proposed Rule's "viable population" requirement would apply to "species of conservation concern," defined as "[s]pecies other than federally listed threatened or endangered species or candidate species, for which the responsible official has determined that there is evidence demonstrating significant concern about its capability to persist over the long-term in the plan area." As it stands, this definition is not science-based, and is likely to lead to arbitrary and capricious decision-making on the parts of "responsible officials". If "species of conservation concern" are to impact land management planning decisions, they must be better defined.

- **"At-risk species" are referenced in the DPEIS, but not in the Proposed Rule:** The DPEIS suggests that the viability requirement would be extended to "at-risk species" (including all species, from slugs to fungus) on national forests and grasslands. However, "at-risk species" are not discussed in the Proposed Rule or adequately analyzed in the DPEIS. As with "species of conservation concern," the Forest Service should reconsider its authority for extending protections to "at-risk species," define the term in the rule, and analyze the effects of the additional protections in the DPEIS.

- **The requirement to maintain "the diversity of plant and animal communities":** According to NFMA, the Proposed Rule should require that Forest Service plans maintain existing *habitat* diversity, "based on the

suitability and capability of the specific land area", rather than focusing on measuring species populations. NFMA calls for management "to meet overall multiple-use objectives"; habitat diversity is just one multiple-use objective that should be included in the rule.

- **"Focal Species":** To determine whether a land management plan is meeting the requirement of the Proposed Rule to provide for ecosystem diversity, the Proposed Rule requires monitoring the status of "focal species." However, the theory of monitoring focal species (also known as "management indicator species" or "MIS") to provide insight into the integrity of ecological systems and the status of other species has been discredited. Thus, the theory should not be employed as part of the Proposed Rule. Rather than concentrating on species populations, the Forest Service should concentrate on habitat diversity.

- **The "public engagement" requirement:** The language requiring that the agency "shall encourage" public input creates an obligation for the agency to affirmatively gather public comment—and a legal question as to the threshold of encouragement, rendering the agency vulnerable to more litigation. It also distances the decision-making process from the local area.

The WRCD has reviewed the comments drafted by the Wyoming Association of Conservation Districts and Bighorn and Carbon County, Wyoming Commissioners. While our District is located in Northwestern Colorado, we have the same concerns regarding the Planning Rule and conservation of our natural resources on private and public lands. Therefore, WRCD endorses their comments and reproduced them with minor changes below. Including those by Boone and Crockett Club noted within the below comments.

219.4 Public Participation

The White River Conservation District, as duly elected local representatives, believe that it is critical to maintain and continue Cooperating Agency status on both planning and project level documents and National Environmental Policy Act (NEPA) processes. This Cooperating Agency status allows us, as local government representatives, the ability to fully participate in land use planning for our public lands. The Council on Environmental Quality's "40 Questions" document addresses responsibilities' and states in part:

> After a lead agency has been designated (Sec. 1501.5), that agency has the responsibility to solicit cooperation from other federal agencies that have jurisdiction by law or special expertise on any environmental issue that should be addressed in the EIS being prepared. Where appropriate, the lead agency should seek the cooperation of state or local agencies of similar qualifications. When the proposal may affect an Indian reservation, the agency should consult with the Indian tribe. Section 1508.5. The request for cooperation should come at the earliest possible time in the NEPA process.
>
> After discussions with the candidate cooperating agencies, the lead agency and the cooperating agencies are to determine by letter or by memorandum which agencies will undertake cooperating responsibilities. To the extent possible at this stage, responsibilities for specific issues should be assigned. The allocation of responsibilities will be completed during scoping. Section 1501.7(a)(4).

We believe that this Cooperating Agency participation aspect of planning based on our local expertise to be fundamental to effective planning. This local government participation should also be understood and appreciated by the USFS as compared to the special interest participation. As locally elected Supervisors and Commissioners, we represent all stakeholders in our jurisdictions. **Elected representatives offer a balance of needs and perspectives compared with the often narrow perspectives of the myriad of special interest groups.** Local government participation also improves the credibility of any federal planning process, often making the process and resultant plans easier to implement.

The USFS is interested in moving forward with a collaborative approach to planning. However, it appears so without defining exactly what collaboration means, who can collaborate, or how the agency will deal with conflicting views among collaborators. The use of cooperating agencies in the planning process guarantees that local constituents are represented.

Local cooperators feel that the lead agency's overwhelming sense of ownership does not allow for or truly accept Cooperating Agency participation during plan revisions. Our local government participation needs to be more inclusive. Any revisions to the USFS Draft Planning Rules should lay out guidelines to improve collaboration and the sharing of resources and data. Improving the collaborative process could benefit many aspects of the planning process:

- The use of Geographic Information Systems should be key in collaborative planning meetings. Projecting spatial data during planning meetings has proved to be a valuable tool in gaining understanding and consensus.
- Actively seeking and engaging potential collaborators early in the planning process could reduce the potential for litigation, while giving all parties a sense of ownership.
- Key issues could be more efficiently identified and worked through early in the process by collaboration with stakeholders and government agencies.
- Planning efforts should be a shared activity among collaborators, which could save Agency time and money in the USFS Draft Planning Rule process.

We suggest the following:

- Streamline the process to reduce the time, effort, and dollars spent by local agencies and collaborators.
- Better utilize local knowledge, research, and datasets.
- Need a better definition of best available science; this has long been a successful point of litigation.
- Guidelines for spatial analysis and the use of nationally consistent and up to date datasets should be included in any USFS Draft Planning Rule revisions.

As stated above, we support the concept of public participation. The USFS Draft Planning Rule (Column 2, p.8486):

> Many people discussed the need for the Forest Service to make a stronger effort to engage groups and communities that traditionally have been underrepresented in land management planning. This is reflected in the requirement that responsible officials encourage the participation of youth, low-income populations, and minority populations in the planning process and in the requirements to be proactive to use contemporary tools to reach out to the public and consider the accessibility of the process to interested groups and individuals. The Agency recognizes the need to engage a full range of interests and individuals in the planning process and the responsibility to promote environmental justice.

We contend that while the intent to involve "youth, low income, and minorities" is admirable and well-intended, individuals and organizations that actually get involved with forest planning are going to be limited to either economic stakeholders (grazing permittees, loggers, outfitters, etc.) or those with an existing interest in forest management. While stakeholders or people with strong interests in forest management will indeed include people of all ages, income levels, or ethnicity, the Forest Service cannot make individuals or groups with no interest or economic stake in National Forests participate in forest planning, no matter how much effort the agency puts into targeted scoping. We recommend you remove the reference to those groups.

219.5 Planning Framework

Planning is fundamentally related to a central economics principle – scarcity. The USFS, through the planning process, must allocate scarce resources to competing interests in a manner that maximizes or minimizes a suite of objectives. To do this, planners need information about values — ecological and biophysical, economic, and social. Only by understanding what these values are can a comprehensive and meaningful plan be developed. Without this information, it is impossible to evaluate tradeoffs between alternatives or to assess whether objectives are being met. Without such values, the resulting plan will be meaningless and arbitrary.

With respect to economics, we suggest the USFS Draft Planning Rule consider an analysis that may include revenues and expenditures, as well as any measurable non-market benefits and costs. Non-market refers to costs or benefits that arise from an alternative that does not constitute revenues or expenditures. For example, individuals who value wildlife may be willing to pay to protect a species or enhance wildlife habitat. Although money may not change hands, it is possible to determine value or willingness to pay through survey methodology. This is also true for recreation experiences that do not generate income, such as aesthetic values, wildlife, etc. In the case where tradeoffs are made between market goods and non-market goods, opportunity costs can be calculated to determine relative values. These values can then be used to compare outcomes under each alternative.

Section 219.5 (Column 2, p.8487) speaks to the role of stakeholders in the planning framework:

> The approach described in the proposed framework responds to the public's stated desire for participation throughout land management planning. The assessment phase would allow for early public participation—well before a proposed action—so that stakeholders could engage in joint fact-finding and

> develop a mutual understanding of the interconnections among social, economic, and ecological communities and systems. The development/ revision/amendment element of the framework responds to the public desire to help develop and provide meaningful input to proposals for land management plans. The monitoring part of the framework responds to stakeholder's desires for a systematic, deliberate, monitoring approach that can inform, and be informed, by other monitoring efforts relevant to management on the unit. Both stakeholders and the Agency recognize the potential efficiencies of a uniform monitoring approach and hope to increase information sharing and learning opportunities.

There is a great deal of difference between a stakeholder 1,000 miles away from a Forest, and one who depends on forest resources for business, recreation, and aesthetic sustenance. The woman who runs a ranch adjacent to USFS lands and relies on a summer grazing lease has a much larger stake in the Forest planning process than does the citizen from many states away. We do not want to diminish the hypothetical dockworker from New Jersey that comes out to enjoy recreation and hunting, but we absolutely want to recognize the difference in stakes between the stakeholders. The Forest planning processes should recognize that the stronger voice in planning comes from local stakeholders.

219.6 Assessments

The Conservation District supports the concept of doing broad-scale ecological assessments. The Planning Rule states (Column 3, p.8487):

> This section of the proposed rule would require an assessment prior to plan revision or development. The responsible official would reach out to the public, Tribes, Alaska Native Corporations, other Federal agencies, States, local governments, and scientists to start the assessment and help identify the questions and issues to be considered. The responsible official would also be required to coordinate with the regional forester, and agency staff from State and Private Forestry, Research and Development, as well as other governmental and nongovernmental partners to consolidate existing information and develop strategies for satisfying any additional information needs. Early engagement with a diverse set of interests is needed to create an accurate depiction of the issues affecting the plan area and a solid base of understanding for any changes needed to the plan.

While the District supports the aforementioned direction for conducting assessments, further direction is needed to address the scientifically-based scale at which assessments would normally be conducted. The direction identified in the Interior Columbia Basin Ecosystem Management Project (ICBEMP) (USDA and USDI 2000) is recommended. The ICBEMP suggested that the U.S. Geologic Survey 5th code hydrologic unit was probably the minimum size needed to conduct ecological coarse filter assessments. While that scale was crafted to recognize the role that climate and large fires have played in shaping western, interior forests, much of the National Forest system has disturbance regimes on a similar scale, making the ICBEMP direction pertinent. For instance, the USFS Draft Planning Rule describes vegetation for the southeastern coastal plain as:

> The forest has two distinct layers: a pure longleaf pine open canopy approaching 70 feet in height and a wiregrass dominated herbaceous layer... This savanna structure is maintained by recurring fire on an average 3-year cycle... This ecological type functions as primary nesting and foraging habitat for red-cockaded woodpecker.

The ICBEMP direction for conducting ecological (coarse filter) assessments at a 5th code hydrologic unit scale would be equally applicable to the southeastern coastal plain. In order to avoid assessments at an inconsistent and scientifically indefensible scale, we suggest you implement ICBEMP direction regarding the scale of ecological assessments.

219.7 New Plan Development or Plan Revision

The new USFS Draft Planning Rule should consider, and institute efficient vehicles to update Forest Plans, either due to new information (e.g. better satellite data), changed conditions (insect infestations), or needs of

public resources. Within the last decade the priorities of the USFS appear to have changed. Former USFS Chief Dale Bosworth developed a list of four threats to the nation's forest and grasslands that would emerge as Agency focus points in the 21st century. The four threats identified by Chief Bosworth included: (1) fire and fuels, (2) invasive species, (3) loss of open space, and (4) unmanaged recreation. Former USFS Chief Gail Kimbell expanded on Chief Bosworth's focus on fire and fuels and her tenure in office partially focused on climate change. The new USFS Chief, Tom Tidwell, appears to be focusing more on the restoration of watersheds and forest lands.

The two former USFS Chiefs discussed above, along with the current Chief, have had three different areas of focus. This is instructive as it allows us to consider how Forest Plans should permit emerging changes in information or societal needs. Instead of a wholesale rewriting of the Forest Plan, we believe that it is more efficient and practical to conduct a simple update and amendment process of the existing Plan. Please consider and discuss an amendment process in the new USFS Draft Planning Rule.

219.9 Diversity of Plant and Animal Communities

The District by and large support the concept of achieving plant and animal diversity using the coarse filter/fine filter approach. The USFS Draft Planning Rule states (Column 2, p.8492):

> Known as a coarse-filter/fine-filter approach, this is a well-developed concept in the scientific literature and has broad support from the scientific community and many stakeholders. The coarse-filter should provide ecological conditions for the long-term persistence of the vast majority of species within the plan area. The fine-filter would identify specific habitat needs of species with known conservation concerns or whose long-term persistence in the plan area is at risk, and for which the coarse-filter protection is insufficient.

We feel that if appropriately worded, the strategy could potentially:

- Reduce the "analysis paralysis" that plagues project-level NEPA analyses.
- Make USFS decisions more defensible during appeals/litigation.
- Lead to on-the-ground management actions that are done at a scale and intensity that actually make a difference compared against unplanned disturbances that are occurring at a scale and intensity outside the normal range of variability.

Unfortunately, if not appropriately worded, the coarse filter/fine filter strategy could further obfuscate planning requirements and add another layer to an already unnecessarily complex and costly analysis process. Please consider our concerns and recommendations in the following sections.

Coarse-filter Approach

Under the category of Coarse Filter Approach, the USFS Draft Planning Rule concludes (Column 3, p. 8492) that:

> The premise behind the proposed coarse-filter approach is that native species evolved and adapted within the limits established by natural landforms, vegetation, and disturbance patterns prior to extensive human alteration. Maintaining or restoring the ecological conditions similar to those under which native species have evolved therefore offers the best assurance against losses of biological diversity and maintains habitats for the vast majority of species in an area…

We contend that in many ecological settings (wildlife/urban interface, checkerboard ownership, etc) "maintaining or restoring" historical conditions may not be possible. In the Interior Columbia Basin Ecosystem Management Report (USDA and USDI 2000), the term "departure" was coined to represent situations where current conditions are radically different from mean historic conditions, and where actions are needed to narrow

the "gap" between historic and current conditions. Using terms such as the preceding would make it clear that while many situations make it impossible or undesirable for "maintaining or restoring" historic conditions, identifying the magnitude of "departure" and narrowing that departure to the degree possible would improve long-term species sustainability.

Under the category of Coarse Filter Approach, the USFS Draft Planning Rule concludes (Column 3, p. 8492) that:

> Healthy ecosystems are indicated by the degree of ecological integrity related to the completeness or wholeness of their composition, structure, function, and connectivity.

The term "connectivity" appears repeatedly throughout the USFS Draft Planning Rule. Based on appeals and court cases, the term "connectivity" is a term that has been grossly misunderstood and evoked by special interest groups to stop well-intended and well-designed projects. The term "connectivity" (or lack thereof) has been used to describe every situation from small, isolated "islands" of eastern forest surrounded by urban development (MacArthur and Wilson 2001), to reduced dispersal opportunities for juvenile northern spotted owls in western coastal forests caused by checkerboard 40-acre clearcuts (USDI 2008), and every situation in between. To both recognize and provide for connectivity, and avoid NEPA pitfalls that will derail future projects, the USFS Draft Planning Rule needs to be carefully worded to explain the nuances of habitat connectivity. We suggest adding the following direction:

- Acknowledgment of the varying degrees to which human settlement patterns have affected habitat connectivity across the continent. Situations where small patches of forested habitats surrounded by urban areas as described in MacArthur and Wilson (2001) do occur, but are not typical of western forests or the majority of National Forest lands.
- Recognition that while changes in human development and changes in forest vegetation patterns both affect the ability of native animals to move across the landscape, they are substantially different variables, needing substantially different measurement indicators for which to assess effects.
- Stated understanding that the factors affecting vegetation patterns are complex and include such variables as "inherent" characteristics (grassland vs. forested), cover type (predominate species), age class (old trees vs. young trees), structural (single-storied vs. multiple-storied), and the scale at which disturbances create patterns (large, low severity fires that create large, homogeneous, uneven-aged stands vs. high severity fires that create a mosaic of even-aged stands).
- Disclosure that connectivity needs for individual wildlife species varies wildly. Most species (birds and "generalists" species) are not particularly affected by changes in habitat connectivity. A few wide-ranging species (wolverines and grizzly bears) are dramatically affected by changes in connectivity.

We suggest that references to connectivity in the USFS Draft Planning Rule be modified to ensure that Forest Plans:

- Understand and disclose the degree to which connectivity may have changed from historic conditions including changes in human development, cover type, age class, structure, and patterns resulting from changes in natural or anthropogenic disturbances.
- Evaluate how changes in connectivity may affect those species that are known to be particularly sensitive to change in connectivity.

- Consider opportunities to improve habitat connectivity when there are substantial changes from historic levels of connectivity and when there are species present in which those changes have been demonstrated to be particularly detrimental.

Fine Filter Approach

Under the Fine Filter Approach (Column 2, p. 8492) the USFS Draft Planning Rule Planning Rule states:

> Three species-specific requirements for plan components that would provide the basis for the fine-filter approach to species conservation. The intent would be to provide plan components that identify specific habitat needs of species, when those needs are not met through the coarse filter. These species are threatened and endangered (T&E) species, candidate species, and species of conservation concern.

The District supports the direction to conduct detailed fine filter analyses for listed species and increased analysis for candidate species on the grounds that the Endangered Species Act (ESA) provides little choice in the matter. We would, however, recommend adding the following direction:

Generally, single species-driven U.S. Fish & Wildlife Service recovery plans for listed species are compatible with coarse filter findings. For instance, the recovery plan for the red-cockaded woodpecker (USDI 2003), which directs management agencies to recruit large-diameter longleaf pine with periodic underburning, is compatible with the coarse filter assessment for southern coastal plain forests. On the eastern periphery of the northern spotted owl's range, however, where forests shift from coastal Douglas-fir to dry ponderosa pine, the northern spotted owl recovery plan direct agencies to maintain or recruit large expanses of dense, multi-storied conifers (USDI 2008). Not only is this direction incompatible with species like flammulated owls that evolved with frequent, non-lethal fires and open forests, but such direction, while providing short-term protection for northern spotted owls, may be unsustainable in the long-term due to the inevitability of severe wildfires. USFS Forest Plans should ensure that when such conflicts between Forest Plan and ESA direction arise, any conflict between findings from coarse filter analysis and recovery plans be clearly disclosed. Furthermore, effects analysis from the implementation of required recovery plans should be disclosed in both short-term and long-term time frames.

Regarding the direction on species of conservation concern, we have significant distress. The USFS Draft Planning Rules (Column 2, p. 8493) states:

> The final species conservation requirement in this section of the proposed rule addresses the needs of species of conservation concern. A species of conservation concern is a species that is not threatened, endangered, or a candidate species, but is one for which the responsible official has determined there is evidence demonstrating significant concern about its capability to persist over the long term in the plan area. A viable population is defined in this proposed rule as a population of a species that continues to persist over the long-term with sufficient distribution to be resilient and adaptable to stressors and likely future environmental conditions. The responsible official would identify, where necessary, specific ecological conditions needed by these species that are not provided by the coarse-filter. The identification of species of conservation concern within the plan area could be based on several criteria, such as substantial scientific information as to the overall status of the species, the quantity and quality of species habitat within the plan area, and the potential for management activities to affect the species habitat within the plan area. Forest Service Directives would contain the criteria for selecting species of conservation concern. State lists of endangered, threatened, rare, endemic, or other classifications of species, such as those listed as threatened under State law; and other sources such as the Nature Serve conservation status system may be used to inform the selection of species of conservation concern. The proposed rule's requirement for species of conservation concern would be to maintain or restore ecological conditions to maintain viable populations of species of conservation concern within the plan area, within the Agency's authority and consistent with the inherent capability of the plan area. Where a viable population of a species of conservation concern already exists within the plan area, the appropriate ecological conditions needed to maintain the long-term persistence of that species will continue to be provided.

Further narrative under Column 2, p. 8493 states:

> The proposed rule would require that the Agency provide plan components to maintain or restore ecological conditions within the plan area for that species, and by doing so to contribute to the extent practicable to a viable population across its range.

While we support the intent of using a fine filter analysis to ensure that certain species are not under-evaluated when conducting coarse filter analysis, the agency has a history of allowing the findings for a single species to result in actions that are incompatible with coarse filter analysis findings, are ecologically unsustainable, and are ultimately incompatible with sustaining native species viability as a whole. For instance, since the USFS Draft Planning Rule uses goshawks as an example (Column 3, p. 8493), we will also. Goshawks occur from the west coast to east coast and occupy all forested environments. Many of these forested environments (aspen, ponderosa pine, western larch, and lodgepole pine) are dependent upon or subject to frequent disturbance (wildfire and insects). Predominate research (Kennedy 2003; Reynolds et al. 1992), however, stresses the importance of sustaining large expanses of dense, multi-storied forest. Dense, multi-storied forests occur naturally in areas of high summer precipitation (i.e. the Northeast), or where fire return intervals are long (i.e. coastal forests in the Northwest). Where fire return intervals are short, however, such as interior ponderosa pine, dense, multi-storied stands were historically limited to small stands or patches within stands that were repeatedly unburned by wildfires. Of course, after a century of fire exclusion, dense, multi-storied stands currently dominate interior forests and explain much of the present-day forest health crises.

Unfortunately, overzealous protection done to protect goshawk nesting habitat, often has precluded treatments that would have restored historic habitat conditions (as identified during coarse filter analyses). Paradoxically, such protection is ultimately counterproductive to goshawks since extensive dense, multi-storied forest conditions are not sustainable within interior forests. Furthermore, other species that evolved with open forest conditions (flammulated owls) are pushed closer to federal listing. While it is understandable that single-species wildlife researchers may not comprehend fully disturbance ecology and its ramification across the spectrum of wildlife species, and thus recommend against management actions that would provide for long-term habitat sustainability, that is inexcusable for USFS deciding officers. It is paramount that USFS deciding officers consider disturbance ecology and habitat sustainability in the interpretation and application of research.

The agency's overemphasis to "protect every species on every acre" has allowed well-intended biologists or appellants/litigants to preclude actions that would have sustained habitat in the long-term, in order to avoid adverse site-specific impacts on goshawks in the short-term. Since there is no limit to the number of single-species analyses that can go into Forest Plans (or projects), the treatment of species of conservation concern can further exacerbate the problem of "analysis paralysis," rather than simplify and defend planning alternatives. To avoid further NEPA conundrums regarding species of conservation concern, we recommend the following measures be considered in the USFS Draft Planning Rule:

- Recognition that all disturbances (man-made or natural) are potentially adverse in the short-term to individual species, even when the species are dependent upon disturbances (e.g. flammulated owls, black-backed woodpeckers, Canada lynx).
- Ensure that biological analyses are done with a full understanding of local disturbance ecology so that long-term habitat sustainability is evaluated and disclosed.
- Disclose effects of alternatives upon species in both the short-term and long-term. Unless short-term effects clearly place a species at risk of federal listing, favor long-term effects over short-term effects when making decisions.

- Identification that wildlife species "specialists" have very specific niches and healthy forests must provide a mix of habitats to provide those niches. Thus, it is impossible to meet the needs of all species on every acre, or even on every project. Effects analyses, therefore, must incorporate those critical considerations at a large enough scale so that habitat for species of conservation concern can be provided over time considering natural, unplanned disturbances.

We also argue that decisions for sustaining species of conservation concern consider economics and efficiency. For instance, the USFS Draft Planning Rules references (Column 3, p. 8493):

> A guideline that recommends a ''no disturbing activities'' time period within a specified distance of a known bald eagle or goshawk nest site during the critical breeding period.

Timing restrictions to protect goshawks are almost universal in existing Forest Plans, yet they are extremely expensive, inefficient, and contribute little to the conservation of the species compared to other variables. For example, to protect goshawks from disturbance, nest surveys are required. However, goshawks are extremely difficult and expensive to survey (Woodbridge and Hargis 2006). Because goshawks select alternate nests every year (Reynolds et al. 1992), goshawk territories must be resurveyed before the startup of project activities and contracts must be updated to ensure that no activity occurs near nests. Goshawks have high fledgling success (Reynolds et al. 1992), but like most large raptors, juveniles have a low recruitment (survival) rate into the adult population (only about 10% of the fledglings produced). The odds are, therefore, that spending large amounts of limited money to inventory, resurvey, and protect a nest that produces two fledglings will only contribute 0.2 adults to the population. This could make sense if most goshawk nests within an administrative unit were being disturbed at any given time or if the species was on the cusp of federal listing (which it is not (USDI 1998)). Nevertheless, a large percentage of NEPA documents suggest that only a fraction of nests are ever disturbed at any given time.

A prime example of such inefficiencies is associated with well-intended protective measures in the Shoshone National Forest (SNF) Land & Resource Management Plan (USDA 1985), which requires all nests to be protected from disturbance. On the SNF, however, 90% of the Forest is wilderness or wilderness study areas in which no nests are ever exposed to disturbance. Furthermore, a query of size class data (ERG 2011) suggests the availability of nest habitat has increased dramatically on the SNF due to a century of fire exclusion. Clearly, assuming that sustaining goshawk habitat is going to be a long-term concern, simply managing for a mix of size classes, including some large, dense stands across the Forest, will provide a vastly more efficient way of assuring species sustainability than worrying about nest disturbance. Therefore, we suggest you consider adding the following provision to the USFS Draft Planning Rule:

> **When crafting conservation strategies for species of conservation concern, the USFS should consider the economic costs and the management efficiency of the strategy. The strategy should ensure that it both minimizes risks to the species and minimizes costs to the agency. The intent is that monies and man-power should be optimized to the extent possible in order to provide for the maximum number of species and habitats.**

We found the examples of specific measures taken to protect species evaluated during the fine filter analysis to lack scientific merit. The USFS Draft Planning Rule (Column 3, p. 8493) states:

> A standard that sets a maximum road density that will improve habitat conditions for the Canada lynx or gray wolf; or a guideline that recommends a ''no disturbing activities'' time period within a specified distance of a known bald eagle or goshawk nest site during the critical breeding period.

The Canada lynx literature (Ruediger et al. 2000; Squires et al. 2006) and Northern Rockies Lynx Management Direction (USDA 2007) generally concludes that lynx do not react negatively to forest roads. Literature from Colorado (Shenk 2007) does conclude that landscapes that have high speed highways have had substantial lynx

road-kill, however, that paper does not attribute that mortality to low-speed forest roads. As wolves have repopulated the northern Rockies, population density shows no correlation to road density. In fact, some of the highest wolf densities are in developed landscapes where prey populations are high. Previous papers (Ruediger et al. 2000; Squires et al. 2006) that did show a possible link to road density are generally disregarded when compared to the two variables that currently explain high wolf viability-abundant prey and public tolerance. Thus, the USFS Draft Planning Rule examples regarding Canada lynx and wolf response are without scientific merit. Regarding the wording of "no disturbing activities" for goshawk protection, please see our previous comment.

The District is concerned about the inclusion of the following in the USFS Draft Planning Rule (Column 2, p. 8494):

> Additionally, it is important to note that the proposed rule is not limited to ''vertebrate'' species as required under the 1982 provisions. The proposed rule would include native plants and native invertebrates (fungi, aquatic invertebrates, insects, plants, and others) for which the Agency currently has very minimal biological information on their life histories, status, abundance, and distribution. However, maintaining or restoring ecosystem diversity within the plan area is the best opportunity to conserve these little-known species.

The inclusion of maintaining viable populations of invertebrates will certainly increase litigation over viability. Particularly since the USFS acknowledges that the "Agency currently has very minimal biological information on their life histories, status, abundance, and distribution." Additionally, this treats national forests as biological preserves rather than managed forests for the use and necessities of the people United States as required by the Organic Act. 16 USC 476. **Accordingly, the District requests that invertebrates be removed from plant and animal diversity requirement.**

On April 12, 2011, Stephen P. Mealey and Harold J. Salwasser, Boone and Crockett Club, submitted comments regarding section **219.9 Diversity of Plant and Animal Communities** of the USFS Draft Planning Rule. The WACD and BHCCC carefully reviewed the comments of Mealey and Salwasser and endorse them in their entirety. Please find their comments reproduced in full below.

TO: Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S. Bountiful, UT 84010

FROM: Stephen P. Mealey and Harold J. Salwasser, Boone and Crockett Club

SUBJECT: Comments on USDA Forest Service proposed rulemaking ("planning rule"), February 14, 2011

DATE: April 12, 2011

Our comments are limited to 36 CFR 219.9: Diversity of plant and animal communities.

COMMENDATIONS:

I. We commend the Forest Service for excluding from the proposed planning rule, requirements for diversity at the species population level included in the 1979 regulations: *"maintain viable populations of all existing native vertebrates"* (36 CFR 219.12); and in the 1982 regulations: *"Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded*

as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area." (36 CFR 219.19).

This commendation is based on the following:

1. **The 1976 National Forest Management Act (NFMA) amendment to the 1974 Forest and Rangeland Renewable Resources Planning Act (RPA) mandated diversity only at the ecological community level.**

The NFMA (Sec. 6 (g) (3) (B) calls for provision of "diversity of plant and animal communities...to meet overall multiple use objectives." This equates to ("coarse scale") ecological community considerations, or "Principles and Concepts Pertaining to organization at the Community Level" discussed by Odum in Chapter 6., of his 1971 *Fundamentals of Ecology*, a widely respected textbook in use at the time the NFMA was enacted. It does not equate to ("fine scale") population consideration, or "Principles and Concepts Pertaining to Organization at the Population Level, in Chapter 7 of *Fundamentals of Ecology,* which is the primary concern and responsibility of state agencies and federal agencies administering the Endangered Species Act of 1973, as amended (ESA). In the words of Art Cooper, Chair of the first NFMA Committee of Scientists charged with developing the first NFMA planning regulations, "viability was entirely a creation of the regulations; it did not have a connection to the diversity language, and it was a result of the dynamics of the committee where individual specialists (Bill Webb, ornithologist, SUNY, in this case) acted essentially independently" (Cooper, personal communication to Mealey and Johnson 2003).

2. **Species population viability is the primary business of state wildlife and fish management agencies, and federal agencies charged with administering the ESA.**

The Public Trust Doctrine is widely recognized as the cornerstone of America's wildlife conservation heritage well documented by James B. Trefethen in his 1975 *An American Crusade for Wildlife*. Two basic principles apply: that all fish and wildlife belong to all Americans and that the states primarily, through their state fish and wildlife management agencies, hold wildlife in trust for Americans and manage fish and wildlife populations mainly through hunting and fishing, to sustain conservation and public use in perpetuity. In general, states possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on federal lands within states. State statutes and state courts universally assert state ownership of fish and wildlife populations. The NFMA planning rule viability requirement is not clearly aligned with the American wildlife conservation heritage and its Public Trust Doctrine underpinning and could jeopardize both.

3. **The NFMA planning rule requirement to maintain viable populations of vertebrates remains technically challenging/infeasible and has thus relied on "surrogates" to satisfy judges and minimize legal exposure.**

Generally accepted theoretical and practical measures for population viability (resilience, fitness and adaptability) and related feasible implementing processes for thousands of species on national forests and grasslands have been elusive if not lacking. Using the Northwest Forest Plan for federal lands in the range of the northern spotted owl as an example, lacking such useful measures and processes, the "revised" Option 9 (Plan) relied on nearly 10 million acres of unmanaged late succession reserves (LSRs), a "survey and manage" process, watershed analysis, and expert panel opinions as viability

"surrogates" to protect over a thousand species populations, and to convince Judge William Dwyer that the intent of the NFMA planning rule "viability language" had been met. Multiple use management on affected lands was greatly diminished by this requirement and federal forest management remains at a virtual standstill while court ordered and policy mandates for population viability are implemented. Such measures have become unintended impediments to reducing the risk of uncharacteristic wildfires which ironically are harming ESA listed species and LSRs. If "overkill" viability surrogates which make multiple use management virtually impossible were replaced with strict "viable population" management as technically defined, the action would require an understanding of the biology of thousands of species vastly exceeding current information and the resources available to acquire such information. Data requirements for necessary information about numbers, distribution, reproductive rates, and survival to afford a high likelihood of persistence for 100 years are practically unreachable for all but a very few species. The technical NFMA planning rule requirement for "viability" is thus, unachievable; therefore the requirement itself is invalid.

II. We commend the Forest Service for keeping the primary focus of the proposed planning regulations on maintaining the diversity of plant and animal communities. The first paragraph under 36 CFR 219.9 titled: Diversity of plant and animal communities and the following paragraph (a) titled Ecosystem Diversity appear largely consistent with the requirement of the NFMA Sec. 6 (g) (3) (B).

CONCERNS:

I. We have a grave concern that the Forest Service in 36 CFR 219.9. (b) Species Conservation, is departing from its primary focus on maintaining the diversity of plant and animal communities, i.e. habitats, with a renewed requirement in (3) for plans to maintain viable populations of (animal-our emphasis) "species of conservation concern" within the plan area. We agree with the 36 CFR 219.9 (b) (1) and (2) requirements to contribute to the recovery of threatened and endangered species; and to conserve candidate species, but we firmly disagree for the three reasons given above under Commendation I. that the Forest Service should accept in any case, sole and/or principal responsibility for the viability of any non-ESA listed animal species.

II. We also have a deep concern about the proposed term: "species of conservation concern" (SCC). Search of the literature reveals no commonly accepted definition of this term. The definition given at 36 CFR 219.19 (page 8525): "Species other than federally listed threatened or endangered species or candidate species, for which the responsible official has determined that there is evidence demonstrating significant concern about its capability to persist over the long term in the plan area", offers much of the vagueness and ambiguity associated with the term "viability". That lack of specificity lead to frequent "viability litigation" to clarify ambiguity, which in turn lead to forest management "gridlock". (The Western Environmental Law Center headquartered in Eugene, Oregon has been, along with others, and continues to be a frequent litigant challenging the Forest Service on species viability and related issues).

With this proposed definition, a worst case scenario is not hard to imagine: overwhelming litigation brought against the Forest Service by plaintiffs arguing the agency, because of insufficient data and analysis, failed to demonstrate through the self imposed requirement for viability analysis, one or more species' capability to persist over the long term. One foreseeable outcome could be court ordered service-wide requirements for "survey and manage" as is currently mandated in the Northwest Forest Plan. Problems with the proposed definition could be significantly reduced or minimized if it was made more specific. ~~For example, SCC could be defined in terms of the NatureServe Conservation Status~~

~~Ranks G1, T1, N1, and S1, and G2, T2, N2, and S2, and state threatened, endangered and sensitive species. This approach would align with the Sustainable Forestry Initiative (SFI) Section 6. Standards for Forests with Exceptional Conservation Value, and Wildlife Habitat Diversity.~~ **(This is the one section that the District disagrees with the** Boone and Crockett Club **due to personal experience with outdated information from entities such as NatureServe Conservation Status causing federal agencies to list an "outstandingly remarkable value" that did not exist.)**

RECOMMENDATIONS:

I. Delete the entire paragraph 36 CFR 219.9 (b) (3) and replace it with the following:

Conserve species of conservation concern within the plan area.

through formal partnership agreements with appropriate state, federal, tribal and private entities.

II. Delete the entire definition of "species of conservation concern" (36 CFR 219.19, page 8525) and replace it with the following:

Species of conservation concern: ~~Species other than federally listed threatened or endangered species or candidate species identified by the NatureServe Network of Natural Heritage Programs and Conservation Data Centers according to NatureServe Conservation Status Rank as G1, T1, N1, S1, and G2, T2, N2, S2; and by states as threatened and endangered.~~ **(Again, the District disagrees with this suggestion and instead suggests: "Only federally listed threatened or endangered species or candidate species.")**

219.10 Multiple Uses

The Multiple-Use Sustained-Yield Act of 1960 (MUSYA) governs the annual and sustainable production of trees, grasses, forbs and shrubs. The new USFS Draft Planning Rule will need to balance the allocation of those resources by adopting the definitions of "multiple use" and "sustained yield" found in Section 4 of MUSYA.

> ''Multiple use'' means: The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.
>
> ''Sustained yield of the several products and services'' means the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.

The grazing of domestic livestock should be a recognized benefit and output on USFS lands, and should be considered both as a tool for management, as domestic livestock herbivory provides many of the same ecological functions of wild ungulates.

Grazing is critically important to Wyoming's local government constituents. Permitted grazing on USFS lands provides significant benefits to both the permittee and the USFS. The permittee benefits from the sustainable use of annual forage and the USFS benefits from strong local communities and economies. The beneficial impacts of herbivory as a natural resource management tool is vital, as many plant communities were developed with herbivory from wild ungulates. The economic and ecological benefits, combined with the leveraging of working private landscapes (ranches) on public lands, makes the continued use of domestic livestock a key issue

in the development of a USFS Draft Planning Rule. Please keep in mind that the loss of private ranches adjacent to USFS system lands is a loss of ecosystem services provided by those ranches.

219.11 Timber Requirements Based on the NFMA

Current USFS employees have alluded to the fact that the authors of the USFS Draft Planning Rule felt that the timber requirements were of diminished importance. Section 219.11 embodies the notion of USFS employees that timber is of less importance now than during previous iterations of the Planning Rule. The requirement that timber harvest has to be "carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation and aesthetic resources" fails to recognize competing ecological processes and established natural conflicts. What is good for species x, may be clearly detrimental to species y and z. Requiring timber harvest consistency among competing processes, life cycles, habitats, etc. will have the effect of slowing down timber harvest even more than the current glacial pace.

The District believes that the USFS must provide a better understanding of forest-based fiber for many uses, as private lands may not be able to provide all of our nation's fiber needs. Biomass project standards and the ability of a particular forest to provide fiber for the production of renewable energy should be a considered component of Forest Plans. Because of the Renewable Portfolio that many states have, the ability and need to produce renewable energy will become more important. While the District acknowledge the USFS Draft Planning Rule mentions "renewable energy projects" in relation to timber harvesting (Column 3, p.8496), we disagree that it can only support "small-scale" projects. Please address in the USFS Draft Planning Rule that the timber industry can support large-scale renewable energy projects.

The District is concerned that the USFS Draft Planning Rule minimizes the positive role that timber management can have in maintaining and restoring healthy forests, as well as dismissing the opportunity that timber management plays in sustaining the economic viability of western communities. Further, the Disrict asserts that the USFS Draft Planning Rule has ignored the need to consider sustaining the infrastructure of the timber industry, so that management tool is available over time. Lastly, we feel that the prescriptive direction for clearcutting is out-of-date and unnecessary. The USFS Draft Planning Rule states (Column 2, p.8497):

> The Agency believes that the provisions of this section would provide a balanced approach, allowing timber harvest on lands not suitable for timber production if it serves as a tool for achieving or maintaining plan desired conditions or objectives. Timber harvest today is used often to achieve ecological conditions and other multiple use benefits for purposes other than timber production; therefore we have included § 219.11(b)(2) in the proposed rule to clarify.
>
> Paragraph (d) sets forth limits on timber harvest, regardless of the reason, on all NFS lands. All plans would, at a minimum, comply with the limitations set forth by the NFMA (16 U.S.C. 1604(g)(3)(E) and (F)). These requirements would limit harvest to situations where the productivity of the land could be sustained and harvesting prescriptions are appropriately applied. These requirements are referenced but not repeated because the Agency believes they are incorporated and enhanced by the requirements for resource protection and plan compatibility set forth in this section of the proposed rule. However, paragraph (d) does reiterate that harvests must be carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources.

The District agrees that "timber harvest today is used often to achieve ecological conditions." However, we disagree with the phrase that timber harvest is generally done "for purposes other than timber production." We contend that since our nation demands immense quantities of lumber, paper, and biomass, and since many western communities are economically dependent upon the timber industry, producing timber as an economic commodity should be on par with "achieving ecological conditions." Furthermore, we contend that timber management requires an infrastructure and thus requires an annual, predictable supply of timber. Consequently, we recommend you add the following direction:

> For suitable lands where timber harvest can be commonly used as a tool to achieve ecological objectives (i.e.: healthy forest) **or** provide for community economic stability, identify the level of wood (lumber, pulp, biomass, etc) needed on an annual basis to sustain the timber industry infrastructure **for a minimum of twenty years** in the target area.

The loss of timber infrastructure will make vegetation treatments much more expensive and inefficient. The more expensive treatments become, it is our opinion and experience that vegetation project implementation will be less likely. Without vegetation treatment, some public lands will be more susceptible to catastrophic natural disturbances. **A healthy forest products industry infrastructure would enable the National Forest to treat highly departed forest conditions in a cost effective manner and manage for forest production in line with ecological processes and multiple uses of the forest. Additionally, a growing need for energy security could be addressed with National Forest commodity outputs.**

The USFS Draft Planning Rule has some prescriptive language regarding clearcutting that reads like a relic from the 1970's. For instance, the USFS Draft Planning Rule (Column 2 p. 8497) states:

> Paragraph (d) also includes requirements that track the NFMA at 16 U.S.C. 1604(g)(3)(F) regarding even-aged timber harvest. These requirements: (1) Limit clearcutting to locations where it is determined to be the optimum method for regenerating the site…
>
> (clearcutting) (3) require(s) cutting to be blended with the natural terrain…
>
> "(clearcutting requires) (3) establish(ing) maximum size limits of areas that may be cut; and (5) requires that harvest is consistent with resource protections.

This section reverts back to 1970's timber management practices where landscapes were harvested in a checkerboard of 40-acre clearcuts. Under USFS Draft Planning Rule direction for conducting broad-scale, coarse-filter, and fine-filter assessments, and recognizing the role that natural disturbances have in shaping the landscape and meeting the needs of plants and animals, clearcutting may still be an appropriate prescription for some lands (i.e. lodgepole pine stands on the Continental Divide that lack an early seral, post-fire component). Whether the prescription provides the fastest regeneration, however, may or may not be a pertinent variable to restoring desired habitat conditions for a given plant or animal species. **We suggest you drop the requirement**.

The USFS Draft Planning Rule attempts to justify these unduly prescriptive measures with the following rationale:

> The procedure for varying these (size) limits is an established process and has worked effectively, providing a limit on opening size and public involvement with higher level approval for exceeding the limits. The Agency believes that the procedure for varying from these limits may be particularly justifiable in the future for ecological restoration, species recovery, improvement of vegetation diversity, mitigation of wildland fire risk, or other reasons. For example, some rare species are adapted to large patch sizes with similar habitat attributes for critical parts of their life cycle. Many of the specific NFMA requirements related to timber harvest are not reiterated in the text of the proposed rule, but are incorporated by reference. Some requirements are not repeated because they are addressed by other regulations; for example, the NEPA regulations direct environmental analysis and the use of interdisciplinary teams.

The District argues that the USFS needs to streamline its direction. For instance, if clearcutting at sizes greater than 40 acres is warranted based on results of broad-scale assessments, it is permissible under the USFS Draft Planning Rule. Why complicate the planning process with multi-layer reviews? Simply let the decision to harvest at large scales be evaluated and analyzed through the NEPA, NFMA, and ESA process. **We suggest the agency drop the entire 40-acre review process.**

219.12 Monitoring

The proposed requirements for monitoring focal species and management indicator species are vague and open to interpretation as to what constitutes adequate monitoring levels. The unintended consequence of lack of specificity will force the USFS into costly monitoring that will likely make projects economically unfeasible and/or subject to indefensible litigation. The USFS Draft Planning Rule states:

> *Focal Species and Management Indicator Species:* The proposed requirement for monitoring questions that address the status of focal species is linked to the requirement of § 219.9 of the proposed rule to provide for ecosystem diversity, which describes the coarse filter approach for providing diversity of plant and animal communities. The term ''focal species'' is defined in the rule as: a small number of species selected for monitoring whose status is likely to be responsive to changes in ecological conditions and effects of management. Monitoring the status of focal species is one of many ways to gauge progress toward achieving desired conditions in the plan. There are several categories of species that could be used to inform the selection of focal species for the unit. These include indicator species, keystone species, ecological engineers, umbrella species, link species, species of concern, and others. Monitoring the status of selected focal species over time is intended to provide insight into the integrity of ecological systems on which those species depend and the effects of management on those ecological conditions (*i.e.,* the coarse filter aspect of the diversity requirement). It is not expected that a focal species be selected for every element of ecological conditions. The proposed requirement for the responsible official to monitor a small number of focal species is intended to allow discretion to choose the number needed to properly assess the relevant ecological conditions across the planning area, within the financial and technical capabilities of the Agency. The choice to have the proposed rule require monitoring of focal species as well as select ecological and watershed conditions is a shift from the 1982 rule's requirement to specifically monitor population trends of ''management indicator species,'' or MIS. The theory of MIS has been discredited since the 1982 rule. Essentially, monitoring the population trend of one species should not be extrapolated to form conclusions regarding the status and trends of other species. In addition, population trends for most species are extremely difficult to determine within the 15-year life of a plan, as it may take decades to establish accurate trend data, and data may be needed for a broader area than an individual national forest or grassland. Instead, the Agency expects to take advantage of recent technological advancements in monitoring the status of focal species, such as genetic sampling to estimate area occupied by species.

Monitoring wildlife populations as required under the 1982 USFS Planning Rule has been fraught with legal challenges including contentions that monitoring was not done at a large enough sample size, did not have statistically-significant results, or did not consider the effects of other variables, including those out of the purview of the USFS. The fact is, monitoring wildlife populations at a sample size that provides statistically significant results, and will stand up to scientific scrutiny, is both extremely expensive and difficult. We suggest pursuing a different approach that includes a categorization of species monitoring protocols:

1. Species that typically occur at sufficient densities so that most suitable habitats are occupied (e.g. if their habitat/niche is present, the species is generally present (ungulates, most passerines, furbearers, etc)).
2. Highly specialized species where data shows that substantial portions of available habitat/niches are unoccupied (e.g. willow flycatchers, fishers, leopard frogs, etc).
3. Widely distributed, highly specialized species that occur at such inherently low densities (e.g. goshawks) where monitoring at a forest-scale is too small a scale to assess their response to changes in habitat.

Recommended Monitoring Strategies by Species Group

- Group One: Species that typically occur at sufficient densities so that most suitable habitats are occupied (e.g. if their habitat/niche is present, the species is generally present (ungulates, most passerines, furbearers, etc)).

Since these species are generally present if the habitat is available, monitoring should be limited to habitat variables (cover type, size or age class, stand structure, forage condition, etc) that define suitable or preferred habitat. Generally, these variables should be measured using Geographic Information System-available data

layers (Forest Inventory and Analysis, satellite imagery, etc). Trends should be considered only when those data layers are updated. Careful consideration should be given to what species fall within Group One. For instance, white-tailed deer would almost always fall within Group One. American martens in the Rocky Mountains would generally fall within Group One when state trapping data indicate most suitable habitat is occupied. Fishers would generally not fall within this group due to the lingering effects of past trapping and local extirpation.

- Group Two: Highly specialized species (e.g. willow flycatchers, fishers, leopard frogs, etc) where data shows that substantial portions of available habitat/niches are unoccupied.

Since data indicate that substantial portions of suitable habitat for species in this group are unoccupied, monitoring should measure species occurrence within suitable habitat. Long-term trend conclusions should be limited to changes in habitat occupancy. For passerines (e.g. willow flycatchers) point counts should be adequate. For mammals (e.g. fishers), DNA hair sampling should be ample. For amphibians (e.g. leopard frogs), spring tadpole surveys should be sufficient. Monitoring should commonly avoid making assessments on population density within individual areas of occupied habitat due to the difficulties in reaching statistically-valid conclusions.

- Group Three: Highly specialized species that occur at such inherently low densities (i.e. goshawks, wolverines) where monitoring at a forest scale is too small a scale to assess their response to changes in habitat.

This group is perhaps the most challenging to monitor, and for which past USFS attempts at monitoring have been both expensive and inconclusive. Using goshawks as an example, we suggest that monitoring on an individual forest basis is both unnecessarily expensive and redundant. Clusters of inventoried nests from past research (Clough 2000; Kennedy 2003; Reynolds et al. 1992) within representative cover types that can be repeated periodically at the regional scale provide sufficient data to measure trends. Limiting monitoring to these clusters makes monitoring more likely to fall within expected budgets, and makes the results more defensible by limiting the "noise" that individual birds exhibit when selecting alternate nests that are often erroneously confused with a response to human disturbance.

Occupancy monitoring of wolverines could be done via DNA hair samples. In most cases, however, occupancy monitoring should be left to research.

General Comments Regarding Forest Plan Monitoring

Generally we support the following strategies for monitoring in order to keep monitoring affordable and simple (and therefore defensible in a litigation situation).

- Wildlife monitoring should emphasize habitat monitoring over occupancy or population monitoring where availability of habitat is the limiting factor.
- The number of species monitored should be a "very short list" and limited to those species that clearly show adverse effects from USFS activities, and which are generally not affected by a multitude of non-USFS activities.
- When it is required to monitor species, not simply habitat (i.e. where some suitable habitat is unoccupied) limit monitoring to "occupancy" where possible. The more that monitoring focuses on population density, fledging success, juvenile recruitment, etc, the more those results are likely to be successfully challenged.

- Consider selective, clustered monitoring at a regional scale over forest scale monitoring when species are widely distributed, occur at low densities, or are expensive or difficult to monitor.

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OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 207.170.226.180
Form Letter:

Comments

See Attachments

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Board of County commissioners
245-2234

Clerk District Court Auditor and Recorder
245-3212

Treasurer and Tax Collector
245-2421

Prosecuting Attorney
245-2564

Assessor
245-2821

Sheriff
245-2555

Coroner
245-2611

County of Benewah
ST. MARIES, IDAHO 83861

May 16, 2011

Hon. Harris Sherman
Under Secretary, NRE
U.S. Forest Service
Department of Agriculture
1400 Independence Ave., S.W.
Washington D.C. 20250
Via Facsimile (202) 205-1758, email, and U.S. Mail

Re: Extension of Proposed Rulemaking Comment Period

Dear Under Secretary Sherman:

On behalf of the Benewah County Commissioners we submit this letter to the U.S. Forest Service with the intention of reserving our rights as an elected governing board and as elected representatives of all residents of Benewah County, Idaho.

The Notice of Proposed Rulemaking requests comments by May 16, 2011. We respectfully request the comment period be extended for an additional 90 days. The initial comment period doubtless seemed adequate when first proposed by the Forest Service, but intervening events and a further review of the issues clearly substantiates the need for additional time.

Benewah County and its residents have participated in the various forest service efforts to update and revise its planning regulations. Previous efforts include the 2008 Final Rule, the 2005 Final Rule, the 2000 Final Rule, and the 1982 Final Rule. Thus, for nearly three decades, the Forest Service has attempted to formulate planning rules that will stand the test of time. Each step along the way, judicial challenges and policy changes have resulted in alterations and a new round of rulemaking. Additional time to address this complex and difficult process is required to submit meaningful comments. At least an additional 90 days should be considered.

In conclusion, we request on behalf of the citizens of Benewah County an additional 90 days in which to provide comments on the 48-page Federal Register Notice which includes the draft EIS and the numerous additional documents provided on the planning rule website. We also need additional time to review information that was recently posted on the website and made available to the public. If you have questions about this request, please do not hesitate to contact us. Thank you for your attention to our request.

Sincerely,

BENEWAH COUNTY COMMISSIONERS

By: _____
J. MICHELE REYNOLDS, Clerk

JMR: tjr
Cc: Forest Service Planning NOI
c/o Bear West Company
172 E. 500 S
Bountiful, UT 84010
Facsimile: (801) 397-1605

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Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 216.17.161.161
Form Letter:

Comments

See Attachments

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FRD-0863

COALITION OF LOCAL GOVERNMENTS

925 SAGE AVENUE, SUITE 302
KEMMERER, WY 83101

COUNTY COMMISSIONS AND CONSERVATION DISTRICTS FOR CARBON, FREMONT, LINCOLN, SWEETWATER, UINTA, AND SUBLETTE - WYOMING

May 16, 2011

SUBMITTED ELECTRONICALLY: http://www.govcomments.com

Forest Service Planning DEIS
Ric Rine, U.S. Forest Service
Assistant Director for Planning
Ecosystem Management Coordination
Washington, D.C. 20250

c/o Bear West Company
132 E. 500 S
Bountiful, UT 84010

Dear Sir or Madam:

CLG is a voluntary association of local governments established to educate, guide, and develop federal land policy in the affected counties. CLG members include county commissions and conservation districts, organized under the pertinent statutes of Wyoming. Current members include Lincoln, Sublette, Sweetwater, and Uinta Counties, and the Lincoln, Little Snake River, Popo Agie, Star Valley, Sublette, Sweetwater, and Uinta Conservation Districts.

These comments are divided into general topics that are not addressed in the proposed rulemaking and specific issues relating to the proposed rules. When appropriate, CLG refers to specific incidents and cases on units of the National Forest System to illustrate the comment. These examples are illustrative not exhaustive.

The CLG members requested cooperating agency status when it submitted its scoping comments on February 16, 2010. It never received even the courtesy of a response.

The Forest Service failure to grant cooperating agency status violates the clear direction by the Council on Environmental Quality (CEQ) that state and local government agencies are to be given cooperating agency status for Environmental Impact Statement (EIS) documents. The Forest Service failure to properly handle the cooperating agency issue has led courts to set aside EIS. *State of Wyoming v. USDA*, 570 F. Supp.2d 1309 (D. Wyo. 2008).

The agency's failure also suggests that the claimed desire to collaborate in the rulemaking documents is false. Indeed, the Forest Service record of not responding to or granting cooperating agency status to local governments does not reflect well on the agency. Apparently Forest Service officers have been told they can pick and choose the public officials to coordinate with and ignore those that may not agree with the agency's policies. Careful review of CEQ direction shows that agreeing with a federal agency is not a criteria for cooperating agency status. Sadly even the Washington Office of the Forest Service will support denial of cooperating agency status until after the close of the comment period on the draft EIS.

CLG understands that other states and local governments also requested cooperating agency status. The Forest Service failure to honor this requirement also raises questions about its compliance with the National Environmental Policy Act (NEPA) and its commitment to honoring public participation and local government coordination mandates from CEQ rules and the National Forest Management Act (NFMA).

Sincerely,

/s/ Kent Connelly, Chairman
Coalition of Local Governments

I. OVERRIDING ISSUES

1. Rationale to Revise Proposed Planning Rules Unsubstantiated

The Forest Service offers the proposed planning rules to address the impacts of climate change and to reduce costs. *76* Fed. Reg. 8480, 8481 (Feb. 14, 2011). The proposed planning rules ignore the 2001 rule and the 2005 revisions but instead force on the 1982 planning rules.

There is no clear evidence that the revised planning rule will reduce land use planning costs. Experience suggests that this rule will be even more expensive to implement. If the Forest Service adds National Environmental Policy Act (NEPA) compliance to the planning process, it would seem that there will be no cost-savings. The factors that add to costs, such as poor data, controversial actions, and litigation are not resolved in the proposed planning rules.

Similarly, the issue of climate change is barely addressed in the proposed planning rules. This makes sense since there is no data showing that climate change is more than a scientifically controversial theory, and, more relevant, there is no data documenting the likely impacts on National Forest System management. The prediction there will be more and longer periods of drought and warmer temperatures is little more than speculation. It is difficult to understand how a single land use plan could be based on these assumptions, when there is no evidence whether the alleged climate change will affect resources within the next 15 years. No credible research documents how to change land management to adjust to possible changes in climate.

For this reason alone, CLG supports the no action alternative.

2. Proposed Planning Rule Is About Process and "Values" Not Science

The rulemaking preface states:

> Science is one source of understanding and knowledge that informs planning and decision-making. Much of planning also involves consideration of public values in land management. This proposed rule is very much a

> science-based rule and establishes a strong requirement for consideration and use of best available scientific information in planning.

Id. at 8482.

Unfortunately, nothing in the proposed rules is based on science. The planning rule does not adopt any scientific standards or criteria, as compared with the Committee of Scientists whose work was the basis for the 1982 rule. The Forest Service incorrectly states that the 1982 rule was to mitigate the impacts of "resource extraction activities." *Id.* NFMA was written to authorize logging for all age-classes of timber and prescribe where and how regeneration is to occur. NFMA also provided that the agency should avoid irreversible damage to soil, watershed resources, water, and avoid impairment of plant and animal diversity. 16 U.S.C. §1602, 1604. These criteria most of which related to regulation of the logging program are the core elements of the 1982 rule. Neither logging or grazing is a 'resource extraction activity' since both are renewable. Hunting and recreation are arguably consumptive but are also renewable. The preface efforts to distinguish the proposed rule from the 1982 rule are unconvincing.

The rulemaking preface states: "The Agency needs a planning process that helps units identify their unique roles in the broader landscape and create land management plans to guide proactive contributions of the unit and of management to ecological, social, and economic sustainability." *Id.* The proposed planning rule incorrectly assumes that the 1982 rules did not provide for 'proactive' management that would promote sustainability. The 1982 rules provided for species diversity, and minimum management requirements to protect, soils, vegetation and watersheds. 36 C.F.R. §219.27 (1982). It appears that the proposed rule's authors know very little about the 1982 rules or the plans written under those rules.

This lack of understanding is then followed by describing the current planning rule as unstable and then asserting that this rule, unlike others reflects an '"improved understanding of science and sustainability." Confusingly, the Forest Service states that proposed rules also will "establish requirements and constraints for on-the-ground management decisions;" *Id.* at 8484. This is exactly what the 1982 planning rule did when it provided for minimum management requirements to protect diversity of species, water quality and vegetation. 36 C.F.R. §219.29 (1982).

The repetition of values, collaboration and cultural and spiritual sustenance shows that the proposed rule is based on feelings and process not science or data. The premise appears to be that the current plans have not provided the public with social, economic and ecological benefits, clean water, fish and wildlife habitat, or "opportunities for recreational, spiritual, educational and cultural sustenance." The Forest Service offers no evidence to support the need for change. Moreover, it is worth noting that no statute directs the Forest Service to provide spiritual, educational or cultural sustenance or clean water.

Elsewhere the Forest Service also attempts to justify the rule revision based on

> a growing concern about a variety of risks and stressors impacting resources, services, benefits, and uses on NFS lands. Issues included, for example: Climate change; insects and disease; recreation, timber, and shifts in other local demands and national market trends; population growth and other demographic shifts; water supply protection; and other ecosystem support services.

Id. at 8483.

There are undoubtedly many more stressors but those listed above are largely the product of Forest Service management policies that have been adopted over the last 20 years. Insects and disease are due increased fuel loads. The fuel loads rose when logging ceased. Since the late 1980s, the Forest Service has steadily abandoned the timber industry, thus leaving the National Forest System with timber that has become a huge fuel load and vulnerable to insects and disease. Drought which is entirely predictable coupled with stagnant stands of timber allowed insects and disease to flourish. The Forest Service's more recent efforts to address these stands have been tentative and insufficient as shown by the catastrophic wildfires in Arizona, California, New Mexico, Oregon, Montana and Utah to name a few states. Wyoming is very much aware that it is next for catastrophic wildfire as a large percent of the western Wyoming forests are dead or dying.

When the Forest Service decreased logging, it had predictably disastrous impacts on rural communities. Little has improved despite direct funding to compensate for the billions lost.

Recreation is directly affected by Forest Service efforts to restrict and end motorized vehicle use. This policy became explicit with the adoption of a new roads rule in January 2001. Thus there are fewer areas for recreation since access is constrained. Ski areas and ski area expansion are also limited as witnessed by the denial of a proposed expansion of the Crested Butte ski resort in 2010.

More importantly, nothing in the proposed rule will actually address the above issues. The Forest Service is not indicating that it will resume logging as part of its commitment to community stability and to provide timber for the needs of the citizens of the United States. 16 U.S.C. §475. The proposed rules do not provide for increased recreation access. Instead, no activity will be allowed unless it contributes to achieving desired conditions or objectives or does not impede achieving desired conditions and objectives.

3. Cooperating Agency Direction and Rules Largely Ignored

The Forest Service failed to acknowledge or grant cooperating agency status that CLG requested in its 2010 scoping comments. The failure to respond violates the clear direction by the Council on Environmental Quality (CEQ) that state and local government agencies are to be given cooperating agency status for Environmental Impact Statement (EIS) documents. CEQ Memorandum, Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act July 28, 1999; CEQ Memorandum, Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act January 30, 2002.

The rulemaking preface obliquely refers to its failure to address the requests: "Based on the input received throughout all these meetings, the Agency determined that additional consultation was not needed with State and local governments for the development of this proposed rule." *Id.* at 8511. The Forest Service failure to properly handle the cooperating agency issue led the federal court to set aside the roadless rule EIS. *State of Wyoming v. USDA*, 570 F. Supp.2d 1309 (D. Wyo. 2008).

The agency's failure also suggests that the claimed desire to collaborate in the proposed rulemaking is false. Section 219.4 affirms this by qualifying the right of state and local governments to be cooperating agencies. The rule allows the Supervisor to decide

whether is 'appropriate' for a state or local government to be a cooperating agency. This contradicts CEQ rules and guidance.

Indeed, the Forest Service record of not responding to or granting cooperating agency status to local governments does not reflect well on the agency. Forest Service officers act as if they have been told that they can pick and choose the public officials to coordinate or cooperate with and ignore those that may not agree with the agency's policies. Careful review of CEQ direction shows that agreeing with a federal agency is not a criteria for cooperating agency status. Sadly even the Washington Office of the Forest Service has supported denial of cooperating agency status, claiming it was up to the Supervisor. Some local governments have been threatened with denial of future cooperating agency status if they continue to express disagreement with Forest Service policies.

4. National Environmental Policy Act (NEPA) Compliance

The major change effected in the 2001 planning rule was to disengage land use planning from NEPA. The Forest Service rationale was that NEPA compliance was too cumbersome and costly. Because land use plans did not actually make a decision, there was no final agency action and thus no need to complete NEPA review.

The proposed planning rules appear to reverse this action by complying with NEPA, although there is not a lot of discussion on this important point. Sections 219.5, 219.7, and 219.14 appear to provide that land use plans will have NEPA compliance, such as an EIS. 76 Fed. Reg. 8501 (For plan development or revision, the decision document would also be accompanied by a final EIS. A plan amendment would be accompanied by appropriate NEPA documentation.); 8511; 36 C.F.R. §§219.5, 219.7 (proposed), 219.14.

The emphasis on public participation also marginalizes the state and local governments. The state and local governments enjoy a special status based on principles of federalism. The Forest Service cannot preempt state or local government functions where it lacks the authority. As explained in these comments, the Forest Service, as a matter of practice, either does not understand or will not accommodate the mandate to coordinate under NEPA. By equating public involvement with coordination with local governments or the obligation under cooperating agency rules and policies, the Forest Service avoids

recognizing local government jurisdiction and avoids having to deal with state and local government officials.

Access in the travel planning process is one area where this is especially evident. The Forest Service has studiously ignored county road documentation preferring instead to close roads to all motorized use without regard to case law or the road's history. CLG members appealed the Ashley National Forest Travel Management Plan on these grounds. The Forest Service issued its Record of Decision 30 days after the close of the comment period on the DEIS and later rejected both Utah and Wyoming appeals summarily. The Dakota Prairie Grasslands, which manages National Grasslands in North Dakota and South Dakota continues to resist coordinating with local governments on its travel plan and instead persists in using the EA process to keep the comment period to 30 days even though the travel plan covers more than 1.2 million acres of land, most of which was acquired subject to roads, rights-of-way and section line easements.

5. Other Statutory Direction Omitted

a. Omission of Mineral Resources

The proposed planning rules are largely silent on mineral development and rights-of-way. The Department of the Interior administers the federal mineral estate but the Forest Service must review surface impacts. Thus, the proposed planning rules should acknowledge this important fact and address the role of mineral development and how it may affect planning.

Alternatively the proposed planning rule omission is a deliberate effort to exclude mineral development from the National Forest System. This would be unlawful. The National Grasslands are specifically identified as being managed for energy development. 7 U.S.C. §1010. The National Forests are also recognized as available for mineral development unless withdrawn. 30 U.S.C. §226(g)(& (h); Energy Security Act, 42 U.S.C. §8855; Mining and Minerals Policy Act, 30 U.S.C. §21a.

b. Management Direction for National Grasslands

While the National Grasslands are part of the National Forest System, the management objectives differ and this should be reflected in the planning rule. The National Grasslands are to be managed as demonstration projects for grassland agriculture and for energy development, among other uses. 7 U.S.C. §1010.

c. Omission of Healthy Forests Mandates

The proposed planning rules fail to incorporate the Healthy Forests Restoration Act. There is next to nothing about how the plan will identify forest conditions and proceed to meet the Act's criteria. Given the recognized extent of disease and beetle infestation and the risks of catastrophic wildfire, particularly in the Rocky Mountain States, this omission is unwarranted.

6. Role of National Forest System in Economy

The planning rule identifies the important role that National Forest System management has on social and economic factors. It fails, however, to correctly reflect either the statutory direction or original commitment to contributing to the stability of dependent communities.

The Organic Act provides in relevant part:

> No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States;

16 U.S.C. §475.

As explained in early Forest Service manuals, the Forest Service was to ensure that the land management policies took into account and provided for community and economic stability. Schallau, C., Alston, R. The Commitment to Community Stability: a Policy or Shibboleth? 17 Envtl. L. 429 (1987) fn 1 citing historical references documenting the

principle that the National Forests were to be managed to stabilize the economies of the dependent communities. The concept of ensuring community stability was established in the Forest Service rules as part of the timber program, 36 C.F.R. Part 223; and in the statutes allocating 25 percent of National Forest System revenues to the local communities. 16 U.S.C. §500. The Secure Rural Schools and Community Self-Determination Act of 2000 which was renewed through 2011, Pub.L. 110-543, 16 U.S.C. §500, replaced the revenue distribution that was tied to timber sale revenues.

7. No More *De Facto* Wilderness, §219.7(b)(2)(iv)

CLG members also believe that the time is long past for the Forest Service to continue to expand the lands that will be managed as if they were wilderness. The 1982 planning rules were amended to provide for wilderness study and review after the Ninth Circuit Court of Appeals set aside the national roadless area review. 36 C.F.R. §219.27 (1983).

Since 1983, however, Congress has adopted numerous National Forest wilderness bills, and released the other lands to multiple use management. This is especially true for Wyoming, where Congress expressly released all of the roadless lands to multiple use management. Pub.L. 98-550, Title II, § 201(a)(10), Oct. 30, 1984, 98 Stat. 2809, Wyoming 1984 Wilderness Act. In 2008, the Wyoming District Court concluded that the Forest Service inventoried roadless area conservation rule was unlawful, both for lack of authority and violation of NEPA. *Wyoming v. U.S. Dept. of Agriculture*, 570 F. Supp.2d 1309 (D. Wyo. 2008). Notwithstanding the law and court decision, the Forest Service continues to use the planning process as a basis to expand wilderness management. The Wilderness Act gave the Secretary of Agriculture 10 years to complete its review and recommendations. 16 U.S.C. §1132(b). The time has long since passed for an end to the continued expansion of *de facto* wilderness management.

8. Proposed Planning Rules Need Definitions

The terms used in the proposed planning rules are not clearly defined. In several cases, it is not clear that the ordinary meaning is the same that the Forest Service is using.

a. Economic sustainability

Economic sustainability could mean managing the National Forest System to sustain local and state economics or it could mean shutting out particular land uses like livestock grazing on the theory that it was not economically sustainable. Unfortunately, the proposed planning rules are coy about what is actually meant thereby frustrating meaningful public comment.

b. Monitoring; See also §219.12, proposed

The CLG supports monitoring the response of resources to management as part of the land use plans. Unfortunately, the public has learned that the Forest Service definition of monitoring differs from that used by the scientific community. Resource monitoring is defined as measuring resource trend over time in response to management actions or permitted uses. Monitoring is paramount to adaptive management. Equally important is the monitoring must be jointly and cooperatively conducted with the resource user or permittee.
the response of the resources to changes in land management over time. Vegetation or habitat monitoring in particular has focused on tracking particular sites and evaluating the site's resources responses to management (or lack thereof).

More recently, Region 1 has adopted a very different definition. Monitoring data are now equated with any information, such as an initial base-line assessment or with a one-time inventory of a resource. Thus, monitoring is any resource information without regard to measuring the response of the resources to management or to changes in management over time. A valid and defensible monitoring program is essential to adaptive management but scatter-shot one-time assessments will not aid in adaptive management.

As a result, we believe that the definition of monitoring needs to be revised to capture the concept of measuring the response of resources to land management over time. *76* Fed. Reg. at 8481.

Another important aspect of monitoring as used in the proposed planning rules is the fact that there is no penalty or consequence, if monitoring is not done. While the Forest Service has been writing land use plans pursuant to Multiple Use Sustained Yield Act

(MUSYA), and now NFMA, for more than 50 years, it has only sporadically monitored the effects of its management plans. While the revised planning rules would make monitoring a cornerstone of land management, there is no trigger or consequence, if monitoring is not actually done.

As one example, more often than not, management of grazing allotments is not evaluated by monitoring unless the permittees do it themselves. And even then the Forest Service is reluctant to accept data from a third party. The Forest Service will often accept the data from Western Watersheds Project. When the permit is to be renewed, the Forest Service has no data to document the responses of the resources to management over time. If challenged, the Forest Service has few facts to defend its decisions and the livestock permittees bear the brunt of this lack of information through a decision to reduce or remove livestock grazing.

CLG also questions whether the Forest Service will allocate the funds and staff for a monitoring program. It has not done so in the past. The proposed rule is promoted as saving money, thus suggesting that the Forest Service will not in fact allocate the necessary funds and staff to make monitoring part of its management scheme.

9. Ecosystem Services, §§219.8, 219.10 proposed

The proposed planning rules attempt to evade the terms of MUSYA by defining planning in terms of ecosystem services.

> "Ecosystem services" is a term that is used today to describe many consumptive and nonconsumptive uses, as well as traditional and non-traditional uses, that people associate with national forests. In the proposed rule we use the phrase "multiple uses, including ecosystem services" in certain places to show an association between the terms so both are recognized in the rule and within our statutory authority as part of land management planning. The management of the multiple uses described by the MUSYA of 1960 (outdoor recreation, range, timber, watershed, and wildlife and fish purposes) has broader application in today's context.

Id. at 8484.

The Forest Service cannot revise the statutory management directives. It is important to remember that the National Forests were reserved to "to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States." 16 U.S.C. §475. The additional and supplemental purposes include "outdoor recreation, range, timber, watershed, and wildlife and fish purposes." 16 U.S.C. §528. As noted above, these are not 'consumptive' or 'non-consumptive uses,' they are the primary land uses that the Forest Service is mandated to provide on the National Forests.

The National Grasslands have similar but different objectives and they are:

> The Secretary is authorized and directed to develop a program of land conservation and land utilization, in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety, and welfare. . .

7 U.S.C. §1010.

None of the above statutory objectives resemble in any shape or form the terms that the Forest Service would adopt in the proposed rule. Given the clear statutory direction and decades of implementation, it is apparent that the Forest Service is unlawfully attempting to revise the law through rulemaking. This exceeds the agency's power and would be set aside as unlawful.

II. SPECIFIC COMMENTS

1. Plan Framework 76 Fed. Reg. at 8481

The proposed planning rules need to add a step of 'assessing planning assumptions and making adjustments.' Theoretically, this would be included in adaptive management, but

experience shows that the Forest Service does not employ adaptive management to reconsider plan assumptions. A particularly telling example is found in North Dakota where the Forest Service assumed in the Dakota Prairie Grasslands (DPG) Plan that the grasslands could achieve a visual obstruction rating (VOR) of 3.5" for all of the National Grassland units in North Dakota and northern South Dakota with only 800 pounds per acre of production. Based on that assumption, the plan adopted a mandatory VOR of 3.5" even though a significant segment of the scientific community and the state agencies stated that it was unlikely that the grasslands could produce sufficient vegetation to achieve 3.5" VOR. The Forest Service further contended that the VOR reading would not lead to significant reductions in livestock grazing. The Forest Service even did an elaborate test drive of plan implementation which showed no grazing reductions. Five years later, the Forest Service is implementing the plan with an average of 25% reductions in grazing in each Ranger District.

These reductions are occurring because the National Grasslands cannot achieve a VOR of 3.5" unless the site produces more than 2300 pounds of forage. The Forest Service sponsored a study by the North Dakota State University to evaluate and establish baseline data and do VOR ratings. The data showed that most sites will not produce 2300 pounds of forage, even before grazing and during an abnormally wet year. In areas that might achieve that production, it would require removing most or all of the livestock to meet a VOR of 3.5" in the fall. Needless to say, had this information been available when the plan was adopted, the Forest Service could not have been able to maintain that no significant reductions would occur. Moreover, the Forest Service would have been required to disclose and analyze the impacts of removing livestock from the grasslands, which are uniquely suited to herbivory.

Rather than acknowledge that the plan assumption was incredibly wrong, the Forest Service has maintained that it will continue to 'implement the plan' without regard to the incorrect assumptions and without regard to the significant impact on one of the primary users. Even the Chief of the Forest Service has flatly stated it will implement the plan regardless of errors in the assumptions and impacts.

If the Forest Service is to have any scientific credibility, it needs to acknowledge when planning assumptions are wrong and make changes. Hunkering down and not making

changes has led to decades of litigation and a significant loss of credibility with the courts and state agencies.

2. Directives In Lieu of Rules Violates NFMA and the Claimed Commitment to Public Participation, §§219.1, 219.2, 219.11 proposed

The proposed rules would allow the Forest Service to make significant changes in the planning process by the non-public avenue of directives, which includes manual, handbook and directives from the Chief, as well as regional modification of handbook and manual direction. The directive system can be difficult to access, especially if it is addressed in a regional modification or order from the Chief.[1] Most manuals and handbooks have been adopted without notice and public comment. Forest Service rules only require public involvement for manuals and only in narrow and self-defined cases. 36 C.F.R. §216.6. Handbook directives do not require any public comment. In short, the proposed rules will hijack the planning process by implementing land use planning through secret directives.

This violates NFMA, since the Forest Service is required to use rulemaking to implement its provisions, which address the land use planning process. 16 U.S.C. §1613. The Agriculture Secretary must also provide for "an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs." 16 U.S.C. §1612(a). Using the nonpublic directive system to implement planning flatly contradicts this clear statutory direction.

3. Role of Science in Planning, §219.3 proposed

The Information Quality Act requires that each federal agency follow guidelines that will ensure and maximize "the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency." Pub. L. No. 106-554 (Dec. 21, 2000) (published at 44 U.S.C. §3516 note). The Forest Service "must use the "best available,

[1] Region 1 manual or handbook direction are not always on its web site and it is necessary to call and ask for a copy. These are often the more controversial changes. Unless a Forest Service official refers to the direction, it is impossible to know it even exists.

peer reviewed science and supporting studies conducted in accordance with sound and objective scientific principles." 42 U.S.C. 300g-1(b)(3)(A) & (B)."

This was the issue in *Ecology Center, Inc. v. U.S. Forest Service*, 451 F.3d 1183 (10th Cir. 2006). The United States Court of Appeals for the Tenth Circuit vacated the Forest Service's decision because the agency failed to demonstrate that the best available science was applied, even though the Forest Service ultimately had the discretion to decide what constituted the best available science. *Id.* at 1193, 1194 n.4 (identifying scientific controversy and holding that the "best available" science is "not just whatever the Forest Service finds on the shelf. . . [I]t still must be good science-that is reliable, peer-reviewed, or otherwise complying with valid scientific methods").

The proposed planning rule falls short of the Information Quality Act or the USDA criteria. While the proposed rules use the term 'best available scientific information' that is not sufficient under the Information Quality Act. 44 U.S.C. §3516 note. The Forest Service will often rely on old data, such as 20-year monitoring data for rangeland conditions, on the basis that it is the 'best available.' Similarly, the Forest Service will use assessment information in lieu of monitoring data, because it lacks such data. In North Dakota, the Forest Service initially used computerized data estimating resource conditions. The Scientific Review Team concluded that the data could not be used at the project level.

The federal court cases frequently set aside Forest Service decisions when they rely on flawed data, but the best available.

The proposed rule apparently qualifies the need to even comply with the Information Quality Act.

> the best available scientific information could be the result of expert opinion, panel consensus, or observations, as long as the responsible official has a reasonable basis for relying on that information. Regardless of the source of the information, the Office of Management and Budget (OMB) Information Quality Bulletin on Peer Review may apply.

Id. at 8485. None of the items in the above list conforms to the Information Quality Act. A single expert opinion without peer-review analysis is not sufficient nor would observations

or panel consensus. CLG also notes that the Forest Service appears to assume that the Information Quality Act does not apply, when it clearly applies to all information disseminated by an agency.

Elsewhere the Forest Service notes that science only informs but does not dictate a decision. *Id.* 8485. It is difficult to understand how to reconcile putting science secondary and yet insisting that this is a science-based planning rule. The explanations within the proposed rulemaking are contradictory.

Similarly deferring the use of science to the directive system is also problematic. *Supra* at 13-14. If the science is to be the center piece of the planning process it should be in the rules, rather than the directives.

4. Cooperating Agency Status and Public Participation, §219.4 proposed

Since the rules will incorporate NEPA, then the Forest Service has no choice but to invite all state and local governments to participate. 40 C.F.R. §§1501.2(d)(3), 1506.2. CEQ direction further requires federal agencies to affirmatively bring state and local government agencies into the process. 40 C.F.R. §1508.5; CEQ Memorandum, Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act July 28, 1999; CEQ Memorandum, Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act January 30, 2002.

The text implies that in many cases, the Forest Service will substitute collaboration or public involvement for cooperating agency process. *See e.g.* 76 Fed. Reg. at 8486.

> The proposed rule specifically would require the responsible official to encourage participation by the public, Tribes, governments, scientists, and other individuals by sharing knowledge, ideas, and resources. It is also expected that the responsible official would rely on proactive, contemporary tools, such as the Internet, to encourage widespread participation.

Id.

The Forest Service compliance with cooperating agency relationships has been disparate and inconsistent. Region 4 resisted local government cooperating agency status for the Utah Wild and Scenic Rivers Act study, saying that the Governor of Utah would represent the Wyoming local government interests. Since the Utah Governor has no relationship with the Wyoming counties, this was clearly not the case. On the other hand, Region 4 forests have recognized cooperating agency status for travel management plans. Region 1 has also varied with counties enjoying cooperating agency status for the Beaverhead but being rejected for the DPG. There is no clear or consistent direction to follow the law and this leads to the exclusion of many local governments in the EIS process.

5. State and Local Government Land Use Planning Coordination and Consistency

The forest planning rule is also inconsistent with the NEPA rules. Instead of recognizing that CEQ rules require coordination, the Forest Service writes:

> The proposed rule would require that during the plan development or plan revision process, the responsible official would review the planning and land use policies of federally recognized Indian Tribes and of other Federal, State, and local governments and document the results of the review in the draft EIS. The review would include assessments conducted by other Federal agencies, statewide forest resource assessments, community wildfire protection plans, or state wildlife action plans. The review would consider the objectives of federally recognized Indian Tribes, and of other Federal, State, and local governments, as expressed in their plans and policies, and would assess the compatibility and interrelated impacts of these plans and policies. The review would include a determination of how each Forest Service plan should address the impacts identified or how each plan might contribute to joint goals.

Id. at 8486-87.

The CEQ rule states that when evaluating environmental consequences a federal agency must consider "Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use

plans, policies and controls for the area concerned. (See §1506.2(d).)" As additional explanation, the CEQ rules further state:

> (d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). ***Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.***

40 C.F.R. §1506.2(d) (emphasis added).

The proposed rule fails to require reconciliation of the proposed plan with the state or local government plan. Instead, the proposed rule assumes that it supersedes state and local plans and there is no obligation to resolve the inconsistency. The Forest Service instead states that consistency would reduce Forest Service management flexibility. 76 Fed. Reg. at 8487. It is apparent that the Forest Service will continue its current inflexibility regardless of contrary law or rule. As is clear above, the Forest Service lacks the authority to ignore the CEQ rules. *Andrus v. Sierra Club*, 442 U.S. 347, 357 (1979).

A real life example involves the Forest Service proposal to introduce big horn sheep on the Flaming Gorge National Recreation Area. This is being proposed without any coordination with state or local governments. It would mean removal of sheep from adjacent private lands and BLM grazing permits. Because the state has authority over wildlife, not the Forest Service, such reintroduction should not occur unless approved by all affected agencies and landowners.

6. Planning Framework, §219.5 proposed

The proposed rule calls for an assessment that would identify "a potential need to change the unit's plan." 76 Fed. Reg. at 8487. It is not clear how the assessment would differ from the analysis of the management situation (AMS) that was used in the 1982 rules. CLG supports both the Forest Service assessment and public involvement but notes that the public needs access to the assessment and the underlying record before commenting.

The discussion implies that the public would have access to the assessment data but does not address how access will be provided.

> The assessment phase would allow for early public participation—well before a proposed action—so that stakeholders could engage in joint fact-finding and develop a mutual understanding of the interconnections among social, economic, and ecological communities and systems. The development/ revision/amendment element of the framework responds to the public desire to help develop and provide meaningful input to proposals for land management plans.

76 Fed. Reg. at 8487.

The proposed rule does not address how that information will be shared. Currently, the Forest Service will not provide such information to state or local governments without a Freedom of Information Act (FOIA) request and will often assess prohibitive search and copying costs. When local governments request a fee waiver, the Forest Service will routinely deny the requests on the basis that the local governments may benefit financially or fail to show how their request will promote the public interest. North Dakota counties have a fee waiver request appeal that has been pending before the Chief's office since 2005. The documents sought addressed Forest Service records of road ownership and control, a major issue in the land use plan and the pending travel management plan. Notably here also, the DPG did not invite state and local governments to 'collaborate' or be cooperating agencies and would have imposed a bill for more than $20,000 for the requested records. It is not sufficient that the Forest Service provide a time for comment, it must be prepared to openly share the records upon which a decision will be based and to end the practice of imposing fees as a barrier to the information.

The proposed rule does not limit or tie any land use management changes to the assessment. Unfortunately, on many occasions, the Forest Service lacks the necessary data or information to write an assessment. *E.g.* Bridger-Teton National Forest lacking allotment management data showing resource conditions in conjunction with wildlife, big game or livestock or historical assessments of healthy forests). On other occasions, the Forest Service has prepared a detailed AMS but ignored it when it did not support major changes that reflected political rather than resource objectives. *See e.g.* DPG where

rangeland health was improving and meeting the current planning standards but DPG wanted to reduce livestock grazing. In short, the 'need for change' was political, not resource based.

If the Forest Service is prepared to rely on data and science rather than politics, then it needs to tie the assessment to later planning decisions. Otherwise, politics of the moment will continue to be the basis for forest plan decisions.

7. Assessments, §219.6 proposed

a. Lack of clear criteria

As written the value of the assessment is severely undercut by the qualification that each unit can decide what kind of assessment is done.

> The responsible official would have discretion to set the scale and scope of the assessment but would engage the public early and would encourage participation in the assessment process. The content of assessments would be used to develop new plans and plan revisions, to develop monitoring questions, and to provide a feedback loop.

Id. at 8487.

This explanation demonstrates how the assessment phase could quickly lose any value. It would, for instance, allow a Supervisor to decide not to use its vegetation monitoring data but instead use only satellite imagery because it was easier to use although less accurate. It would allow the Supervisor to simply write rangelands are in poor condition and do not meet habitat requirements without any evidence supporting such a conclusion. Without clear standards for assessments, this step will have little value in the planning process.

The rulemaking preface states:

> Assessments should provide useful information to the responsible official to develop plan components and other content for a new or revised plan, to identify gaps in needed information that might be filled by a monitoring

> program, to identify changing conditions that the Agency might need to track, or to identify assumptions that should be tested later.

Id.

The foregoing language is even more troubling. First, information gaps cannot be filled by a monitoring program unless the planning process would be suspended for 10 years. Each plan now has a monitoring program so the question should relate to the results of the monitoring. If the units are not actually implementing monitoring, then there should be a good explanation about why this is not occurring. Without monitoring is it unlikely that the Forest Service can substantiate resource conditions or any changes within the accepted scientific meaning of the term.

Finally, the proposed rule needs to state that the Forest Service cannot rely on one time assessments in lieu of monitoring data. Moreover, the Forest Service should be required to accept data from other entities. State university systems and other research departments have important work and studies that should be used rather than discarded because they do not fit the political objectives or were not done by the Forest Service.

b. Reliance on "Existing Information"

The potential value of the assessment phase is compromised because it must 'use existing information and be conducted rapidly in order to respond to changing conditions." *Id.* at 8487.

First, it is well-established that the Forest Service, more often than not, has little or no current or existing information. In most cases it has not implemented the monitoring objectives from the prior plans. Indeed, the second generation of plans often defaults to 20 and 30-year old data because that was the last time that the agency had vegetation monitoring.

Similarly, there is little credible forest health data, since that information used to be generated by the timber program. It is too late to assess forest health after the fire.

The proposed rule further permits the use of one-time assessments rather than monitoring data. "However, nothing in this section would restrict the responsible official from gathering new information to address the issues or questions for the assessment." *Id.* 8488. This does not ensure unbiased data development. Instead, it would override monitoring data. The danger is as follows. If the assessment is a windshield review of vegetation in a drought, then the plan will be strongly biased against grazing or recreation and not representative of actual vegetation or plant diversity and health. A quick and dirty riparian area assessment would suffer from the same infirmities, since it would not establish the causal factors or be based on soils or climate, which also affect riparian area conditions. In short this rule does nothing to improve information or data used for forest planning and management.

8. Plan Development §219.7 Proposed

a. Process

CLG supports the direction to reach out to state and local governments. But as noted above, this will not be meaningful unless the Forest Service is willing to share information and not impose cost-prohibitive barriers to such information. The role of state and local governments is compromised by provided that the Supervisor can decide cooperating agency status would not be appropriate.

b. Plan components

The proposed rule would require plans to adopt "desired conditions, objectives, standards, guidelines, and suitability of areas. Plans could also contain goals, an optional plan component." *Id.* This comes straight out of the 1982 planning rules. If properly used and based on information, it can be an acceptable format. CLG members' experience instead shows that standards and guidelines are applied rigidly as if they are law. Thus, it is ironic that elsewhere in the rulemaking the Forest Service pushes for flexibility but in fact opts for rigid management without regard to specific circumstances or capability or site potential.

CLG previously recommended adopting performance objectives and providing for flexibility on how they are achieved. The proposed rule stays with standards and guidelines which

are implemented without exception, even when the assumptions upon which the standards and guidelines are based are proven to be wrong.

Finally nothing in the above format is consistent with adaptive management. The rulemaking preface refers to adaptive management, the planning rule does the opposite.

i. Desired Conditions and Objectives

Nothing in the proposed rule requires desired conditions or objectives to be based on the capability or site potential or location of the unit of the National Forest System. It may not be possible to achieve native vegetation, especially on acquired lands where revegetation efforts introduced non-native species. Thus, the diversity objective for native species may not be achievable and set all land uses to fail to achieve the desired conditions.

Further, the proposed rule fails to define if and when such desired conditions must be achieved. As written, they must be achieved immediately, even if the new desired condition is not within the site capability or site potential and without regard to the fact that resource conditions changes require time, often several decades. Most current plans provide that the land uses (project level actions) are consistent with the plan, if the objectives are met or there is progress towards meeting the objectives. Here again, some forest units adopt project level plans that penalize land users if the objectives are not met now, even though the plan provided for making progress towards meeting the desired conditions or objectives.

This is a very significant distinction, since it is probable that the objectives in a plan are not met in the numerical sense but conditions are improving and will continue to improve. The proposed rule needs to expressly state that objectives are not mandatory in the sense that if not met land uses will end or must be immediately change. Alternatively, the Forest Service will have to significantly revise objectives to fit actual conditions, rather than the programmatic estimates currently used.

CLG notes that elsewhere the preface describes desired conditions and objectives as aspirational. "Objectives and desired conditions are long-term aspirations whose achievement would depend on the cumulative effect of a number of agency actions, and often on factors outside the agency's control." *Id.* at 8501. Unfortunately, CLG members

have learned that Forest Service employees will arbitrarily use these aspirational desired conditions and objectives to justify grazing reductions or removal. There needs to be a lot more education of Forest Service officers at the supervisory and district ranger level.

In the same context, the proposed rule explicitly states that a project must either move resource conditions toward objectives or not preclude eventual achievement of desired conditions or objectives. *Id.* at 8501. CLG agrees with this general statement. It is important however that at least in Region 1, the Forest Service is allowing implementation that requires each project to achieve the desired conditions or objectives within five years. This is not only harsh but is a deliberate effort to remove or punish livestock grazing use. The Forest Service owes it to the public and local governments to end this type of arbitrary agency action.

ii. Standards and Guidelines

The preface claims that guidelines will be requirements but are flexible. This statement belies more than 25 years of Forest Service implementation history. It is entirely disingenuous. The rigidity is found in the example regarding longleaf versus loblolly pine forests. *Id.* 8489. The standard does not consider the feasibility of changing the plant species, which is more than just burning a few acres and letting nature take its course. The imposition of a specific percentage further limits flexibility in management, even if the assumption that fire will readily restore the longleaf pine turns out to be wrong.

Moreover, the proposed rule does not limit standards to legal criteria, such as limiting nonpoint source water pollution. Instead the Forest Service is free to invent any standard without regard to the impacts on multiple use such as motorized recreation, snowmobiling or livestock grazing.

The adoption of rigid management through standards and guidelines is not adaptive management; it is the opposite of adaptive management.

c. Goals

As defined, the goals are indistinguishable from objectives. When the 1982 planning rules were first implemented, goals were understood to be the long-term or 50-year planning horizon. Without this qualification, the planning rule is both confusing and meaningless.

9. Other Plan Content, §219.7 proposed

i. Monitoring Plans

CLG supports monitoring but notes that since the Forest Service has never met this objective it seems risky to make it such an important part of the proposed planning rules. Unless the Forest Service is prepared to actually budget and staff the monitoring program, it will not occur.

The emphasis on rapid change is even more questionable. Monitoring measures the change in resource conditions over time. Sound monitoring practices do not support abrupt management changes based on how conditions look this year. Rapid changes only invite mistakes, since it is not possible to understand all of the causal factors with a one-time assessment that might affect resource conditions. There are numerous occasions when the assumption that land uses are the cause are found to be incorrect. The proposed planning rules makes those kind of mistakes inevitable.

b. Identification of Priority Watersheds, §219.8

The proposed planning rule attempts to use watershed management to exercise authority over water. The Forest Service has very limited authority over water quality and no jurisdiction over water quantity. The Organic Act requires the Forest Service to manage the land to provide favorable conditions for water flows. 16 U.S.C. §475. This language requires the Forest Service to manage the forests to increase water flows, which occur when logging is allowed. CLG assumes that is not the objective of the proposed rule. MUSYA identifies waters as one of the supplemental multiple uses. 16 U.S.C. §528.

No other statute grants the Forest Service jurisdiction to manage watershed for water quality. The only authority is to follow a particular state's nonpoint source water pollution

rules. Water quality regulation belongs to EPA and is delegated to the respective states. The Forest Service has no such authority.

This provision is based on proposed §219.8, 'water-based sustainability.' Again nothing in any federal law authorizes the National Forest System to be managed for water-based sustainability. In the western states, the legal authority over all surface and groundwater lies with the states by constitutional direction.

CLG members reluctantly conclude that this initiative in particular is aimed at further reducing the multiple uses that may possibly affect the watershed, such as motorized recreation, motorized travel, skiing, livestock grazing, and, of course, logging. Similarly such management focus will spell the end to mining and energy development in the National Forest System units, even though these are the statutorily authorized land uses for the National Forest System.

10. Sustainability, §219.8 proposed

The only apparent standard in the proposed planning rules calls for ecological, social and economic sustainability. No law uses these terms and the rules do not adequately define what the Forest Service thinks is sustainable. There would be a significant difference between sustainable indefinitely, notwithstanding factors that we cannot predict, versus sustainable over the life of the plan.

The discussion confuses rather than enlightens.

> require the development of plan components that maintain or restore the structure, function, composition, and connectivity of these systems as a whole and that maintain, protect, or restore key elements within each system.

76 Fed. Reg. at 8490.

What kind of function are we talking about. Does structure mean soils or vegetation or both. What is the scope of 'composition.' Connectivity suggests that the Forest Service wants to manage land outside of the National Forest System unit boundaries, when it lacks

any authority to do so. Nor is there any guidance on exactly how the Forest Service will identify key elements and what they will emphasize.

a. Wildland Fire

The Forest Service has embraced the concept of 'restoring the role of fire in the ecosystem.' At the same time, the largest component of the Forest Service budget has gone to fighting wildfires. More significantly, we do not see any serious discussion of the adverse impacts of wildfire or fire for that matter on the ecosystem.

The biological opinion for Region 3 is a notable exception where it documents the adverse impacts of fire on habitat for Threatened and Endangered Species. Biological Assessment and Evaluation USDOI, USFWS Nov. 8, 2002. Fires lead to significant soil erosion since it is rarely, if ever, possible to revegetate a fire site before winter rains or snow. The soil erosion leads to increased sediment [pollution] in the water systems. Revegetation is not magically limited to native plant species. Instead wind, birds, and wildlife bring a host of invasive plant species that will out compete native vegetation. So while the land looks green in the press photos, a closer examination will show a significant percent of invasive species. *See e.g.* Forest Service discussion of invasive species on the Greyrock Allotment, which burned in 2004 in the Picnic Rock Fire and has been in nonuse.

Fire also displaces and kills wildlife and big game as well as significantly altering or destroying habitat. More recently, sage grouse biologists have questioned the previous wisdom that sage brush needed to be burned to regenerate this habitat component.

b. Water Sustainability

As noted above, the Forest Service has no water regulatory authority, other than to maintain favorable conditions for water flows. 16 U.S.C. §475. Nevertheless, the proposed planning rules attempt to hijack state and federal regulatory schemes by grossly exaggerating the role of the National Forest System management on water systems. Indeed, the Forest Service has affirmatively tried to impede both the operation and expansion of water systems on the National Forests. The Forest Service generally does not support water development projects.

The rulemaking preface claims that the Forest Service 'administer[s] more than 90,000 water rights in cooperation with states. *76* Fed. Reg. at 8491. This is flatly untrue. The Forest Service enjoys a reserved water right for the primary purposes of the forest reservation as determined at the time of the original reservation. US v. New Mexico, 438 U.S. 696 (1978) (holding no reserved water rights for purposes stated in MUSYA). Otherwise, the Forest Service has applied for and received specific water rights for consumptive uses, e.g. range improvements, campgrounds and administrative facilities. In no case does the Forest Service 'administer' the water right, it is granted a water right. Only the respective western states administer water rights.

On the issue of access to and for hydro operations, CLG members have found the Forest Service to be a less than willing 'partner.' Many water cooperatives and rural electric associations operate under special use permits from the Forest Service. While these are of long-duration, the Forest Service regulatory process impedes management and maintenance of water systems on the National Forest System.

The conclusion that there are areas on National Forests where water resources are degraded is one of those general statements without any meaning when made out of context. One could say insufficient vegetation on 10 feet of a riparian area is 'degraded' but what does that mean in the context of thousands of miles of riparian areas? The statement may be technically true but it is not accurate and misrepresents the actual resource conditions.

The Forest Service does not provide data supporting the premise that current management of the National Forest System currently contributes to poor water quality. While many of the National Forests are headwaters for major water systems, such as the Colorado River or the Missouri River, there is no basis to conclude it is current forest management that currently causes water quality problems.

There are many speculative reports that climate change will lead to longer and more severe drought. Any student of American history will understand that the western states have seen numerous periods of drought. None of the reports provides any data to support the theory other than it might happen.

If the Forest Service wanted to increase water flows, it need only resume logging or increase timber sales or vegetation projects to increase water yields. Over the past 25 years, the Forest Service has reduced its timber program to a mere shadow of its former size. Logging would also address the extreme fuel loads and disease that now threatens a significant number of the National Forests. But it is clear that this would not occur under the proposed planning rule.

Separately, there is a genuine risk that the vulnerable forests will burn with long-term and devastating impacts on watershed. The extent of the fuel loads, disease and infested stands of timber mean that the upper Colorado River Basin faces a very real risk. The loss of soil will take decades or even a century to recover if the fire goes out of control, like the Biscuit Fire in Oregon and Northern California.

c. Riparian Areas

Current range management already calls for restoring and maintaining riparian areas. It is unclear what more the planning rule should require.

Proposed planning rules also fail to recognize that many riparian areas are not flowing waterways. The mandatory width is not supportable from a factual or scientific basis and must be deleted.

d. Social and Economic Stability

Until recently, the Forest Service recognized that it had a statutory obligation to maintain the economic stability of the adjacent communities. 36 C.F.R. §223.88 (1985). The Forest Service erased the role of addressing the impacts on stability of dependent communities during the Clinton Administration along with severing payments to counties from timber sale revenues.

Notwithstanding the agency's efforts to divorce itself from this principle, it is based on the Organic Act and the original intent of the National Forest System. The Organic Act states in part that the forests are to be managed to provide timber for the needs of the citizens of the United States.' 16 U.S.C. §475. Gifford Pinchot, the first Chief of the Forest Service directed the managers to first consider the needs and desires of the local communities.

1905 Use of the National Forests at 12. (In the management of each reserve local questions will be decided on local grounds.") From this language and direction, the Forest Service adopted regulations that tailored the timber sale program to consider the stability of the dependent communities. 36 C.F.R. §223.88(a)(3).

The proposed rule continues the policy of divorcing National Forest System management from the local communities. If the terms social and economic sustainability meant ensuring that the forest management sustained the social and economic structure of adjacent communities, then CLG would support it. As written however, it is apparent that the Forest Service proposes to dictate to the communities what is socially and economically sustainable. This is entirely outside the purview of a federal land managing agency.

e. Custom and Culture

Along the same lines, the planning rule purports to consider custom and culture but actually will dictate changes in local custom and culture. It is also significant that the proposed rule only recognizes tribal and Alaska native culture and dismisses rural custom and culture. *Id*. 8492.

The Forest Service invites comments on 'cultural sustainability.' Again this is entirely outside of the agency's authority and one issue that it is poorly equipped to deal with. One need only look at how the Forest Service proposes to transition southeast Alaska away from timber much like how the Forest Service transitioned the Pacific Northwest from timber in the 1990s. The rural towns affected by mill closings in northern California and Oregon never recovered. Minimum wage tourism jobs are not the same as mill or logging work that pays more. They also contribute less income to the overall community.

Recreation access is a huge cultural issue. CLG members have seen nothing but road closures on the National Forest System units in Wyoming as well as Utah and Colorado. Despite thousands of signatures on petitions for maintaining motorized access, the Forest Service continues to unilaterally close roads, either independent of travel planning or as part of a travel plan. The Ashley National Forest is a case in point, where it decided it was 'too hard' to inventory the roads to be closed but closed them anyway. This type of action demonstrates that the Forest Service is institutionally incapable of respecting rural custom and culture and proceeds without regard to the consequences of its actions.

11. Diversity of Plant and Animal Communities, §219.9 proposed

NFMA directs that plans:

> provide for diversity of plant and animal communities ***based on the suitability and capability of the specific land area*** in order ***to meet overall multiple-use objectives***, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan;

16 U.S.C. §1604(b)(3)(b) (emphasis added). The planning rule notably drops two important statutory qualifications with respect to species diversity, site capability or potential and to achieve multiple use objectives. Instead, the proposed rule makes species diversity a stand-alone objective without regard to multiple use management and without regard to ***the suitability and capability of the specific land area***.

The proposed rule also assumes without any basis in fact that preservation of native tree species will preserve all other native plants. 76 Fed. Reg. at 8493.

This proposed rule also does not consider the fact that NFMA does not require native plant species only plant and animal diversity. Many areas on the National Forest System were acquired and revegetated. The National Grasslands are a case in point where USDA planted crested wheatgrass to restore soils and vegetation following severe drought during the Great Depression. Crested wheatgrass is a persistent non-native plant and while not politically desirable remains valuable for wildlife habitat and forage. As written the proposed rule would require conversion of the National Grasslands to all native vegetation; a huge and impractical undertaking that would certainly not succeed.

CLG agrees with other comments that the Forest Service has no authority to mandate species viability on the National Forest System. No federal law provides the Forest Service with wildlife management authority. The western state constitutions grant this authority to the states. The proposed rule guarantees future litigation, since much of the Forest Service past plan litigation has involved species viability determinations.

Along the same lines, the Forest Service has no authority under the Endangered Species Act, and the U.S. Fish and Wildlife Service defines recovery and habitat needs.

12. Multiple Uses, §219.10 proposed

The proposed rulemaking makes an impassioned but entirely wrong case for changing the definition of multiple use based on changing conditions and needs to include "ecological services." *Id.* at 8494. Forest Service cannot use rulemaking to change the law written by Congress.

Moreover, the Forest Service fails to show that there is no longer a need for timber, recreation, livestock grazing, or habitat for fish and wildlife. Indeed just the opposite is true, the United States citizens continue to need wood products, food, and a place to recreate that does not involve the time and effort that wilderness or non-motorized recreation would require.

Even though Congress recognizes the right of entities to develop the federal mineral estate on National Forest System units, the proposed rule is entirely silent on mining or mineral leasing. 30 U.S.C. §226(g) and (h); Energy Conservation Act, 42 U.S.C. §8855 ("It is the intent of the Congress that the Secretary of Agriculture shall process applications for leases of National Forest System lands and for permits to explore, drill, and develop resources on land leased from the Forest Service, notwithstanding the current status of any plan being prepared under section 1604 of Title 16."). It is also notably silent about rights-of-way.

Given this fact, one must assume that the Forest Service intends to sunset all mineral development on the National Forest System units, perhaps with the notable exception of the current production on the Bridger-Teton or the Little Missouri National Grassland, which produces most of the oil and gas on the National Forest System.

13. Monitoring, §219.12 proposed

a. Scale

CLG notes that 'broad-scale' monitoring is not actually monitoring, since it is unlikely that broad scale assessments will accurately measure resource responses to management changes. The move to broad scale, which is not defined is indicative of Forest Service proposals to use satellite imaging or other broad scale estimates in lieu of actual monitoring. If the Forest Service were not making such significant decisions based on the data, CLG would not object but it does. For instance, Region 4 recently released a direction threatening permit action, suspension or cancellation, if a permittee were to exceed utilization anywhere in the allotment or if grazing occurs before range ready or any other infraction of annual operating instructions or forest plan direction. If the Forest Service were to base a decision that utilization was exceeded based solely on satellite photos or a windshield assessment, then that is not monitoring and is not credible. The impacts on specific operations will nevertheless be significant.

Moreover, satellite imagery is both expensive and unlikely to yield the detail necessary to identify causal factors or site capability.

b. Scope of Monitoring

The preface suggests that monitoring will address only sustainability and diversity, not the traditional multiple uses. *Id.* at 8498. This too is unlawful.

The discussion of species to monitor is equally unsatisfactory. Under the 1982 rules, the Forest Service tended to define management indicator species based on popularity rather than associated habitat. The proposed rules adopt a new term 'focal species' without any useful criteria.

Moreover, the Forest Service lacks any jurisdiction to manage wildlife or fish, but has only authority to manage the habitat for fish and wildlife.

The proposed rule's concept of monitoring does not include assessment and documentation of causal factors. To this day, for instance, Forest Service employees will

conclude that livestock grazing is the sole or primary cause of degradation to riparian areas or sites, when further investigation would have revealed heavy use by elk or the fact that the site was an abandoned sheep bedding ground that never returned to native plant species. Similarly, the Forest Service may identify grazing as the cause of a riparian area segment not meeting proper functioning condition (PFC) when the changes were due to use a road acres the area for energy exploration. Similarly the default solution is to remove livestock grazing, not to manage the other resource impacts, such as excess elk or moose populations.

14. Plan Amendments and Administrative Changes, §219.13 proposed

a. Rapidity Sacrifices Accuracy Despite Adverse Impacts on Users

The proposed rules again appear to promise rapid decisions, regardless of the impacts or information limitations. This rule documents the failure to actually propose or implement adaptive management. Adaptive management would use desired conditions and continue to change objectives and standards and guidelines based on careful monitoring. The rapid change concept uses broad scale assessments in lieu of monitoring but promises change without revising objectives or standards and guidelines.

It is apparent that the outcome will be the further removal of the multiple uses for the National Forest System, motorized recreation, livestock grazing, timber, and mineral development. Even the retired Forest Service employees recognized that the objective of the proposed rule is to convert the National Forests to a hybrid of wildlife refuges and park, while excluding public use to the greatest extent possible. This contradicts the statutory scheme and the mission of the National Forest System.

b. Vague Direction Gives Supervisors Broad Power to Make Changes Without Factual Basis

Consistent with the claimed rapidity, the proposed rules would allow the Supervisor virtually unlimited discretion to effect changes with or without an assessment documenting the need for change and with limited collaboration. For instance, the preface explains the supervisor could decide that the standards and guidelines are insufficient to protect a riparian area and could just do an amendment, e.g. remove livestock grazing. *Id.* 8500. This authorizes

arbitrary and capricious action, as noted above in past Forest Service actions. A one time assessment often fails to consider or document other causal factors, such as lack of experience on the part of Forest Service employees.

15. Planning Records, §219.14 proposed

The rule calls for the Forest Service to prepare a planning record, which has always been the case. It does not address agency policy of charging groups it does not like for providing a record that should otherwise be free of charge. This must change and be explicit.

16. Consistency with Plan, §219.15 proposed

NFMA directs that all permits be consistent with the land use plan. 16 U.S.C. §1604(i). This proposed rule takes the consistency issue to the extreme, thereby negating any pretense of adaptive management. The proposed rules return to enforcing standards and guidelines as if they were mandatory regulations. "The Forest Service's position has been that a project's consistency with a land management plan could only be determined with respect to standards and guidelines, because an individual project by itself could almost never achieve objectives and desired conditions." *76* Fed. Reg. at 8501.

Consistency direction would appear to preclude mineral development and certainly biases forest management against the multiple uses that led to the establishment of the National Forest System. The preface states:

> However, even when a project is proposed for a reason other than to meet a desired condition, objective, or goal (for example, an unexpected proposed use such as a new permit application), the project would be consistent if and only if it does not foreclose the possibility of achieving any desired conditions, objectives, and goals of the plan.

Id. at 8501. If the Forest Service applies achievement of objectives within the next five years as is the case in Region 1 or some other arbitrary time frame, most if not all multiple uses like mineral development activities will be foreclosed. This is especially true since the Forest Service is redefining multiple uses to ecological sustainability and species diversity

and viability. This will have severe and adverse impacts on local communities and ultimately on the National Forest System.

Without aggressive management, consultants to CLG members conclude that much of the National Forest System in western Wyoming will burn in catastrophic wildfires. This will displace the agriculture and tourism industry, as well as big game and wildlife. Tentative efforts for a few logging projects will not address a problem of this size or scale. The proposed rule, especially §219.15 will ensure that these wildfires occur.

III. Subpart B Predecisional Administrative Review Process

1. Introduction

CLG disagrees that the Forest Service has either a sound history of resolving issues or that its review is unbiased. Instead, in dealing with the Forest Service on issues relating to roads, public access or agriculture, it has always been apparent that the reviewing officer was fully briefed by the deciding officer and there was nothing independent in the review. Only a year ago, for example, the Forest Service planned major reductions for a grazing permit in Lincoln County but had not provided for public comment on the EA. The reviewing officer's comments during the 'resolution' strongly defended the process, thereby showing no independence whatsoever. This was also true for the counties' appeal of the Ashley National Forest travel plan.

Unless and until the Forest Service adopts an administrative review process used by the Department of the Interior, it will not conform to Administrative Procedure Act principles of due process.

2. Plan Objections, §219.51 proposed

The proposed rule will restrict objectors not only to those filing written comments but to the specific comments made. *Id.* at 8504. This exceeds even the APA standard, where parties have standing to sue if the issue was raised within the comment period. This is one more indication that the proposed rule is designed to limit public processes not enhance them.

3. Objections §219.56 proposed

The proposed rule would impose very short time frame of 30 days and it would be from publication rather than receipt. This short time period is completely unreasonable if applied to a lengthy EIS. The time periods should be tied to the decision, *e.g.* 30 days if categorically excluded, 60 days for an EA and 90 days for an EIS.

OT	S	RT	DT	EA	F	RI	CE

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See Attachments

Individual(s)

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SWEETWATER COUNTY CONSERVATION DISTRICT

FRD-0864

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May 16, 2011

SUBMITTED ELECTRONICALLY: http://www.govcomments.com

Forest Service Planning DEIS
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Re: Forest Service Planning Rule Comments

Dear Sir or Madam,

The Sweetwater County Conservation District incorporates by reference the Coalition of Local Governments scoping comments on the proposed Forest Service Planning Rule.

Sincerely,

/s/ Mary Thoman

I. OVERRIDING ISSUES

1. Rationale to Revise Proposed Planning Rules Unsubstantiated

The Forest Service offers the proposed planning rules to address the impacts of climate change and to reduce costs. *76* Fed. Reg. 8480, 8481 (Feb. 14, 2011). The proposed planning rules ignore the 2001 rule and the 2005 revisions but instead force on the 1982 planning rules.

There is no clear evidence that the revised planning rule will reduce land use planning costs. Experience suggests that this rule will be even more expensive to implement. If the Forest Service adds National Environmental Policy Act (NEPA) compliance to the planning process, it would seem that there will be no cost-savings. The factors that add to costs, such as poor data, controversial actions, and litigation are not resolved in the proposed planning rules.

Similarly, the issue of climate change is barely addressed in the proposed planning rules. This makes sense since there is no data showing that climate change is more than a scientifically controversial theory, and, more relevant, there is no data documenting the likely impacts on National Forest System management. The prediction there will be more and longer periods of drought and warmer temperatures is little more than speculation. It is difficult to understand how a single land use plan could be based on these assumptions, when there is no evidence whether the alleged climate change will affect resources within the next 15 years. No credible research documents how to change land management to adjust to possible changes in climate.

For this reason alone, CLG supports the no action alternative.

2. Proposed Planning Rule Is About Process and "Values" Not Science

The rulemaking preface states:

> Science is one source of understanding and knowledge that informs planning and decision-making. Much of planning also involves consideration of public values in land management. This proposed rule is very much a

> science-based rule and establishes a strong requirement for consideration and use of best available scientific information in planning.

Id. at 8482.

Unfortunately, nothing in the proposed rules is based on science. The planning rule does not adopt any scientific standards or criteria, as compared with the Committee of Scientists whose work was the basis for the 1982 rule. The Forest Service incorrectly states that the 1982 rule was to mitigate the impacts of "resource extraction activities." *Id*. NFMA was written to authorize logging for all age-classes of timber and prescribe where and how regeneration is to occur. NFMA also provided that the agency should avoid irreversible damage to soil, watershed resources, water, and avoid impairment of plant and animal diversity. 16 U.S.C. §1602, 1604. These criteria most of which related to regulation of the logging program are the core elements of the 1982 rule. Neither logging or grazing is a 'resource extraction activity' since both are renewable. Hunting and recreation are arguably consumptive but are also renewable. The preface efforts to distinguish the proposed rule from the 1982 rule are unconvincing.

The rulemaking preface states: "The Agency needs a planning process that helps units identify their unique roles in the broader landscape and create land management plans to guide proactive contributions of the unit and of management to ecological, social, and economic sustainability." *Id*. The proposed planning rule incorrectly assumes that the 1982 rules did not provide for 'proactive' management that would promote sustainability. The 1982 rules provided for species diversity, and minimum management requirements to protect, soils, vegetation and watersheds. 36 C.F.R. §219.27 (1982). It appears that the proposed rule's authors know very little about the 1982 rules or the plans written under those rules.

This lack of understanding is then followed by describing the current planning rule as unstable and then asserting that this rule, unlike others reflects an '"improved understanding of science and sustainability." Confusingly, the Forest Service states that proposed rules also will "establish requirements and constraints for on-the-ground management decisions;" *Id*. at 8484. This is exactly what the 1982 planning rule did when it provided for minimum management requirements to protect diversity of species, water quality and vegetation. 36 C.F.R. §219.29 (1982).

The repetition of values, collaboration and cultural and spiritual sustenance shows that the proposed rule is based on feelings and process not science or data. The premise appears to be that the current plans have not provided the public with social, economic and ecological benefits, clean water, fish and wildlife habitat, or "opportunities for recreational, spiritual, educational and cultural sustenance." The Forest Service offers no evidence to support the need for change. Moreover, it is worth noting that no statute directs the Forest Service to provide spiritual, educational or cultural sustenance or clean water.

Elsewhere the Forest Service also attempts to justify the rule revision based on

> a growing concern about a variety of risks and stressors impacting resources, services, benefits, and uses on NFS lands. Issues included, for example: Climate change; insects and disease; recreation, timber, and shifts in other local demands and national market trends; population growth and other demographic shifts; water supply protection; and other ecosystem support services.

Id. at 8483.

There are undoubtedly many more stressors but those listed above are largely the product of Forest Service management policies that have been adopted over the last 20 years. Insects and disease are due increased fuel loads. The fuel loads rose when logging ceased. Since the late 1980s, the Forest Service has steadily abandoned the timber industry, thus leaving the National Forest System with timber that has become a huge fuel load and vulnerable to insects and disease. Drought which is entirely predictable coupled with stagnant stands of timber allowed insects and disease to flourish. The Forest Service's more recent efforts to address these stands have been tentative and insufficient as shown by the catastrophic wildfires in Arizona, California, New Mexico, Oregon, Montana and Utah to name a few states. Wyoming is very much aware that it is next for catastrophic wildfire as a large percent of the western Wyoming forests are dead or dying.

When the Forest Service decreased logging, it had predictably disastrous impacts on rural communities. Little has improved despite direct funding to compensate for the billions lost.

Recreation is directly affected by Forest Service efforts to restrict and end motorized vehicle use. This policy became explicit with the adoption of a new roads rule in January 2001. Thus there are fewer areas for recreation since access is constrained. Ski areas and ski area expansion are also limited as witnessed by the denial of a proposed expansion of the Crested Butte ski resort in 2010.

More importantly, nothing in the proposed rule will actually address the above issues. The Forest Service is not indicating that it will resume logging as part of its commitment to community stability and to provide timber for the needs of the citizens of the United States. 16 U.S.C. §475. The proposed rules do not provide for increased recreation access. Instead, no activity will be allowed unless it contributes to achieving desired conditions or objectives or does not impede achieving desired conditions and objectives.

3. Cooperating Agency Direction and Rules Largely Ignored

The Forest Service failed to acknowledge or grant cooperating agency status that CLG requested in its 2010 scoping comments. The failure to respond violates the clear direction by the Council on Environmental Quality (CEQ) that state and local government agencies are to be given cooperating agency status for Environmental Impact Statement (EIS) documents. CEQ Memorandum, Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act July 28, 1999; CEQ Memorandum, Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act January 30, 2002.

The rulemaking preface obliquely refers to its failure to address the requests: "Based on the input received throughout all these meetings, the Agency determined that additional consultation was not needed with State and local governments for the development of this proposed rule." *Id.* at 8511. The Forest Service failure to properly handle the cooperating agency issue led the federal court to set aside the roadless rule EIS. *State of Wyoming v. USDA*, 570 F. Supp.2d 1309 (D. Wyo. 2008).

The agency's failure also suggests that the claimed desire to collaborate in the proposed rulemaking is false. Section 219.4 affirms this by qualifying the right of state and local governments to be cooperating agencies. The rule allows the Supervisor to decide

whether is 'appropriate' for a state or local government to be a cooperating agency. This contradicts CEQ rules and guidance.

Indeed, the Forest Service record of not responding to or granting cooperating agency status to local governments does not reflect well on the agency. Forest Service officers act as if they have been told that they can pick and choose the public officials to coordinate or cooperate with and ignore those that may not agree with the agency's policies. Careful review of CEQ direction shows that agreeing with a federal agency is not a criteria for cooperating agency status. Sadly even the Washington Office of the Forest Service has supported denial of cooperating agency status, claiming it was up to the Supervisor. Some local governments have been threatened with denial of future cooperating agency status if they continue to express disagreement with Forest Service policies.

4. National Environmental Policy Act (NEPA) Compliance

The major change effected in the 2001 planning rule was to disengage land use planning from NEPA. The Forest Service rationale was that NEPA compliance was too cumbersome and costly. Because land use plans did not actually make a decision, there was no final agency action and thus no need to complete NEPA review.

The proposed planning rules appear to reverse this action by complying with NEPA, although there is not a lot of discussion on this important point. Sections 219.5, 219.7, and 219.14 appear to provide that land use plans will have NEPA compliance, such as an EIS. 76 Fed. Reg. 8501 (For plan development or revision, the decision document would also be accompanied by a final EIS. A plan amendment would be accompanied by appropriate NEPA documentation.); 8511; 36 C.F.R. §§219.5, 219.7 (proposed), 219.14.

The emphasis on public participation also marginalizes the state and local governments. The state and local governments enjoy a special status based on principles of federalism. The Forest Service cannot preempt state or local government functions where it lacks the authority. As explained in these comments, the Forest Service, as a matter of practice, either does not understand or will not accommodate the mandate to coordinate under NEPA. By equating public involvement with coordination with local governments or the obligation under cooperating agency rules and policies, the Forest Service avoids

recognizing local government jurisdiction and avoids having to deal with state and local government officials.

Access in the travel planning process is one area where this is especially evident. The Forest Service has studiously ignored county road documentation preferring instead to close roads to all motorized use without regard to case law or the road's history. CLG members appealed the Ashley National Forest Travel Management Plan on these grounds. The Forest Service issued its Record of Decision 30 days after the close of the comment period on the DEIS and later rejected both Utah and Wyoming appeals summarily. The Dakota Prairie Grasslands, which manages National Grasslands in North Dakota and South Dakota continues to resist coordinating with local governments on its travel plan and instead persists in using the EA process to keep the comment period to 30 days even though the travel plan covers more than 1.2 million acres of land, most of which was acquired subject to roads, rights-of-way and section line easements.

5. Other Statutory Direction Omitted

a. Omission of Mineral Resources

The proposed planning rules are largely silent on mineral development and rights-of-way. The Department of the Interior administers the federal mineral estate but the Forest Service must review surface impacts. Thus, the proposed planning rules should acknowledge this important fact and address the role of mineral development and how it may affect planning.

Alternatively the proposed planning rule omission is a deliberate effort to exclude mineral development from the National Forest System. This would be unlawful. The National Grasslands are specifically identified as being managed for energy development. 7 U.S.C. §1010. The National Forests are also recognized as available for mineral development unless withdrawn. 30 U.S.C. §226(g)(& (h); Energy Security Act, 42 U.S.C. §8855; Mining and Minerals Policy Act, 30 U.S.C. §21a.

b. Management Direction for National Grasslands

While the National Grasslands are part of the National Forest System, the management objectives differ and this should be reflected in the planning rule. The National Grasslands are to be managed as demonstration projects for grassland agriculture and for energy development, among other uses. 7 U.S.C. §1010.

c. Omission of Healthy Forests Mandates

The proposed planning rules fail to incorporate the Healthy Forests Restoration Act. There is next to nothing about how the plan will identify forest conditions and proceed to meet the Act's criteria. Given the recognized extent of disease and beetle infestation and the risks of catastrophic wildfire, particularly in the Rocky Mountain States, this omission is unwarranted.

6. Role of National Forest System in Economy

The planning rule identifies the important role that National Forest System management has on social and economic factors. It fails, however, to correctly reflect either the statutory direction or original commitment to contributing to the stability of dependent communities.

The Organic Act provides in relevant part:

> No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States;

16 U.S.C. §475.

As explained in early Forest Service manuals, the Forest Service was to ensure that the land management policies took into account and provided for community and economic stability. Schallau, C., Alston, R. The Commitment to Community Stability: a Policy or Shibboleth? 17 Envtl. L. 429 (1987) fn 1 citing historical references documenting the

principle that the National Forests were to be managed to stabilize the economies of the dependent communities. The concept of ensuring community stability was established in the Forest Service rules as part of the timber program, 36 C.F.R. Part 223; and in the statutes allocating 25 percent of National Forest System revenues to the local communities. 16 U.S.C. §500. The Secure Rural Schools and Community Self-Determination Act of 2000 which was renewed through 2011, Pub.L. 110-543, 16 U.S.C. §500, replaced the revenue distribution that was tied to timber sale revenues.

7. No More *De Facto* Wilderness, §219.7(b)(2)(iv)

CLG members also believe that the time is long past for the Forest Service to continue to expand the lands that will be managed as if they were wilderness. The 1982 planning rules were amended to provide for wilderness study and review after the Ninth Circuit Court of Appeals set aside the national roadless area review. 36 C.F.R. §219.27 (1983).

Since 1983, however, Congress has adopted numerous National Forest wilderness bills, and released the other lands to multiple use management. This is especially true for Wyoming, where Congress expressly released all of the roadless lands to multiple use management. Pub.L. 98-550, Title II, § 201(a)(10), Oct. 30, 1984, 98 Stat. 2809, Wyoming 1984 Wilderness Act. In 2008, the Wyoming District Court concluded that the Forest Service inventoried roadless area conservation rule was unlawful, both for lack of authority and violation of NEPA. *Wyoming v. U.S. Dept. of Agriculture*, 570 F. Supp.2d 1309 (D. Wyo. 2008). Notwithstanding the law and court decision, the Forest Service continues to use the planning process as a basis to expand wilderness management. The Wilderness Act gave the Secretary of Agriculture 10 years to complete its review and recommendations. 16 U.S.C. §1132(b). The time has long since passed for an end to the continued expansion of *de facto* wilderness management.

8. Proposed Planning Rules Need Definitions

The terms used in the proposed planning rules are not clearly defined. In several cases, it is not clear that the ordinary meaning is the same that the Forest Service is using.

a. Economic sustainability

Economic sustainability could mean managing the National Forest System to sustain local and state economics or it could mean shutting out particular land uses like livestock grazing on the theory that it was not economically sustainable. Unfortunately, the proposed planning rules are coy about what is actually meant thereby frustrating meaningful public comment.

b. Monitoring; See also §219.12, proposed

The CLG supports monitoring the response of resources to management as part of the land use plans. Unfortunately, the public has learned that the Forest Service definition of monitoring differs from that used by the scientific community. Resource monitoring is defined as measuring resource trend over time in response to management actions or permitted uses. Monitoring is paramount to adaptive management. Equally important is the monitoring must be jointly and cooperatively conducted with the resource user or permittee.
the response of the resources to changes in land management over time. Vegetation or habitat monitoring in particular has focused on tracking particular sites and evaluating the site's resources responses to management (or lack thereof).

More recently, Region 1 has adopted a very different definition. Monitoring data are now equated with any information, such as an initial base-line assessment or with a one-time inventory of a resource. Thus, monitoring is any resource information without regard to measuring the response of the resources to management or to changes in management over time. A valid and defensible monitoring program is essential to adaptive management but scatter-shot one-time assessments will not aid in adaptive management.

As a result, we believe that the definition of monitoring needs to be revised to capture the concept of measuring the response of resources to land management over time. *76* Fed. Reg. at 8481.

Another important aspect of monitoring as used in the proposed planning rules is the fact that there is no penalty or consequence, if monitoring is not done. While the Forest Service has been writing land use plans pursuant to Multiple Use Sustained Yield Act

(MUSYA), and now NFMA, for more than 50 years, it has only sporadically monitored the effects of its management plans. While the revised planning rules would make monitoring a cornerstone of land management, there is no trigger or consequence, if monitoring is not actually done.

As one example, more often than not, management of grazing allotments is not evaluated by monitoring unless the permittees do it themselves. And even then the Forest Service is reluctant to accept data from a third party. The Forest Service will often accept the data from Western Watersheds Project. When the permit is to be renewed, the Forest Service has no data to document the responses of the resources to management over time. If challenged, the Forest Service has few facts to defend its decisions and the livestock permittees bear the brunt of this lack of information through a decision to reduce or remove livestock grazing.

CLG also questions whether the Forest Service will allocate the funds and staff for a monitoring program. It has not done so in the past. The proposed rule is promoted as saving money, thus suggesting that the Forest Service will not in fact allocate the necessary funds and staff to make monitoring part of its management scheme.

9. Ecosystem Services, §§219.8, 219.10 proposed

The proposed planning rules attempt to evade the terms of MUSYA by defining planning in terms of ecosystem services.

> "Ecosystem services" is a term that is used today to describe many consumptive and nonconsumptive uses, as well as traditional and non-traditional uses, that people associate with national forests. In the proposed rule we use the phrase "multiple uses, including ecosystem services" in certain places to show an association between the terms so both are recognized in the rule and within our statutory authority as part of land management planning. The management of the multiple uses described by the MUSYA of 1960 (outdoor recreation, range, timber, watershed, and wildlife and fish purposes) has broader application in today's context.

Id. at 8484.

The Forest Service cannot revise the statutory management directives. It is important to remember that the National Forests were reserved to "to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States." 16 U.S.C. §475. The additional and supplemental purposes include "outdoor recreation, range, timber, watershed, and wildlife and fish purposes." 16 U.S.C. §528. As noted above, these are not 'consumptive' or 'non-consumptive uses,' they are the primary land uses that the Forest Service is mandated to provide on the National Forests.

The National Grasslands have similar but different objectives and they are:

> The Secretary is authorized and directed to develop a program of land conservation and land utilization, in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety, and welfare. . .

7 U.S.C. §1010.

None of the above statutory objectives resemble in any shape or form the terms that the Forest Service would adopt in the proposed rule. Given the clear statutory direction and decades of implementation, it is apparent that the Forest Service is unlawfully attempting to revise the law through rulemaking. This exceeds the agency's power and would be set aside as unlawful.

II. SPECIFIC COMMENTS

1. Plan Framework 76 Fed. Reg. at 8481

The proposed planning rules need to add a step of 'assessing planning assumptions and making adjustments.' Theoretically, this would be included in adaptive management, but

experience shows that the Forest Service does not employ adaptive management to reconsider plan assumptions. A particularly telling example is found in North Dakota where the Forest Service assumed in the Dakota Prairie Grasslands (DPG) Plan that the grasslands could achieve a visual obstruction rating (VOR) of 3.5" for all of the National Grassland units in North Dakota and northern South Dakota with only 800 pounds per acre of production. Based on that assumption, the plan adopted a mandatory VOR of 3.5" even though a significant segment of the scientific community and the state agencies stated that it was unlikely that the grasslands could produce sufficient vegetation to achieve 3.5" VOR. The Forest Service further contended that the VOR reading would not lead to significant reductions in livestock grazing. The Forest Service even did an elaborate test drive of plan implementation which showed no grazing reductions. Five years later, the Forest Service is implementing the plan with an average of 25% reductions in grazing in each Ranger District.

These reductions are occurring because the National Grasslands cannot achieve a VOR of 3.5" unless the site produces more than 2300 pounds of forage. The Forest Service sponsored a study by the North Dakota State University to evaluate and establish baseline data and do VOR ratings. The data showed that most sites will not produce 2300 pounds of forage, even before grazing and during an abnormally wet year. In areas that might achieve that production, it would require removing most or all of the livestock to meet a VOR of 3.5" in the fall. Needless to say, had this information been available when the plan was adopted, the Forest Service could not have been able to maintain that no significant reductions would occur. Moreover, the Forest Service would have been required to disclose and analyze the impacts of removing livestock from the grasslands, which are uniquely suited to herbivory.

Rather than acknowledge that the plan assumption was incredibly wrong, the Forest Service has maintained that it will continue to 'implement the plan' without regard to the incorrect assumptions and without regard to the significant impact on one of the primary users. Even the Chief of the Forest Service has flatly stated it will implement the plan regardless of errors in the assumptions and impacts.

If the Forest Service is to have any scientific credibility, it needs to acknowledge when planning assumptions are wrong and make changes. Hunkering down and not making

changes has led to decades of litigation and a significant loss of credibility with the courts and state agencies.

2. Directives In Lieu of Rules Violates NFMA and the Claimed Commitment to Public Participation, §§219.1, 219.2, 219.11 proposed

The proposed rules would allow the Forest Service to make significant changes in the planning process by the non-public avenue of directives, which includes manual, handbook and directives from the Chief, as well as regional modification of handbook and manual direction. The directive system can be difficult to access, especially if it is addressed in a regional modification or order from the Chief.[1] Most manuals and handbooks have been adopted without notice and public comment. Forest Service rules only require public involvement for manuals and only in narrow and self-defined cases. 36 C.F.R. §216.6. Handbook directives do not require any public comment. In short, the proposed rules will hijack the planning process by implementing land use planning through secret directives.

This violates NFMA, since the Forest Service is required to use rulemaking to implement its provisions, which address the land use planning process. 16 U.S.C. §1613. The Agriculture Secretary must also provide for "an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs." 16 U.S.C. §1612(a). Using the nonpublic directive system to implement planning flatly contradicts this clear statutory direction.

3. Role of Science in Planning, §219.3 proposed

The Information Quality Act requires that each federal agency follow guidelines that will ensure and maximize "the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency." Pub. L. No. 106-554 (Dec. 21, 2000) (published at 44 U.S.C. §3516 note). The Forest Service "must use the "best available,

[1] Region 1 manual or handbook direction are not always on its web site and it is necessary to call and ask for a copy. These are often the more controversial changes. Unless a Forest Service official refers to the direction, it is impossible to know it even exists.

peer reviewed science and supporting studies conducted in accordance with sound and objective scientific principles." 42 U.S.C. 300g-1(b)(3)(A) & (B)."

This was the issue in *Ecology Center, Inc. v. U.S. Forest Service*, 451 F.3d 1183 (10th Cir. 2006). The United States Court of Appeals for the Tenth Circuit vacated the Forest Service's decision because the agency failed to demonstrate that the best available science was applied, even though the Forest Service ultimately had the discretion to decide what constituted the best available science. *Id.* at 1193, 1194 n.4 (identifying scientific controversy and holding that the "best available" science is "not just whatever the Forest Service finds on the shelf. . . [I]t still must be good science-that is reliable, peer-reviewed, or otherwise complying with valid scientific methods").

The proposed planning rule falls short of the Information Quality Act or the USDA criteria. While the proposed rules use the term 'best available scientific information' that is not sufficient under the Information Quality Act. 44 U.S.C. §3516 note. The Forest Service will often rely on old data, such as 20-year monitoring data for rangeland conditions, on the basis that it is the 'best available.' Similarly, the Forest Service will use assessment information in lieu of monitoring data, because it lacks such data. In North Dakota, the Forest Service initially used computerized data estimating resource conditions. The Scientific Review Team concluded that the data could not be used at the project level.

The federal court cases frequently set aside Forest Service decisions when they rely on flawed data, but the best available.

The proposed rule apparently qualifies the need to even comply with the Information Quality Act.

> the best available scientific information could be the result of expert opinion, panel consensus, or observations, as long as the responsible official has a reasonable basis for relying on that information. Regardless of the source of the information, the Office of Management and Budget (OMB) Information Quality Bulletin on Peer Review may apply.

Id. at 8485. None of the items in the above list conforms to the Information Quality Act. A single expert opinion without peer-review analysis is not sufficient nor would observations

or panel consensus. CLG also notes that the Forest Service appears to assume that the Information Quality Act does not apply, when it clearly applies to all information disseminated by an agency.

Elsewhere the Forest Service notes that science only informs but does not dictate a decision. *Id*. 8485. It is difficult to understand how to reconcile putting science secondary and yet insisting that this is a science-based planning rule. The explanations within the proposed rulemaking are contradictory.

Similarly deferring the use of science to the directive system is also problematic. *Supra* at 13-14. If the science is to be the center piece of the planning process it should be in the rules, rather than the directives.

4. Cooperating Agency Status and Public Participation, §219.4 proposed

Since the rules will incorporate NEPA, then the Forest Service has no choice but to invite all state and local governments to participate. 40 C.F.R. §§1501.2(d)(3), 1506.2. CEQ direction further requires federal agencies to affirmatively bring state and local government agencies into the process. 40 C.F.R. §1508.5; CEQ Memorandum, Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act July 28, 1999; CEQ Memorandum, Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act January 30, 2002.

The text implies that in many cases, the Forest Service will substitute collaboration or public involvement for cooperating agency process. *See e.g.* 76 Fed. Reg. at 8486.

> The proposed rule specifically would require the responsible official to encourage participation by the public, Tribes, governments, scientists, and other individuals by sharing knowledge, ideas, and resources. It is also expected that the responsible official would rely on proactive, contemporary tools, such as the Internet, to encourage widespread participation.

Id.

The Forest Service compliance with cooperating agency relationships has been disparate and inconsistent. Region 4 resisted local government cooperating agency status for the Utah Wild and Scenic Rivers Act study, saying that the Governor of Utah would represent the Wyoming local government interests. Since the Utah Governor has no relationship with the Wyoming counties, this was clearly not the case. On the other hand, Region 4 forests have recognized cooperating agency status for travel management plans. Region 1 has also varied with counties enjoying cooperating agency status for the Beaverhead but being rejected for the DPG. There is no clear or consistent direction to follow the law and this leads to the exclusion of many local governments in the EIS process.

5. State and Local Government Land Use Planning Coordination and Consistency

The forest planning rule is also inconsistent with the NEPA rules. Instead of recognizing that CEQ rules require coordination, the Forest Service writes:

> The proposed rule would require that during the plan development or plan revision process, the responsible official would review the planning and land use policies of federally recognized Indian Tribes and of other Federal, State, and local governments and document the results of the review in the draft EIS. The review would include assessments conducted by other Federal agencies, statewide forest resource assessments, community wildfire protection plans, or state wildlife action plans. The review would consider the objectives of federally recognized Indian Tribes, and of other Federal, State, and local governments, as expressed in their plans and policies, and would assess the compatibility and interrelated impacts of these plans and policies. The review would include a determination of how each Forest Service plan should address the impacts identified or how each plan might contribute to joint goals.

Id. at 8486-87.

The CEQ rule states that when evaluating environmental consequences a federal agency must consider "Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use

plans, policies and controls for the area concerned. (See §1506.2(d).)" As additional explanation, the CEQ rules further state:

> (d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). ***Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.***

40 C.F.R. §1506.2(d) (emphasis added).

The proposed rule fails to require reconciliation of the proposed plan with the state or local government plan. Instead, the proposed rule assumes that it supersedes state and local plans and there is no obligation to resolve the inconsistency. The Forest Service instead states that consistency would reduce Forest Service management flexibility. 76 Fed. Reg. at 8487. It is apparent that the Forest Service will continue its current inflexibility regardless of contrary law or rule. As is clear above, the Forest Service lacks the authority to ignore the CEQ rules. *Andrus v. Sierra Club*, 442 U.S. 347, 357 (1979).

A real life example involves the Forest Service proposal to introduce big horn sheep on the Flaming Gorge National Recreation Area. This is being proposed without any coordination with state or local governments. It would mean removal of sheep from adjacent private lands and BLM grazing permits. Because the state has authority over wildlife, not the Forest Service, such reintroduction should not occur unless approved by all affected agencies and landowners.

6. Planning Framework, §219.5 proposed

The proposed rule calls for an assessment that would identify "a potential need to change the unit's plan." 76 Fed. Reg. at 8487. It is not clear how the assessment would differ from the analysis of the management situation (AMS) that was used in the 1982 rules. CLG supports both the Forest Service assessment and public involvement but notes that the public needs access to the assessment and the underlying record before commenting.

The discussion implies that the public would have access to the assessment data but does not address how access will be provided.

> The assessment phase would allow for early public participation—well before a proposed action—so that stakeholders could engage in joint fact-finding and develop a mutual understanding of the interconnections among social, economic, and ecological communities and systems. The development/ revision/amendment element of the framework responds to the public desire to help develop and provide meaningful input to proposals for land management plans.

76 Fed. Reg. at 8487.

The proposed rule does not address how that information will be shared. Currently, the Forest Service will not provide such information to state or local governments without a Freedom of Information Act (FOIA) request and will often assess prohibitive search and copying costs. When local governments request a fee waiver, the Forest Service will routinely deny the requests on the basis that the local governments may benefit financially or fail to show how their request will promote the public interest. North Dakota counties have a fee waiver request appeal that has been pending before the Chief's office since 2005. The documents sought addressed Forest Service records of road ownership and control, a major issue in the land use plan and the pending travel management plan. Notably here also, the DPG did not invite state and local governments to 'collaborate' or be cooperating agencies and would have imposed a bill for more than $20,000 for the requested records. It is not sufficient that the Forest Service provide a time for comment, it must be prepared to openly share the records upon which a decision will be based and to end the practice of imposing fees as a barrier to the information.

The proposed rule does not limit or tie any land use management changes to the assessment. Unfortunately, on many occasions, the Forest Service lacks the necessary data or information to write an assessment. *E.g.* Bridger-Teton National Forest lacking allotment management data showing resource conditions in conjunction with wildlife, big game or livestock or historical assessments of healthy forests). On other occasions, the Forest Service has prepared a detailed AMS but ignored it when it did not support major changes that reflected political rather than resource objectives. *See e.g.* DPG where

rangeland health was improving and meeting the current planning standards but DPG wanted to reduce livestock grazing. In short, the 'need for change' was political, not resource based.

If the Forest Service is prepared to rely on data and science rather than politics, then it needs to tie the assessment to later planning decisions. Otherwise, politics of the moment will continue to be the basis for forest plan decisions.

7. Assessments, §219.6 proposed

a. Lack of clear criteria

As written the value of the assessment is severely undercut by the qualification that each unit can decide what kind of assessment is done.

> The responsible official would have discretion to set the scale and scope of the assessment but would engage the public early and would encourage participation in the assessment process. The content of assessments would be used to develop new plans and plan revisions, to develop monitoring questions, and to provide a feedback loop.

Id. at 8487.

This explanation demonstrates how the assessment phase could quickly lose any value. It would, for instance, allow a Supervisor to decide not to use its vegetation monitoring data but instead use only satellite imagery because it was easier to use although less accurate. It would allow the Supervisor to simply write rangelands are in poor condition and do not meet habitat requirements without any evidence supporting such a conclusion. Without clear standards for assessments, this step will have little value in the planning process.

The rulemaking preface states:

> Assessments should provide useful information to the responsible official to develop plan components and other content for a new or revised plan, to identify gaps in needed information that might be filled by a monitoring

> program, to identify changing conditions that the Agency might need to track, or to identify assumptions that should be tested later.

Id.

The foregoing language is even more troubling. First, information gaps cannot be filled by a monitoring program unless the planning process would be suspended for 10 years. Each plan now has a monitoring program so the question should relate to the results of the monitoring. If the units are not actually implementing monitoring, then there should be a good explanation about why this is not occurring. Without monitoring is it unlikely that the Forest Service can substantiate resource conditions or any changes within the accepted scientific meaning of the term.

Finally, the proposed rule needs to state that the Forest Service cannot rely on one time assessments in lieu of monitoring data. Moreover, the Forest Service should be required to accept data from other entities. State university systems and other research departments have important work and studies that should be used rather than discarded because they do not fit the political objectives or were not done by the Forest Service.

b. Reliance on "Existing Information"

The potential value of the assessment phase is compromised because it must 'use existing information and be conducted rapidly in order to respond to changing conditions." *Id.* at 8487.

First, it is well-established that the Forest Service, more often than not, has little or no current or existing information. In most cases it has not implemented the monitoring objectives from the prior plans. Indeed, the second generation of plans often defaults to 20 and 30-year old data because that was the last time that the agency had vegetation monitoring.

Similarly, there is little credible forest health data, since that information used to be generated by the timber program. It is too late to assess forest health after the fire.

The proposed rule further permits the use of one-time assessments rather than monitoring data. "However, nothing in this section would restrict the responsible official from gathering new information to address the issues or questions for the assessment." *Id.* 8488. This does not ensure unbiased data development. Instead, it would override monitoring data. The danger is as follows. If the assessment is a windshield review of vegetation in a drought, then the plan will be strongly biased against grazing or recreation and not representative of actual vegetation or plant diversity and health. A quick and dirty riparian area assessment would suffer from the same infirmities, since it would not establish the causal factors or be based on soils or climate, which also affect riparian area conditions. In short this rule does nothing to improve information or data used for forest planning and management.

8. Plan Development §219.7 Proposed

a. Process

CLG supports the direction to reach out to state and local governments. But as noted above, this will not be meaningful unless the Forest Service is willing to share information and not impose cost-prohibitive barriers to such information. The role of state and local governments is compromised by provided that the Supervisor can decide cooperating agency status would not be appropriate.

b. Plan components

The proposed rule would require plans to adopt "desired conditions, objectives, standards, guidelines, and suitability of areas. Plans could also contain goals, an optional plan component." *Id.* This comes straight out of the 1982 planning rules. If properly used and based on information, it can be an acceptable format. CLG members' experience instead shows that standards and guidelines are applied rigidly as if they are law. Thus, it is ironic that elsewhere in the rulemaking the Forest Service pushes for flexibility but in fact opts for rigid management without regard to specific circumstances or capability or site potential.

CLG previously recommended adopting performance objectives and providing for flexibility on how they are achieved. The proposed rule stays with standards and guidelines which

are implemented without exception, even when the assumptions upon which the standards and guidelines are based are proven to be wrong.

Finally nothing in the above format is consistent with adaptive management. The rulemaking preface refers to adaptive management, the planning rule does the opposite.

i. Desired Conditions and Objectives

Nothing in the proposed rule requires desired conditions or objectives to be based on the capability or site potential or location of the unit of the National Forest System. It may not be possible to achieve native vegetation, especially on acquired lands where revegetation efforts introduced non-native species. Thus, the diversity objective for native species may not be achievable and set all land uses to fail to achieve the desired conditions.

Further, the proposed rule fails to define if and when such desired conditions must be achieved. As written, they must be achieved immediately, even if the new desired condition is not within the site capability or site potential and without regard to the fact that resource conditions changes require time, often several decades. Most current plans provide that the land uses (project level actions) are consistent with the plan, if the objectives are met or there is progress towards meeting the objectives. Here again, some forest units adopt project level plans that penalize land users if the objectives are not met now, even though the plan provided for making progress towards meeting the desired conditions or objectives.

This is a very significant distinction, since it is probable that the objectives in a plan are not met in the numerical sense but conditions are improving and will continue to improve. The proposed rule needs to expressly state that objectives are not mandatory in the sense that if not met land uses will end or must be immediately change. Alternatively, the Forest Service will have to significantly revise objectives to fit actual conditions, rather than the programmatic estimates currently used.

CLG notes that elsewhere the preface describes desired conditions and objectives as aspirational. "Objectives and desired conditions are long-term aspirations whose achievement would depend on the cumulative effect of a number of agency actions, and often on factors outside the agency's control." *Id.* at 8501. Unfortunately, CLG members

have learned that Forest Service employees will arbitrarily use these aspirational desired conditions and objectives to justify grazing reductions or removal. There needs to be a lot more education of Forest Service officers at the supervisory and district ranger level.

In the same context, the proposed rule explicitly states that a project must either move resource conditions toward objectives or not preclude eventual achievement of desired conditions or objectives. *Id.* at 8501. CLG agrees with this general statement. It is important however that at least in Region 1, the Forest Service is allowing implementation that requires each project to achieve the desired conditions or objectives within five years. This is not only harsh but is a deliberate effort to remove or punish livestock grazing use. The Forest Service owes it to the public and local governments to end this type of arbitrary agency action.

ii. Standards and Guidelines

The preface claims that guidelines will be requirements but are flexible. This statement belies more than 25 years of Forest Service implementation history. It is entirely disingenuous. The rigidity is found in the example regarding longleaf versus loblolly pine forests. *Id.* 8489. The standard does not consider the feasibility of changing the plant species, which is more than just burning a few acres and letting nature take its course. The imposition of a specific percentage further limits flexibility in management, even if the assumption that fire will readily restore the longleaf pine turns out to be wrong.

Moreover, the proposed rule does not limit standards to legal criteria, such as limiting nonpoint source water pollution. Instead the Forest Service is free to invent any standard without regard to the impacts on multiple use such as motorized recreation, snowmobiling or livestock grazing.

The adoption of rigid management through standards and guidelines is not adaptive management; it is the opposite of adaptive management.

c. Goals

As defined, the goals are indistinguishable from objectives. When the 1982 planning rules were first implemented, goals were understood to be the long-term or 50-year planning horizon. Without this qualification, the planning rule is both confusing and meaningless.

9. Other Plan Content, §219.7 proposed

i. Monitoring Plans

CLG supports monitoring but notes that since the Forest Service has never met this objective it seems risky to make it such an important part of the proposed planning rules. Unless the Forest Service is prepared to actually budget and staff the monitoring program, it will not occur.

The emphasis on rapid change is even more questionable. Monitoring measures the change in resource conditions over time. Sound monitoring practices do not support abrupt management changes based on how conditions look this year. Rapid changes only invite mistakes, since it is not possible to understand all of the causal factors with a one-time assessment that might affect resource conditions. There are numerous occasions when the assumption that land uses are the cause are found to be incorrect. The proposed planning rules makes those kind of mistakes inevitable.

b. Identification of Priority Watersheds, §219.8

The proposed planning rule attempts to use watershed management to exercise authority over water. The Forest Service has very limited authority over water quality and no jurisdiction over water quantity. The Organic Act requires the Forest Service to manage the land to provide favorable conditions for water flows. 16 U.S.C. §475. This language requires the Forest Service to manage the forests to increase water flows, which occur when logging is allowed. CLG assumes that is not the objective of the proposed rule. MUSYA identifies waters as one of the supplemental multiple uses. 16 U.S.C. §528.

No other statute grants the Forest Service jurisdiction to manage watershed for water quality. The only authority is to follow a particular state's nonpoint source water pollution

rules. Water quality regulation belongs to EPA and is delegated to the respective states. The Forest Service has no such authority.

This provision is based on proposed §219.8, 'water-based sustainability.' Again nothing in any federal law authorizes the National Forest System to be managed for water-based sustainability. In the western states, the legal authority over all surface and groundwater lies with the states by constitutional direction.

CLG members reluctantly conclude that this initiative in particular is aimed at further reducing the multiple uses that may possibly affect the watershed, such as motorized recreation, motorized travel, skiing, livestock grazing, and, of course, logging. Similarly such management focus will spell the end to mining and energy development in the National Forest System units, even though these are the statutorily authorized land uses for the National Forest System.

10. Sustainability, §219.8 proposed

The only apparent standard in the proposed planning rules calls for ecological, social and economic sustainability. No law uses these terms and the rules do not adequately define what the Forest Service thinks is sustainable. There would be a significant difference between sustainable indefinitely, notwithstanding factors that we cannot predict, versus sustainable over the life of the plan.

The discussion confuses rather than enlightens.

> require the development of plan components that maintain or restore the structure, function, composition, and connectivity of these systems as a whole and that maintain, protect, or restore key elements within each system.

76 Fed. Reg. at 8490.

What kind of function are we talking about. Does structure mean soils or vegetation or both. What is the scope of 'composition.' Connectivity suggests that the Forest Service wants to manage land outside of the National Forest System unit boundaries, when it lacks

any authority to do so. Nor is there any guidance on exactly how the Forest Service will identify key elements and what they will emphasize.

a. Wildland Fire

The Forest Service has embraced the concept of 'restoring the role of fire in the ecosystem.' At the same time, the largest component of the Forest Service budget has gone to fighting wildfires. More significantly, we do not see any serious discussion of the adverse impacts of wildfire or fire for that matter on the ecosystem.

The biological opinion for Region 3 is a notable exception where it documents the adverse impacts of fire on habitat for Threatened and Endangered Species. Biological Assessment and Evaluation USDOI, USFWS Nov. 8, 2002. Fires lead to significant soil erosion since it is rarely, if ever, possible to revegetate a fire site before winter rains or snow. The soil erosion leads to increased sediment [pollution] in the water systems. Revegetation is not magically limited to native plant species. Instead wind, birds, and wildlife bring a host of invasive plant species that will out compete native vegetation. So while the land looks green in the press photos, a closer examination will show a significant percent of invasive species. *See e.g.* Forest Service discussion of invasive species on the Greyrock Allotment, which burned in 2004 in the Picnic Rock Fire and has been in nonuse.

Fire also displaces and kills wildlife and big game as well as significantly altering or destroying habitat. More recently, sage grouse biologists have questioned the previous wisdom that sage brush needed to be burned to regenerate this habitat component.

b. Water Sustainability

As noted above, the Forest Service has no water regulatory authority, other than to maintain favorable conditions for water flows. 16 U.S.C. §475. Nevertheless, the proposed planning rules attempt to hijack state and federal regulatory schemes by grossly exaggerating the role of the National Forest System management on water systems. Indeed, the Forest Service has affirmatively tried to impede both the operation and expansion of water systems on the National Forests. The Forest Service generally does not support water development projects.

The rulemaking preface claims that the Forest Service 'administer[s] more than 90,000 water rights in cooperation with states. *76* Fed. Reg. at 8491. This is flatly untrue. The Forest Service enjoys a reserved water right for the primary purposes of the forest reservation as determined at the time of the original reservation. US v. New Mexico, 438 U.S. 696 (1978) (holding no reserved water rights for purposes stated in MUSYA). Otherwise, the Forest Service has applied for and received specific water rights for consumptive uses, e.g. range improvements, campgrounds and administrative facilities. In no case does the Forest Service 'administer' the water right, it is granted a water right. Only the respective western states administer water rights.

On the issue of access to and for hydro operations, CLG members have found the Forest Service to be a less than willing 'partner.' Many water cooperatives and rural electric associations operate under special use permits from the Forest Service. While these are of long-duration, the Forest Service regulatory process impedes management and maintenance of water systems on the National Forest System.

The conclusion that there are areas on National Forests where water resources are degraded is one of those general statements without any meaning when made out of context. One could say insufficient vegetation on 10 feet of a riparian area is 'degraded' but what does that mean in the context of thousands of miles of riparian areas? The statement may be technically true but it is not accurate and misrepresents the actual resource conditions.

The Forest Service does not provide data supporting the premise that current management of the National Forest System currently contributes to poor water quality. While many of the National Forests are headwaters for major water systems, such as the Colorado River or the Missouri River, there is no basis to conclude it is current forest management that currently causes water quality problems.

There are many speculative reports that climate change will lead to longer and more severe drought. Any student of American history will understand that the western states have seen numerous periods of drought. None of the reports provides any data to support the theory other than it might happen.

If the Forest Service wanted to increase water flows, it need only resume logging or increase timber sales or vegetation projects to increase water yields. Over the past 25 years, the Forest Service has reduced its timber program to a mere shadow of its former size. Logging would also address the extreme fuel loads and disease that now threatens a significant number of the National Forests. But it is clear that this would not occur under the proposed planning rule.

Separately, there is a genuine risk that the vulnerable forests will burn with long-term and devastating impacts on watershed. The extent of the fuel loads, disease and infested stands of timber mean that the upper Colorado River Basin faces a very real risk. The loss of soil will take decades or even a century to recover if the fire goes out of control, like the Biscuit Fire in Oregon and Northern California.

c. Riparian Areas

Current range management already calls for restoring and maintaining riparian areas. It is unclear what more the planning rule should require.

Proposed planning rules also fail to recognize that many riparian areas are not flowing waterways. The mandatory width is not supportable from a factual or scientific basis and must be deleted.

d. Social and Economic Stability

Until recently, the Forest Service recognized that it had a statutory obligation to maintain the economic stability of the adjacent communities. 36 C.F.R. §223.88 (1985). The Forest Service erased the role of addressing the impacts on stability of dependent communities during the Clinton Administration along with severing payments to counties from timber sale revenues.

Notwithstanding the agency's efforts to divorce itself from this principle, it is based on the Organic Act and the original intent of the National Forest System. The Organic Act states in part that the forests are to be managed to provide timber for the needs of the citizens of the United States.' 16 U.S.C. §475. Gifford Pinchot, the first Chief of the Forest Service directed the managers to first consider the needs and desires of the local communities.

1905 Use of the National Forests at 12. (In the management of each reserve local questions will be decided on local grounds.") From this language and direction, the Forest Service adopted regulations that tailored the timber sale program to consider the stability of the dependent communities. 36 C.F.R. §223.88(a)(3).

The proposed rule continues the policy of divorcing National Forest System management from the local communities. If the terms social and economic sustainability meant ensuring that the forest management sustained the social and economic structure of adjacent communities, then CLG would support it. As written however, it is apparent that the Forest Service proposes to dictate to the communities what is socially and economically sustainable. This is entirely outside the purview of a federal land managing agency.

e. Custom and Culture

Along the same lines, the planning rule purports to consider custom and culture but actually will dictate changes in local custom and culture. It is also significant that the proposed rule only recognizes tribal and Alaska native culture and dismisses rural custom and culture. *Id*. 8492.

The Forest Service invites comments on 'cultural sustainability.' Again this is entirely outside of the agency's authority and one issue that it is poorly equipped to deal with. One need only look at how the Forest Service proposes to transition southeast Alaska away from timber much like how the Forest Service transitioned the Pacific Northwest from timber in the 1990s. The rural towns affected by mill closings in northern California and Oregon never recovered. Minimum wage tourism jobs are not the same as mill or logging work that pays more. They also contribute less income to the overall community.

Recreation access is a huge cultural issue. CLG members have seen nothing but road closures on the National Forest System units in Wyoming as well as Utah and Colorado. Despite thousands of signatures on petitions for maintaining motorized access, the Forest Service continues to unilaterally close roads, either independent of travel planning or as part of a travel plan. The Ashley National Forest is a case in point, where it decided it was 'too hard' to inventory the roads to be closed but closed them anyway. This type of action demonstrates that the Forest Service is institutionally incapable of respecting rural custom and culture and proceeds without regard to the consequences of its actions.

11. Diversity of Plant and Animal Communities, §219.9 proposed

NFMA directs that plans:

> provide for diversity of plant and animal communities ***based on the suitability and capability of the specific land area*** in order ***to meet overall multiple-use objectives***, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan;

16 U.S.C. §1604(b)(3)(b) (emphasis added). The planning rule notably drops two important statutory qualifications with respect to species diversity, site capability or potential and to achieve multiple use objectives. Instead, the proposed rule makes species diversity a stand-alone objective without regard to multiple use management and without regard to ***the suitability and capability of the specific land area***.

The proposed rule also assumes without any basis in fact that preservation of native tree species will preserve all other native plants. 76 Fed. Reg. at 8493.

This proposed rule also does not consider the fact that NFMA does not require native plant species only plant and animal diversity. Many areas on the National Forest System were acquired and revegetated. The National Grasslands are a case in point where USDA planted crested wheatgrass to restore soils and vegetation following severe drought during the Great Depression. Crested wheatgrass is a persistent non-native plant and while not politically desirable remains valuable for wildlife habitat and forage. As written the proposed rule would require conversion of the National Grasslands to all native vegetation; a huge and impractical undertaking that would certainly not succeed.

CLG agrees with other comments that the Forest Service has no authority to mandate species viability on the National Forest System. No federal law provides the Forest Service with wildlife management authority. The western state constitutions grant this authority to the states. The proposed rule guarantees future litigation, since much of the Forest Service past plan litigation has involved species viability determinations.

Along the same lines, the Forest Service has no authority under the Endangered Species Act, and the U.S. Fish and Wildlife Service defines recovery and habitat needs.

12. Multiple Uses, §219.10 proposed

The proposed rulemaking makes an impassioned but entirely wrong case for changing the definition of multiple use based on changing conditions and needs to include "ecological services." *Id.* at 8494. Forest Service cannot use rulemaking to change the law written by Congress.

Moreover, the Forest Service fails to show that there is no longer a need for timber, recreation, livestock grazing, or habitat for fish and wildlife. Indeed just the opposite is true, the United States citizens continue to need wood products, food, and a place to recreate that does not involve the time and effort that wilderness or non-motorized recreation would require.

Even though Congress recognizes the right of entities to develop the federal mineral estate on National Forest System units, the proposed rule is entirely silent on mining or mineral leasing. 30 U.S.C. §226(g) and (h); Energy Conservation Act, 42 U.S.C. §8855 ("It is the intent of the Congress that the Secretary of Agriculture shall process applications for leases of National Forest System lands and for permits to explore, drill, and develop resources on land leased from the Forest Service, notwithstanding the current status of any plan being prepared under section 1604 of Title 16."). It is also notably silent about rights-of-way.

Given this fact, one must assume that the Forest Service intends to sunset all mineral development on the National Forest System units, perhaps with the notable exception of the current production on the Bridger-Teton or the Little Missouri National Grassland, which produces most of the oil and gas on the National Forest System.

13. Monitoring, §219.12 proposed

a. Scale

CLG notes that 'broad-scale' monitoring is not actually monitoring, since it is unlikely that broad scale assessments will accurately measure resource responses to management changes. The move to broad scale, which is not defined is indicative of Forest Service proposals to use satellite imaging or other broad scale estimates in lieu of actual monitoring. If the Forest Service were not making such significant decisions based on the data, CLG would not object but it does. For instance, Region 4 recently released a direction threatening permit action, suspension or cancellation, if a permittee were to exceed utilization anywhere in the allotment or if grazing occurs before range ready or any other infraction of annual operating instructions or forest plan direction. If the Forest Service were to base a decision that utilization was exceeded based solely on satellite photos or a windshield assessment, then that is not monitoring and is not credible. The impacts on specific operations will nevertheless be significant.

Moreover, satellite imagery is both expensive and unlikely to yield the detail necessary to identify causal factors or site capability.

b. Scope of Monitoring

The preface suggests that monitoring will address only sustainability and diversity, not the traditional multiple uses. *Id.* at 8498. This too is unlawful.

The discussion of species to monitor is equally unsatisfactory. Under the 1982 rules, the Forest Service tended to define management indicator species based on popularity rather than associated habitat. The proposed rules adopt a new term 'focal species' without any useful criteria.

Moreover, the Forest Service lacks any jurisdiction to manage wildlife or fish, but has only authority to manage the habitat for fish and wildlife.

The proposed rule's concept of monitoring does not include assessment and documentation of causal factors. To this day, for instance, Forest Service employees will

conclude that livestock grazing is the sole or primary cause of degradation to riparian areas or sites, when further investigation would have revealed heavy use by elk or the fact that the site was an abandoned sheep bedding ground that never returned to native plant species. Similarly, the Forest Service may identify grazing as the cause of a riparian area segment not meeting proper functioning condition (PFC) when the changes were due to use a road acres the area for energy exploration. Similarly the default solution is to remove livestock grazing, not to manage the other resource impacts, such as excess elk or moose populations.

14. Plan Amendments and Administrative Changes, §219.13 proposed

a. Rapidity Sacrifices Accuracy Despite Adverse Impacts on Users

The proposed rules again appear to promise rapid decisions, regardless of the impacts or information limitations. This rule documents the failure to actually propose or implement adaptive management. Adaptive management would use desired conditions and continue to change objectives and standards and guidelines based on careful monitoring. The rapid change concept uses broad scale assessments in lieu of monitoring but promises change without revising objectives or standards and guidelines.

It is apparent that the outcome will be the further removal of the multiple uses for the National Forest System, motorized recreation, livestock grazing, timber, and mineral development. Even the retired Forest Service employees recognized that the objective of the proposed rule is to convert the National Forests to a hybrid of wildlife refuges and park, while excluding public use to the greatest extent possible. This contradicts the statutory scheme and the mission of the National Forest System.

b. Vague Direction Gives Supervisors Broad Power to Make Changes Without Factual Basis

Consistent with the claimed rapidity, the proposed rules would allow the Supervisor virtually unlimited discretion to effect changes with or without an assessment documenting the need for change and with limited collaboration. For instance, the preface explains the supervisor could decide that the standards and guidelines are insufficient to protect a riparian area and could just do an amendment, e.g. remove livestock grazing. *Id.* 8500. This authorizes

arbitrary and capricious action, as noted above in past Forest Service actions. A one time assessment often fails to consider or document other causal factors, such as lack of experience on the part of Forest Service employees.

15. Planning Records, §219.14 proposed

The rule calls for the Forest Service to prepare a planning record, which has always been the case. It does not address agency policy of charging groups it does not like for providing a record that should otherwise be free of charge. This must change and be explicit.

16. Consistency with Plan, §219.15 proposed

NFMA directs that all permits be consistent with the land use plan. 16 U.S.C. §1604(i). This proposed rule takes the consistency issue to the extreme, thereby negating any pretense of adaptive management. The proposed rules return to enforcing standards and guidelines as if they were mandatory regulations. "The Forest Service's position has been that a project's consistency with a land management plan could only be determined with respect to standards and guidelines, because an individual project by itself could almost never achieve objectives and desired conditions." *76* Fed. Reg. at 8501.

Consistency direction would appear to preclude mineral development and certainly biases forest management against the multiple uses that led to the establishment of the National Forest System. The preface states:

> However, even when a project is proposed for a reason other than to meet a desired condition, objective, or goal (for example, an unexpected proposed use such as a new permit application), the project would be consistent if and only if it does not foreclose the possibility of achieving any desired conditions, objectives, and goals of the plan.

Id. at 8501. If the Forest Service applies achievement of objectives within the next five years as is the case in Region 1 or some other arbitrary time frame, most if not all multiple uses like mineral development activities will be foreclosed. This is especially true since the Forest Service is redefining multiple uses to ecological sustainability and species diversity

and viability. This will have severe and adverse impacts on local communities and ultimately on the National Forest System.

Without aggressive management, consultants to CLG members conclude that much of the National Forest System in western Wyoming will burn in catastrophic wildfires. This will displace the agriculture and tourism industry, as well as big game and wildlife. Tentative efforts for a few logging projects will not address a problem of this size or scale. The proposed rule, especially §219.15 will ensure that these wildfires occur.

III. Subpart B Predecisional Administrative Review Process

1. Introduction

CLG disagrees that the Forest Service has either a sound history of resolving issues or that its review is unbiased. Instead, in dealing with the Forest Service on issues relating to roads, public access or agriculture, it has always been apparent that the reviewing officer was fully briefed by the deciding officer and there was nothing independent in the review. Only a year ago, for example, the Forest Service planned major reductions for a grazing permit in Lincoln County but had not provided for public comment on the EA. The reviewing officer's comments during the 'resolution' strongly defended the process, thereby showing no independence whatsoever. This was also true for the counties' appeal of the Ashley National Forest travel plan.

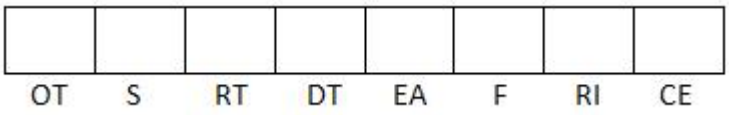
Unless and until the Forest Service adopts an administrative review process used by the Department of the Interior, it will not conform to Administrative Procedure Act principles of due process.

2. Plan Objections, §219.51 proposed

The proposed rule will restrict objectors not only to those filing written comments but to the specific comments made. *Id.* at 8504. This exceeds even the APA standard, where parties have standing to sue if the issue was raised within the comment period. This is one more indication that the proposed rule is designed to limit public processes not enhance them.

3. Objections §219.56 proposed

The proposed rule would impose very short time frame of 30 days and it would be from publication rather than receipt. This short time period is completely unreasonable if applied to a lengthy EIS. The time periods should be tied to the decision, *e.g.* 30 days if categorically excluded, 60 days for an EA and 90 days for an EIS.



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Comments

See Attachments

Individual(s)

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Created On	5/16/2011 7:45:00 PM

May 16, 2011

Submitted via email to *http://www.govcomments.com/*

RE: National Forest System Land Management Planning Notice of Proposed Rulemaking and Draft Programmatic EIS

To Whom It May Concern:

Upon on review of the proposed rule, it is understood that the U.S. Department of Agriculture is seeking a rule modification that will provide better planning flexibility to meet the challenges of climate change, forest restoration and conservation, watershed protection, wildlife conservation, and sustainability of the nation's forest resources. While the proposed rule offers a more adaptive and responsive approach, Colorado Springs Utilities is very interested in the proposed rule respective to the outcome considering our extensive water utility interests and operations across multiple National Forests in Colorado.

The City of Colorado Springs, with a population of approximately 480,000, receives and delivers nearly 99% of its water supply through three major river basins: South Platte River, Colorado River, and the Arkansas River. Colorado Springs Utilities water supply and storage system(s) utilizes several transmission lines, reservoirs, and other infrastructure that lie within the Pike, San Isabel, and White River National Forests.

Concerned with the changing forest conditions and wildfire risks due to climate change, beetle epidemics, historical fire suppression, and increasing demand for water supplies in the western United States, it is our expectation that any rule changes should work to improve the planning processes while minimizing any constraints to our existing water supplies, operations, and access as well as the development of any conditional water rights, storage, or prospective operations vital to Colorado Springs future.

Colorado Springs Utilities has long been a collaborative partner with the United States Forest Service, and looks forward to encouraging a positive rule that encompasses the flexibility to meet the shared management goals of the Forest Service and Colorado Springs Utilities.

Per the review of the Draft Programmatic Environmental Impact Statement and Appendix A-Proposed Planning Rule, Colorado Springs Utilities has prepared the following comments:

1. Per §219.3 Role of Science in Planning, it is understood that the responsible official as assigned by the Forest Service will take into account and use of the best available science

and information relevant to any decision or action. Understanding that areas of best available science will vary, the proposed planning rule would require that the responsible official only document the use of best available science as outlined in §219.3 (a), (b), (c). Colorado Springs Utilities agrees with the concept of utilizing the "best available science" concept, however, how will the Forest Service address and select between accepted but conflicting theories and research. It is of concern that the proposed rule lacks a more collaborative approach and process to better ensure an opportunity to build consensus and decision making amongst key stakeholders. Understandably the responsible official should have the final authority to make a decision; however, that decision should only come with due process of the stakeholders to present what is considered the best available science.

2. Per §219.7 New Plan Development or Plan Revision (2) (iv) and (v), the responsible official will be required to identify and recommend any such areas for wilderness designation, and any rivers eligible for inclusion to the National Wild and Scenic Rivers System unless previously inventoried or does not warrant additional review. Colorado Springs Utilities is seeking further clarification with regards to the ability, process, authority, and limitations of the responsible official and how this rule change conforms to the designation of such lands and rivers in compliance with the 1964 Wilderness Act and 1968 Wild and Scenic Rivers Act.
3. Per §219.7 New Plan Development or Plan Revision, considering the approval of a management plan under the 2005 Travel Management Rule, how would such a plan, or resource management conflict be addressed under the proposed forest rule? Would the responsible official have the authority to override an approved alternative/plan previously approved under the 2005 Travel Management Plan? If so, how would this process work?
4. Per §219.7 New Plan Development or Plan Revision (3) (e) (i), identify watershed(s) that are a priority for maintenance or restoration. How would this directive apply to forest management needs under special considerations to restore forest health conditions, or reduce wildfire risks in wilderness areas or companion areas that contribute significantly to a public water supply? Consider language as proposed in the current Eagle and Summit County Wilderness Preservation Act.
5. Per §219.8 Sustainability (1)(a)(ii), under the authority of the proposed rule, how would the plan identify and consider existing and future water supply rights, access, and operations within an aquatic ecosystem identified in need of restoration or to be maintained? How will the plan, or responsible official, identify and work with the appropriate water rights owners and applicable state water laws?
6. Per §219.8 Sustainability (3) Riparian areas. Understanding the need and importance of restoring of riparian areas, the proposed plan requires that a default width/area around all lakes, perennial or intermittent streams, and open water lands shall be established if they are not delineated considering rationale based on best available science. This blanketed approach needs further clarification and need, and should consider on the ground resources, ecosystem health, and uses per the identified management area. It is also unclear as to what these width/areas mean in terms of protected areas and constraints.
7. In general, the proposed forest rule provides a positive alternative to the status quo of planning for large scale areas with Colorado's national forest. Colorado Springs Utilities seeks to support a positive change for this level of planning, however, as an major water utility, we feel it is critical to address the aforementioned questions and concerns. We also feel it is important that this planning change incorporate a stronger integration of State and local agency expertise and knowledge as part of the required planning process. This integration of expertise will help to ensure better planning and protection of existing and

future water supply operations that can coincide with other natural resource management goals and objectives.

If you have any questions regarding the comments submitted or Colorado Springs Utilities water system, please feel free to contact me.

Sincerely,

Eric Howell

Eric Howell
Colorado Springs Utilities
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OT	S	RT	DT	EA	F	RI	CE

FRD Letter 869

Attributes

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See Attachments

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PORTLAND WATER BUREAU
FROM FOREST TO FAUCET

Randy Leonard, Commissioner
David G. Shaff, Administrator

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www.portlandonline.com/water

May 16, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S.
Bountiful, Utah 84010

Dear Planning Rule Team:

Thank you for the opportunity to provide comments on the National Forest System Land Management Planning Rule and accompanying Draft EIS. The Portland Water Bureau (PWB) serves a population of over 900,000 persons in the Portland, Oregon, metropolitan area. Portland's primary water supply is the Bull Run watershed, an unfiltered source located within the Mt. Hood National Forest. Approximately 96% of the watershed is Forest Service land and the remaining 4% is owned by the City of Portland. Stewardship of the watershed requires close coordination between the Portland Water Bureau and the Mt. Hood National Forest.

PWB commends the Forest Service for the process it has undertaken to develop the proposed planning rule and the rule's commitments to include participation opportunities for local government. Additionally, Portland supports the requirements in the planning rule for commitments to maintain, protect or restore riparian areas and watersheds. Of particular note is §219.8 of the rule that calls for taking into account ecological sustainability components including climate change, and includes components that maintain, protect or restore public water supplies, sole source aquifers, source water protection areas, groundwater, and other water bodies. Nationwide, a significant number of cities and communities obtain drinking water supplies from watersheds located on national forest land. Acknowledgement of the role of the Forest Service in helping to protect public water supplies is an important component of the planning rule.

PWB does believe the rule could go farther in its commitment to ensure protection of riparian areas and watersheds. The Alternative D version of the rule provides significantly more protection for watershed and riparian conditions. Forest plans and the planning processes under Alternative D require several watershed protection and riparian protection components that go beyond those in the preferred alternative (Alternative A) and include:

- Watershed-scale assessments, using the best available science to provide information on the aquatic, riparian and terrestrial condition of watersheds within the planning unit;
- Use of information gathered during the watershed assessment to refine Riparian Conservation Area boundaries and develop monitoring programs;
- Creating and maintaining spatial connectivity within or between watersheds, including lateral, longitudinal and drainage connections among floodplains, wetlands, upslope areas, and headwater tributaries;
- Identifying key watersheds across the planning unit in order establish a network that can serve as anchor points for the protection, maintenance, and restoration of broad scale processes;

- Establishment of Riparian Conservation Areas based on the best available science and adoption of minimum standard buffers of no less than 100 ft on each side of the stream as the interim standard until the watershed assessment is completed;
- Protection, maintenance and restoration of Riparian Conservation Areas such that management activities within such areas are primarily for restoration and requiring activities that are not for restoration to be designed using the best available science;
- Watershed standards and guidelines for: 1) biological and biophysical connectivity of key watersheds, 2) limits on road densities to achieve sediment reduction and minimize hydrologic alternations, 3) maintenance and restoration of lakes, streams, wetlands, public water supplies, and source water protection areas; 4) preventing soil erosion and sedimentation, and 5) road decommissioning and remediation in conservation areas and key watersheds as the top restoration priority.

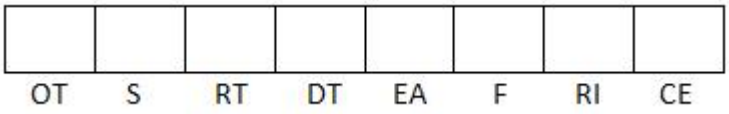
As noted on page 97of the DEIS, Alternative D specifies many of the same elements for watershed management as the Northwest Forest Plan. One of the notable features of this plan, and an underpinning to its success, has been its emphasis on use of watershed assessments to tailor plans to individual watersheds. PWB disagrees with the primary criticism that the DEIS points out with the respect to the watershed and riparian focus of Alternative D – that it might not allow the flexibility to develop plans that can best address resource concerns of a given unit and might not be effective and efficient across highly variable systems. Although this option establishes a preliminary, minimum standard width for Riparian Conservation Areas on all planning units, this is only an *interim* standard and directs Forest Service managers to use information gathered during the watershed assessments to refine default Conservation area boundaries. Moreover, the watershed assessment focus of Alternative D ensures that there would be maximum opportunities for planning and consultation with government agencies and other landowners, relative to other planning rule alternatives.

PWB would like to commend the Forest Service for undertaking a thorough and thoughtful effort to develop a proposed rule that will guide the development, amendment and revision of land management plans so that National Forest System lands may continue to provide ecosystem services and contribute to social and economic sustainability. However, PWB prefers the watershed and riparian-protection components of Alternative D because they provide a scientifically-based, collaborative approach to protection of source water protection areas located on national forest land.

Thank you for the opportunity to comment on the proposed planning rule.

Sincerely,

Edward A. Campbell
Resource Protection and Planning Director



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Comments

See Attachments

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May 13, 2011

Forest Service Planning DEIS
C/O Bear West Company
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RE: Grant Soil Water Conservation District Comments on the Forest Service Proposed Planning Rule and DEIS

To Whom It May Concern:

The Grant County Soil Water Conservation District (GSWCD) appreciates the opportunity to bring forward issues and submit comments concerning the Forest Service Proposed Planning Rule and DEIS. While the public has been invited to review and comment generally on the effect of the proposed planning rule and DEIS, Soil and Water Conservation Districts have the additional responsibility for protecting watershed health, water quality and the yield of a sustained supply of clean water for the public's use. We recognize this responsibility with the utmost of seriousness and feel we need to deal with proposed federal actions that affect local citizens in a thorough and serious manner. We are focusing on issues with the proposed planning rule that will greatly impede the ability of the GSWCD to carry out their responsibilities to the citizens of Southwest New Mexico and Southern Arizona who depend upon the waters of the Gila and Mimbres Rivers.

The US Forest Service's (FS) most important responsibility is found in its statutory authorization set forth by the U.S. Congress. While many of the subjects in the proposed rule are important, the proposed rule sidesteps the real task set forth by Congress for the Forest Service. That task is multiple use, and the sustainable production of goods and services for the American public. Please refer to the Organic Act, the Multiple-Use Sustained Yield Act, the National Forest Management Act, and the Federal Land Planning Management Acts for the correct statutory authorizations and limitations that the Forest Service needs to follow when setting its goals and objectives.

It is also important to point out that the National Environmental Policy Act, Section 102,(C)(v) states in part: *"……the comments and views of the appropriate Federal, state, and local agencies which are authorized to develop and enforce environmental standards, shall be made available to … [and accompany]the proposal through the existing agency review*

processes…" This is not an empty statement placed in the law frivolously. It was, and still is, the intent of Congress that local governments and their land managing entities are consulted, and their concerns are integrated into federal proposals; or the reasons why the local concerns are not included is clearly displayed in the NEPA analysis. The proposed new rule appears to disregard this very important language.

The GSWCD also wishes to express its disappointment with the obvious mission shift that has occurred within the FS. The proposed planning rule makes it very obvious that the FS is no longer the non political, professional agency that carried out a mission of multiple use and wise management of resources. It is obvious FS has become totally preservation oriented, in line with many of today's power and money driven environmental organizations. The total disregard for the needs of the American people along with the abandonment of the sustained production of natural resource through proper land resource management is very disheartening.

The use of unproven junk science and the level of political debauchery that is now practiced by the FS is shameful and a long way from the onetime non-partisan, highly professional, agency that led the nation in the sustainable production of timber, water, forage, wildlife habitat, and recreation opportunities. Over 100 years ago watershed conditions were severely impacted throughout the Western US. For a number of years prior to the1970's the Forest Service was the lead agency in finding and implementing solutions to the degraded watershed conditions. Starting in the 1970's the FS has slowly drifted from finding solutions and implementing a variety of appropriate land management practices to becoming the nation's environmental police force, whose mission is to greatly restrict resource production in order to protect the American people's land from use by the American public. The proposed FS Planning Rule is totally geared towards this protectionism.

The following statement is found in the Proposed Planning Rule *(Volume 76, Number 30, Federal Register Page 8487, Second paragraph)* is very telling of how the agency now sees it role in managing National Forest Lands. "*Requiring land management plans to be consistent with local government plans; however, would not allow the flexibility needed to address the diverse management needs on NFS lands and could hamper the Agency's ability to address regional and national interests on Federal lands."* This statement is a clear indication that the FS now sees itself as the keeper of the interest of the environment community who only recognizes preservation as the legitimate use of federal land. It is very clear that the FS now envisions itself as a superior national entity that no longer has any ties to "local governments."

It is clear the FS has some more comprehensive, diverse, management needs that are somehow above the level of "local governments" to be part of or capable of carrying out. It is evident in this statement that the FS feels that it is far above "local governments" and if local citizens are allowed to be involved with the management of the National Forest land they are not capable of being flexible and would only hamper "the Agency's" abilities. The FS in this statement clearly separates local planning and local needs from what they claim as their overriding mission, taking care of "regional and national interest". To be excluded from and considered to be some type of burden upon the elite FS "Planning" process is a slap in the face to many local (Western US) citizens who happen to live within or adjacent to National Forest lands.

The FS needs to withdraw the current divisive and condescending proposed planning rule and start over with a planning rule that considers the needs of local governments and citizens; the citizen who will be on the ground daily caring for their National Forest. Any FS planning process should start at the local community level and not be driven by the wealthy, powerful and politically connected environmental organizations.

The proposed FS Planning Rule and DEIS plays down and totally dismisses the importance of local governance in favor of the FS's new lofty role of protector of ecological sustainability, ecological diversity, and forest health. The reality of the situation is the FS or the wealthy environmental organizations do not have much "influence over the factors that impact ecological sustainability on NFS lands (ecological diversity, & forest health). The droughts, fires, insect infestations, wind storms, hail storms, and many other natural disturbances drive the dynamics of ecosystem much more than well managed use of the land by man. As is very evident in most National Parks and Wilderness Areas, the current preservation policies in place for these lands serve the emotional single self interest of a few and have been shown to not address the degraded vegetative and watershed conditions that are the legacy of the settlement of the west. It has been shown that a preservation policy only contributes to the continued degradation of water quality and soil loss as occurred in the last 20 years as the National Parks and Wilderness Areas are burning up in extremely intense fires with catastrophic results.

Again, the FS needs to withdraw the current misguided proposed planning rule and start over with a planning rule that addresses the management of National Forest land at the local level before worrying about and setting unachievable broad landscape level restrictions. Any FS planning process should start with the pieces (local issues and ecosystem) to build the whole (landscapes and populations). To dictate top down planning restrictions will never achieve Desired Future Conditions (DFC) because the people needed to accomplish the DFC's will never feel any ownership in the process.

The following statement is found in the DEIS for 2011 Planning Rule *(page 51, second paragraph)* again is very telling of how the agency now sees it role in managing National Forest Lands. *"Land management plans developed for each unit of the NFS are found at the bottom of this hierarchy of direction. Land management plans provide broad guidance to the Forest Service for project and activity decision making in a national forest, grassland, prairie, or other administrative unit. These plans reflect laws, regulations, and Agency policies. A plan does not authorize projects or activities, nor does it commit the Forest Service to take action; however, a plan can constrain the Agency from authorizing or carrying out actions. The NFMA requires that plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands be consistent with the applicable land management plan (16 U.S.C. 1604(i))."*

This statement clearly indicated that the proposed FS Planning Rule will be higher in the "hierarchy of direction" than Forest level Land Management Plans, which are higher in the "hierarchy of direction" than the plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands. This hierarchy of direction would be workable if the FS Planning Rule was limited to defining the process to be used to develop the Forest Plans instead of dictating constraints, not allowing the authorization of projects or activities in

Forest Plans and setting a national preservation agenda that impedes that ability of local level managers from making decisions base on local conditions and local needs. It is clear that the Proposed FS Planning Rule is an attempt to control the outcome of Forest Plans. It is very evident in the statement made on page 54, paragraph 1, of the DEIS that the new planning rule will take precedent over established FS policy. *"Therefore, planning rule provisions for specific land management plan guidance will influence a responsible official's discretion when approving a land management plan and subsequent site-specific management activities."*

The FS needs to withdraw the current misguided proposed planning rule and start over with a planning rule that provides for an orderly planning process and not a planning rule that redefines the mission of the FS.

The last issue with the DEIS is contained in the entire Dynamic Nature of Ecosystems treatise presented on pages 55 - 65 of the DEIS. It is very evident that this treatise is an attempt to describe and justify the FS mission shift from the production and appropriate use of resources to a preservation oriented mission where ecosystems are described as very complicated but dynamic units of land that only can be sustained if human disturbance is not tolerated. This whole new approach to FS land management totally dismisses the old mission of managing for the resources needed to support the human population and places the main objective of land management to sustaining the land in some type of "dynamic " status quo. This new mission fits well with the philosophy upon which wilderness management has been practiced for year across the nation.

The GSWCD is very concerned that the mission of managing for the resources needed to support the human population is not dropped from the mission of the FS. It is becoming obvious that most of the nation no longer recognizes or understands the value of the resources found on National Forest systems lands and the FS no longer addresses the need to provide clean water, wood fiber, forage, and wildlife habitat through developing and implementing the appropriate management practices. Providing resources for the American public once was the mission of the FS and a big part of the life blood of rural America.

Again, the FS needs to withdraw the current misguided proposed planning rule and start over with a planning rule that provides the resources needed to support the human population while ensuring that the potential of the land is not degraded.

Conclusion:

The FS needs to relook at the purpose for setting aside the Forest Reserves from the Public Domain and the historic role these lands played in the growth and development of the nation. While there has always been abuse and misuse of the land, the ecosystems that make up the Western US landscapes have proven to be very resilient and most of the resources produced on National Forest system lands are truly renewable natural resources.

Sincerely,

David McCauley

David McCauley, Chairman
Grant Soil & Water Conservation District

OT	S	RT	DT	EA	F	RI	CE

Attributes

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Comments

See Attachments

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Wisconsin County Forests Association

FRD-0892

Jane Severt, Executive Director
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May 16, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 E 500 S
Bountiful, UT 84010

Subject: Planning Rule Comments

Please accept the following comments from Wisconsin County Forests Association on the proposed Forest Service Planning Rule.

Wisconsin County Forests Association (WCFA) represents the 29 counties in Wisconsin with county forest lands established under state statutes § 28.10 and 28.11. Collectively these 29 counties manage over 2.36 million acres of forests, the largest public land base in Wisconsin. Like our national forests, Wisconsin's County Forests are managed for multiple use; optimum production of forest products together with recreational opportunities, wildlife, and watershed protection.

WCFA recognizes the need for updates to the existing planning rule for our national forests; much has changed in the arena of forest planning on public forests since 1982. Each of our 29 counties prepares a 15-year comprehensive forest plan. Our plans are amended and updated as needed throughout those 15 years. It is encouraging that plan amendments may become more viable under the proposed planning rule changes for national forests.

Documents describing the proposed changes indicate "planning under the proposed rule would be collaborative and science based". In addition, "the responsible official will be required to take the best available scientific information into account and provide opportunities for public participation through the planning process". We trust that "science" will include both biological and social aspects. As public land managers we fully understand the importance of using the best available biological science in the management of our natural resources. Yet, it is also imperative to consider the social needs and expectations of forest management. Here in northern Wisconsin many of our small, rural communities were established within close proximity to the Chequamegon-Nicolet National Forest (CNNF) due to the steady, reliable supply of forest products the forest promised to provide. The economic and social fabrics of many communities were founded on the assured ability of the CNNF to provide a source of raw material for forest industries. Decreased harvesting on our national forests has significantly contributed to the extreme economic hardships many of these communities are facing today.

We understand that the effects of these proposed planning rule changes will reach far beyond our small national forest here in Wisconsin but we are best able to comment on situations we are familiar with. The frustrations of many northern Wisconsin residents relative to the inability of the CNNF to carry out the objectives contained in the forest plan are very real and justified. We remain hopeful that an improved planning process will work towards some alleviation of our frustrations but still are fearful that even a revised planning rule will not lead to methods of allowing national forests to be managed according the their approved plan. The forest plan for the CNNF was developed over a long period of time and at a considerable cost to taxpayers, yet the forest is unable to abide by the Allowable Sales Quantity set in that plan.

It is stated in proposed rule changes documentation that the "Forest Service Planning Rule serves as the primary tool to ensure that Land Management Plans continuously provide desired ecosystem functions, contribute to social and economic sustainability, are rooted in the best available scientific information and are developed with public input and participation." All too often the social and economic sustainability of communities closest to the national forest are not considered enough in forest plans. We encourage any changes that could strengthen those aspects of planning.

We find it interesting that the significant issues used as the outline for discussion under all proposed alternatives contained in the DEIS; Ecosystem Restoration, Watershed Protection, Diversity of Plant and Animal Communities, Climate Change, Multiple Uses, Efficiency and Effectiveness, Transparency and Collaboration, and Coordination and Cooperation Beyond NFS Boundaries address the social and economic aspects in a minimal context. True, they are discussed under the multiple uses section but we feel those items have not received just representation when compared with the biological aspects contained in the identified "significant issues".

Upon review of the proposed alternatives we do acknowledge that the preferred alternative, Alternative A, indicates "a unit would be expected to contribute an element of stability to local economics." However, in our opinion the importance of this consideration is diminished in the DEIS and there is no clear definition of what "an element" refers to. That being said, of the choices presented it does appear that the preferred alternative, Alternative A, most closely aligns with our concept of multiple uses.

We are firmly against choosing and/or implementing Alternative D.

We urge the Forest Service not to overlook the valuable contributions that local communities and their residents can offer during the planning process. We appreciate the difficult task before you but firmly believe that the interests of local, rural communities and their residents are losing out to affluent urban interests when it comes to the management of our national forests.

Thank you for the opportunity to provide these comments.

Elroy Zemke

Elroy Zemke, President
Wisconsin County Forests Association

Jane F. Severt

Jane Severt, Executive Director
Wisconsin County Forests Association

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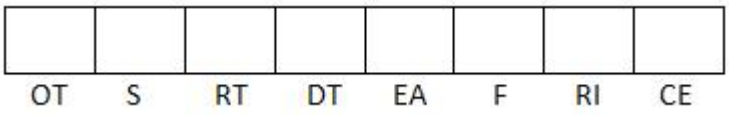

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See Attachments

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Name	TIM BEALS
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City	DOWNIEVILLE
State	CALIFORNIA
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Country	UNITED STATES
Created On	5/17/2011 3:04:00 AM

SIERRA COUNTY

Department of Public Works
P.O. Box 98
Downieville, California 95936
(530)289-3201 FAX (530) 289-2828

Tim H. Beals
Director

May 16, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S
Bountiful, Utah 84010

Thank you for the opportunity to submit comments on the proposed planning rule (76 Federal register 8480, February 14, 2011). Sierra County, containing a land ownership patter of 65% federal ownership under the jurisdiction of the National Forest System, considers the relationship with the United States Forest Service to be of paramount concern. Any planning decision involving federal land within the County must assess the impacts to the land and resource planning process of the County as well as the socio-economic well-being of its local communities.

First and foremost, Congress and the United States Department of Agriculture need to refresh its respective familiarity with the history of the birth of the National Forest System and the commitments made to rural areas of the nation in the form of sustainable jobs, infusion of revenue and commerce, and on going federal support to the rural, forested communities as an offset to large areas of land within local government boundaries dedicated to national forest uses. This commitment to local government has all but been abandoned and lost and the very health of the forests and the forested communities are at stake. The US Forest Service was established for three original purposes: to preserve the forest itself; to produce a continuous supply of timber to the American people; and, to ensure favorable conditions of water flow for people downstream of public land. The agency is failing at all three original goals. Federal use of public land needs to be more productive and entrepreneurial. Local forest communities, the related economies, and government need a sustainable supply of goods and services from federal land to provide sustainable jobs. Only when the original commitment to local government is re-established can be entertain productive discussions of the national forest planning process.

The forested areas of Sierra County and for that matter, the forested areas of the Western United States have never been more at risk. Science and experience clearly indicates that future fires

will be larger and more dangerous to human life and other forms of life unless thinning proceeds at a pace and scale commensurate with the problem. Many species are threatened and endangered by increasing forest density and catastrophic wildfire. Additionally, the Forest Service is not producing any timber nor biomass to reduce present stocking levels nor is the agency assuring or protecting good forest and watershed conditions for fish and wildlife, recreation, fire protection, grazing, tourism, and community protection. The very statement of the Regional Forester to treat 500,000 acres per year as a goal of the agency for fuel treatments is a supported condition but we have no confidence nor evidence of record that these treatments will proceed at the pace and scale stated and needed to maintain a healthy forest and watershed condition.

The current proposed planning rule abandons any reference to forest receipts and the need for economic sustainability of the forest counties and communities. This is significant and potentially catastrophic to local schools and to local government and the proposed planning rule must have a condition of providing and maintaining healthy commitments to forest counties in the form of investment, diversification, and sustainable jobs. This can only be maintained with a minimum commitment to restore appropriately funded forest receipts and a concurrent reinvestment in the forest communities and local government.

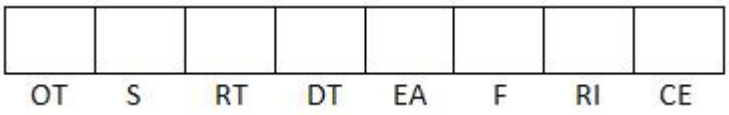
The role of the Forest Service in the rural and forested communities is understated in the proposed planning rule. The location of Forest Service facilities (Ranger Stations, Fire Stations, Campgrounds, and other like improvements) has a direct and significant impact on the rural communities and local government. These significant levels of concern can stem from a loss of coordination and communication between local government and the Forest Service and can be easily identified as a direct negative economic impact by the loss of commerce, professional payroll, interaction within a community, and contributions to the health of a rural community. Sierra County can be identified as the “poster child” of a forested county that suffered devastating social and economic impacts from the relocation of a Ranger Station to a location outside of the county to a remote, private parcel located outside of the boundary of the National Forest and into a more suburban setting. This one move and the concurrent loss of the Ranger Station from the Sierra County seat of government in Downieville has caused a complete breakdown of communication and coordination between the County and the Forest Service; has devastated the social and economic conditions of the west side of the County; and, has set the stage for a much overdue analysis of the environmental impacts from a planning decision of the Forest Service on local government. This single example among many others is the basis for a renewed need and emphasis on coordination that was a fundamental principle and goal of the National Forest Management Act. This Act requires coordination with the land and resource management processes of local government and the provisions of the 1982 planning rule (Section 219.7) need to continue to provide a framework for coordination through a renewed emphasis in the proposed planning rule. A provision must be built into the planning rule for direct and effective notice and participation of local government in the planning process of the Forest Service. This can only be accomplished by clearly requiring coordination by the Forest

Service that requires forest plans to be consistent with local land use plans and that requires notice and coordination at the earliest possible time in the process undertaken by the Forest service.

Thank you.

/s/ Original Signed and Mailed

Tim H. Beals
Director of Transportation



Attributes

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Delivery Type: W - Web-based submission
IP Address: 66.243.201.28
Form Letter:

Comments

See Attachments

Individual(s)

Organization Type	Individual
Organization	
Email Address	sshell@pewtrusts.org
Title	
Name	SUSAN SHELL
Address 1	83 SPRING HILL ROAD
Address 2	
City	MONTVILLE
State	MAINE
Zip	04941
Country	UNITED STATES
Created On	5/17/2011 11:05:00 AM
Organization Type	Business (Affected Owner/CEO, Chamber of Commerce)
Organization	AUGUSTUS BOVE HOUSE
Email Address	
Title	OWNERS
Name	DAVID & ARLENE STETSON
Address 1	
Address 2	
City	NAPLES
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 12:46:00 PM

Organization Type	Public Interest Group/Political Party
Organization	ENDANGERED SPECIES COALITION
Email Address	
Title	PROG DIR
Name	TARA THORNTON
Address 1	
Address 2	
City	LITCHFIELD
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 12:46:00 PM
Organization Type	Business (Affected Owner/CEO, Chamber of Commerce)
Organization	GREEN STORE
Email Address	
Title	OWNER
Name	ELLIE DANIELS
Address 1	
Address 2	
City	BELFAST
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 12:46:00 PM
Organization Type	Public Interest Group/Political Party
Organization	MAINE AUDUBON
Email Address	
Title	EXEC DIR
Name	TED KOFFMAN
Address 1	
Address 2	
City	FALMOUTH
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 12:47:00 PM
Organization Type	Public Interest Group/Political Party
Organization	MAINE FARMLAND TRUST

Email Address	
Title	EXEC DIR
Name	JOHN PIOTTI
Address 1	
Address 2	
City	BELFAST
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 12:47:00 PM
Organization Type	Public Interest Group/Political Party
Organization	MAINE TROUT UNLIMITED COUNCIL
Email Address	
Title	PRES
Name	GREG PONTE
Address 1	
Address 2	
City	WEST GARDINER
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 12:48:00 PM
Organization Type	Public Interest Group/Political Party
Organization	MERRYMEETING AUDUBON SOCIETY
Email Address	
Title	PRES
Name	TED ALLEN
Address 1	
Address 2	
City	BRUNSWICK
State	MAINE
Zip	
Country	UNITED STATES
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Organization	PORTLAND TRAILS
Email Address	
Title	EXEC DIR

Name	NAN CUMMING
Address 1	
Address 2	
City	PORTLAND
State	MAINE
Zip	
Country	UNITED STATES
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Organization	RESTORE THE NORTH WOODS
Email Address	
Title	MAINE DIR
Name	JYM ST PIERRE
Address 1	
Address 2	
City	HALLOWELL
State	MAINE
Zip	
Country	UNITED STATES
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Organization Type	Public Interest Group/Political Party
Organization	WILDLIFE ALLIANCE OF MAINE
Email Address	
Title	EXEC DIR
Name	DARYL DEJOY
Address 1	
Address 2	
City	BANGOR
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 12:49:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	PROF OF ECOLOGY
Name	AMY ARNETT PH D
Address 1	UNITY COLLEGE

Address 2	
City	UNITY
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 12:55:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	PROF OF BIOLOGY
Name	DR DREW BARTON
Address 1	UNIV OF MAINE AT FARMINGTON
Address 2	
City	FARMINGTON
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 12:55:00 PM
Organization Type	State Government Agency/Elected Official
Organization	MAINE HOUSE OF REPS DIST 148
Email Address	
Title	REP
Name	ROBERTA B BEAVERS
Address 1	
Address 2	
City	SOUTH BERWICK
State	MAINE
Zip	
Country	UNITED STATES
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Organization	MAINE HOUSE OF REPS DIST 67
Email Address	
Title	REP
Name	SETH BERRY
Address 1	
Address 2	
City	BOWDOINHAM

State	MAINE
Zip	
Country	UNITED STATES
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Organization Type	State Government Agency/Elected Official
Organization	MAINE HOUSE OF REPS DIST 142
Email Address	
Title	REP
Name	ANDREA BOLAND
Address 1	
Address 2	
City	SANFORD
State	MAINE
Zip	
Country	UNITED STATES
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Organization Type	State Government Agency/Elected Official
Organization	MAINE HOUSE OF REPS DIST 72
Email Address	
Title	REP
Name	MICHAEL CAREY
Address 1	
Address 2	
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State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 12:58:00 PM
Organization Type	State Government Agency/Elected Official
Organization	MAINE HOUSE OF REPS DIST 137
Email Address	
Title	REP
Name	ALAN CASAVANT
Address 1	
Address 2	
City	BIDDEFORD
State	MAINE
Zip	

Country	UNITED STATES
Created On	5/26/2011 12:59:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	PROF OF ENVIRONMENTAL STUDIES
Name	DAVID H FIRMAGE
Address 1	COLBY COLLEGE
Address 2	
City	WATERVILLE
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:03:00 PM
Organization Type	Public Interest Group/Political Party
Organization	CHEWONKI FOUNDATION
Email Address	
Title	PRESIDENT EMERITUS
Name	W DONALD HUDSON JR PH D
Address 1	
Address 2	
City	ARROWSIC
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:05:00 PM
Organization Type	State Government Agency/Elected Official
Organization	MAINE HOUSE OF REPS DIST 107
Email Address	
Title	REP
Name	MELISSA WALSH INNES
Address 1	
Address 2	
City	YARMOUTH
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:05:00 PM

Organization Type	State Government Agency/Elected Official
Organization	MAINE HOUSE OF REPS DIST 65
Email Address	
Title	REP
Name	PETER KENT
Address 1	
Address 2	
City	WOOLWICH
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:06:00 PM
Organization Type	State Government Agency/Elected Official
Organization	MAINE HOUSE OF REPS DIST 61
Email Address	
Title	REP
Name	BRUCE MACDONALD
Address 1	
Address 2	
City	BOOTHBAY
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:06:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	
Name	JOHN PIOTTI
Address 1	
Address 2	
City	UNITY
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:07:00 PM
Organization Type	State Government Agency/Elected Official
Organization	MAINE HOUSE OF REPS DIST 130

Email Address	
Title	REP
Name	LINDA SANDBORN
Address 1	
Address 2	
City	GORHAM
State	MAINE
Zip	
Country	UNITED STATES
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Organization	MAINE HOUSE OF REPS DIST 79
Email Address	
Title	REP
Name	SHARON ANGLIN TREAT
Address 1	
Address 2	
City	HALLOWELL
State	MAINE
Zip	
Country	UNITED STATES
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Organization Type	State Government Agency/Elected Official
Organization	MAINE HOUSE OF REPS DIST 46
Email Address	
Title	REP
Name	JOAN WELSH
Address 1	
Address 2	
City	ROCKPORT
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:08:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	

Name	DR HERB WILSON
Address 1	COLBY COLLEGE
Address 2	DEPT OF BIOLOGY
City	WATERVILLE
State	MAINE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:08:00 PM
Organization Type	Public Interest Group/Political Party
Organization	ANIMAL FRIENDLY SOLUTIONS
Email Address	
Title	
Name	SUZANNE FOURNIER
Address 1	
Address 2	
City	MILFORD
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:09:00 PM
Organization Type	Business (Affected Owner/CEO, Chamber of Commerce)
Organization	BONAFIDE GREEN GOODS LLC
Email Address	
Title	OWNER
Name	DEBORAH DEMOULPIED
Address 1	
Address 2	
City	CONCORN
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
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Organization Type	Business (Affected Owner/CEO, Chamber of Commerce)
Organization	CAFE INDIGO LLC
Email Address	
Title	OWNER
Name	PATTI DANN
Address 1	

Address 2	
City	CONCORD
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:09:00 PM
Organization Type	Public Interest Group/Political Party
Organization	CITIZENS FOR A FUTURE NEW HAMPSHIRE
Email Address	
Title	PRES
Name	DEREK OWEN
Address 1	
Address 2	
City	HOPKINTON
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
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Organization Type	Public Interest Group/Political Party
Organization	CITIZENS FOR SLUDGE-FREE LAND
Email Address	
Title	PRES
Name	CAROLINE SNYDER
Address 1	
Address 2	
City	N SANDWHICH
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:10:00 PM
Organization Type	Business (Affected Owner/CEO, Chamber of Commerce)
Organization	CONCORD CAMERA STORE
Email Address	
Title	OWNER
Name	MICHAEL ST GERMAIN
Address 1	
Address 2	
City	CONCORD

State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
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Organization Type	Business (Affected Owner/CEO, Chamber of Commerce)
Organization	COPPERTOPPE INN & RETREAT CENTER
Email Address	
Title	OWNER
Name	SHEILA ORANCH
Address 1	
Address 2	
City	HEBRON
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:11:00 PM
Organization Type	Business (Affected Owner/CEO, Chamber of Commerce)
Organization	
Email Address	
Title	
Name	RICK VANDEPOLL PH D
Address 1	
Address 2	
City	CENTER SANDWHICH
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:12:00 PM
Organization Type	Public Interest Group/Political Party
Organization	GREEN ALLIANCE
Email Address	
Title	DIR
Name	SARAH BROWN
Address 1	
Address 2	
City	PORTSMOUTH
State	NEW HAMPSHIRE
Zip	

Country	UNITED STATES
Created On	5/26/2011 1:12:00 PM
Organization Type	Business (Affected Owner/CEO, Chamber of Commerce)
Organization	HANDFORD ENTERPRISES
Email Address	
Title	
Name	J ALBERT HANDFORD
Address 1	
Address 2	
City	CENTER SANDWHICH
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:12:00 PM
Organization Type	Business (Affected Owner/CEO, Chamber of Commerce)
Organization	MADE ON EARTH
Email Address	
Title	OWNER
Name	MARY BETH BRYANT
Address 1	
Address 2	
City	WOLFEBORO
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:13:00 PM
Organization Type	Public Interest Group/Political Party
Organization	NEW HAMPSHIRE ANIMAL RIGHTS LEAGUE INC
Email Address	
Title	PRES
Name	LINDA DIONNE
Address 1	
Address 2	
City	CONCORD
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:13:00 PM

Organization Type	Other Organization
Organization	NH CONFERENCE OF THE UNITED CHURCH OF CHRIST SPIRITUALITY & EARTH STEWARDSHIP CMMTE
Email Address	
Title	CHAIR
Name	REV ROGER BURKHART
Address 1	
Address 2	
City	PEMBROKE
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:14:00 PM
Organization Type	Public Interest Group/Political Party
Organization	NEW HAMPSHIRE PEACE ACTION
Email Address	
Title	EXEC DIR
Name	WILL HOPKINS
Address 1	
Address 2	
City	CONCORD
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:14:00 PM
Organization Type	Business (Affected Owner/CEO, Chamber of Commerce)
Organization	S&W SPORTS
Email Address	
Title	OWNER
Name	TIM FARMER
Address 1	
Address 2	
City	CONCORD
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:15:00 PM
Organization Type	Individual
Organization	

Email Address	
Title	PROF OF ENVIRONMENTAL CONSERVATION
Name	JOHN E CARROLL
Address 1	UNIV OF NEW HAMPSHIRE
Address 2	DEPT OF NATURAL RESOURCES & ENVIRONMENT
City	DURHAM
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:15:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	
Name	MARTHA FULLER CLARK
Address 1	
Address 2	
City	PORTSMOUTH
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:16:00 PM
Organization Type	State Government Agency/Elected Official
Organization	NEW HAMPSHIRE HOUSE OF REPS
Email Address	
Title	REP
Name	KENNETH GOULD
Address 1	
Address 2	
City	DERRY
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:16:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	PROF EMERITUS

Name	DR JOHN W LAMPERTI
Address 1	
Address 2	
City	HANOVER
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:16:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	PROF OF ENVIRONMENTAL SCIENCE
Name	MARK MITCH
Address 1	NEW ENGLAND COLLEGE
Address 2	
City	HENNIKER
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:17:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	DIR OFFICE FOR SUSTAINABILITY
Name	ROY MORRISON
Address 1	SOUTHERN NEW HAMPSHIRE UNIV
Address 2	
City	MANCHESTER
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:17:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	
Name	SUSI NORD
Address 1	

Address 2	
City	CANDIA
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:17:00 PM
Organization Type	State Government Agency/Elected Official
Organization	NEW HAMPSHIRE HOUSE OF REPS MINORITY LEADER
Email Address	
Title	REP
Name	TERIE NORELLI
Address 1	
Address 2	
City	PORTSMOUTH
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:18:00 PM
Organization Type	State Government Agency/Elected Official
Organization	NEW HAMPSHIRE HOUSE OF REPS
Email Address	
Title	REP
Name	DEREK OWEN
Address 1	
Address 2	
City	HOPKINTON
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:18:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	
Name	DEBORAH B PIGNATELI
Address 1	
Address 2	
City	NASHUA

State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:19:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	PROF & CHAIR DEPT OF NATURAL SCIENCES
Name	BEN STEELE
Address 1	COLBY-SAWYER COLLEGE
Address 2	
City	NEW LONDON
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:19:00 PM
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Organization	NEW HAMPSHIRE HOUSE OF REPS DIST 3
Email Address	
Title	REP
Name	CHARLES WEED PH D
Address 1	
Address 2	
City	KEENE
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:20:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	
Name	REV DR MARY E WESTFALL WESTFALL
Address 1	
Address 2	
City	DURHAM
State	NEW HAMPSHIRE
Zip	

Country	UNITED STATES
Created On	5/26/2011 1:20:00 PM
Organization Type	Individual
Organization	
Email Address	
Title	PROF OF PSYCHOLOGY
Name	WILLIAM R WOODWARD PH D
Address 1	UNIV OF NEW HAMPSHIRE
Address 2	
City	DURHAM
State	NEW HAMPSHIRE
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:21:00 PM
Organization Type	Public Interest Group/Political Party
Organization	CENTER FOR BIOLOGICAL DIVERSITY NE FIELD OFC
Email Address	
Title	CONSERVATION ADVOCATE
Name	MOLLIE MATTESON
Address 1	
Address 2	
City	RICHMOND
State	VERMONT
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:21:00 PM
Organization Type	Business (Affected Owner/CEO, Chamber of Commerce)
Organization	ELMORE MOUNTAIN FARM
Email Address	
Title	OWNERS
Name	BUNNY & PETER MERRILL
Address 1	
Address 2	
City	MORRISVILLE
State	VERMONT
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:21:00 PM

Organization Type	Public Interest Group/Political Party
Organization	HEARTBEET LIFESHARING
Email Address	
Title	EXEC DIR
Name	HANNAH SCHWARTZ
Address 1	
Address 2	
City	HARDWICK
State	VERMONT
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:23:00 PM
Organization Type	Business (Affected Owner/CEO, Chamber of Commerce)
Organization	RED HEN BAKERY
Email Address	
Title	OWNERS
Name	RANDY GEORGE & LIZA CAIN
Address 1	
Address 2	
City	MIDDLESEX
State	VERMONT
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:23:00 PM
Organization Type	Public Interest Group/Political Party
Organization	WATER 1ST
Email Address	
Title	PRINCIPAL
Name	HUGO LIEPMANN
Address 1	
Address 2	
City	RANDOLPH CENTER
State	VERMONT
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:24:00 PM
Organization Type	Individual
Organization	

Email Address	
Title	
Name	TOM GILBERT
Address 1	
Address 2	
City	STANNARD
State	VERMONT
Zip	
Country	UNITED STATES
Created On	5/26/2011 1:24:00 PM

May 16, 2011

Dear Secretary Vilsack,

The sweeping new national forest management rule that was recently released by the Obama administration provides a unique opportunity to continue the conservation legacy of President Theodore Roosevelt who had the foresight to protect America's national forests and grasslands more than a century ago —which now include over 1.1 million acres in the White Mountain and Green Mountain National Forests in Maine, New Hampshire, and Vermont. Unfortunately, the draft rule fails to create strong protections for these treasured lands, and is a missed opportunity for the Obama administration to establish its own conservation legacy.

As currently proposed, this new forest policy affords fewer protections for our national forests than the regulations issued by President Ronald Reagan in 1982 and currently in use. Instead, the new regulations should require protections for healthy fish and wildlife populations and their habitats. The regulations must also secure safe, clean water by creating mandatory management standards to protect and restore streams, rivers, and watersheds. Finally, the Obama administration must uphold its commitment to sound science by using the best available science at all levels of the planning rule.

Our national forests and the wildlife and water resources they support face unprecedented threats and challenges in the 21st century. These public lands provide vital fish and wildlife habitat, clean drinking water, and world-class outdoor recreation opportunities for millions—and they're one of our best tools for combating climate change.

Here in northern New England, the White Mountains and Green Mountains contain some of the most spectacular country in the northeast—including Mount Washington, New England's highest peak. They provide habitat for fish and wildlife as well as contributing to tourism and recreation opportunities. Hundreds of businesses, such as hunting and fishing suppliers, sporting camps, and outdoor retailers derive real economic benefit, such as jobs, from these national forests.

We look forward to working with you to develop a new framework for managing our national forests in northern New England. Protecting them is a legacy that President Obama and the American people cannot afford to lose.

Sincerely,

Maine

1. David and Arlene Stetson, Owners
   Augustus Bove House
   Naples, Maine

2. Tara Thornton, Program Director
   Endangered Species Coalition
   Litchfield, Maine

3. Ellie Daniels, Owner
   The Green Store
   Belfast, Maine

4. Ted Koffman, Executive Director
   Maine Audubon
   Falmouth, Maine

5. John Piotti, Executive Director
   Maine Farmland Trust
   Belfast, Maine

6. Greg Ponte, President
   Maine Trout Unlimited Council
   West Gardiner, Maine

7. Ted Allen, President
   Merrymeeting Audubon Society
   Brunswick, Maine

8. Nan Cumming, Executive Director
   Portland Trails
   Portland, Maine

9. Jym St. Pierre, Maine Director
   RESTORE: The North Woods
   Hallowell, Maine

10. Daryl DeJoy, Executive Director
    Wildlife Alliance of Maine
    Bangor, Maine

11. Amy Arnett, Ph.D., Professor of Ecology
    Unity College
    Unity, Maine

12. Dr. Drew Barton
    Professor of Biology
    University of Maine at Farmington

Farmington, Maine

13. Rep. Roberta B. Beavers
Maine House of Representatives, District 148
South Berwick, Maine

14. Rep. Seth Berry
Maine House of Representatives, District 67
Bowdoinham, Maine

15. Rep. Andrea Boland
Maine House of Representatives, District 142
Sanford, Maine

16. Rep. Michael Carey
Maine House of Representatives, District 72
Lewiston, Maine

17. **Rep. Alan Casavant**
Maine House of Representatives, District 137
Biddeford, Maine

18. David H. Firmage
Clara C. Piper Professor of Environmental Studies, emeritus
Colby College
Waterville, Maine

19. W. Donald Hudson, Jr., Ph.D.
President Emeritus, Chewonki Foundation
Arrowsic, Maine

20. Rep. Melissa Walsh Innes
Maine House of Representatives, District 107
Yarmouth, Maine

21. Rep. Peter Kent
Maine House of Representatives, District 65
Woolwich, Maine

22. Rep. Bruce MacDonald
Maine House of Representatives, District 61
Boothbay, Maine

23. The Honorable John Piotti, Former State Representative

Former House Majority Leader and Chair of Joint Standing Committee on Agriculture, Conservation, & Forestry
Unity, Maine

24. Rep. Linda Sanborn
Maine House of Representatives, District 130
Gorham, Maine

25. Rep. Sharon Anglin Treat
Maine House of Representatives, District 79
Hallowell, Maine

26. Rep. Joan Welsh
Maine House of Representatives, District 46
Rockport, Maine

27. Dr. Herb Wilson
Department of Biology
Colby College
Waterville, Maine

New Hampshire

28. Suzanne Fournier
Animal Friendly Solutions
Milford, NH

29. Deborah deMoulpied, Owner
BonaFide Green Goods, LLC
Concord, NH

30. Patti Dann, Owner
Café Indigo, LLC
Concord, NH

31. Derek Owen, President
Citizens for a Future New Hampshire
Hopkinton, NH

32. Caroline Snyder President
Citizens for Sludge-Free Land
N. Sandwich, NH

33. Michael St. Germain, Owner
Concord Camera Store

Concord, NH

34. Sheila Oranch, Owner
Coppertoppe Inn and Retreat Center
Hebron, NH

35. Rick Van de Poll, PhD
Ecosystem Management Consultants
Center Sandwich, NH

36. Sarah Brown, Director
Green Alliance
Portsmouth, NH
Represents over 100 businesses in NH and Maine

37. J. Albert Handford
Handford Enterprises
Center Sandwich, NH

38. **Mary Beth Bryant, Owner**
Made On Earth
Wolfeboro, NH

39. Linda Dionne, President
New Hampshire Animal Rights League, Inc.
Concord, NH

40. Rev Roger Burkhart, Chair
New Hampshire Conference of the United Church of Christ
Spirituality and Earth Stewardship Committee
Pembroke, NH

41. Will Hopkins, Executive Director
New Hampshire Peace Action
Concord, NH

42. Tim Farmer, Owner
S&W Sports (Summer & Winter)
Concord, NH

43. John E. Carroll, Professor of Environmental Conservation

University of New Hampshire

Department of Natural Resources and Environment

University of New Hampshire

Durham, NH

44. The Honorable Martha Fuller Clark
Former Chair, Senate Energy and Natural Resource Committee
Portsmouth, NH

45. Rep. Kenneth Gould
New Hampshire House of Representatives
Derry, NH

46. Dr. John W. Lamperti, Professor Emeritus
Dartmouth College
Hanover, NH

47. Mark Mitch, Associate Professor of Environmental Science
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48. Roy Morrison
Director, Office for Sustainability
Southern New Hampshire University
Manchester, NH

49. The Honorable Susi Nord
Former New Hampshire State Representative
Candia, NH

50. Rep. Terie Norelli
New Hampshire House of Representatives Minority Leader
Portsmouth, NH

51. Rep. Derek Owen
Environment and Agriculture Committee
NH House of Representatives
Hopkinton, NH

52. Debora B. Pignatelli
Former New Hampshire Governor's Councilor

Nashua, NH

53. Ben Steele
Professor and Chair, Department of Natural Sciences
Colby-Sawyer College
New London, NH

54. Rep. Charles Weed, Ph.D.
NH House of Representatives, District 3
Cheshire County
Professor of Political Science, Keene State College
Keene, NH

55. The Rev. Dr. Mary E. Westfall, Senior Minister
Community Church of Durham, UCC
Durham, NH

56. William R. Woodward, Ph.D.
Professor of Psychology
University of New Hampshire
Durham, NH

Vermont

57. Mollie Matteson, Conservation Advocate
Center for Biological Diversity, Northeast Field Office
Richmond, VT

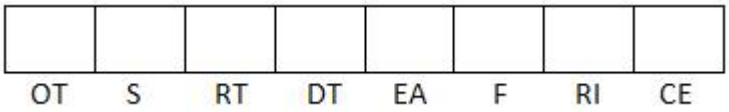
58. Bunny and Peter Merrill, Owners
Elmore Mountain Farm
Morrisville, Vermont

59. Hannah Schwartz, Executive Director
Heartbeet Lifesharing
Hardwick, Vermont

60. Randy George and Liza Cain, Owners
Red Hen Bakery
Middlesex, Vermont

61. Hugo Liepmann, Principal
Water 1st!
Past President, Vermont Coverts
Randolph Center, VT

62. Tom Gilbert
Executive Director, Highfields Center for Composting
Stannard, Vermont
(signing as individual, not on behalf of Highfields)



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Response Type: 2 - Form or Letter Generator
Delivery Type: W - Web-based submission
IP Address: 209.233.128.103
Form Letter: 9

Comments

FORM 9

See Attachments

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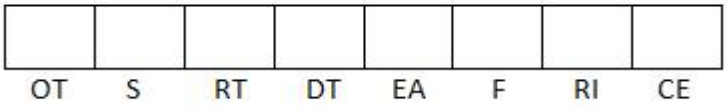

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Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 168.178.42.109
Form Letter:

Comments

The Utah Division of Drinking Water applauds and supports the effort to address drinking water source protection in the proposed rule. Specifically, the effort to "maintain, protect and restore public water supplies..." on NFS lands will be of great benefit to water suppliers in Utah, where NFS lands form the watersheds and source protection areas for multiple municipal water supplies, serving water systems of all sizes. The protection of these supplies provides a degree of assurance to the citizens of Utah that they will be able to continue to enjoy clean drinking water for generations to come.

Individual(s)

Organization Type	State Government Agency/Elected Official
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Attributes

Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 207.156.47.5
Form Letter:

Comments

May 10, 2011
Forest Service Planning DEIS
C/O Bear West Company
172 E 500 S
Bountiful, UT84010

RE: National Forest System Land Management Planning: Proposed Rule (Federal Register Volume 76, No 30, February 14, 2011, 8480-8528)

Dear Forest Service Planning Team:

The Division of Hunting and Game Management and Division of Habitat and Species Conservation of the Florida Fish and Wildlife Conservation Commission (FWC) have coordinated agency review of the reference document, and provide the following comments and recommendations.
Background

The FWC is the state fish and wildlife agency in Florida and has a long history of close cooperation and partnership with the United States Forest Service (USFS). The three National Forests in Florida are established as state Wildlife Management Areas (WMAs), totaling 1,234,310 acres. The FWC provides substantial Law Enforcement, wildlife and fisheries management assistance, and cooperative financial support on these areas. In addition, the FWC provides regulations for hunting, fishing and protection of fish and wildlife resource on the National Forests in Florida. We are pleased to have the opportunity to comment on this important proposed land management planning rule.

Scope of Project

The U.S. Department of Agriculture (USDA) is proposing a new planning rule to guide land and resource management planning for all units of the National Forest System (NFS) under the National Forest Management Act of 1976. The proposed rule sets forth process and content requirements to guide the development, amendment, and revision of land management plans to maintain, protect, and restore NFS lands while providing for sustainable multiple uses, including ecosystem services, so that NFS lands continuously provide ecosystem functions and contribute to social and economic sustainability. Planning under the proposed rule would be collaborative and science-based with the responsible official (in most cases the local USFS Forest Supervisor) required to take the best available scientific information into account and provide opportunities for public participation throughout the planning process. The NFS held a series of nationwide videoconferences to better explain the proposed rule to the public, stakeholders and partnering agencies. Staff from FWC participated in this process and was grateful for that opportunity.

Potentially Affected Resources

This proposed rule would potentially impact the management of fish and wildlife resources and the habitat upon which they depend on over one million acres of lands in Florida that are owned and managed by the USFS. These lands contain plant and animal life that are of great interest to the people of Florida and the United States of

America. From a landscape ecosystem perspective, these resources are critical to the FWC mission of Managing fish and wildlife resources for their long-term well-being and the benefit of people.

Issues and Recommendations

We support the concept of adaptive management and engaging public and agency partner's participation early and throughout the planning process. The proposed rule outlines a three step planning process, which includes: 1) Assessment and data gathering; 2) Development, revision and amendment of the plan; and 3) Monitoring. This appears to have been well thought out and we support this approach. We are very supportive of a monitoring program that allows for evaluation, learning and adaptation of management actions. We are concerned that the bar for monitoring and reporting may be set too high, which could result in unnecessary negative impacts to other program areas, due to an inability of the unit to meet monitoring and reporting requirements.

Ecosystem restoration is a priority in the proposed planning rule. Restoring ecological integrity and function on a broad landscape scale (landscape linkages and significant ecological corridors for fish and wildlife resources) is a stated goal. This proposed rule is proactive and the adaptive management requirements support maintaining and restoring the structure, function, composition and connectivity of ecosystems. Active partnerships with state fish and wildlife agencies, other land management partners and the private sector is critical for obtaining this goal and we suggest their roles and participation be more clearly defined.

The proposed rule requires consideration of "habitat conditions for wildlife, fish, and plants commonly enjoyed and used by the public, such as species that are hunted, fished, trapped, gathered, observed, or needed for subsistence." We suggest that hunting and trapping under certain circumstances is not only recreation or a food resource, but a management tool necessary to ensure the sustainability of some ecological communities. We suggest that this be included the role and authority of state fish and wildlife agencies in managing and regulating hunting and fishing be codified in the proposed rule.

We agree that the planning process should be socially inclusive, in order to reflect local perspectives, cultural considerations, and considerations of neighboring landowners who may be affected by planning decisions. Involving local, county and tribal governments in the planning process should aid in capturing both social and cultural considerations that will ultimately yield greater public support. Although we support local accountable decision making, there is some concern that the proposed rule may put too much authority in the hands of one "responsible official" without adequate recourse and oversight from a state-wide or nation-wide perspective. Better defining the role of the responsible official in this document may help to alleviate these concerns.

Section 219.10 Multiple Uses, should include additional language to more accurately describe management protocols for designation and recommendation of wilderness areas. Wilderness designation can significantly impact the ability to manage fish and wildlife resources, potentially resulting in net losses to conservation of trust species. These designations also directly impact the type of recreational opportunities that are possible. To that end, we recommend adding language that parallels the statute affirming that designated wilderness shall be administered for the use and enjoyment of the American people in such a manner as will leave them unimpaired for future use and enjoyment as wilderness.

Finally, we would suggest that the role and authorities of the state fish and wildlife agencies for the sustainable conservation of fish and wildlife on units of the NFS be codified in the proposed rule. A planning rule that acknowledges the state fish and wildlife agencies as statutory partners will help guide the development of land management plans that protect and restore the full range of fish and wildlife habitats, and also ensure their connections with adjacent or downstream habitats on public and private lands. This type of integrated and landscape scale approach to conservation is consistent with NFS philosophy and will help ensure that fish and wildlife populations survive landscape level impacts such as a changing climate.

Summary

In general, the FWC supports the proposed rule and applauds the USDA and NFS for soliciting our review and moving forward with this endeavor. We hope our issues and recommendations will be taken under consideration and reflected in the final document.

Thank you for the opportunity to comment on the Proposed Rule. If the USDA or NFS wishes to engage our agency directly regarding our suggestions, please contact Dr. Don Coyner at phone 352-732-1760 (email: don.coyner@myfwc.com) and I will be glad to make the appropriate arrangements.

Don Coyner, Ph.D.
Section Leader, Public Hunting Areas
Division of Hunting & Game Management
1515 E. Silver Springs Blvd. Suite 106
Ocala, FL 34470

Office: 352-732-1760
FAX: 352-732-1366

Our hunting and fishing heritage depends on you.
Introduce a child, spouse or friend to the great outdoors!

Individual(s)

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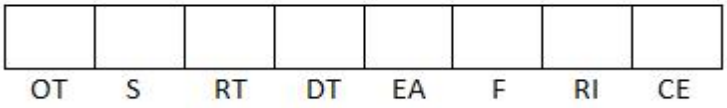

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Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 76.236.27.151
Form Letter:

Comments

Hi, this document may be the most important piece of legislation to come in the future for many years where recreation on our Natiional Forest is concerned. As a commissioner listening to a mass of people or as an individual with children and grand children I implore you to take a closer look at what you are leaving out of your Forest plan when it comes to recreation, be it fishing, hunting, or simply enjoying the forest. Habitat which is so crucial for all species survival is addressed in such loose terms that in this age invites lawsuits that will tie up the Forest service personnel and money that needs to be going to a better use.
Where are the specifics for our deer herds and fisheries. My dad taught me to hunt and fish and I have enjoyed these things all of my life, as have my children, please give the future children a chance to enjoy them too.
PLEASE GIVE REREATIONAL USES MORE OF a PRIORITY.

THANK YOU

STEVE TANNER

Individual(s)

Organization Type	County Government Agency/Elected Official
Organization	GLENN CNTY FISH & GAME COMMISSION
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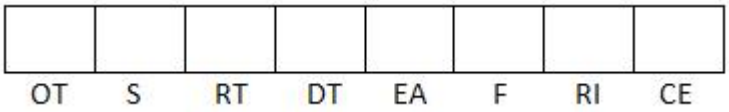

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Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 97.73.64.173
Form Letter:

Comments

The Western North Carolina Public Lands Council serves as a bridge between the managers of the public lands located in Western North Carolina and the elected officials, business owners, tourists associations, and interested citizens in our communities. In this role we have come to appreciate the historical, economic, aesthetic, and ecological importance of public lands to our communities. .

On behalf of the Western North Carolina Public Lands Council, I thank you for the opportunity to comment on the proposed National Forest Management Planning Rule and the DEIS.

The proposed rule and the Draft DEIS clearly reflect a sincere effort to incorporate the multiple points of view and competing interests that are inherent to the multiple use concept of NFS management.

The Council supports the views most closely represented by the language of DEIS Draft Plan D but that language and the language in the proposed planning rule is still not strong enough. Therefore, our specific concerns are listed below.
Wildlife Need Cohesive Regional Protection, Not Ad Hoc Project Decisions
• The draft rule abandons the requirement to ensure the viability of all species across the Forest, reserving that protection for a subset of species of conservation concern. The viability requirement must extend to all species.
• The process for identifying species of conservation concern is vague. Additionally, the threshold is too high and too prone to challenge by groups opposed to responsible conservation measures.
• The new planning proposal abandons the mandate that species are "well distributed" across the forest, reducing expectations so far that a subpopulation somewhere "within the plan area" is acceptable. Wildlife, especially the imperiled wildlife designated as species of concern, are more resilient in the face of climate change and other threats when their populations are well distributed. Restore the "well distributed" requirement to the rule.
• The draft rule recognizes that there are factors beyond the agency's control which can undermine the viability of a species across the forest. Where such factors exist, the rule requires only that the agency protect viability to the "extent practicable." The rule lumps all imperiled species and all threats into the same category to which efforts are required only to the extent practicable. There will be species, however, for which Forest Service property is the last, best population stronghold in a shifting landscape. Those species warrant exceptional effort. At the other extreme, some species will be so imperiled by threats beyond the agency's control that the steps needed to maintain a viable population on the forest is neither technically feasible nor reasonable. The rule should adopt a tiered approach to assessing and addressing the viability impacts of threats outside the forest.
• Forest plans must set forth processes and standards for distinguishing between healthy ecosystems which must be maintained and degraded ecosystems which must be restored, not merely maintained.
• The draft rule misses an opportunity to foster regional coordination for imperiled species facing regional-scale threats like climate change. Although the rule directs forest plans to consider their regional context, no provision is made for the coordination of a regional plan, implemented through forest plans and project decisions, for the protection of imperiled species.
• The monitoring program established by the draft rule requires consideration of "focal species" which are responsive to changes in ecological conditions. The monitoring program and selection of focal species must build upon that plan-level analysis to provide ongoing information about the health of ecosystems reflected in the forest plan.
Forest Plans Must Set Robust Standards To Protect Water Quality And Watershed Health
The Council believes that additional protection is required to protect key watersheds and this is likely one of the

most important contributions the Forest Service can make to its neighbors in an all-lands approach to Forest Service management.
• The draft rule provides no structure for improving agency management of watersheds. This is particularly true in the Southeast where Forest Service property serves as the drinking watershed for many large metropolitan areas. The rule must be amended to include minimum buffers, special protection for exceptional watersheds, restoration of degraded watersheds, prohibitions on logging in erodible soils, and the rule must address roadless inventory and evaluation
• Protecting roadless areas is essential to providing for the recreation, watershed, fish and wildlife resources. When forest plans are developed or revised, all roadless areas (including currently inventoried roadless areas and any additional roadless areas identified in the forest planning process) should be identified, evaluated and considered for recommendation to Congress for wilderness designation. The new rule should make clear that the roadless area inventories and evaluations are a two-step process: first, an identification and inventory of roadless areas; and, second, an evaluation of those roadless areas for wilderness recommendation.
Foster Participation By The Public
• The draft rule provides a right to object only on those topics that were the subject of prior substantive comment. The rule allows only 30 days for the public to provide that comment, however, with no extension and no allowance for holidays or other events during the 30-day period. For plan amendments documented with an environmental assessment rather than full environmental impact statement, there is no requirement to provide the public with a draft EA to review during the 30-day comment period. Within the 30-day period, the interested public would not only have to divine the agency's intent from whatever documents it has chosen to share with them, but consult experts, prepare comments, and attach copies of any documents they wish to reference (incorporation by reference is disallowed) including studies and papers prepared by federal agencies or the Forest Service itself. The rule must be rewritten to create a meaningful opportunity for informed public comment.
• The draft rule currently provides only 30 days in which to file an objection to a final plan decision. Revise the rule to provide a more realistic timeline for the review of final plan decisions and filing of objections.
• It is critical that the planning rules and subsequent management plans be responsive to advances in scientific knowledge but insulated from the vagaries of political mood swings. The more prescriptive language of Draft Plan D increases the probability that this will happen but even stronger comprehensive and prescriptive language needs to be included in the rule and EIS alternative plans.

Again, thank you for this opportunity to comment on this work.

Sincerely
Maxine Arnold Dalton, PhD
Chair, WNC Public Lands Council

Individual(s)

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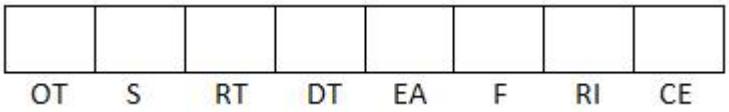

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Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 138.163.0.42
Form Letter:

Comments

Department of Defense Regional Environmental Coordination Office at Navy Region Southwest has coordinated the following two comments to be incorporated into the National Forest System Land Management Planning document. See coordinated language below:

1) "Department of Defense facilities or interests within the National Forest Service planning area and the Director of the Department of Defense (DoD) Energy Siting Clearinghouse, request early notification to coordinate and consult with the military during the earliest stages of permitting or authorization processes of renewable energy and/or associated energy infrastructure projects. This early coordination is to jointly analyze and mitigate any impacts to current and future military training, testing, and readiness missions including; Military Operating Areas (MOAs), Military Training Routes (MTRs), air space, radar surveillance, coastal, and ground access, when making any land use decisions on forest service property at the earliest possible time to minimize impacts to current and future military mission uses. Examples of land uses that could impact the military mission include, but are not limited to, recommendations for wilderness designation, habitat improvement projects, environmental restoration projects, public utility development (e.g., erection of cell phone towers, electrical transmission lines, wind energy towers and solar array towers), large mining development, recreational development (e.g., campgrounds, visitor centers), and land exchanges for the purpose of facilitating the preceding land uses."

For proposed energy development, it is critical that this notification and coordination occur at the earliest possible stage, i.e., when permits for energy testing are being considered by the forest service. This can help identify proposed energy projects which may impact current and future military operations before an applicant invests large amounts of money or time in a project. Early involvement by the military would alert an applicant when a project may be a concern to military operations and mission. It would also help to identify changes in a proposed project and/or mitigation which would minimize impacts to current and future military operations. This may include a reduction in the size of the project area or it may identify concerns relative to the placement of individual components of the project."

2) Please consider adding the following to Section 219.10 Multiple Uses: a discussion and requirement for addressing use and compatibility with military mission activities on an equal status as other described multiple uses. The rule talks to balancing recreation, wilderness, cultural and historical resources, timber requirements, etc. Please include consideration of military activities as well. See proposed language below:

"All land management plans should allow for early coordination with military when addressing land use and compatibility to support the testing, training, and readiness missions of the U.S. Department of Defense"

Individual(s)

Organization Type	Federal Agency/Elected Official
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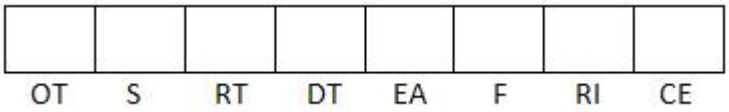

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Response Type: 1 - Letter
Delivery Type: W - Web-based submission
IP Address: 209.74.220.199
Form Letter:

Comments

Forest Service Planning DEIS
C/o Bear West Company
132 E 500 S
Bountiful, UT 84010
May 16, 2011

Comment on the 2011 draft Planning Rule:

I am a Commissioner in Skamania County which the Gifford Pinchot National Forest (GPNF) comprises more than 85%. It is my goal to re-establish resource management on the Gifford Pinchot National Forest. It is my contention that the GPNF has not been effectively managed for nearly 20 years, due largely to lack of accountability to the basic mission of our National Forest Service.

The new Planning Rule draft, unfortunately, does little to correct that problem. I agree with the new direction toward increased and required collaboration with the public on project planning. I agree that all relevant species must have some consideration within the process with respect to habitat needs. However, I do not find that the Rule(s) will increase accountability to your mission.

I disagree with the attempt to be 'all things to all people' all of the time, which is my characterization of the draft Rule. The simple facts are that: 1) choices between mutually exclusive outcomes have to be made in order to engage in management; 2) on any forest landscape, management activities can be organized to disrupt only a small portion of similar habitat; and 3) rules are promulgated to establish goals, process, and limits.

This draft Rule tries to preempt every objection, but the detailed elaboration simply serves to expand concerns. As the National Association of Forest Service Retirees put it: "... We believe that the overall content of the proposal is overly ambitious, overly optimistic, complex, costly, and promises much more than it can deliver. Rather than providing a simplified, streamlined process for developing and amending plans, I fear that the opposite will result." I agree. In fact I find that the time, money, and energy spent on crafting the fine details of this draft would have been better spent in actual project-level planning.

Thank you for your consideration and efforts to make the forest a valuable and healthy resource for Skamania County and beyond,

Bob Anderson
Skamania County Commissioner, District 3
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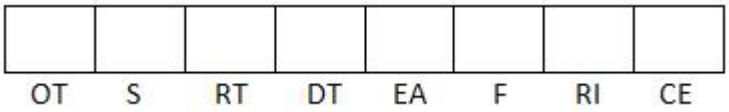

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Comments

Comments from North Carolina Department of Environment and Natural Resources, Office of Conservation, Planning, and Community Affairs

The Office of Conservation, Planning, and Community Affairs includes the Natural Heritage Program and DENR regional offices, and is responsible for addressing natural areas, biodiversity, and coordinating state environmental actions with local partners.

Following are our most important comments and greatest concerns about the draft planning rule:

219.4 Coordination: We support the provision for consultation with interested state, local, and tribal agencies. However, we note that the language remains vague as to both the scope and the degree of consideration to give to coordination and cooperation with these other interested parties.

The language proposed in Alternative D on coordination for species viability is very good, and we strongly support adding it. This is the most important form of coordination that National Forest planning should be doing, and conserving both species and ecosystem processes will require this kind of coordination and cooperation across regions larger than single National Forests.

219.8 Sustainability: We support the provisions for sustainability in this section. We agree with the recognition indicated in the overview that National Forests have a very important role in ecological sustainability, and a more limited role in economic sustainability of their regions.

In addition, we support the addition of language like that in Alternative D, calling for identification of key areas that can serve as anchor points for sustainable landscape networks. Watersheds will often be the best units for this kind of analysis and designation, but it would be appropriate for other kinds of landscape units to be allowable instead, where conditions warrant.

We also support the addition of the language in Alternative D for riparian areas (3) and for watersheds (4).

219.9 Diversity: We support the requirements for protection of ecosystem diversity and diversity of plant and animal communities. In general, we support the coarse filter/fine filter approach for achieving this. However, we believe some of the changes in this rule are not wise. The requirements for ensuring viability of all (native) species across the Forest, and for those species to be well distributed across the forest, present in previous planning rules, should be added back in. While a coarse filter approach of protecting ecosystems may usually be an adequate and efficient way of doing this, the rule should make clear that this is one of the goals of protecting ecosystems. Ecosystems can be defined in a variety of ways. Plans should be required to demonstrate reasonable care that the approach used will accomplish this goal. In addition, the process and basis for identifying species of conservation concern is vague, and could prove inadequate. Having a requirement for the viability of all native species, albeit to be accomplished indirectly by coarse filters, is needed to ensure that this goal is accomplished. The requirement for species to be well-distributed is a necessary part of ensuring viable populations, especially with the expected changes in climate, but is too likely to be forgotten if not explicitly required.

219.10 Multiple Use: We support the inclusion in this section of a wide range of uses and values, in addition to traditional resource extraction. We support the provisions to seek opportunities to coordinate with neighboring landowners for shared management objectives (4), the identification of the landscape scale context (6), and the potential impacts of climate change (9). We support the requirement for inclusion of the variety of areas indicated in section (b), including sustainable recreation. The section on designation of special areas is somewhat vague. Specially designated areas other than Research Natural Areas have been important components of previous plans in North Carolina's National Forests, and we would encourage more specific addressing of them.

219.19 Definitions: We are concerned about the definition proposed for restoration, given the extensive and appropriate emphasis on restoration in the proposed rule and in many Forest Service actions. We recognize the difficulty of tying restoration goals to historic conditions, in light of a changing environment, and the potential for mistakes if reference conditions are interpreted too narrowly. However, concepts like resilience, sustainability, and ecosystem functions, as commonly used, are too vague and do not provide sufficient specificity to make good restoration decisions. While these are important aspects of ecosystems, they generally ignore species composition, vegetation structure, and other details that are crucial for meaningful restoration. There remains a need for an appropriately defined concept of reference condition, one based in nature as it occurs in the area being addressed and therefore open to scientific study and understanding. Without this constraint, restoration will be too easily directed in inappropriate directions.

219.54-219.56 Objections: These sections place extensive limitations on the right to object to forest plans and plan amendments. While the Forest Service needs to be able to reach conclusions on planning in a timely way, some of these may go too far in restricting objections. In particular, the limit of 30 days for objection to amendments that require only an environmental assessment may be inadequate, given the time lag that can occur in learning of notices published in official sources, the need for the opportunity to review proposals, the more limited information available in environmental assessments, and the need to collect materials that are not allowed to be incorporated by references.

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Comments

See Attachments

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IN REPLY REFER TO:
Forestry
(406) 638-2391

Planning Rule

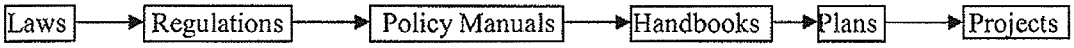
May 16, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 E 500 S
Bountiful, UT 84010

Thank you for the opportunity to comment on the proposed planning rule for the National Forest System. We request that the following language be added to the Regulation in its entirety:

> *Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision. In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.*

It is essential to remember that the Regulations are important as they provide a **pathway** to projects as shown below:



Although the proposed Regulations (36 CFR Part 219 released under Federal Register/Vol. 76, No. 30) relate to the National Forest System Land Management Planning Act (NFSLMP), the statutory language that we believe is an important **pathway** for National Forest System land management planning is contained in the Federal Land Policy and Management Act (FLPMA).

FLPMA: 16 USC § 1712 Land Use Plans

a) Development, maintenance, and revision by the Secretary (shortened).
b) Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision. In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

We believe that it is significant that Congress felt that it was important to place this direction on the *first* page of a 113-page law. This responsibility recognizes the special Indian Trust obligation that the Forest Service has to Indian people and their assets. The statutory requirement listed in 16 USC § 1712(b) crosses over to many of the Indian Trust ideals promulgated in Indian law (Title 25). The Secretary of Interior has delegated Indian land use planning responsibilities to the Bureau of Indian Affairs (BIA) Regional Directors (25 USC §§ 3101-3120, 25 USC §§ 3701-3120, and 53 IAM chapter 2). In addition, BIA line officers are responsible as the primary trustees to work with Indian beneficiaries on a number of tribal land resource management programs.

Some key definitions not listed in FLPMA for the language contained in (16 USC § 1712(b)) are provided in the Indian land use planning law (25 USC § 3101):

(9) "Indian" means a member of an Indian tribe;

(10) "Indian land" means land title to which is held by -

A. the United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe, or

B. an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation;

The BIA promotes tribal resource management programs as Indian fiduciaries through the use primarily of two unique laws: Indian Self Determination Act (25 USC § 450 et. seq.) and through the use of **interagency** project "bank accounts" (25 USC § 3109). We believe that these are superior Indian funding mechanisms to accomplish projects, as they were specifically requested by Indians for Indians compared to the funding mechanisms that are available to your agency. Our office believes that by having a partnership with your agency, we could provide funding that would promote Indian self determination more effectively. In addition, the Indian Self Determination Act provides for tribal organizations involvement. Tribal organizations must include federally recognized tribes but may also include "unrecognized tribes," providing for additional Indian involvement.

A prime example of why we must ensure a clear pathway from FLPMA to projects is the catastrophic fires that ravaged southern California Indian land in 2003. As a result of the fires, the Inter-Tribal Timber Council, a tribal organization, and several tribes from southern California played a key role in lobbying Congress to ensure the passage of the Tribal Forest Protection Act (TFPA). We believe that this was done to bring attention to BIA land managers to insure that we do a better job as trustees in coordinating our plans with the US Forest Service and Bureau of Land Management plans. However, FLPMA makes this coordination requirement clearer than any other law. The passage of the TFPA appears to be a symptom of our agencies not effectively coordinating our plans. If our plans were coordinated effectively, they would identify threat zones where Indian beneficiaries would have the opportunity to implement projects to reduce the threats to Indian assets. The TFPA is not simply an application process or a funding mechanism. Rather, TFPA is a law that promotes Indian involvement in projects in mutual threat zones that should result from well coordinated planning. If these threats are discovered after our plans are approved, we should jointly revise our plans to provide for the projects to reduce threats. It is our responsibility as trustees to ensure that these coordinated partnership opportunities are negotiated with the Indian beneficiaries affected. Our federal obligation, partnership and commitment to reduce these threats can be found in (USFS Agreement # 10-IA-11130206-032 and the interagency forest health agreement of 1978).

The independent assessments of Indian land resource management programs (25 USC § 3111) have shown that we receive far less funding and staffing support than public land management agencies. In an effort to assist the BIA in becoming a better Indian Trustee and to meet our shared Federal Indian Trust obligation, we need your assistance. The BIA and Indian beneficiaries would greatly benefit from our proactive approach to providing a pathway from the laws to on the ground projects.

Our coordination efforts should assist in the development of landscape scale management areas as allowed for in the Sustained-Yield Forest Management Act (16 USC §§ 583 et. seq.) and the Forest Landscape Restoration Act (FLR) (16 USC §§ 7301-7304). Millions of dollars in funding may be available for FLR projects, and submissions shall be made to the "appropriate Regional Forester" and "Regional Director of the Bureau of Indian Affairs" (16 USC 7303). Indian beneficiaries are in desperate need of these funds offered under the FLR authority. We would appreciate your assistance in developing joint BIA – Forest Service Regional submissions to manage Indian aboriginal lands on a landscape scale. Funding received under FLR could assist Montana and Wyoming National Forest System Lands and Rocky Mountain Region Indian beneficial owners. An added benefit would be that these funds would allow us to comply with FLPMA by managing these resources on a landscape scale ensuring our coordinated land management efforts.

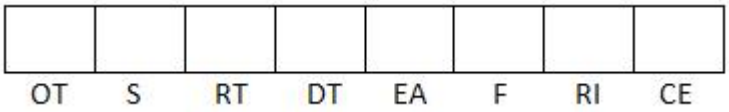
In summation, we see this as an opportunity to strengthen the special relationship that the federal government maintains with Indian people, their assets, and their governmental organizations. In performing consultations, the BIA would like to provide the Forest Service and Indian people an added value as an Indian fiduciary broadening the scope of the federal government to tribal government discussions. The resources to be managed under the proposed regulations have been managed by Indian people from time immemorial. Although much of Indian ancestral assets are now managed as "public trust," Indian people should be seen as special stakeholders (beneficial owners) of the "public trust" due to their history and close connection to the land. We will endeavor to improve Indian land use plans to meet the goals and objectives of Indian beneficial owners and improve Indian management programs, but we need your help. **The Rocky Mountain Regional Office again strongly recommends that the language in 16 USC 1712(b) be added in its entirety into the planning regulations (36 CFR Part 219).** Including this language in the regulation will provide a clear pathway to projects. However, in the absence of a clear pathway, we expect that the Forest Service will comply with the law requiring meaningful coordination with the BIA and the appropriate Indian beneficial owners. Indian people have much to offer and can assist us in meeting our agencies' challenges in managing Federal "Trust" Lands. Our agencies would be well served in seeking Indian council and seeking Indian active involvement in managing these Indian and national assets.

If you have any questions, please call Caleb Cain, Regional Forester, at (406) 247-7949.

Sincerely,

Edward Parisien

Regional Director



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Comments

Thank you for the opportunity to supply scoping comments related to the proposed National Forest Planning Rule. The following concerns of the Wyoming Department of Environmental Quality relate to protecting water quality, air quality, and other natural resources of the State of Wyoming.

§219.4(a): This language appears to elevate NGOs and the general public to cooperator status (as defined by NEPA). The language should clearly distinguish between the roles of cooperators and the public (collaborators).

In §219.8 Sustainability, and in other locations throughout the document, there is reference to taking into account potential system drivers, stressors, and disturbance regimes, including climate change. It is unclear how the Forest Service will take into account climate change and other factors not created by Forest Service management when determining appropriate plan components to maintain or restore the structure, function, composition, and connectivity of health and resilient terrestrial and aquatic ecosystems and watershed in the plan area.

In §219.12(a)(5) there may be instances where it would be appropriate to consider air quality impacts and monitoring under the Clean Air Act to demonstrate compliance with §219.1 (g). Therefore, we recommend adding reference to status of air quality conditions.

We agree that science should play a very important role in planning; however we are perplexed about the proposed scales of monitoring. §219.5(a)(3) and §219.12 propose considerable monitoring at the unit scale and broader scale, but we are very concerned that monitoring requirements in the proposed planning rule do not include project and activity monitoring, especially the language in §219.12(a)(7) stating that "…monitoring is not a prerequisite for carrying out a project or activity."

Land management is an applied science. We would encourage the Forest Service to direct their research of broad scale issues (e.g., climate change) at the regional scale; individual forests need to focus their resources and monitoring efforts on parameters directly affected by Forest Service projects and activities (e.g., riparian condition, sediment loading to streams, etc.), since potential impacts from resource uses (grazing, timber harvesting, oil and gas development, etc.) vary greatly, at the project or activity scale. This highly variable data can then be compiled to provide information on the unit or broader scale; whereas, general assessments of highly variable data collected on the unit or broader scale generally cannot be extrapolated back to the project scale to make site specific management decisions about individual projects. Therefore, it is imperative that monitoring of parameters directly affected by projects and activities be conducted at the project or activity scale, so that the Forest Service can make site specific, adaptive management decisions to protect the natural resources the Forest Service is entrusted to manage. Attempting to monitor and address the broad indicators in §219.12(a)(5)(iii through vii) at the unit scale will create an immense workload and will likely provide little, if any, additional information than data collected at a broader scale.

On the other hand, although climate change is an ecological stressor and system driver, impacts would likely be similar across multiple units or Forests. In §219.12 (a)(5) there is discussion of unit monitoring programs including measurable changes on the unit related to climate change. How would this be accomplished and at what level would this be considered? Additionally, current data shows that changes in climate during the relatively short 15

year life of a Forest Plan are within the natural range of variability; current science and models are not robust enough to predict specific on the ground changes, even during the long term; therefore, how can planning and management decisions be made based on unknown climate variation in a short, 15 year plan?

The Preferred Alternative appears to lack the watershed protection and sustainability the DEIS suggests, both due to the lack of project level monitoring and to the lack of specificity in the actual language in the Federal Register. We would prefer the language in Alternative D for §219.8(a)(3) Riparian areas be used, and we especially request inclusion of the language in §219.8(a)(4) Watershed Standards and Guidelines be included in the Preferred Alternative.

In summary, the Wyoming Department of Environmental Quality believes the National Forest Planning Rule should require individual forests to focus their resources and monitoring efforts on parameters directly affected by Forest Service projects and activities at an appropriate scale to make specific management decisions, based on the variability of the data; appropriate air quality monitoring and reference to air quality status needs to be included; and, watershed standards and guidelines should be included in the Preferred Alternative.

Sincerely,

Mark Conrad
Water Quality NEPA Coordinator
Wyoming Department of Environmental Quality

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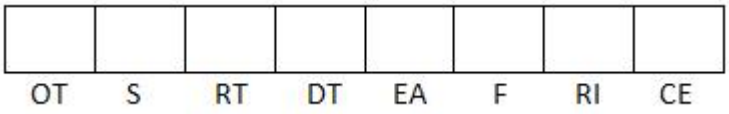

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Comments

On 14 February, 2011 the U.S. Department of Agriculture published a proposed rule for National Forest System Management Planning (Federal Register, vol. 76, no. 30, pp. 8480-8528. These comments on the proposed rule are being submitted by the Acequia Madre de Carnuel, a political subdivision of the state of New Mexico which manages the use of water through the Tijeras-Carnuel creek bordering the Cibola National Forest. We have prepared these comments in conjunction with other land grants, and with the New Mexico Land Grant Council and the New Mexico Land Grant Consejo.

Acequias are indigenous communities granted control over the use of surface water by the governments of Spain or Mexico prior to 1848. They are indigenous because their residents are in part descendents of Native American tribes and because they had established communities in the Southwest before the United States exercised sovereignty in the region. The Acequia Madre de Carnuel, like other acequias in the state of New Mexico are recognized as local governing bodies, similar to soil conservation districts and school districts.

Comments, Questions and Recommended Changes on Proposed Planning Rule
The following sections contain comments and recommendations for changes to the proposed planning rule found in CFR Part 219 – Planning Subparts A and B. The comments (noted as Comment) provide opinions, by the submitting party, regarding material presented in the proposed planning revision. Recommendations for change (noted as Recommendation) provide language for a proposed language change or addition of new material for inclusion in the plan. The comments, questions and recommendations are laid out sequentially section by section in the same order as which they are laid out in the proposed planning rule revision.

Section 219.4 Requirements for Public Participation

(7) Native knowledge, indigenous ecological knowledge, and land ethics.

Comment: This subparagraph calls for a critical body of information to be collected from Native American Tribes and Alaska Native Corporations as part of the tribal participation and consultation. Like Native American Tribes, Spanish and Mexican acquias were organized by land based communities with hundreds of years of local knowledge and land ethnics relating to watershed areas in lands now managed by the US Forest Service. Spanish and Mexican acequia communities share a relationship to the land that is a part of the cultural make up of the people from those communities.

In addition, many agricultural water systems used for irrigating crops (acequias), watering livestock, and providing community drinking water have their headwaters, man made points of diversion and portions of their delivery canals/lines located on lands now managed by the U.S. Forest Service. Throughout New Mexico communities that were settled as Spanish and Mexican Land Grants have water irrigation systems for that predate U.S. sovereignty in the Southwest. In New Mexico Acequias, as well as Spanish and Mexican Community land grants are recognized as units of local government. Acequias have governing boards that are elected to manage the delivery of water to users and to oversee the maintenance and up keep of the water delivery system. Maintenance of acequia systems include removal of sediment and silt at the bottom of the canals as well as the removal of trees and other vegetation encroaching on the banks of the canals and impeding the flow of water.

Recommendation: Either amend subparagraph (7) or add a new section that will allow for collection of information about indigenous knowledge, land ethics, cultural issues, and sacred and culturally significant sites from "Non-Tribal indigenous government entities recognized by state or federal statute with pre-existing cultural and natural resource access, use and maintenance rights on land currently under the jurisdiction of the U.S. Forest Service." Language to this effect may also be inserted into subparagraph (8).

Addition of such language may necessitate the addition of "non-tribal indigenous government entities" in the definitions found under §219.19.

(8) Participation opportunities for other Federal agencies, Federally recognized Tribes, States, counties, and local governments.

Comment: The Acequia Madre de Carnuel is eager to engage the US Forest Service in government-to-government dialogues relating to lands controlled by the Forest Service that include watershed areas that feed into the Tijeras-Carnuel creek and is potentially interested in entering into government-to-government agreements with the Forest Service regarding their management. The Acequia Madre de Carnuel is concerned that language proposed under Sub-paragraph 8 does not adequately provide for local government entities such as the acequias to be included in the planning process. Particularly, the use of the language "The responsible official shall provide opportunities for other government agencies to participate in planning for NFS lands," is vague. As it stands a line officer could limit local government coordination to simply providing input at public forum. A better safeguard for local government coordinators should be in place.

The Acequia Madre de Carnuel seeks a higher level of participation in the planning process than is afforded the general public through public meetings. The current proposed language does not require the Forest Service to actively engage in a dialogue with local government entities but rather simply provide opportunities for participation. In reviewing the current planning rule developed in 1982 found in 36 CFR Ch. II (7-1-00 Edition) section 219.7 Coordination with Other Public Planning Efforts, the Acequia Madre de Carnuel found far stronger language in paragraphs (d) and (f) of that section. The Acequia prefers use of the language found in paragraphs (d) and (e) over the current language found under subparagraph (8) of the proposed rule. The reason for the preference is that the current planning rule states "the responsible line office shall meet with. . . representatives of other local governments at the beginning of the planning process to develop procedures for coordination." It further clarifies that meetings with local governments can "be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced. " Finally, subparagraph (e) requires that the line officer in developing the plan "shall seek input form. . . local governments. . . to help resolve management concerns in the planning process and to identify areas where additional research is needed.

All of the above-mentioned requirements from the existing planning rule are important because of turnover among line officers within the Forest Service and quite often line officers have not been around long enough to fully appreciate the overall impact the Service has on local communities adjacent to its boundaries. Therefore it is critical that local communities through their representative local governments are involved and at the table from the onset of the development, revision or amend of a forest unit plan. Local governments typically have a good understanding of the role Forest Service land plays with regard to the social, ecological and economic health of their communities.

Recommendation: Replace subparagraph (8) with the following language: In development, revision or amendment of a Forest Service Unit land management plan, the responsible official shall meet with the representatives of all other Federal agencies, State agencies, local governments, and Indian Tribal governments that may be affected by the plan at the beginning of the planning process to develop procedures for coordination. At a minimum this includes all federal or state recognized local government entities and tribal governments with lands adjacent to the Forest Service Unit or that have pre-existing land and/or resource use right claims within the Forest Service Unit. Also at minimum such conferences shall be held during the assessment, development, and revision/amendment phases of the planning process. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced. In assessing, developing, revising or amending a Forest Service Unit plan the responsible official shall seek input from other Federal, State, local governments, and Indian Tribal governments, specifically those with lands adjacent

to the Forest Service Unit or that have pre-existing land and/or cultural and natural resource access, use and maintenance rights or valid claims to those rights within the Forest Service Unit, to: help identify existing and future conditions, trends, stressor and opportunities; help identify areas where additional research is needed; help identify monitoring indictors to be measured during the life of the plan, and; help resolve management concerns that arise during development, revision, amendment and implementation of the plan.

Section 219.6 Assessments

(a) Process for plan development or revision assessments.

Comment: In keeping in line with the recommended changes for Section 219.4 subparagraph (8) language must be added to this section to ensure adequate coordination with local government entities in the assessment process.

Recommendation: Add an additional sentence to subparagraph (1) that reads as follows: Notify and meet with local governments entities with lands adjacent to the Forest Service Unit or that have pre-existing land and/or cultural and natural resource access, use and maintenance rights or valid claims to those rights within the Forest Service Unit to help identify existing and future conditions, trends, stressor and opportunities, areas where additional research is needed, and potential monitory questions.

(b) Content of assessments for plan development or revision

This section provides a critical opportunity for the Forest Service to obtain knowledge and information from local government entities and the communities, which they serve regarding use and importance of the Forest Service Unit within the context of the broader landscape as well as within the context of current and historical uses of lands located in the Unit.

In order to strengthen the Forest Service's ability to capitalize on this opportunity it is recommended the following language be added to the below subparagraphs of subsection (b)

Recommendation:

Under subparagraph (2) at the end of second sentence listing types of plans add: local government land use, zoning and comprehensive plans.

Under subparagraph (3) add a sentence that calls for the Forest Service to identify areas with preexisting cultural and natural resource access, maintenance and use rights by Tribal and non-tribal indigenous communities established prior to the U.S. establishing sovereignty within the area encompassed by the Unit and to the extent possible identify and list out with reasonable specificity the types of cultural and natural resource access, maintenance and resource use rights existing in areas identified.

Under subparagraph (4) amend the sentence to read as follows: Identify potential monitoring questions or information needs to inform the development or modification of the unit's social, economic and ecological monitoring program.

Section 219.7 New plan development or plan revision

(c) Process for plan development or revision
Comment: In laying out the process for plan development or revisions it is important that the responsible official identify the relevant stakeholders that will be most impacted by the Unit plan. This includes the tribal and non-tribal indigenous local government entities and communities that have claims to or that have existing cultural or natural resource access, maintenance and use rights on the unit that predate the unit and the U.S. establishing sovereignty in the area or region where the unit is located. Below are recommendations for language that can be added to ensure that pre-existing rights as called for under §219.1 subparagraph (e) are identified and integrated into Unit plans for the protection of those rights.

Recommendation: Under subsection (c) item (2) of Section 219.7 add a new subparagraph which requires the

responsible official to identify non-tribal indigenous local government entities which have claims to or established pre-existing access, maintenance and cultural and natural resource use rights located within the plan Unit.

Under the same section as sited above add a new subparagraph that requires the responsible official to work with non-tribal indigenous local government entities to identify preexisting cultural and natural resource access, maintenance and use rights and areas within the Unit subject to those rights.

Section 219.9 Diversity of plant and animal communities

Comment: Sustainability forest ecosystems and diversity of plant and animal communities are critical components to re-establishing and maintaining healthy forests and healthy watersheds. Watershed health is of the upmost importance to our long established land based communities. The relationship our communities had to the land prior to the establishment of the U.S. Forest Service and the land management practices derived from those relationships provided for a more harmonic balance within the forest eco-systems than exist today. Therefore we feel it important to include language in both sections 219.8 and 219.9 that recognizes the importance of historic and traditional practices that can still be applicable today.

Recommendation: In subsection (b) Species Conservation under subparagraph (3) in the last sentence add local government after tribal and before private land managers.

Add a new subsection (d) that calls for a component under this section to be informed by historic practices of pre-existing tribal and non-tribal indigenous communities that are consistent with diversity of plant and animal species within the Unit and the region.
Section 219.10 Multiple uses

(b) Requirements for plan components for a new plan or plan revision.

Comment: It is important that a component be added to address the management of areas of importance for non-tribal indigenous entities with pre-existing cultural and natural resource access, maintenance and use rights that are based on historical and documented claims to lands now managed by the Forest Service. This can be accomplished by adding the following recommended language.

Recommendation: Add a new subparagraph after subparagraph (iii) that reads as follows: Management of areas of importance to non-tribal indigenous entities.

Section 219.11 Timber requirements based on the NFMA

(b) Harvest of trees on land not suitable for timber production.

Comment: It is critical that the proposed planning rule make it clear that thinning for the maintenance, protection and improvement of preexisting community water delivery systems located within a planning Unit continue to be allowed in areas designated as not suitable for timber production. This type of thinning is not for production but rather for maintenance to ensure adequate delivery of water for irrigation and/or drinking water.

Recommendation: under subparagraph (2) of subsection (b) Harvest of trees on land not suitable for timber production, add the following example to the last sentence in the paragraph: improving or protecting the delivery of water along established preexisting water delivery systems.

Section 219.15 Project and activity consistency with the plan

(a) Application to existing authorizations and approved projects or activities.

Comment: There are numerous existing occupancies, uses and maintenance of sites within the Forest Service Units in New Mexico that are valid rights and which have never received official authorization or approvals. This includes location of cemeteries, sacred religious sites, man made points of diversion and water delivery systems that have existed prior to the United States establishing sovereignty in New Mexico but that now lie with the Forest Service boundaries. Many of these occupancies or uses have gone officially unnoticed or unmentioned and in some cases

official attempts have been made to bar or deny the continuation of use. A large reason for inconsistencies in official policy related to these preexisting site and rights is that they are held or claimed by non-tribal indigenous entities without any official means of consultation with the U.S. Forest Service. For this reason is necessary that the Forest Service specifically work with these non-tribal indigenous entities to properly identify all existing occupancies and uses so that they may be accounted for in the Unit plan.

Recommendation: Add the following two sentences to subsection (a) after the first sentence in that subsection that reads as follows: The responsible official shall meet with any non-tribal indigenous entities with documented claims or valid existing rights within the Unit to identify any and all occupancies, uses and activities related to those claims or rights. Upon receiving official notice from the Forest Service of a unit plan, development, revision or amendment, it shall be the duty of the all non-tribal indigenous entities to notify the Forest Service of their desire to meet for the purpose of identifying occupancies, uses and activities on lands within the Unit.

Section 219.16 Public notifications

(c) How public notice is provided

Comment: Aside from general public notice it is important that the Forest Service provide direct notice to local government entities that will be affected by the plan, particularly any entities that have lands directly adjacent to the plan Unit or whose constituents have valid existing cultural or natural resource access, maintenance, or use rights for lands located within the plan Unit. Direct notification will ensure that relevant government stakeholders are involved in the assessment phase of the planning process, which will help mitigate unforeseen objections to a new plan, a revision or an amendment. In addition, early direct notice allows ample opportunity to address and resolve any issues identified during the assessment phase.

Recommendation: Under subsection (c) add a new subparagraph (6) that contains the following language: For a new plan, plan revision or amendment direct written notice shall be given to local government entities with ownership or management of lands directly adjacent to Forest Service Unit or with existing cultural and natural resource access, use and maintenance rights on the Unit.

Under subsection (c) subparagraph (2) add the following language after newspaper(s) of record: "and general circulation in the region of the Unit."

Section 219.19 Definitions

Comment: In order to incorporate the changes recommended throughout this public comment document it is necessary to add some new definitions to section 219.9.

Recommendation: Add new definition as follows:

Non-tribal indigenous entity – A local government entity, recognized by Federal or State statute, that represents a non-tribal community(ies)/group(s) and/or pre-existing cultural and natural resource access, maintenance and use right(s) established prior to United States sovereignty in the State in which a Forest Service Unit is located

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Comments

The following document is submitted by La Merced del Pueblo de Chilili as part of the public comment process established for consideration and application to the 2011 proposed Forest Service Planning Rule revision.

La Merced del Pueblo de Chilili is a unit of state government, established by the New Mexico Legislature under §49-14-1 NMSA 1978,

Spanish and Mexican community land grants are Indo-Hispano indigenous communities established in the present day United States Southwest, prior to the U.S. establishing sovereignty, between the periods of 1692 to 1848. These communities were originally established through a grant of land by either the Spanish or Mexican government. Lands granted were to be managed by a board of trustees for the benefit of the community and the ownership of the vast majority of the lands granted was held in common by all. The Treaty of Guadalupe Hidalgo, which ended the Mexican American War, protects the property rights that were established when the land grants were originally granted by Spain and Mexico. The properness of the adjudication of those property rights by the United States, as called for in the Treaty, has been disputed since 1854. The adjudication process was wrought with inconsistencies, malfeasance, and corruption, and resulted in the approximate loss of 5.7 million acres of land commonly owned by hundreds of communities throughout New Mexico. Of those 5.7 million acres lost approximately 3.4 million acres ended up under the direct control and management of the United States government. A vast majority of these lands are now under the direct control of the USDA – Forest Service.

The loss of these common lands had devastating social and economic impacts on rural communities throughout New Mexico. Of the 131 Spanish and Mexican community land grants established only approximately 35 remain in existence today. The reason so many Spanish and Mexican land grants became defunct is that these land based agrarian communities could no longer survive without the access and use of the common lands. Sustenance living based on the utilization of natural resources from the common lands was no longer possible without the access to and ownership of the common lands. Utilization of natural resources included but was not limited grazing, hunting, fishing, harvesting of firewood, gathering herbs, berries and nuts for eating and medicinal purposes, using common waters for livestock and domestic use.

Comments, Questions and Recommended Changes on Proposed Planning Rule
The following sections contain commentaries and recommendations for changes to the proposed planning rule found in CFR Part 219 – Planning Subparts A and B. The commentaries (noted as Comment) provide opinions, by the submitting party, regarding material presented in the proposed planning revision. Recommendations for change (noted as Recommendation) provide language for a proposed language change or addition of new material for inclusion in the plan. The comments, questions and recommendations are laid out sequentially section by section in the same order as which they are laid out in the proposed planning rule revision.

Section 219.4 Requirements for Public Participation

(7) Native knowledge, indigenous ecological knowledge, and land ethics.

Comment: This subparagraph calls for a critical body of information to be collected from Native American Tribes and Alaska Native Corporations as part of the tribal participation and consultation. Like Native American Tribes, Spanish and Mexican community land grants are land based communities with hundreds of years of local knowledge and land ethnics relating to former common lands now managed by the US Forest Service. Spanish and Mexican land grant communities share a relationship to the land that is a part of the cultural make up of the people from those communities. These former common lands have a huge cultural significance to land grant communities in New Mexico and because of the, well documented, long history of use of these former common lands there exists today numerous sacred and culturally significant sites located on these lands.

In addition, many agricultural water systems used for irrigating crops (acequias), watering livestock, and providing community drinking water have their headwaters, man made points of diversion and portions of their delivery canals/lines located on former common lands now managed by the U.S. Forest Service. Throughout New Mexico communities that were settled as Spanish and Mexican Land Grants have water irrigation systems for that predate U.S. sovereignty in the Southwest. In New Mexico Acequias like Spanish and Mexican Community land grants are recognized units of local government. Acequias have governing boards that are elected to manage the delivery of water to users and to oversee the maintenance and up keep of the water delivery system. Maintenance of acequia systems include removal of sediment and silt at the bottom of the canals as well as the removal of trees and other vegetation encroaching on the banks of the canals and impeding the flow of water. As well, land grants as established in Spanish and Mexican law and confirmed through state statute have the authority to manage the common waters of the grant.

Recommendation: Either amend subparagraph (7) or add a new section that will allow for collection of information about indigenous knowledge, land ethics, cultural issues, and sacred and culturally significant sites from "Non-Tribal indigenous government entities recognized by state or federal statute with pre-existing cultural and natural resource access, use and maintenance rights on land currently under the jurisdiction of the U.S. Forest Service." Language to this effect may also be inserted into subparagraph (8).

Addition of such language may necessitate the addition of "non-tribal indigenous government entities" in the definitions found under §219.19.

(8) Participation opportunities for other Federal agencies, Federally recognized Tribes, States, counties, and local governments.

Comment: Spanish and Mexican community land grants are one of the oldest government structures in the Southwest dating back to the 1690's. In 2004, the state of New Mexico officially recognized Spanish and Mexican community land grants as political sub-divisions of the state. As newly recognized units of government under state law Spanish and Mexican community land grants are now eligible and eager to engage the US Forest Service in government-to-government dialogues relating to former common lands now controlled by the Forest Service. As well land grants are also interested in entering into government-to-government agreements with the Forest Service regarding the management and use of those former common lands. This extends to the role that planning plays in management of the former common land by the US Forest Service. This being the case both the New Mexico Land Grant Council and the New Mexico Land Grant Consejo are concerned that language proposed under Sub-paragraph 8 does not adequately provide for local government entities to be included in the planning process. Particularly, the use of the language "The responsible official shall provide opportunities for other government agencies to participate in planning for NFS lands," is vague enough to allow a line officer to limit local government coordination on a plan to input at public forums held during the public comment portion of a plans development.

As government entities Spanish and Mexican land grant units of government want a higher level of participation in the planning process than is afforded the general public through "opportunities" such as public meetings. The current proposed language does not require the Forest Service to actively engage in a dialogue with local government entities but rather simply provide opportunities for participation. In reviewing the current planning rule developed in 1982 found in 36 CFR Ch. II (7-1-00 Edition) section 219.7 Coordination with Other Public Planning Efforts, the Council and Consejo found far stronger language in paragraphs (d) and (f) of that section. Both the Council and the Consejo prefer use of the language found in paragraphs (d) and (e) over the current language found under subparagraph (8) of the proposed rule. The reason for the preference is that the current planning rule states "the responsible line office shall meet with. . . representatives of other local governments at the beginning of the planning process to develop procedures for coordination." It further clarifies that meetings with local

governments can "be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced. " Finally, subparagraph (e) requires that the line officer in developing the plan "shall seek input form. . . local governments. . . to help resolve management concerns in the planning process and to identify areas where additional research is needed.

All of the above-mentioned requirements from the existing planning rule are important because the turn over of line officers within the Forest Service is a frequent occurrence and quite often line officers have not been around long enough to fully understand the overall impact the Forest Service has on local communities adjacent to its boundaries. Therefore it is critical that local communities through their representative local governments are involved and at the table from the onset of the development, revision or amend of a forest unit plan. This is since local governments typically have a better understanding of the role Forest Service land plays with regard to the social, ecological and economic health of their communities.

Recommendation: Replace subparagraph (8) with the following language: In development, revision or amendment of a Forest Service Unit land management plan, the responsible official shall meet with the representatives of all other Federal agencies, State agencies, local governments, and Indian Tribal governments that may be affected by the plan at the beginning of the planning process to develop procedures for coordination. At a minimum this includes all federal or state recognized local government entities and tribal governments with lands adjacent to the Forest Service Unit or that have pre-existing land and/or resource use right claims within the Forest Service Unit. Also at minimum such conferences shall be held during the assessment, development, and revision/amendment phases of the planning process. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced. In assessing, developing, revising or amending a Forest Service Unit plan the responsible official shall seek input from other Federal, State, local governments, and Indian Tribal governments, specifically those with lands adjacent to the Forest Service Unit or that have pre-existing land and/or cultural and natural resource access, use and maintenance rights or valid claims to those rights within the Forest Service Unit, to: help identify existing and future conditions, trends, stressor and opportunities; help identify areas where additional research is needed; help identify monitoring indictors to be measured during the life of the plan, and; help resolve management concerns that arise during development, revision, amendment and implementation of the plan.
Section 219.6 Assessments

(a) Process for plan development or revision assessments.

Comment: In keeping in line with the recommended changes for Section 219.4 subparagraph (8) language must be added to this section to ensure adequate coordination with local government entities in the assessment process.

Recommendation: Add an additional sentence to subparagraph (1) that reads as follows: Notify and meet with local governments entities with lands adjacent to the Forest Service Unit or that have pre-existing land and/or cultural and natural resource access, use and maintenance rights or valid claims to those rights within the Forest Service Unit to help identify existing and future conditions, trends, stressor and opportunities, areas where additional research is needed, and potential monitory questions.

(b) Content of assessments for plan development or revision

This section provides a critical opportunity for the Forest Service to obtain knowledge and information from local government entities and the communities, which they serve regarding use and importance of Forest Service Unit within the context of the broader landscape as well as within the context of current and historical uses of lands located in the Unit.

In order to strengthen the Forest Service's ability to capitalize on this opportunity it is recommended the following language be added to the below subparagraphs of subsection (b)

Recommendation:

Under subparagraph (2) at the end of second sentence listing types of plans add: local government land use, zoning and comprehensive plans.

Under subparagraph (3) add a sentence that calls for the Forest Service to identify areas with preexisting cultural and natural resource access, maintenance and use rights by Tribal and non-tribal indigenous communities established prior to the U.S. establishing sovereignty within the area encompassed by the Unit and to the extent possible identify and list out with reasonable specificity the types of cultural and natural resource access, maintenance and resource use rights existing in areas identified.

Under subparagraph (4) amend the sentence to read as follows: Identify potential monitoring questions or information needs to inform the development or modification of the unit's social, economic and ecological monitoring program.

Section 219.7 New plan development or plan revision

(c) Process for plan development or revision
Comment: In laying out the process for plan development or revisions it is important that the responsible official identifies the relevant stakeholders that will be most impacted by the Unit plan. This includes the tribal and non-tribal indigenous local government entities and communities that have claims to or that have existing cultural or natural resource access, maintenance and use rights on the unit that predate the unit and the U.S. establishing sovereignty in the area or region where the unit is located. Below are recommendations for language that can be added to ensure that pre-existing rights as called for under §219.1 subparagraph (e) are identified and integrated into Unit plans for the protection of those rights.

Recommendation: Under subsection (c) item (2) of Section 219.7 add a new subparagraph which requires the responsible official to identify non-tribal indigenous local government entities which have claims to or established pre-existing access, maintenance and cultural and natural resource use rights located within the plan Unit.

Under the same section as site above add a new subparagraph that requires the responsible official to work with non-tribal indigenous local government entities to identify preexisting cultural and natural resource access, maintenance and use rights and areas within the Unit subject to those rights.

Section 219.9 Diversity of plant and animal communities

Comment: Sustainability forest ecosystems and diversity of plant and animal communities are critical components to re-establishing and maintaining healthy forests and healthy watersheds. Watershed health is of the upmost importance to our long established land based communities. The relationship our communities had to the land prior to the establishment of the U.S. Forest Service and the land management practices derived from those relationships provided for a more harmonic balance within the forest eco-systems than exist today. Therefore we feel it important to include language in both sections 219.8 and 219.9 that recognizes the importance of historic and traditional practices that can still be applicable today.

Recommendation: In subsection (b) Species Conservation under subparagraph (3) in the last sentence add local government after tribal and before private land managers.

Add a new subsection (d) that calls for component under this section to be informed by historic practices of pre-existing tribal and non-tribal indigenous communities that are consistent with diversity of plant and animal species within the Unit and the region.
Section 219.10 Multiple uses

(b) Requirements for plan components for a new plan or plan revision.

Comment: It is important that a component be added to address the management of areas of importance for non-tribal indigenous entities with pre-existing cultural and natural resource access, maintenance and use rights that are based on historical and documented claims to lands now managed by the Forest Service. This can be accomplished by adding the following recommended language.

Recommendation: Add a new subparagraph after subparagraph (iii) that reads as follows: Management of areas of importance to non-tribal indigenous entities.

Section 219.11 Timber requirements based on the NFMA

(b) Harvest of trees on land not suitable for timber production.

Comment: It is critical that the proposed planning rule make it clear that thinning for the maintenance, protection and improvement of preexisting community water delivery systems located within a planning Unit continue to be allowed in areas designated as not suitable for timber production. This type of thinning is not for production but rather for maintenance to ensure adequate delivery of water for irrigation and/or drinking water.

Recommendation: under subparagraph (2) of subsection (b) Harvest of trees on land not suitable for timber production, add the following example to the last sentence in the paragraph: improving or protecting the delivery of water along established preexisting water delivery systems.

Section 219.15 Project and activity consistency with the plan

(a) Application to existing authorizations and approved projects or activities.

Comment: There are numerous existing occupancies, uses and maintenance of sites within the Forest Service Units in New Mexico that are valid rights and which have never received official authorization or approvals. This includes location of cemeteries, sacred religious sites, man made points of diversion and water delivery systems that have existed prior to the United States establishing sovereignty in New Mexico but that now lie with the Forest Service boundaries. Many of these occupancies or uses have gone officially unnoticed or unmentioned and in some cases official attempts have been made to bar or deny the continuation of use. A large reason for inconsistencies in official policy related to these preexisting site and rights is that they are held or claimed by non-tribal indigenous entities without any official means of consultation with the U.S. Forest Service. For this reason is necessary that the Forest Service specifically work with these non-tribal indigenous entities to properly identify all existing occupancies and uses so that they may be accounted for in the Unit plan.

Recommendation: Add a the following two sentences to subsection (a) after the first sentence in that subsection that reads as follows: The responsible official shall meet with any non-tribal indigenous entities with documented claims or valid existing rights within the Unit to identify any and all occupancies, uses and activities related to those claims or rights. Upon receiving official notice from the Forest Service of a unit plan, development, revision or amendment it shall to the duty of the all non-tribal indigenous entities to notify the Forest Service of their desire to meet for the purpose of identifying occupancies, uses and activities on lands within the Unit.

Section 219.16 Public notifications

(c) How public notice is provided

Comment: Aside from general public notice it is important that the Forest Service provide direct notice to local government entities that will be affected by the plan, particularly any entities that have lands directly adjacent to the plan Unit or whose constituents have valid existing cultural or natural resource access, maintenance, or use rights for lands located within the plan Unit. Direct notification will ensure that relevant government stakeholders are involved in the assessment phase of the planning process, which will help mitigate unforeseen objections to a new plan, a revision or an amendment. As well early direct notice allow ample opportunity to address and resolve any issues identified during the assessment phase.

Recommendation: Under subsection (c) add a new subparagraph (6) that contains the following language: For a new plan, plan revision or amendment direct written notice shall be given to local government entities with ownership or management of lands directly adjacent to Forest Service Unit or with existing cultural and natural resource access, use and maintenance rights on the Unit.

Under subsection (c) subparagraph (2) add the following language after newspaper(s) of record: "and general circulation in the region surrounding the Unit."

Section 219.19 Definitions

Comment: In order to incorporate the changes recommended throughout this public comment document it is necessary to add some new definitions to section 219.9.

Recommendation: Add new definition as follows:

Non-tribal indigenous entity – A local government entity, recognized by Federal or State statute, that represents a non-tribal community(ies)/group(s) and/or pre-existing cultural and natural resource access, maintenance and use right(s) established prior to United States sovereignty in the State in which a Forest Service Unit is located.

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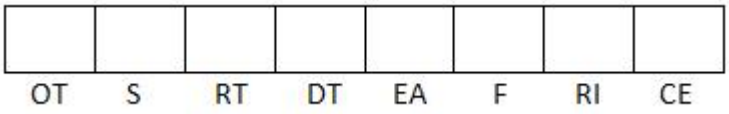

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Comments

May 16, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 East 500 South Bountiful, UT 84010

RE: NFS Planning Rule Comments

To Whom It May Concern:

New Mexico Federal lands Council (NMFLC) submits the following comments to the Proposed Rule and Draft Programmatic Environmental Impact Statement (DEIS) for National Forest System Land Management Planning. NMFLC respectfully request a thirty (30) day extension to review the science that was last presented and comment on the proposed rule.

On behalf of the NMFLC, the state's trade organization representing federal and state land grazers, thank you for the opportunity to comment on the above captioned document.

NMFLC supports management of National Forest System (NFS) lands under the principles of multiple use and sustained yield as congressionally mandated by the Multiple-Use and Sustained-Yield Act of 1960 (MUSYA) (16 U.S.C. 528-531) and further codified by the National Forest Management Act of 1976 (NFMA) (16 U.S.C. 1601-1614). The Proposed Rule shifts management of NFS lands to advance the concepts of ecological sustainability and ecosystem diversity above multiple use and sustained yield.

The overview in the Federal Register notice for the Proposed Rule states that, "Planning would consider the full suite of multiple uses including ecosystem services, energy, minerals, outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. . . ." However, plan components would ". . . be required to provide for multiple uses, including sustainable recreation and ecosystem services, and protect cultural and historic resources and specially designated areas (such as wilderness and wild and scenic rivers)." The elevated status of select multiple uses is further evident in text of the Proposed Rule.

Sections 219.8 Sustainability and 219.9 Diversity of Plant and Animal Communities are redundant in providing requirements that plans ". . . must include plan components to maintain or restore the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area." Section 219.10 Multiple Uses directs planning to meet the requirements of §219.8 and §219.9 and "consider" a full suite of multiple uses including ecosystem services. Section 219.10 further requires that plans " . . . must provide for . . ." sustainable recreation, protection of cultural and historic resources, NFS Planning Rule Comments
management of areas of tribal importance, protection of wilderness areas, protection of wild and scenic rivers, protection and appropriate management of other designated or recommended areas, and other plan components

for multiple uses as necessary. The Proposed Rule assigns greater importance to certain multiple uses and, in doing so, violates NFMA.

NFMA provides clear guidance regarding the equality of multiple uses at 16 U.S.C. 1604 (e) (1) ". . . provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960, and in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. . . ." Coordination, as defined by Black's Law Dictionary, means the state of being equal; of the same order, rank, degree, or importance; not subordinate. Through NFMA it is clear Congress intended that NFS planning coordinate and consider each of the listed multiple uses equally. Based on this foundation, NMFLC objects to the Proposed Rule because it violates NFMA by omitting specific requirements for plan components to provide for the range program.

The Proposed Rule at §219.10 (b) (1) (IV) requires that plans extend protection of congressionally designated wilderness areas to recommended wilderness areas identified in the assessment process. It is beyond the authority of the United States Department of Agriculture (USDA) to manage an area as wilderness unless and until Congress actually designates such areas pursuant to the Wilderness Act. This requirement should be removed from the Proposed Rule.

The pre-decisional administrative review process described in Subpart B of the Proposed Rule strictly limits who may file an objection to those who have previously submitted formal comments during opportunities provided in plan development. This strict limitation is contradictory to an overall goal of the Proposed Rule to provide for meaningful public involvement throughout all stages of the planning process. Objector limitations are particularly onerous when considering issues that arise after opportunities for formal comment. A loophole is created that allows NFS planning to consider issues that the public, as a whole, is not allowed to comment on. All restrictions on who may object to a plan, plan revision, or plan amendment should be removed from the Proposed Rule to ensure meaningful public involvement throughout all stages of planning.

The DEIS provides an analysis of how each alternative meets the purposes and needs associated with the concepts of ecological sustainability and ecosystem diversity, not the principles of multiple use and sustained yield as mandated by MUSYA and NFMA. The resulting document fails to consider how each alternative will impact traditional multiple uses of NFS lands. Page 134 of the DEIS indicates that range was highlighted during scoping as one of the major contributors to community jobs and income from NFS lands. Of the multiple uses required by MUSYA and NFMA, range is the only use the Proposed Rule does not specifically require in-land management plans.

The DEIS repeatedly refers to livestock grazing as a stressor to other resources. Properly managed livestock grazing is a valuable resource management tool that can improve wildlife habitat, biodiversity, and overall ecological conditions while providing cultural and economic NFS Planning
benefits to communities. Unmanaged grazing, by both wild and domestic herbivores, can be a stressor to resources. The DEIS should make this distinction by replacing all references to livestock grazing as a stressor with unmanaged grazing by wild and domestic herbivores.

New Mexico contains over 9.2 million acres of land administered by the USDA Forest Service comprising the Carson, Cibola (including the Kiowa National Grasslands), Gila, Lincoln, Santa Fe, and part of the Coronado national forests. NFS authorized 549,409 animal unit months (AUM) of forage for commercial livestock operations in New Mexico, according to the Grazing Statistical Summary for Fiscal Year 2009 (USDA-FS 2009).

The 2009 Basin and Range Region Cow-calf Cost and Return Budget reports an annual value of production on a per cow basis of $472 (USDA-ERS 2009). By converting 2009 AUM authorizations to animal units yearlong (549,409/12), the number of head of cows capable of being supported by the 2009 AUM authorizations can be estimated at 45,784. Applying this estimate, the 2009 potential for value of production from NFS forage is over $21.6 million in estimated direct benefit to New Mexico communities. This figure demonstrates the importance to rural communities of continued and consistent access to forage on NFS lands for qualified ranching operations.

Beyond economic benefits, ranching represents an important and irreplaceable part of the custom and culture of agriculture in New Mexico, conserves open space, provides habitat for wildlife, and presents day-to-day stewardship of both private and federally owned lands. Continued incorporation of NFS lands with privately owned

ranching operations directly contributes to meeting goals 1, 2, and 3 of the USDA Strategic Plan listed on page 3 of the DEIS. The Planning Rule should explicitly recognize and require that all forest plans developed under the rule contain provisions to provide consistent access to forage resources for the purposes of commercial livestock production as congressionally mandated by MUSYA and NFMA.

In conclusion, President Obama and USDA Secretary Vilsack share a commitment to strengthening rural America. The vitality and sustainability of rural America is and always has been tied to a continued yield of goods and services from the land. The shift in management from the principles of multiple use and sustained yield outlined in the Proposed Rule is not only inconsistent with MUSYA and in violation of NFMA but it also moves USDA in a direction away from meeting the stated commitments of its leadership.

Thank you for the opportunity to comment on this important matter.

Sincerely,
Bebo Lee

Don L. (Bebo) Lee
President, NMFLC
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Literature Cited:
USDA-ERS. 2009. United States Department of Agriculture Economic Research Service Basin and Range Region Cow-calf Cost and Return Estimates for 2009. Online. Available at http://www.ers.usda.gov/Data/CostsAndReturns. [Retrieved May 2011]
USDA-FS. 2009. United States Department of Agriculture Forest Service Grazing Statistical Summary Fiscal Year 2009. Online. Available at http://www.fs.fed.us/rangelands/reports/index.shtml. [Retrieved May 2011]

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Comments

See Attachments

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FRD-1054

BOARD OF COUNTY COMMISSIONERS
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May 16, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S
Bountiful, UT 84010

Dear Sir or Madam:

Thank you for this opportunity to submit comments on the proposed forest planning rule (76 Fed. Reg. 8480, Feb. 14, 2011).

Management of the national forests is important to Jackson County and our local economic health. Forest planning is important because our national forests should be working for all of us and need to be well-managed according to a set of multiple use priorities and within budget constraints. Unfortunately, the Proposed Rule seems to make planning an end in itself. We believe it will add to the process burden already overwhelming the Forest Service and will increase the time and cost for completing forest plans, resulting in less, not more, on the ground management of the national forests.

The proposed rule weakens the role of planning efforts of local government. The planning efforts of local governments should have a special place in forest planning. That was the case under the 1982 rule which separated "Public participation" requirements under 36 C.F.R. § 219.6 from the "Coordination with other public planning efforts" under 36 C.F.R. § 219.7. The proposed rule weakens the requirement to consider the plans of state and local government and Indian tribes in three ways. First, it combines public participation requirements together with the section on coordination with other public planning efforts into one section which dilutes the importance of coordination with other public planning efforts. Second, within the newly combined single section 219.4, the rule compels the Forest Service to "encourage" public participation from all segments of the public except state and local government. Finally, whereas the 1982 planning rule in 219.7 clearly required that "the responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes," the rule under 219.4 adds the equivocal phrase at the end of the sentence "to the extent practicable and appropriate." This changes coordination with state and local government and Indian tribe plans from a requirement to a discretionary decision of the forest supervisor. If increasing the agency discretion is the objective, then the phrase "to the extent practicable and appropriate" should be used elsewhere in the proposed planning rule particularly with regards to species viability and consideration of the best science.

economic considerations are not competing values, but, rather, they are truly interdependent and all play an important role in effectively managing NFS lands.

Because the USFS is in a position to have a substantial impact on all of the factors influencing ecological, social and economic sustainability, we request that the proposed rule recognize this and include language for plan components that maintain or restore all three elements of sustainability, being ecological, social and economic.

Too much process and paper work. The Proposed Rule is long on process (Sec. 219.5, 219.6, 219.7). These requirements are too cumbersome and time consuming. One of the objectives of the new rule is supposed to be that it is workable, affordable and will withstand court challenges so the Forest Service doesn't have to do it over again. Based on experience since the 1982 Planning Rule was adopted, additional process is not likely to improve our national forests or make the job of managing them any easier. These processes will just lead to more lawsuits by people who are opposed to natural resource use and management. Only those processes required by Congress in the NFMA should be included in the Planning Rule.

Species Viability. Section 219.9 fails to correct the problem of an unattainable and procedurally impossible obligation to demonstrate that a forest plan will "maintain viable populations of species". One of the most frequent legal claims in national forest litigation is that the Forest Service is not maintaining viable populations. The Forest Service should use the revision of the planning regulation as an opportunity to eliminate this fertile ground for litigation. There is no consensus on the population level that achieves a "viable" population so the regulation imposes a legal obligation on the Forest Service to ascertain what is not ascertainable. Measuring and proving that a forest plan will "maintain" or "is maintaining" a viable population is nearly impossible, leaving the Forest Service highly vulnerable to lawsuits.

The proposed rule requires the Forest Service to demonstrate it will maintain viable population for "species of conservation concern", which the planning rule defines as species for which "there is evidence demonstrating significant concern about its capability to persist over the long-term in the plan area." Requiring the Forest Service to provide a guarantee of viability for a species over which there is significant concern about viability requires the agency to guarantee something that it cannot. It puts the burden on the Forest Service to prove it will maintain a viable population and invites litigation over the adequacy of the substantive requirements in the plan, survey obligations, and population monitoring.

Further, the proposed rule expands the "viability" requirement to include all species in all six taxonomic Kingdoms, i.e., Plants, Animals, Fungus, Bacteria, Algae, and Protozoa. This will make the cost of compliance soar, will establish a regulatory standard that cannot be achieved and will increase litigation over "viability". The agency acknowledges it knows very little about invertebrates. The 1982 viability requirement just for vertebrates has cost the agency many millions of dollars and 29 years of litigation that is still on-going. Adding a viability obligation for invertebrates such as fungi, slugs,

Though occasionally referenced in the proposal, the Forest Service appears to be ignoring its multiple use mandate, a mandate imposed by Congress, codified in agency regulations and affirmed by the courts. This problem manifests itself in three ways. First, the proposal fails generally to acknowledge the multiple use mandate as a guiding principle of forest planning. Second, proposed provisions specifically conflict with the multiple use mandate. Third, the proposed definition of "ecosystem services" is so inclusive and vague that it dilutes the entire concept of multiple use. The proposed rule clearly provides that preservation trumps social and economic factors, including recreation, contradicting the Multiple Use Sustained Yield Act, the statute that authorizes many Forest activities.

The proposed rule is overly long, detailed, and encumbered with inflexible mandatory requirements and jargon that preclude it from being a workable, affordable, and enduring Planning Rule. In a time when the United States is facing record budget deficits, the Forest Service needs to be working to maximize productive work, not paper work. We urge you to revise the Proposed Rule by eliminating everything that goes beyond the statutory planning requirements contained in the Multiple Use Sustained Yield Act and the National Forest Management Act. The contents of Alternative C, contained in Appendix E to the Draft Programmatic Environmental Impact Statement for the Proposed Rule would be a good way to do this. Alternative C in the draft EIS would, according to the Forest Service analysis, cost nearly $24 million (24%) less per year than the proposed rule to implement

Following are some more specific recommendations:

Responsible official. We agree that the Forest Supervisor should be the Responsible Official for forest plans. (Sec. 219.2).

Use of scientific information. The proposed rule has several references to "best available science". This seems like a good idea, but the detailed proof and documentation required in 219.3 turns it into a bad idea. Not everyone can agree on what is the "best" science. We recommend that the Planning Rule simply require that the Forest Service take into account available, relevant scientific information, along with other factors, in the amendment or revision of forest plans, without any reference to the "best" information.

Local community needs. The Proposed Rule places a lot of emphasis on public involvement (Sec. 219.4), but places more emphasis on the views of "youth, low-income and minority populations" than on the local citizens and forest users who will be most directly affected by the Plan.

Sustainability. 219.8 requires plan components to "**maintain or restore** the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area ...." (emphasis added). However in reference to social and economic sustainability, the rule requires only that "[t]he plan must include plan components **to guide the unit's contribution** to social and economic sustainability ...." (emphasis added). We strongly believe that social, environmental and

and insects assures millions more in costs over the next decade and 30 more years of litigation

Viability and management of species are the responsibility of state wildlife and fish management agencies, and the federal agencies charged with administering the ESA. The Forest Service is not required by any law to maintain "viable populations". The Planning Rule should simply require the Forest Service to do what is required by the NFMA.

Monitoring. Monitoring is an integral part of land management and land management planning. However, implementing Section 219.12 will be impossible without investing a lot more money. The Forest Service says it will only do what it can afford to do, but the Courts are not likely to agree that that is what the Proposed Rule requires. Instead of focusing on "climate change and other stressors" and "carbon stored above ground", forest plan monitoring should focus on how well the Forest Service is achieving the Desired Conditions, forest plan objectives, and planned outputs. We recommend the Monitoring requirements in Alternative C.

Objection process. It is a good idea to limit the opportunity to object to a proposed plan to people who have participated in the planning process by submitting comments. It makes good sense to require that objections to the plan be brought up before a final decision is made. This process has worked well for Healthy Forest Restoration Act projects. The requirements of Sec. 219.50—219.62 should be included in the final Planning Rule.

Thank you for the opportunity to comment.

Board of County Commissioners
Jackson County, Colorado

By: _____
Michael A. Blanton

OT	S	RT	DT	EA	F	RI	CE

Attributes

Response Type: 3 - Form or LG +
Delivery Type: W - Web-based submission
IP Address: 66.112.77.92
Form Letter: 11+

Comments

Please accept our comments as attached

Individual(s)

Organization Type	County Government Agency/Elected Official
Organization	GRANT COUNTY PUBLIC FOREST COMMN
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Title	MEMBER
Name	KING WILLIAMS
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State	OREGON
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Country	UNITED STATES
Created On	5/11/2011 7:21:00 PM

Grant County Public Forest Commission

P.O. Box 310
Canyon City, OR 97820

Committed to a Thriving Community through Healthy Forests

Elected Members

Dave Traylor

Mike Smith

Tod Houpt

Roy Peterson

Don Bishop

Walt Gentis

Roger Mckinley

King Williams

Larry Blasing

May 4, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S
Bountiful, UT 84010

Re: National Forest System Land Management Planning Notice of Proposed Rulemaking and Draft Programmatic EIS

To Whom It May Concern:

Please accept these comments on the Forest Service's Proposed Forest Planning Rule (Proposed Rule) published in the Federal Register February 14, 2011.

We are making these comments as a the Grant County Public Forest Commission. The Grant County Public Forest Commission was established by an initiative of the electorate of Grant County, Oregon for the purpose (in part) to "prescribe actions to promote the efficient beneficial and timely stewardship of public lands and resources". The members of the Commission are elected by the voters of Grant County. The enabling initiative passed by the voters of Grant County in 2002 recognized and stated..."forest health is paramount to our natural environment, including watersheds, wildlife habitat, fisheries, native ecosystems, timber production, grazing and other beneficial activities". Our purpose as a commission is to work to ensure that these principles are met in a timely fashion.

Grant County citizens are largely dependent on the outputs of our local National Forests to provide resources for our economies and amenities for our social wellbeing. Grant County has three remaining sawmills that can easily be supplied with raw material from the Malheur National Forest along with supplemental industries using biomass, post and poles, cottage industries, etc. We have a large ranching industry that has been historic partners with the Forest Service through grazing allotments to become one of the best beef and sheep producing regions in the US. If the USFS is to maintain its legal mandate, it must focus on ways to keep these industries and economies viable. Forest planning is important because our federal forests should be working for all citizens especially those communities dependent upon the outputs of the public lands for our economic and social well being. The forests need to be well-managed according to a set of priorities and within budget constraints. Unfortunately, the Proposed Rule seems to make planning an end in itself. We believe it

will add to the process burden already overwhelming the Forest Service. Less, not more, will get done on the lands the Forest Service manages.

In a time when the United States is facing record budget deficits, the Forest Service needs to be working to maximize productive work, not paper work. We urge you to revise the Proposed Rule by eliminating everything that goes beyond the statutory planning requirements contained in the Multiple Use Sustained Yield Act and the National Forest Management Act. The contents of Alternative C, Appendix E to the Draft Programmatic Environmental Impact Statement for the Proposed Rules (Alternative C) would be a good way to do this.

Here are some more specific recommendations:

Responsible official. We agree that the Forest Supervisor should be the Responsible Official for forest level plans. (Sec. 219.2).

Use of scientific information. The Proposed Rule has several references to "best available science". This seems like a good idea, but the detailed proof and documentation required in Sec. 219.3 turns it into a bad idea. No one can agree on what is the "best" science. On the ground knowledge of a particular area is more reliable than theoretical studies and computer models. Replace proposed Sec. 219.3 with the language in Alternative C.

Local community needs. The Proposed Rule places a lot of emphasis on public involvement (Sec. 219.4), but places more emphasis on the views of "youth, low-income and minority populations", private landowners, and Native American tribes than on the local citizens and forest users who will be most directly affected by the Plan. The requirements for this kind of outreach will cost money better used for projects on the ground and is contrary to the The Organic Act of 1897, The Multiple-Use, Sustained-Yield Act of June 12, 1960, and The Forest and The National Environmental Policy Act of 1969. Interested people, from whatever sector of society, will make their views known without a requirement the Forest Service is likely to get sued for not following, with no benefit to the resources it manages. Public outreach should be left to the discretion of the responsible official and follow more closely the intent of The Organic Act of 1897, The Multiple-Use, Sustained-Yield Act of June 12, 1960, and The Forest and The National Environmental Policy Act of 1969. See Alternative C.

Too much process and paper work. The Proposed Rule is long on process (Sec. 219.5, 219.6, 219.7). These requirements are too cumbersome and time consuming. One of the objectives of the new rule is supposed to be that it is workable, affordable and will withstand court challenges so the agency doesn't have to do it over again. Based on experience since the 1982 Planning Rule was adopted, additional process is not likely to improve our forests or make the job of managing them any easier. These processes will just lead to more lawsuits by people who are opposed to natural resource use and management. Only those processes required by Congress in the NFMA should be included in the Planning Rule.

Species viability. The Forest Service is not required by NFMA to include this in the Planning Rules. It is only required to "provide for diversity of plant and animal communities" and "preserve the diversity of tree species". What is in Sec. 219.9 goes even further than the 1982 requirement that has caused the Forest Service so much trouble in the Courts and cost it over a billion dollars over the last 30 years.

This requirement should be eliminated now. Instead, the Planning Rule should simply require the agency to do what the NFMA requires. See Alternative C.

Multiple Use. The Proposed Rule does not properly address the various multiple uses the Forest Service is required to manage for under the Multiple Use-Sustained Yield Act. Sec. 219.8 and 219.10 should be rewritten to give equal weight to all three aspects of "sustainability": "social, economic and ecological". Instead, it lists only "ecosystem services" as a multiple use that "contributes to local, regional, and national economies in a sustainable manner." This is a prime example of language in the Proposed Rule that delivers the wrong message to Forest Service personnel about what the Forest Service needs to be doing to manage natural resources such as timber, grazing, recreation and water. Alternative C is the right approach.

Monitoring. Carrying out Sec. 219.12 will be impossible without investing a lot of money. The Forest Service says it will only do what it can afford to do, but the Courts are not likely to agree that is what the Proposed Rule requires. Instead of focusing on "climate change and other stressors" and "carbon stored above ground" (Sec. 219.12(a)(5)), the agency should be looking at timber outputs, AMU's, recreational visitor days and water quality and quantity. A formal monitoring process under the Forest Plan is unnecessary. The "biennial evaluation" should be eliminated. The language in Alternative C should be the Final Rule.

Objection process. It is a good idea to limit the opportunity of object to a proposed plan to people who have participated in the planning process by submitting comments. It makes good sense to require that objections to the plan be brought up before a final decision is made. This process has worked well for Healthy Forest Restoration Act projects. The requirements of Sec. 219.50—219.62 should be included in the final Planning Rule.

Respectfully submitted,

Grant County Public Forest Commission

Dave Traylor, member

Mike Smith, member

Larry Blasing, member

King Williams, member

Tad Houpt, member

Dan Bishop, member

Roger McKinley, member

Walt Gentis, member

We, as individuals, approve these comments as our own for the purposes of standing to Appeal or Litigate implementation of the plan if necessary.

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John Day, OR 97845

Mike Smith
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FRD- 10160

MONTEZUMA COUNTY
BOARD OF COMMISSIONERS

County Commissioners:
Steve Chappell
Gerald Koppenhafer
Larrie Rule

County Administrator:
Ashton N. Harrison

109 West Main Street, Room 302
Cortez, Colorado 81321
(970) 565-8317
(970) 565-3420 FAX

May 16, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 E. 500 S.
Bountiful, UT 84010

Re: Forest Planning Rule

The following comments on the Proposed Rule and DPEIS are respectfully submitted to the United States Forest Service.

The Montezuma County Board of County Commissioners have the following concerns;

Conformance to NFMA & MUSYA; The Proposed Rule does not conform to longstanding federal laws including the National Forest Management Act (NFMA), and the Multiple Use Sustained Yield Act (MUSYA). These acts clearly establish that the forest should be managed to meet multiple-use objectives. The proposed rule appears to elevate maintenance and restoration of wildlife above other objectives, and marginalizes the multiple-use concept.

Although the Forest Service must provide for maintenance and diversity of plant and animal communities, the Proposed Rule focuses too heavily on the maintenance and restoration of wildlife ignoring the multiple-use mandate. All forest resources must be considered equally.

NFMA and MUSYA provide the Forest Service with the direction and authority to manage public forest reserves. Neither Act however requires the Forest Service to maintain "viable populations of species" nor do they require "restoration" of ecological conditions for species viability. The Forest Service would be exceeding their authority by pursuing these concepts.

NFMA at 16 U.S.C. 1604 requires the Forest Service to develop a Planning Rule under the principals of Multiple-use Sustained Yield Act of 1960. the Proposed Rule "waters MUSYA down" changing the mission to "Sustained multiple uses".

Conformance with FLPMA & NEPA; The Proposed Rule must conform to FLPMA & NEPA regarding "coordination" with local governments, and the statutory guidance on coordination should be reflected in any new planning rule. The general public is looking for "effective input" that can be seen reflected in the final rule. The only way the public gains an "effective voice" is through "coordination" with local government.

The Proposed Rule provides that the responsible official could amend plans or change the plan at any time. Any change to a plan that has impact on local communities must, by law, be coordinated with local government.

Counties and Towns where 25 % of their land is under Federal Jurisdiction must have an impacting voice in final rule/ regulations to significantly protect and account for their economic viability, historical and cultural practices and their access to public lands.

Protection of "recommended" Wild and Scenic Rivers and Wilderness Areas; The Proposed Rule would require the protection of areas that are recommended for Wilderness and Eligible or Suitable Wild and Scenic Rivers in order to protect the ecological and social values for which they

may someday be designated. When these areas are identified, mapped, and managed as Wilderness Areas or as Wild and Scenic Rivers they are in essence being "designated" by the Forest Service and effectively become such. By federal law only congress can designate such areas.

Sustainability; The Proposed Rule places heavy emphasis on issues such as connected habitats for wide ranging species, restoration of ecosystem and watershed structure, function composition and connectivity, & climate change. It also enlarges the categories of species for protective status, endangered, threatened, candidate and now focal, keystone, umbrella, link and species of concern. The proposed rule also promotes biodiversity beyond Forest Service lands and goes on to include a holistic approach to ecosystem and species diversity., reconnected wilderness and eligible and suitable wild and scenic rivers, and historic migration corridors.

DPEIS at 103 "The ability of the Forest service to maintain or restore necessary ecological conditions within a plan area needed to maintain the existing diversity and viability of all species native to those areas or contribute to viable populations of species whose populations extend well beyond the plan area is uncertain". As the DPEIS already recognizes, this is beyond the ability authority and control of the Forest Service.

Social and economic sustainability. The Proposed Rule does not place enough emphasis on social, cultural, historic uses and economics. These are critical issues for small communities that depend on public lands for their sustenance and a greater level of importance should be placed on the voice of local government in these communities.

Respectfully,

The Montezuma County Board of County Commissioners

Larrie D. Rule Gerald W. Koppenhafer Steve D. Chappell

Cc.

The Honorable Scott Tipton
Colorado State Representative, District 58
200 E. Colfax
Denver, CO 80203

The Honorable Michael Bennett
702 Hart Senate Office Building
Washington, DC 20510

The Honorable Mark Udall
Hart Office Building
Suite SH-317
Washington, D.C. 20510

The Honorable Ellen Roberts
Sate Capitol; 200 East Colfax
Denver, Colorado. 80203

Montezuma County
Board of Commissioners
Administration Office
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109 West Main Street
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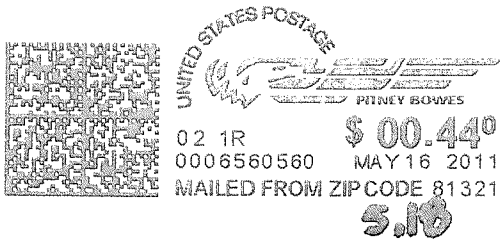

Forest Service Planning DEIS
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BOARD OF COUNTY COMMISSIONERS
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FRD-1041

Sherry Ward
Clerk of the Board
Phone 208-253-4561
Fax 208-253-4880

May 9, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 East 500 South
Bountiful, UT 84010

RE: "Planning Rule" Comments

Dear Chief Tidwell;

As county commissioners for Adams County, Idaho, a coordinating local government, we are hopeful that you will consider special the government to government comments on the proposed rule changes for the National Forest System Land Management Planning program administered by the Forest Service. We strongly support yours efforts to simplify the land management planning process and making it more responsive to changes that cause management situation shifts. Our county government is represented in our local National Forest's collaborative program on several projects. We are pleased that the agency is using an adaptive management approach as we face changing situations and new information. Our experiences with the overall situation cause us to raise some concerns with the proposed rule.

Our concerns are based on the many things the county and its citizenry supply to the users of the National Forest. Our taxpayers supply the roads and bridges for access, law enforcement for protection, search and rescue, emergency medical and other services at grossly unequal levels of taxation versus payments rendered. Our citizens endure legislation such as the Endangered Species Act that often inordinately influences or restricts their economic endeavors simply because they are neighbors. Our county has almost 70% of its lands that has no tax base, 65% of which is controlled by the federal government, primarily National Forest. Our county's economic stability is profoundly influenced by decisions on the National Forest System lands, far more than Indian Tribes are through Treaties. It is because of this that we seek to be involved and considered a coordinating entity in decisions involving the lands of adjacent National Forests. We wish to be consulted BEFORE decisions are made and our legitimate role recognized in decisions that influence citizens, especially their jobs and the county economy. Our county suffers from the recent decisions made on the National Forests particular the

availability and production of some of the purported multiple uses. Our county has some of the highest unemployment rates in the State of Idaho.

As commissioners we understand the need for using science and applying new technology in decision making. While we appreciate your effort to incorporate science through the rule making process, even the "best available" science, however we believe this item as written will lead to greatly increased litigation and evaluations or time scales of judgments on decisions obtaining and documenting this science. In particular we believe that strange judicial rulings by activist judges in a federal court system known for that occurrence in this area will be the outcome. We suggest a change in language. Understanding that science and technology information will be utilized, considered and evaluated in planning process and decisions should be sufficient for supporting guidance type planning decisions that may last for 15 years. Unfortunately, scientists often have to follow the funding and that creates a bias as well as a lack of investigation which could greatly influence decisions if this is the only requirement for validating a decision. Rewriting the ruling so that divergent views and values and associated science are to be raised and provided in the collaborative process, it can influence developments in the monitoring program.

As a government with part time commissioners and a small county administrative budget it is very difficult for the county to participate as much as both we and the agency may like for us to do, in both planning and project development. We are part of a collaborative project currently; however, participation in the outlined planning process as the rule lays-out will force us to not participate fully in the collaborative planning process because of time and money. We do support the process but, we see potential problems arising in meeting standards for filing objections to plan decisions with the proposed rule. With political changes and budget shifts that are almost inevitable in the county and with its part-time governing commission there may be substantive preclusion of involvement in the land plan development process. We feel that on a government to government basis there should be exceptions to the ability to file objections. Finances and available time can dramatically control all of this county's involvement with the Forest Service even with the knowledge of how much their management decisions affect our citizens.

Another concern for us is the ecosystem recovery and resiliency goal or attribute that is stated in the rule. Our concern is that the agency will simply use prescribed fire as the principal tool of management with little consideration for mechanical means and recovery of products. In particular our concern is based on the potential loss of recoverable biomass for an energy production system development which the county. In addition, we see increased emphasis on various wildlife species, especially birds, at the expense of utilization or the provision of products for our citizens that are tied to the area, such as firewood. We also see a distinct difference between restoring an ecosystems historic fire disturbance regime and the habitat fostered by the aboriginal human users and the "climate change" system that may be influenced currently by humans. Apparently we believe there is a substantive shift from a colder to warmer environment with differences in attributes and affects reflective in terms restoration and resilience.

FRD-1061

We strongly support the changes proposed to the deciding or responsible officer for the land planning units and types of changes. For us that change seems to support both the collaborative process you are proposing to use but also the adaptive management process. By working with the decision-makers our citizens may again learn to trust the agency and its personnel. So many top down decisions have made local forest users feel fruitless in seeking remedies to problems or concerns with local managers, while one size doesn't always fit everywhere most users have found little remedial recourse for decisions.

Our very busy constituents will continue to find that the time to participate in the collaborative process will be limited. Your agency must be aware that they will need to create situations that foster the participation in the collaborative process. This is a special problem for the users and others knowledgeable about the land and its resources so that their very special knowledge is obtained and utilized in the collaborative process in planning and projects implemented by the plan. This is a special problem when dealing with and participating in the decision objection process. We hope that localization of the process occurs and actually becomes an expectation of the program. The more open and available this public process is the more assurance that trust can develop.

One item that the rule does not seem to deal with very well is the issuance of new or changed policy that influences the plan situation or its execution. An outstanding example of this is the several recent roads and Travel Management Plan policies. These changes have been rolling out with some frequency only to be changed or modified, soon. The effort to minimize roads has had very major effects on the utilization and uses of resource as well as the ability to correct problems. These are hampering existing plans and as such are expected to cause problems with plans executed under the new rule. In some cases such policy issuance may cause wholesale plan amendments that will be expensive, time consuming and even influence the ability to perform some forms of management activities. An assessment of this should be made before policies are issued. This could also reduce the political tampering with long term forest management with every administration change.

The rule as written has some problems but we appreciate that several of the changes proposed will shorten the process and enhance the ability to make changes when the monitoring program finds problems. We are aware that are some items that the judicial system will definitely review but these reviews will foster a better more useful system.

Sincerely,
Adams County Board of Commissioners

Bill Brown

Joe Holmes

Mike Paradis

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FRD-1061

Bill Brown, Chairman
Mike Paradis
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Forest Service Planning DEIS
C/O Bear West Company
132 East 50 South
Bountiful, Utah 84010

May 18, 2011

RE: Planning Rule comments

Chief Tidwell:

Please add this comment supplement and attachment A to our original comment letter dated May 9, 2011. The Board of Commissioners from Adams County feel strongly that the existing Planning Rule 219.7 that spells out coordination protocol that the Forest Service is required action when dealing with States, Tribes, and County governments. Rule 219.7 should be left in as is, or adopted as recommended by the attached comment letter from Fred Kelly Grant and Sean Curtis. The Adams County Board fully supports their views and the Forest Service should adopt their recommendation. Local governments represent the citizens and have been authorized to speak in their behalf on issues, thus should have more standing when dealing with federal agencies than the general public.

Respectfully submitted,

Mike Paradis

Mike Paradis, Vice-chairman
Adams County Commissioner

Enclosure: Attachment A

ATTACHMENT A

FRD-1061

Tony Tooke
Director
Ecosystem Management Coordination
United States Forest Service
1400 Independence Avenue, SW
Washington, DC 20250-1104
(Sent by land mail, fax, and electronically)

Chief Thomas L. Tidwell
Chief of the United States Forest Service
Mail Stop 1144
1400 Independence Avenue, SW
Washington, DC 20250
(Sent by land mail, fax, and electronically)

And

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S.
Bountiful, Utah 84010

Dear Chief Tidwell and Director Tooke:

This is a statement, report, analysis and comment that Sean Curtis and I have prepared regarding our recommendation that the proposed Section 219.4 of the 2011 Planning Rules proposal be replaced with the language of the existing, applicable Section 219.7 of the 1982 Planning Rules.

We propose that the following specific changes be made to Section 219.4 of the Proposed Rules:

Either replace the whole of Proposed Section 219.4 with Sections 219.6 (public participation) and Sections 219.7 (coordination with State, Indian Tribal, and local governments);

Or, Divide proposed Section 219.4 into two parts, the first setting forth the public participation language of the

Section and the second setting forth the language of current Section 219.7 setting forth the protocol for coordination.

Either change would reflect the Congressional mandate that sets local government in a status separate from and more intimately involved than the general public. It is a Congressionally mandated separation that makes sense. Local governments represent the interests of all citizens of their jurisdictions, not just specific interest.

Local governmental officials have the responsibility for maintaining economic stability and the social cohesiveness of their communities. They are responsible for, and have the authority to exercise, protection of the police powers reserved by the Tenth Amendment, the protection of public safety, health and welfare.

If they fail to protect the stability of their jurisdictions, the Forests will suffer as they have near the communities that have died because of loss of the timber business. The Forest Service will suffer from a public credibility standpoint, at a time when the Congress is listening to citizens again.

As you know from our prior talks, I have been working with local governments to implement the "coordination" communication and negotiation process connecting federal agencies with local governments for over two decades. My efforts began with Owyhee County, Idaho, and from a rocky beginning the County and Bureau of Land Management have developed a mutually beneficial dialogue which is continual.

Using the same process, the County has established a successful dialogue status with the Fish and Wildlife Service, the Idaho Department of Environmental Quality (acting for EPA) and other agencies. The Forest Service has no land management responsibilities in the County. Major land use conflicts have been resolved, and the coordination process laid the base for the Owyhee Initiative, as I explained during the Andrus Conference which you, Chief Tidwell, attended.

Sean Curtis began working with Modoc County in California shortly after I began the effort with Owyhee County. Modoc faced problems with the BLM and the Forest Service. He, Carolyn Carey, June Roberts and a courageous Board of Supervisors led by Nancy Huffman, established a coordination protocol which continues today. Sean continues to assist Modoc County in

successful communication with the Forest Service, BLM, and Fish and Wildlife.

Sean and I have seen the coordination process as defined by Congress in the Federal Land Policy Management Act and mandated for the Forest Service by the National Forest Management Act work. The Secretary of Agriculture's protocol set forth in the currently applicable Section 219.7 parallels the Congressional definition and has worked in a mutually beneficial manner in every local government where Forest Service personnel have followed the law.

We are engaged in a serious effort to persuade you to resist the temptation to change the Secretary's definition in Section 219.7 which mirrors the Congressional mandate. We have seen the 219.7 protocol work. We have also seen the "cooperating agency" status encouraged by the proposed Section 219.4 fail the citizens of local governments. That status benefits only the Service, paid planners, and local government officials who do not believe that they have the authority to stand firm for their citizens who deserve real, meaningful representation at the table with federal agencies.

This report, analysis and comment is a two fold effort. It constitutes Sean and my personal position regarding the effectiveness of the currently applicable Section 219.7 and the interest of many counties and units of local government who seek meaningful representation at the table with your personnel.

I respect the belief in collaboration that you two have, and the fact that you have shown that belief in the national and regional meetings that you have provided. But, the units of local government that have signed on to this report were not specifically represented in those meetings. No local government association can represent the interests of the citizens of specific local governments.

The National Association of Counties does not represent the citizens of the counties that have signed on to this report and analysis. No State Association of Cities or Counties represent the citizens of the local governments that have signed on this report and analysis. Such associations represent the counties and cities who are members, but they do not represent the local citizens. Congress recognizes that fact, thus has specifically qualified local governments for special recognition and representation with the Forest Service and other federal agencies.

The second impact of this report and analysis is that many units of local government have shown interest in signing on to this report as their local plan and policy for the protocol to be followed in the coordination process mandated for your Service by Congress. They will expect that coordination be implemented in accord with their local plan and policy adopted by endorsing replacement of Section 219.4 of the Proposed Rules by Section 219.7 of the 1982 Planning Rules.

It is from that dual standpoint that we submit this report, analysis, comment and statement of local plans and policies as to the protocol for coordination between local governments and the Forest Service.

I. PERSONAL ANALYSIS, REPORT AND COMMENT AS TO SECTION 219.4 OF THE 2011 PROPOSED FOREST SERVICE PLANNING RULES SUBMITTED BY SEAN CURTIS AND FRED KELLY GRANT:

Sean Curtis is a Natural Resource Analyst who is assisting local governments to implement the coordination process with all federal agencies. His work with Modoc County historically has already been discussed; his work with that County continues today. He is knowledgeable regarding management of natural resources as well as the mutually beneficial coordination process. His knowledge and experience with the actual management of land uses and natural resources makes him especially effective in implementing coordination not just from a protocol standpoint, but from a management standpoint.

Fred Kelly Grant initiated the first coordination process with the BLM which has continued without interruption for two decades in Owyhee County, Idaho.

Together, based on their personal experiences, they submit this report, analysis and comment requesting that the proposed Section 219.4 be replaced with Section 219.7 of the 1982 Planning Rules for the coordination process, and by Section 219.6 of the 1982 Planning Rules for public participation.

In the alternative, they request and suggest that the Proposed Section 219.4 be separated into two parts: the first containing public participation as set forth in the proposal (removing the governments of States, the Tribes and local entities of government from the public participation language),

and the second as to coordination containing all provisions of Section 219.7 of the 1982 Planning Rules.

We urge reconsideration of the text of Section 219.4 of the Proposed 2011 Planning Rules as to coordination. The Section alters dramatically the elements of mutual participation that make up the Congressional requirement that the Forest Service "coordinate" with local governments. We urge that Section 219.7 of the 1982 Planning Rules be substituted for the proposed Section 219.4 as to coordination. Section 219.7 complies with the Congressional mandate of coordination and definition of coordination.

II. LOCAL PLAN AND POLICY REGARDING THE COORDINATION PROCESS SUBMITTED BY SIGNATORY COUNTIES AND LOCAL GOVERNMENTS:

Many counties and local governments have signed on to our report, analysis and comment. The signatory counties and local governments submit this report as their "coordination protocol", their local plan and policy as to the protocol by which coordination is implemented, not as a mere comment such as those submitted by Curtis, Grant and other members of the general public.

III. THE PROPOSED RULES HAVE NOT BEEN DEVELOPED IN COMPLIANCE WITH THE 1982 PLANNING RULES BECAUSE THEY HAVE NOT BEEN DEVELOPED IN COORDINATION WITH THE LOCAL GOVERNMENTS THAT HAVE SIGNED THIS REPORT AND ANALYSIS.

The Secretary of Agriculture served Notice that the 2011 Proposed Planning Rules would be prepared in accordance with the 1982 Planning Rules. Section 219.7 of those 1982 Rules requires that the Forest Service "coordinate" development of the Rules with local governments. That Section must be followed in the final review and adoption of Planning Rules, but it has not been followed to this point---at least as to the local governments signatory to this report and analysis.

Section 219.7 should have been followed even in the development of the draft Rules, but it was not. Chapter 4 of the Proposed Rules lists hundreds of organizations and individuals who were consulted and involved in the development of the Rules. But, the coordination with individual and

specific local governments required by Congress was not implemented.

The specific elements of coordination set forth in Section 219.7 have not been followed with the signatory counties and entities of local government. So, to this point, the Service has failed to comply with the Congressional mandate of coordination and failed to comply with regulatory direction from the Secretary of Agriculture.

Unless the Service remedies its non-compliance by adequately coordinating with the signator counties and local governments with regard to the proposed Planning Rules, they will no doubt suffer the same judicial fate as the prior two sets of proposals that have been rejected for non-compliance with the law.

The counties and local governments signatory to this analysis submit the document as their local policy as to how coordination should be implemented. They submit that Section 219.7 of the 1982 Planning Rules should be substituted for Section 219.4 of the 2011 Proposals. In so doing, they represent to the Chief and to the Secretary that the provisions of Section 219.7 constitute their local plan and policy for implementing coordination. By submitting the language of Section 219.7, they expect that the Service will coordinate with each of them in attempting to resolve the conflict between their 219.7 policy and the proposed Section 219.4.

IV. SECTION 219.4 OF THE PROPOSED 2011 PLANNING RULES SHOULD BE REPLACED BY THE EXACT LANGUAGE OF SECTION 219.7 OF THE EXISTING AND APPLICABLE 1982 FOREST SERVICE PLANNING RULES.

In Section 219.7 of the 1982 Planning Rules, the Secretary of Agriculture carefully set forth all the elements of coordination required by Congress in the only Congressional definition of "coordination" or "coordinate" enacted into natural resource management law.

Section 219.7 of the 1982 Planning Rules closely parallels the Congressional definition of "coordination" and "coordinate" contained in the Federal Land Policy Management Act. FLPMA was enacted one day prior to enactment of the National Forest Management Act which requires the Forest Service to engage in "coordination" with local governments. Until Congress changes that definition, it is the definition that has the force of law.

Counties and other entities of local government throughout the west have utilized the coordination communication process with the Forest Service to the mutual benefit of local officials and Forest Service personnel. Where Forest Service personnel have followed the Secretary's process, management has progressed well without expensive, wasteful litigation.

Where Forest Service personnel have followed the Rules, the Service has benefitted from having a clear roadmap to successful communication and resolution of conflicts. Section 219.7 very clearly identifies when and how coordination takes place in the planning process. It clearly identifies who is responsible for developing the coordination process, the manner in which the planning documents should display and discuss local government plans and policies, and how the Forest Service should review local plans and policies to find inconsistencies or conflicts with federal plans and assist in resolving such conflicts.

It identifies one major element of coordination as defined by Congress: the need to meet with local officials and communicate with them regarding issues and resolution of conflicts. That element of meeting, of face to face discussions, is sadly missing from the proposed Section 219.4. Whether to meet government to government is left by the Section's language totally to the discretion of the local "responsible officer". Congress never sublimated coordination to the discretion of a local line officer.

The section is the very core of coordination. It sets in place the protocol through which local governments and the Service can find mutually beneficial resolution of conflicts. The Council on Environmental Quality, charged with oversight and control of NEPA planning processes, requires that NEPA processes be put in place "as early as possible" in the planning effort so that conflicts can be identified and resolved early, prior to issuance of a final document that must be challenged through litigation---administrative or judicial. Section 219.7 provides the means for the Service to comply with CEQ's regulations. If it is left in place, and the Service's personnel follow it, there will never be question as to whether the Service has complied with the law as set forth by NEPA and CEQ.

Those counties and entities of local government that have engaged the Forest Service in coordination have proven that the process works to the advantage of both parties. Modoc County in

California, Glen Lake Irrigation District in Montana, Custer County in Idaho, and Fremont County in Wyoming, among others, have utilized the 219.7 process to engage the Service in discussions that have so far negated the need for litigation.

Wherever Forest Service personnel are willing to comply with the Congressional mandate and definition of coordination with local government, Section 219.7 presents a clear path to compliance. The proposed Section 219.4 **DOES NOT. THE PROPOSED SECTION 219.4 DOES NOT PROVIDE A PROCESS THAT COMPLIES WITH THE CONGRESSIONAL MANDATE OF COORDINATION.**

Make no mistake, as we demonstrate hereinafter, Congress has ordered that the Forest Service coordinate, in the true sense of that word, with local government. Section 219.7 of the 1982 Rules sets forth the definition of coordination that Congress has provided by statute. The proposed Section 219.4 DOES NOT. If the proposed Section 219.4 is adopted, the signatory counties and entities of local government will still insist on coordination as defined by Congress, not as set forth in 219.4. We will prevail, and the Service personnel will have no clear protocol in their own rules to follow.

We urge that the Secretary leave in place the provisions of Section 219.7 of the 1982 Planning Rules related to coordination with local governments.

The signatory counties and local governments insist that Section 219.7 of the 1982 Planning Rules, which constitutes their local plan and policy for coordination be substituted for Section 219.4 of the Proposed 2011 Planning Rules.

V. PROPOSED LANGUAGE TO REPLACE SECTION 219.4 OF THE PROPOSED 2011 RULES:

Section 219.7, which should replace proposed Section 219.4, as to coordination with local governments, provides as follows:

Sec. 219.7 Coordination with other public planning efforts.

(a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(b) The responsible line officer shall give notice of the preparation of a land and resource management plan, along with a general schedule of anticipated planning actions, to the official or agency so designated by the affected State (including the Commonwealth of Puerto Rico). The same notice shall be mailed to all Tribal or Alaska Native leaders whose tribal lands or treaty rights are expected to be impacted and to the heads of units of government for the counties involved. These notices shall be issued simultaneously with the publication of the notice of intent to prepare an environmental impact statement required by NEPA procedures (40 CFR 1501.7).

(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include--

(1) Consideration of the objectives of other Federal, State and local governments, and Indians tribes, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the impacts identified; and,

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

(d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced.

(e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities

on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.

[47 FR 43037, Sept. 30, 1982, as amended at 48 FR 29122, June 24, 1983]

Section 219.7 was issued by the Secretary of Agriculture as compliance with Section 219.1 that set forth the principles to guide Forest Service planning. Those principles included the following:

(9) Coordination with the land and resource planning efforts of other Federal agencies, State and local governments, and Indian tribes;

(10) Use of a systematic, interdisciplinary approach to ensure coordination and integration of planning activities for multiple-use management

VI. THE LANGUAGE OF SECTION 219.7 OF THE 1982 PLANNING RULES COMPLIES WITH THE CONGRESSIONAL MANDATE TO COORDINATION AND WITH THE CONGRESSIONAL DEFINITION OF COORDINATION.

A. The Provisions of the Forest and Rangeland Renewable Resources Act, the Federal Land Policy Management Act and the National Forest Management Act, and the Legislative History of Said Acts Makes It Patently Clear That Congress Defined "Coordination" In Terms That Require a Process Such as That Set Forth in Section 219.7 of the 1982 Planning Rules.

The language of Section 219.7 was intended to, and did, implement the mandate by Congress that Forest planning be performed in "coordination" with local governments. The legislative history of the various Forest Management Acts, beginning with the Multiple Use Sustained Yield Act of 1960 demonstrates that Congress intends that "coordination" be a principle by which Forest planning is conducted----not "cooperation", not "collaboration", but "coordination.

SHERRY WARD
Adams County Clerk
P O Box 48
Council ID 83612-0048

FRD-1061

BOISE ID 837

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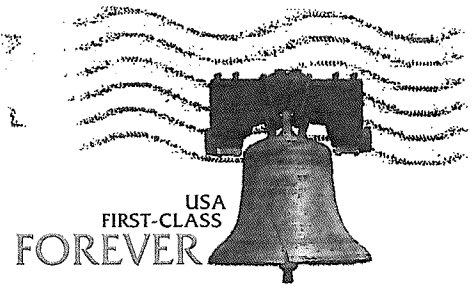

Forest Service Planning DEIS
c/o Bear West Company
132 East 500 South
Bountiful, UT 84010

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Washoe Tribe of Nevada and California

FRD-1062

Forest Service Planning DEIS
C/O Bear West Company
172 E 500 St
Bountiful, UT 84010

May 16, 2010

Re: National Forest System Land Management Planning Rule DEIS

To Whom It May Concern:

Thank you for allowing the Washoe Tribe the opportunity to comment on the 36 CFR Part 219, National Forest System Land Management Planning: Proposed Rule. The Washoe Environmental Protection Department (WEPD) and Tribal Historic Preservation Office (THPO) support the overall goal of revising the NFS planning rule. WEPD and THPO feel that it is essential to have a revised rule in place to provide for protection and sound management of the natural and cultural resources.

The new planning rule should maintain effective communication with tribal entities and ensure protection of cultural resources. The Washoe Tribe has the following comments regarding specific sections of the proposed rule.

Section 219.8 Sustainability, Social and Economic Sustainability (pg. 8492)
Cultural sustainability should be included as an equal aspect in the foundation for sustainability. Cultural conditions cannot be adequately or appropriately represented in social and economic sustainability.

Section 219.10 Multiple Uses, Cultural and Historic Resources (pg. 8496)
The last sentence of paragraph one should be removed from the proposed rule: "In some cases, damage may occur if necessary to achieve a different multiple use objective". The statement allows for misinterpretation and could result in the destruction of cultural resources. Cultural resources should take priority in multiple use issues. Cultural resources cannot be replaced once damaged or destroyed.

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FRD-1062

Section 219.12 Monitoring, Unit Level Monitoring (pg. 8498)
Cultural resources should be included as a component in monitoring for every program.

Consultation with Indian Tribal Governments (pg. 8512)
Please provide definition of cooperative Agency status and what advantages/disadvantages it would provide for a Tribe.

Consultation with Indian Tribal Governments (pg. 8513)
Sacred sites need to be included in the proposed planning rule. Discussions regarding sacred site protection need to be incorporated into the planning rule.

Section 219.5 Planning Framework, (b) Interdisciplinary teams (pg. 8516)
Tribes should be included in ID teams when projects are within ancestral lands.

Thank you for considering our comments on the proposed planning rule and for providing us the opportunity to comment on this project. Please keep us informed on the status of this project.

Sincerely,

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Washoe Tribe of NV and CA
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marie.barry@washoetribe.us

Darrel Cruz, THPO
Washoe Tribe of NV & CA
Cultural Resource Office
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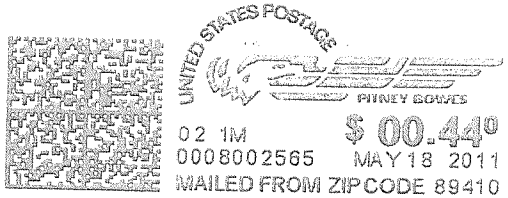

FRD-1062

Forest Service Planning DEIS
c/o Bear West Company
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Bountiful, UT 84010

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DELTA COUNTY, COLORADO

BOARD OF COUNTY COMMISSIONERS

COUNTY COURTHOUSE • 501 PALMER STREET • SUITE 227 • DELTA • COLORADO • 81416-1796

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Dist. 1: C. Douglas Atchley - Dist. 2: C. Bruce Hovde - Dist. 3: R. Olen Lund

FRD-1063

May 16, 2011

VIA FAX: 801-397-1605

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, UT 84010

RE: **2011 Proposed National Planning Rule**

To Whom It May Concern:

The Board of County Commissioners (Board) in Delta County, Colorado wishes to submit the following comments in regard to the USFS 2011 Proposed National Planning Rule (Proposed Rule).

Multiple Use

The Forest Service's authorizing statutes, the National Forest Management Act (NFMA) and the Multiple-Use Sustained Yield Act (MUSYA), provide that "the Secretary shall assure that (Forest Service) plans "shall provide for "multiple use and sustained yield" of products and services including "outdoor recreation, range, timber, watershed, wildlife and fish and wilderness". The Proposed Rule places its main emphasis on provisions for environmental analysis and fish and wildlife protection rather than providing equal weight to the other multiple uses including timber, grazing, mining and oil and gas development. The Board believes that all multiple uses should be afforded equal weight.

Sustainability

The Proposed Rule fails to give equal weight to all three aspects of "sustainability", e.g. social, economic and ecological. (*Section 219.8*) The section focuses on ecological sustainability while merely mentioning the "multiple uses" in general. Once again, economic and social "sustainability" are of equal importance and value for our rural communities dependent on the multiple use activities conducted on our public lands, e.g. grazing, timber, mining and oil and gas development and recreation. The economic and social impacts of a plan decision should be considered equally with ecological considerations when addressing "sustainability".

FRD-1003

Coordination with Local Governments

The Proposed Rule potentially weakens the process for coordinating with local governments as mandated in NFMA and currently included in the 1982 Planning Rule. The Proposed Rule directs the agency to solicit "public participation", but local governments, the entities responsible for protecting the health, safety and welfare of the local citizens, are not given adequately elevated status over individual special interests.

The Board appreciates the opportunity to comment on the Proposed Rule and appreciates your thoughtful consideration of its comments.

Sincerely,

C. Bruce Hovde, Chair

R. Olen Lund, Vice Chair

C. Douglas Atchley, Commissioner

DELTA COUNTY COMMISSIONERS
Delta County Courthouse
501 Palmer, Suite 227
Delta, CO 81416-1796

FRD-1003

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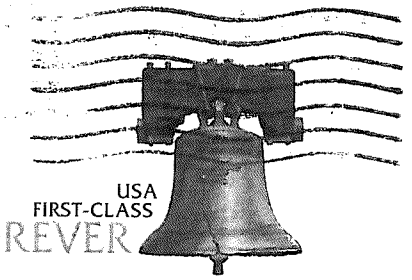

Forest Service Planning DEIS
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Bountiful, UT 84010

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FRD-1064

C. L. "BUTCH" OTTER
GOVERNOR
May 16, 2011

Forest Service Planning "Planning Rule" DEIS
C/o Bear West Company
132 E 500 S
Bountiful, UT 84010

To Whom It May Concern,

Enclosed are the State of Idaho's comments to the U.S. Department of Agriculture's Forest Planning Draft Environmental Impact Statement (Forest Plan).

In general, the State of Idaho is concerned that the Forest Plan exceeds its authority under the National Forest Management Act in managing *"viable populations of species of conservation concern..."* The Idaho Department of Fish and Game manages fish and wildlife species in the State of Idaho. The Forest Plan needs to recognize the State's broad trusteeship, police power and primacy over fish and wildlife within its borders – including wildlife on most federal lands.

Additionally, unlike other federal land managers, there is no additional "Governors Consistency" review proposed for the Forest Plan once the final document is produced. The Final Plan should allow for the Governors of affected states to review federal rules to ensure they are consistent with State laws.

Thank you for your consideration of the State of Idaho's comments on the new Forest Plan.

As Always – Idaho, "Esto Perpetua"

CLO/sg

C.L. "Butch" Otter
Governor of Idaho

FRD-1064

Idaho Department of Fish and Game Comments on the USFS Proposed Planning Rule and DEIS for incorporation into Coordinated State Comments.

The Proposed Planning rule and DEIS address eight significant issues identified during scoping; Ecosystem Restoration, Watershed Protection, Diversity of Plant and Animal Communities, Climate Change, Multiple Use, Efficiency and Effectiveness, Transparency and Collaboration, and Coordination and Cooperation beyond National Forest Service boundaries.

General Comments

The USFS acknowledges in the proposed rule and DEIS that USFS lands contain significant habitats for wildlife and wildlife associated recreation therefore the State of Idaho is vested in the implementation and outcomes associated with the proposed planning rule. The final rule needs to recognize the State's broad trustee, police powers, and primacy over fish and wildlife within their borders which includes wildlife on most federal lands. The proposed rule recognizes significant issues such as the need for Efficiency and Effectiveness, Transparency and Collaboration, and Coordination and Cooperation. As the planning rule addresses the issues pertaining to fish and wildlife conservation, management, and assessment we submit that all actions associated with the fish and wildlife would be best served through formally acknowledging and incorporating state wildlife management authority, expertise, knowledge, and formal plans related to fish and wildlife. Department of Fish and Game staff routinely coordinate and collaborate with USFS State, Regional and District staff on many of these matters but the rule should acknowledge that coordination with the appropriate state agency authorized to manage Fish and Wildlife is an expectation.

The Federal Register notice refers to State Wildlife Action Plans in the context of the proposed requirements of assessments on pages 8487, 8488 and 8517. This is an appropriate use of Idaho's State Wildlife Action Plan and we support its use in these contexts. It must also be recognized that the State of Idaho adopts more detailed species management plans which describe management and conservation for specific species, such as but not limited to, greater sage-grouse, grizzly bear and Yellowstone cutthroat trout. The plans describe conservation actions, including habitat actions, necessary to ensure the long term persistence of the species within the state irrespective of land ownership boundaries. We suggest adding the following underlined language after State Wildlife Action Plans, and formally approved State species management plans, on pages 8487, 8488 and 8517. Formal recognition of these plans supports all eight "significant issues" identified during scoping.

We are extremely concerned with the statement on Page 8495 in the Federal Register notice under the Integrated Resource Management Subheading which reads, "This provision of giving consideration to certain species as game or sportfish that play a special role in contributing to social, cultural and economic sustainability is not intended to require that units support the population goals of State Agencies." This statement clearly conflicts with the guidance to Coordinate and Collaborate and is another failure to recognize the authority of States to regulate and manage fish and wildlife within their borders. We suggest that the guidance be re-written to reflect that it is the intent of the USFS to, "support population goals of State Fish and Wildlife Agencies unless a compelling reason is provided otherwise."

FRD-1064

OFFICE OF SPECIES CONSERVATION

C.L. "BUTCH" OTTER
Governor

NATHAN A. FISHER
Administrator

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304 North Eighth Street, Suite 149
Boise, Idaho 83702

May 16, 2011

Forest Service Planning "planning rule" DEIS
c/o Bear West Company
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Bountiful, UT 84010

To Whom it may concern:

The Governor's Office of Species Conservation (OSC) is charged with implementing policy and programs related to federally threatened and endangered species as well as candidate species, species petitioned for listing and rare and declining species. Additionally, OSC is tasked with overseeing recovery efforts for threatened and endangered species in Idaho as well as implementing conservation programs to preclude the need to list species. Of equal importance is the agency's mission to serve as an ombudsman to Idaho citizens who are being harmed by federal regulations pertaining to listed species, candidate species, petitioned species and species with other federal designations.

Below you will find OSC's comments pertaining to the USDA Forest Service's (Forest Service) proposed planning rule found at 36 CFR Part 219.

Candidate Species and Species of Conservation Concern

The proposed rule makes it clear that the Forest Service intends to place a higher level of protection on candidate species across National Forest System lands. The Endangered Species Act (ESA) defines "candidate" species as "those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list but issuance of the proposed rule is precluded." While a candidate species is considered warranted for protection under the ESA but precluded from listing because of higher priorities, they receive no statutory protection under the ESA. The State of Idaho has concern over the Forest Service placing a higher level of protection on candidate species and the hindrance of multiple use activities that may result with such protections. While the State of Idaho agrees that it is necessary to take precautionary steps towards precluding the need to list species, I urge the agency to reconsider its intent to address the needs of candidate species with a higher level of protection than what is afforded under the ESA.

The proposed rule defines "species of conservation concern" as a "[s]pecies that is not threatened, endangered, or a candidate species, but is one for which the responsible official has determined there is evidence demonstrating significant concern about its capability to persist over the long term in the plan area." The State of Idaho questions the scientific validity of this definition and questions how the Forest Service intends to manage the ecological conditions for species that have been arbitrarily placed into a special category without any statutory protections. Land management planning decisions that are arbitrary and capricious are likely to result under this rule's definition for "species of conservation concern."

FRD-1064

Viable Population Requirement

The proposed planning rule defines "viable population" as a "species that continues to persist over the long-term with sufficient distribution to be resilient and adaptable to stressors and likely future environmental conditions." The National Forest Management Act (NFMA) does not require the Forest Service to maintain viable populations, but this proposed rule would require the Forest Service to "maintain viable populations of species of conservation concern within the planning area." Concerning to the State of Idaho is the lack of a clear definition of what actually constitutes a "viable population." NFMA makes it clear that the Forest Services' statutory obligation is to manage the habitat and to maintain or restore the ecological conditions for native fish and wildlife population. The State of Idaho maintains that the Forest Service does not have the statutory authority to manage populations of fish and wildlife. Management authority of those populations of native fish and wildlife that are not listed under the federal Endangered Species Act as either threatened or endangered lies exclusively with the states.

Species Reintroduction Efforts

As part of the Forest Service's mission to assist in the recovery of federally protected plant and animal species, the proposed rule indicates that "species reintroductions" may be a management activity that the agency will consider using under certain circumstances. However, the State of Idaho questions whether the Forest Service has the statutory authority to initiate species reintroduction efforts on National Forest System lands. Additionally, if the Forest Service does in fact propose a species reintroduction effort on National Forest System lands, what level of collaboration will the Forest Service have with the states prior to any effort moving forward? The State of Idaho maintains that prior to any federally led augmentation of a species; the federal government must first have the approval of the State in which the reintroduction effort is being proposed.

Balancing Multiple Uses on National Forest System Lands

As required by Congress, the Forest Service must comply with its statutory obligations under both the National Forest Management Act (NFMA) and the Multiple-Use Sustained Yield Act (MUSYA) in which an integral balance between all uses of National Forest System lands including; outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness must be maintained. Industries such as timber, livestock production, mining and recreation are the true lifeblood of many rural communities that are greatly impacted by federal decisions both at the national and local level. Therefore, I would strongly encourage the Forest Service to ensure that the final planning rule is constant with the agency's mandates under both NFMA and MUSYA and an equal balance of all multiple uses on the National Forest System is maintained.

Thank you for your consideration of these comments.

Sincerely,

Nathan A. Fisher

Nathan A. Fisher
Administrator

PHONE: (208) 334-2189 | FAX: (208) 334-2172

C. L. "Butch" Otter
governor

Nancy C. Merrill
director

David M. Ricks
deputy director

IDAHO PARK AND RECREATION BOARD

Tom Crimmins
region one

Randy Doman
region two

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region four

Jean S. McDevitt
region five

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IDAHO DEPARTMENT OF PARKS AND RECREATION

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March 10, 2011

FRD-1064

USDA FS Planning Rule
Content Analysis Team
C/O Bear West Company
172 E 500 S
Bountiful, UT 84010

RE: Forest Service Planning

Dear Planning Rule Team:

The Idaho Department of Parks and Recreation (IDPR) reviewed the Forest Planning Draft Environmental Impact Statement (DEIS). The USDA Forest Service is developing a new planning rule to replace the 2000 planning rule.

We previously commented on this project during the Notice of Intent comment period. We were concerned about how the planning rule would consult with other agencies, especially state and local agencies.

The IDPR has made substantial investments on Idaho National Forest lands. Our grant programs provide Idaho's National Forests with funding to improve Recreation Vehicle, Boating, Off-Highway Vehicle, Snowmobile, Cross-Country Skiing, and Non-motorized trail opportunities.

Forest Plans have the ability to prescribe changes to uses on National Forest lands. These changes can sometimes conflict with IDPR grant funded projects. Under Idaho Administrative Procedures Act (IDAPA) Rules, a National Forest who accepts our grant funds is required to keep those facilities open to the recreation use specified in the grant application for the lifetime of the facility.

In order to avoid a grant conversion, our staff works closely with forest planners to ensure that the proposed plan and our grant projects don't come into conflict. The proposed rule should clearly outline that consultation with state and local governments must occur in initial plan development or subsequent amendments or revisions. It is our hope the revised rule will result in a closer working relationship between the Forest Service and state agencies in plan development

The DEIS presents five different alternatives. Alternative A is the proposed action. Alternative B represents the No Action alternative.

FRD-1064

Alternative C creates a rule that limits planning to the minimum requirements. Alternative D addresses additional protections for watersheds and landscapes. Alternative E provides for additional monitoring.

The biggest problem with the current planning process (1982 and 2000 rule) is that the planning process could take up to 8-10 years. The public rarely has the stamina or patience for such a long planning process. The rule needs to shorten the planning time frame to retain public interest in the Forest Plan revision process.

The planning rule and the new forest plans should take a wider look at management of other lands surrounding the individual National Forests. These other lands could include state and private lands, as well as other National Forests, BLM and other Federal lands. The old rule did not adequately look at the surrounding area which sometimes led to conflicts between forests and state and private landowners.

The final rule should seek to minimize planning costs. Alternative A (proposed rule) estimated costs are only slightly lower than the exiting rule (Alternative B). The current and future federal budget levels are unlikely to provide full funding for National Forest Planning.

The IDPR has seen too many times, when planning costs can divert money from on-the ground projects. For example, the Motor Vehicle Use Rule did not provide funding to the individual National Forests to get into compliance with the rule. This lack of funding diverted funds from trail and road maintenance.

Recreation Monitoring under the current rule is sporadic and disorganized. While the new rule (Alternative A) would standardize some monitoring, recreation monitoring needs to start using customer satisfaction surveys as a monitoring tool as outlined in Alternative E. We have starting using customer satisfaction surveys a few years ago. We found that there were significant differences between the importance of facilities between managers and visitors. These surveys were critical for us identifying where we could make improvements for park visitors. National Forests should also start doing customer satisfaction surveys.

Thank you for the opportunity to review the proposed rule and DEIS. If you have any questions about our comments, please contact me at (208) 514-2483.

Sincerely,

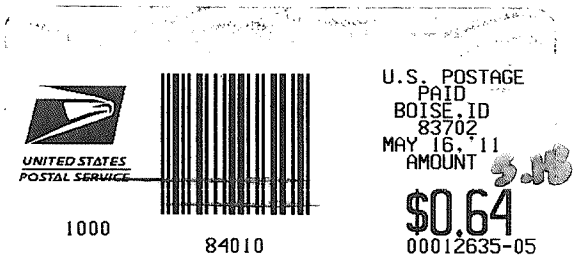
Jeff Cook

Jeff Cook, Outdoor Recreation Analyst
Recreation Bureau

OFFICE OF THE GOVERNOR
STATE CAPITOL
BOISE, IDAHO 83720

RETURN SERVICE REQUESTED

FRD-10104



Forest Service Planning "Planning Rule" DEIS
C/o Bear West Company
132 E 500 S
Bountiful, UT 84010

84010$4921

Wyoming County Commissioners Association

FRD-1065

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May 11, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 E 500 S
Bountiful, UT 84010

RE: Planning Rule Comments

To Whom It May Concern:

On behalf of the Wyoming County Commissioner's Association (WCCA), please accept the following comments related to the proposed National Forest System Land Management Planning Rule (Rule). We understand the objective of the proposed rule is to guide the collaborative and science based development, amendment, and revision of land management plans that promote healthy, resilient, diverse, and productive national forests and grasslands.

WCCA is the primary representative for Wyoming's county commissioners. This association works to create partnerships between local county governments, State Government and the Federal Government. There are 23 counties in Wyoming who are vitally concerned about the present and future management of these lands. The following comments are provided to foster that partnership in the management of the nation's national forests and grasslands.

§219.2 – Levels of planning and responsible officials

WCCA supports the designation of the unit supervisor as the responsible official for unit level plans. Experience has shown that early and regular face to face meetings with the governing bodies of the affected counties is the best way to initiate and maintain appropriate local-level collaboration. Elected county officials are the only legally accountable representatives of the "public" at the local level.

§219.2(b)(3) states that the local unit supervisor is the responsible official for development and approval of a plan, unless a regional forester, Chief, under secretary, or the Secretary acts as the responsible official. WCCA recommends adding additional language clarifying under what circumstances higher officials would be able override the unit supervisor as the responsible official.

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§219.3 – Role of science in planning

WCCA supports the requirement that the responsible official shall take into science throughout the planning process. However, this section should additionally recognize that scientific data is one of many factors influencing a plan decision. Sound science has an important role in Forest Service planning and management. Proving what science is "best" is likely to be time consuming and of little value, but will undoubtedly lead to litigation which will further delay the planning process.

While due diligence on behalf of the responsible official should be required, counties are concerned that the strict procedural requirements imposed on the responsible official to document in detail the identification, interpretation, and application of scientific findings and conclusions threaten to drain agency resources, elevate consideration of science above other considerations, and have the potential to allow for increased litigation (specific to compliance).

§219.4 – Requirements for public participation

The Federal Land Management and Policy Act (FLPMA), as well as other regulations, requires that planning efforts undertaken by the federal government consider existing state and local plans and ordinances. This level of coordination ensures a more comprehensive plan that incorporates many of the issues affecting communities located adjacent to public lands.

Under the existing rule (36 CFR 219.7) the planning process took so long that effective public participation by the affected county governments was prohibitively complex and resulted in extreme "process-fatigue" without yielding commensurate benefits. WCCA supports early and thorough collaboration with local government officials in the planning process [§219.4(a)], but suggests clarifying when collaborative efforts will be determined not "feasible and appropriate." WCCA maintains that Federal law requires agencies to coordinate with local governments and suggests that thorough collaborative efforts (with local governments) are always feasible and appropriate.

WCCA supports active public participation and encourages the agency to give increased weight to local communities most directly impacted by the plan.

WCCA supports the requirement to provide opportunities for other government agencies to participate in planning on NFS lands [§219.4(a)(8)], specifically the requirement for the responsible official to encourage local governments to seek cooperating agency status.

The National Environmental Policy Act (NEPA) requires the federal government cooperate with local governments when developing environmental documents. The White House Council on Environmental Quality (CEQ) has also provided guidance to federal agencies on granting Cooperating Agency Status to state and local governments. The Forest Service Handbook, provides additional guidance to agency managers about inviting local governments to participate in the preparation of environmental documents.

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§219.4 will provide for much needed consistency across Forest Service Regions in county participation as cooperating agencies. Currently, much regional disparity exists in the use acknowledgement of cooperating agency relationships by the Forest Service.

WCCA supports the requirement that the responsible official review county planning and land use policies and document results of the review in the draft Environmental Impact Statement, including how the USFS plan will address the impacts identified and how the plan will contribute to joint goals. [§219.4(b)(3)]

WCCA recommends striking "to the extent practicable and appropriate" from §219.4(b)(1) and replace with "with a view toward achieving consistency between the proposed forest and local plans." As mentioned before, WCCA believes it is always appropriate and practicable for the agency to coordinate with local governments. Additionally WCCA recommends adding the following requirement: "Where the forest plan may not be made consistent with local plans, the responsible official shall document how and why its plan is not consistent with local plans, as determined by local officials, and explain why its plan cannot be made consistent with local plans."

The language in §219.4(b)(3) states "the responsible official will [not] seek to direct or control management of lands outside of the planning area, nor will the responsible official conform management to meet non-Forest Service objectives and policies." WCCA is concerned that this language may contradict the earlier stated objective to coordinate with local governments. In addition, WCCA is concerned that this section may create conflict with established Community Wildfire Protection Plans (CWPP) which include planning on both Federal and non-Federal lands.

§219.7 – New plan development or plan revision

WCCA requests that future planning efforts require the responsible official to consider the reduction of Fire Regime Condition Class (FRCC) in consideration of desired conditions [§219.7(d)(1)(i)]. NFS lands should be actively managed to reduce the threat of wildfire and the release of greenhouse gases. Reduction of FRCC 3 to FRCC 2 and FRCC 1 will insure a sustainable economic and environmental legacy for future generations. Each year catastrophic wildfires throughout the nation contribute to climate change, jeopardize the national treasury, threaten fish and wildlife habitat, degrade both water and air quality, and cause devastation to forest dependent communities through loss of life, property, jobs, and the nation's timber resource.

§219.8 – Sustainability

WCCA appreciates that the proposed rule considers the ecological, social, and economic systems as interdependent and without ranking in importance. Nevertheless, the rule requires the unit to take affirmative action under the plan to maintain and restore elements of ecological sustainability, but merely guides the unit's contribution to social and economic sustainability. Counties recognize that the agency has more influence over factors that impact ecological sustainability on its lands. They also acknowledge that the rule makes a presumption that land is suitable for timber production unless identified in the plan as not suitable.

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We have concern over how the proposed rule broadly defines "ecosystem services" and recreation as the principal contributions of national forests toward the social and economic well-being of nearby communities. Given the sheer size of these national forests, their contributions to surrounding communities must be more tangible, substantial, and sustainable for their contributions to be appropriately significant. §219.8 should be amended to emphasize the profound role that a national forest plays in the vitality of local communities, and direct the responsible official to embrace that role through meaningful and productive coordination with elected county officials.

§219.8 (b)(4) should be clarified to provide a clear understanding of how the agency defines "sustainable," understanding that local interpretation of economic sustainability may differ from the perspective of the responsible official. All efforts should be made by the responsible official to achieve consistency between agency and local definitions of sustainability.

§219.9 – Diversity of plant and animal communities

WCCA is concerned that §219.9 will provide increased process and litigation by diverting scarce agency resources to expand the obligation to demonstrate that a plan will maintain ecosystem diversity and viable populations of plant and animal species. The agency is assuming a burdensome responsibility, not required by statute, to maintain the viability of "species of conservation concern within the plan area", and to extend the viability requirement to native plants and invertebrates, about which the agency has "very minimal biological information on their life histories, status, abundance, and distribution". Wildlife viability is not the only consideration of the agency when developing site-specific plans.

NFMA does not mention "viable populations" but instead the Act only requires the Forest Service to "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives and within the multiple-use objectives of the land management plan." 16 U.S.C. 1604 (a)(3)(b). In contrast, the regulation treats national forests as biological preserves rather than forests managed for the use and necessities of the people United States as required by the Organic Act. 16 USC 476.

The current planning rule makes it extremely difficult for the Forest Service to demonstrate that it is maintaining viable populations of wildlife species. One of the most frequent legal claims in national forest litigation is that the Forest Service is not maintaining viable populations. The Forest Service should use the revision of the planning regulation as an opportunity to eliminate this fertile ground for litigation. There is no consensus on the population level that achieves a "viable" population so the regulation imposes a legal obligation on the Forest Service to ascertain what is not ascertainable. Measuring and proving that a forest plan will "maintain" or is "maintaining" a viable population is nearly impossible, leaving the Forest Service highly vulnerable to lawsuits.

The forest planning regulation should not make the protection of candidate species a legal obligation when Congress has not imposed such a legal obligation in either the Endangered Species Act or the National Forest Management Act. The Forest Service has higher planning priorities than to devote its scarce resources to providing a conservation strategy in the forest

plan to conserve every species for which someone has filed a petition to list or for which the listing agency has not yet determined whether listing is even warranted.

§219.9 and §219.10 Multiple uses / Timber requirements based on the NFMA
This section fails to recognize that per the National Forest Management Act (NFMA), ecological factors (as referenced in §219.9) are not elevated above any other multiple-use nor does it require that national forest land use plans be contingent upon such considerations. WCCA is concerned that the responsible official will be influenced to consider superfluous and relatively undefined "ecosystem services" above the statutory requirements of multiple use.

The agencies multiple use mandate, a mandate imposed by Congress, codified in agency regulations and affirmed by the courts, seems to be circumvented in the proposed rule. The multiple use sustained yield statutory mandate is a viable and credible planning blueprint for managing forest lands. The current proposed rule fails to adequately uphold the statutory requirements of NFMA (16 U.S.C. §1600) and MUSYA (16 U.S.C. §§528-31).

§219.19 – Definitions

The proposed rule defines ecosystem services too broadly and improperly elevates ecosystem services to the same level of importance as multiple uses under MUSY.

The plan must provide for "ecosystem services" but the term is very broadly defined such that if a plan does not provide one of the services it will violate the regulation. Ecosystem services are defined as: "Benefits people obtain from ecosystems, including: (1) Provisioning services, such as clean air and fresh water, as well as energy, fuel, forage, fiber, and minerals; (2) Regulating services, such as long term storage of carbon; climate regulation; water filtration, purification, and storage; soil stabilization; flood control; and disease regulation; (3) Supporting services, such as pollination, seed dispersal, soil formation, and nutrient cycling; and (4) Cultural services, such as educational, aesthetic, spiritual, and cultural heritage values, as well as recreational experiences and tourism opportunities." 36 C.F.R. 219.19. The regulation states that "the plan must provide for multiple uses and ecosystem services" 36 C.F.R. 219.11. To the extent that ecosystem services trump the multiple uses in the Multiple-Use Sustained-Yield Act, the regulation is an end run around MUSY without an act of Congress.

§219.53 – Who may file an objection
WCCA supports language that would limit filing of an objection to those who have submitted "formal comments" related to a plan, plan amendment, or plan revision during public participation opportunities provided in the planning process. We also support the requirement that objections be based on the substance of the objector's formal comments, unless the objection concerns an issue that arose after opportunities for formal comment. It is appropriate that the burden falls on the objector to demonstrate compliance with these requirements.

With increased opportunities to participate and comment, objectors have no responsible arguments against these requirements. A plan, after the exercise of a reasonable process, must be adopted and implemented to let appropriate management begin.

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WCCA looks forward to continuing our close working relationship with the Forest Service in an effort to ensure that the public is involved in forest planning at the appropriate level and in truly meaningful ways.

As proposed, we believe the proposed rule is overly long and encumbered with inflexible mandatory requirements that preclude it from being a workable, affordable, and enduring Planning Rule. We believe that the adoption of the above recommendations into the planning rule will better enable the agency to plan for wise stewardship of the Nation's forest resources as well as to provide for the long-termstability of the forest communities we represent.

Sincerely,

Cindy DeLancey, Executive Director
Wyoming County Commissioners Association

CD:jlm

FRD-10065

Originally mailed 5/10/2011

Wyoming County Commissioners Association

Post Office Box 86
Cheyenne, Wyoming 82003

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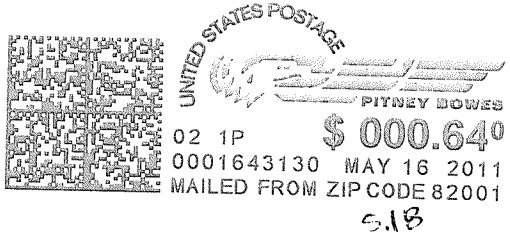

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FRD-1005

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Rio Arriba
Board of County Commissioners

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FRD-10066

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Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, UT 84010

May 16th, 2011

Re. Comments on the 2011 Proposed Forest Planning Rule (76 Fed Reg 8480)

To whom it may concern,

The County of Rio Arriba hereby offers the following comments and endorses the analysis, findings and comments, (including attachments) prepared and presented by the entities listed in this document.
Rio Arriba County enjoys a unique status in that there are numerous pueblos and tribes that reside therein and is the location of numerous former and current viable, under state statute communal Spanish and Mexican land grants, (also granted to Pueblos) both which have property and rights protected by treaties, paramount is the 1848 Treaty of Guadalupe Hidalgo, which ended the Mexican-American War. (Of these former land grants, many are still considered legitimate but until their claims are legally resolved as to how they were essentially stolen and their property returned, will remain in hands of the Federal Government).

The protection of property and other rights in Article VIII of the Treaty were reaffirmed in the Protocol of Queretero and the Treaty of Mesilla (which concluded Gadsden Purchase). The State Constitution of New Mexico also reaffirms the Treaty of Guadalupe Hidalgo and all the rights guaranteed therein.

The National Forest landholdings (and BLM) are comprised mostly of the common lands which were an important component of land grants and thus the property of land grants and Pueblos but ended up in the federal estate thru a convoluted process of subterfuge, outright theft, etc, and remain to these day an unresolved issue and a national disgrace. **At the very least both (Pueblos and Land-grants) have prior existing traditional use rights to the forest lands, with access to the forest and access to the traditionally accessed resources therein**.

Local governments have the authority and responsibility to protect the public welfare of its residents in their jurisdictions.

For Rio Arriba County specifically:

FRD - 10066

RIO ARRIBA COUNTY DESIGN AND DEVELOPMENT REGULATION SYSTEM ORDINANCE 2011-02

Art. 1 General
1.4 Authority

The County is granted the power by the State to adopt ordinances to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the County and its inhabitants. To that end the County is given the power to adopt regulations and restrictions to achieve these goals. This Ordinance is promulgated according to the authority granted to Counties and in compliance with

Sections 3-21-14 NMSA 1978.

1.5 Applicability
This ordinance is applicable to any portion of the territory within Rio Arriba County that is not within the zoning jurisdiction of a municipality or not within Native American designated lands. Unless a preemption argument is addressed and proven, **this ordinance shall apply to lands owned by the State or the United States.**

Rio Arriba County Comprehensive Plan: Part 11 states in part: Restitution of our land grants will sustain us and our families, and agriculture will protect our precious water and natural resources by adopting and invoking the **Treaty of Guadalupe Hidalgo.**

Relevant to this is:

Part 219- Planning Subpart A- National Forest System land Management Planning
2191 Purpose and applicability:
(e) This part does not affect treaty rights or valid existing rights established by statute or legal instruments.

This is an important element and should be strictly adhered to:

Sect 219.3: Role of science in planning.
(b) Describe how the social, economic and ecological sciences were identified and appropriately interpreted and applied:

Sect 219.4 Requirements for public participation
(a) (1) "The responsible official should be proactive but not just use contemporary tools as this would exclude many that rely on more traditional methods of notification and may not know how to access information via the internet etc.

Sect 219.11 Timber requirements based on the NFMA

(c) Harvest for salvage, sanitation, or public health or safety. This type of harvest should be a priority of a forest plan, and not just when it is considered consistent with the plan. These are vital non-negotiable reasons. Timber harvest is paramount to get our forests back to health, particularly for the purpose of water production as per their original mandate, along with timber.

FRD-1066

Sect 219. 12 Monitoring (4)vii this monitoring of the progress toward fulfilling the units distinctive roles and contributions to ecologic, social and economic conditions of the local area region and nation is very important.

219.16 public notification (c) again notification should be as done in 219.4 (a) (1) a

COMMENTS, (ATTACHMENTS INCLUDED), SUBMITTED BY OTHERS IN REGARD TO THE PROPOSED 2011 FOREST PLANNING RULE (76 FED. REG. 8480) ARE FULLY ENDORSED AND SUPPORTED BY RIO ARRIBA COUNTY ARE THE FOLLOWING.
Submission # FRD-0586: County of Plumas, Board of Supervisors, Quincy California 95971
Submission # FRD-0642 California State Association of Counties and Regional Council of Rural Counties
Submission # FRD-0644: Crook County land Use Planning and Zoning Commission, Sundance WY 82729
Submission # FRD-0645: Board of Commissioners, Converse County, Wyoming 82633
Submission # FRD-0646: Mineral County Board of Commissioners Superior Montana 59872
Submission # 0656: Bayfield County Economic Development Corporation Washburn WI 54891
Submission # FRD-0660: Lincoln County, Montana, Dist II
Submission # FRD-0675: Society of American Foresters, Bethesda Maryland 20814

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*Espanola Annex * 1122 Industrial Park Road * Espanola, New Mexico 87532 * Phone (505) 753-2992 * Fax (505) 753-9397*

Rio Arriba
Board of County Commissioners

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Chairman, District III

FRD-10066

Barney Trujillo
District I

Alfredo L. Montoya
Commissioner, District II

COUNTY MANAGER
Tomas Cámpos, III

Rio Arriba requests full consideration be given to the comments, endorsements and recommendations submitted by this county and to recognize that, a 'one size fits all', "management from the top down" and disregard of local government standing, make this plan unacceptable:

Furthermore we request existing laws concerning federal land management and treaty rights be given the full weight of said laws and treaty rights in this or any other future management proposals of public land.

We appreciate and thank you for affording us the opportunity to provide comment. Any questions and concerns can be addressed to:

Thomas Campos, County Manager, Rio Arriba County

Date: 05/16/11

Signed:

CC:

US Congressman Ben Ray Lujan
US Congressman Steve Pierce

US Senator Jeff Bingaman
US Senator Tom Udall

Governor of New Mexico Susana Martinez

...Arriba County
122 Industrial Park Rd
...panola NM 87532

FRD-10040

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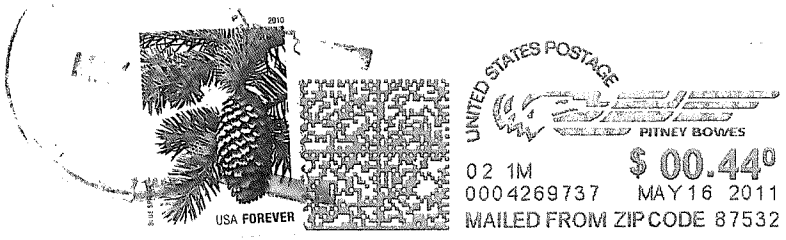

Forrest Service Planning DEIS
c/o Bear West Company
132 E 500 South
Bountiful, UT 84010

B401034921 C016

GOVERNOR
Susana Martinez

DIRECTOR AND SECRETARY
TO THE COMMISSION
Tod W. Stevenson

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Las Cruces, NM

FRD-1067

May 16, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S.
Bountiful, UT 84010

Re: National Forest System Land Management Planning Draft Environmental Impact Statement
NMDGF Doc. No. 14061

Dear Sirs:

The New Mexico Department of Game and Fish (Department) has reviewed the National Forest System Land Management Planning Draft Environmental Impact Statement (DEIS). The Department submitted comments on 12 February 2010 on the Notice of Intent (NOI) to Prepare a DEIS for this project. According to the 18 Dec 2009 NOI, a new Rule is needed to guide land managers in developing, amending, and revising land management plans for the 155 national forests and 20 national grasslands in the National Forest System (NFS). A new Rule provides the opportunity to help protect, reconnect and restore national forest and grasslands for the benefit of human communities and natural resources. Developing a new Rule will allow the USFS to integrate forest restoration, watershed protection, climate resilience, wildlife conservation, the need to support vibrant local economies and collaboration into how the USFS manages national forests and grasslands, with the goals of protecting water, climate and wildlife, while enhancing ecosystem services and creating economic opportunity.

In our 12 February 2010 comments on the NOI, the Department supported the following concepts:

1. The new Rule must be responsive to the need for forest restoration and conservation, watershed protection, wildlife conservation, and the sustainable use of public lands to support vibrant human communities.
2. Forest plans should emphasize maintenance and restoration of watershed health, to ensure abundant clean water, the protection of soils, and the health of aquatic and terrestrial ecosystems.
3. Forest plans should provide for a diversity of species, ecosystems and wildlife habitats.
4. Forest plans should address the need for restoration and conservation to enhance ecosystem resilience to a variety of threats, including climate change.

5. Forest plans should proactively address climate change through monitoring, mitigation and adaptation, and should allow flexibility to adapt to changing conditions and incorporating new information.

According to Section 219.8 of the Proposed Rule, sustainability is the fundamental principal that will guide land management planning. The intent is for forest plans to guide management so that NFS lands are ecologically sustainable and contribute to social and economic sustainability, with resilient ecosystems and watersheds, diverse plant and animal communities, and the capacity to provide people and communities with a range of social, economic, and ecological benefits for present and future generations.

The proposed rule would provide guidance for plans to require meaningful and accountable monitoring through a structured public process that evaluates changes on the unit and across the broader landscape. Monitoring would be used to assess progress toward achieving desired conditions in forest plans, and for evaluating whether there is a need for re-assessment and plan revision or amendment.

As stated in subpart A of the Proposed Rule, consistent with the Multiple-Use Sustained-Yield Act of 1960, the Forest Service manages the NFS to sustain the multiple uses, including ecosystem services, of its renewable resources in perpetuity, while maintaining the long-term health and productivity of the land. With regard to perpetuating multiple uses on NFS lands, Section 219.10 **Multiple uses** states that within Forest Service authority, the capability of the plan area, and the fiscal capability of the unit, the plan must provide for multiple uses, including ecosystem services, outdoor recreation, range, timber, watershed, wildlife and fish. Section 219.10 further states that "*...the responsible official shall* ***consider*** [emphasis ours]*...(5) Habitat conditions, subject to the requirements of 219.9 for wildlife, fish, and plants commonly enjoyed and used by the public, such as species that are hunted, fished, trapped, gathered, observed, or needed for subsistence.* The Department strongly recommends that this section of the proposed Rule **require** that forest plans identify how habitat conditions for relatively common wildlife species that are hunted and fished, such as deer, elk, and trout, will be maintained or improved. Language should also be included in this section that identifies the unique authority provided to state fish and wildlife agencies to manage wildlife within their respective states, including on NFS lands. We recommend that language also be included to **require** cooperation between the responsible Forest Service authority for plan revision and update and the respective state fish and wildlife agency when developing objectives and monitoring protocols for wildlife species management and conservation.

Three additional standards that we believe should be included in the Proposed Rule are:

1. Require that commercial timber cutting, in areas identified as suitable for timber production, sustain the long-term health and productivity of the land and benefits fish and wildlife.
2. Create a standard 100-foot minimum development buffer for streams, lakes and rivers that ensures the conservation of watersheds important to fisheries and anglers.
3. Require planning and habitat maintenance for desirable nonnative species that are recreationally and economically important, such as rainbow and brown trout, where compatible with native species conservation.

With the inclusion of our recommendations, the Department supports the implementation of Alternative A, the Proposed Action.

PRD-1067

We appreciate the opportunity to comment on this project. Should you have any questions regarding our comments, please contact Mark Watson, Habitat Specialist, of my staff at (505) 476-8115, or <mark.watson@state.nm.us>.

Sincerely,

Matt Wunder, Ph.D.
Chief, Conservation Services Division

MW/MLW

CC: Wally Murphy (Ecological Services Field Supervisor, USFWS)
Tod Stevenson (Director, NMDGF)
R.J. Kirkpatrick (Assistant Director, NMDGF)
Area Chiefs (NMDGF)
Area Habitat Specialists (NMDGF)
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Forest Service Planning DEIS
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WYOMING GAME AND FISH DEPARTMENT

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May 16, 2011

FRD- 1068

WER 11630
USDA Forest Service
Notice of Proposed Rulemaking
National Forest System Land Management Planning
RIN 0596-AC94

Forest Service Planning DEIS
C/O Bear West Company
132 E 500 S
Bountiful, UT 84010

Dear Sir/Madam:

The staff of the Wyoming Game and Fish Department has reviewed the proposed rulemaking for the National Forest System Land Management Planning. Our comments are organized according to the sections of the proposed rule.

219.3 Role of Science

The use of "best available scientific information" in the unit-level planning process is scattered throughout the proposed planning rule language. While the Department supports the need to document what information was taken into consideration to arrive at a decision, we are concerned about how the responsible official (often the unit supervisor) is to determine what is the "best" science. The proposed planning rule does not outline a process for choosing the most accurate or reliable sources of data. Moreover, a forest plan revision – from scoping to a record of decision – may take an entire decade to complete. How are new and relevant findings, assessments, and data incorporated into the planning process, and how does the responsible official determine whether or not the new information is in fact the "best available"?

Experts in the same field who are equal in knowledge and experience often disagree. We recommend that the information used throughout the planning process and for decision-making be documented, as currently required by the proposed language.

Recommendation: The unit supervisor should be charged with using credible science – accurate, reliable, and relevant – (219.3(a)) throughout the planning process, but should not be tasked with determining what is the best science (219.3(c)). Section 219.3(b) is also unnecessary and should be removed. A unit supervisor should not need to describe how information was identified and

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appropriately interpreted and applied as it will be outlined in the environmental impact statement (EIS) for the actual land management planning process.

219.6 Assessments

According to the proposed planning rule language, an assessment is conducted prior to the development or revision of a land management plan. A plan amendment may or may not require an assessment. The scope and scale of the assessment is determined by the unit supervisor. The Department is concerned that the assessment process could be adding a step and is duplicative of the NEPA scoping process or the analysis of the management situation (AMS).

Additionally, according to the proposed planning rule language the responsible official must assemble a group of cooperators to work through the assessment process. However, it is unclear whether or not this process is subject to the requirements of the Federal Advisory Committee Act (FACA).

Recommendation: This section should be considered carefully as to the purpose and possible duplication of NEPA scoping. If scoping in and of itself could serve as the assessment, we would not want to see an additional layer of process. The Department also recommends that Forest Service units should use local and state plans in their assessment process.

219.9 Diversity of Plant and Animal Communities

Clear and realistic national guidance for unit-level land management planning is vital to the successful implementation of a new Forest Service planning rule. Accordingly, coordination with State fish and wildlife agencies and the acknowledgement of agency authority over the management of fish and wildlife within state borders are essential to planning rule language. State fish and wildlife agencies are primary sources of some of the highest quality information on individual species, species communities, and priority habitats. State fish and wildlife agencies have developed strategic and science-based plans to manage and conserve fish and wildlife populations within their borders. Moreover, State fish and wildlife agencies in the West are making a coordinated effort to develop an integrated Decision Support System (DSS) tool that crosses state boundaries to allow for the management of landscape-scale issues.

Recommendation: Section 219.9 (a)(1)(2)(3)(4)(5)(6)(8)&(9) should incorporate specific coordination with corresponding State and local entities and their existing, approved plans before undertaking any planning efforts.

Existing tools for the management of fish and wildlife (e.g., State Wildlife Action Plans, Strategic Habitat Plans, etc.) developed to ensure a diversity of native species and desired non-native species and the protection of candidate species and species of conservation concern, should not be reinvented by Forest Service at the unit level, but these tools should be utilized and supported by directive at the national level. The authority for the management of native species,

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candidate species, and species of greatest conservation need (SGCN) ultimately lies with the State, and Forest Service "coarse filter" and "fine filter" approaches to meeting population goals and to protect and restore species and wildlife habitats that are coordinated with State fish and wildlife agencies will be stronger and, more often than not, successful.

In terms of providing the ecological conditions to maintain *viable* populations of species of conservation concern within the plan area, the Department echoes the concerns of other agencies and organizations that trying to establish what constitutes species viability is an exceedingly ambiguous task. Furthermore, the lack of a low and high bar for what is and what is not a viable population, and what ecological conditions do or do not support a viable population seems to open up the Forest Service to legal challenges based on how other individuals, organizations, and agencies define "viable". The Forest Service has had legal challenges on viability. Looking at both the viability of vertebrate and invertebrate species will exacerbate the burden of proof on the Forest Service and further delay projects.

Finally, we encourage the Forest Service to work to maintain or restore ecological conditions to contribute to the management of certain species across their range when it is not possible or practical to manage for a species in a specific plan area. The Forest Service must recognize that it may not be in the interest of all forest units within a species' range to manage for that species. For example, in Wyoming big horn sheep are managed regionally by the Wyoming Game and Fish Department. Management emphasis for big horn sheep is on areas in northwest Wyoming where management goals are most compatible with existing forest uses. In central Wyoming, on forests such as the Bighorn, wild sheep management is not emphasized due to the prevalence of other authorized uses that are less compatible with the presence of this species. Thus, the management of big horn sheep may not be appropriate for every planning unit across its entire range. The proposed planning rule must allow for planning and management flexibility based on existing forest uses and management objectives.

Recommendation: Section 219.9 (b)(3) should be removed.

219.12 Monitoring

The Department supports monitoring efforts. However, based on the past track record of monitoring, this section of the proposed planning rule seems beyond what is necessary and realistic.

Recommendation: A monitoring program should be simple, affordable, and have a real opportunity of being implemented. Section 219.12 should be revised.

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Thank you for the opportunity to comment. If you have any questions or concerns, please contact Mary Flanderka, Habitat Protection Coordinator, at (307) 777-4587.

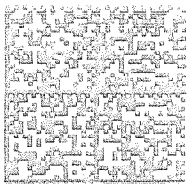
Sincerely,

for John Emmerich
Deputy Director

JE/mf/al

cc: USFWS
John Kennedy – WGFD, Cheyenne
Rebekah Dillinger – Policy Office, Office of Governor Mead
Bill Crapser – Wyoming State Forestry Division

WYOMING
GAME AND FISH DEPARTMENT
5400 Bishop Boulevard Cheyenne, WY 82006



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Forest Service Planning DEIS
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Congress of the United States
Washington, DC 20515

FRD-1049

May 13, 2011

Mr. Harris Sherman
Under Secretary for Natural Resources and Environment
US Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, UT 84010

Dear Under Secretary Sherman:

We are writing regarding the proposed National Forest Management Act planning rule (the "rule") currently open for public comment, and urge you to more closely consider how the rule can facilitate connecting youth, minority and urban populations to our national forests. Specifically, the rule should ensure equitable access for youth, minority, and urban populations is incorporated into relevant plan components, include analysis of equitable access opportunities for youth, minority, and urban populations, and ensure active engagement with these populations during the planning process.

As a nation, we face unprecedented challenges in connecting youth and minorities, particularly in urban areas, to our great outdoors. Research shows that youth are increasingly disconnected from nature: children today spend half as much time outside as they did in 1981.1 Richard Louv has labeled this "nature-deficit disorder," and it has been linked to a variety of health problems, ranging from obesity to depression. In contrast, regular exposure to the outdoors and nature has been linked to a wide range of benefits including increased creativity, reduced stress, and improved academic performance. Minorities are especially affected. Research suggests that minority and low-income youth are less likely than white higher-income youth to have adequate access to the outdoors, and that Latino Americans and African Americans of all ages are less likely than Caucasians to use outdoor recreation areas.2 This trend is compounded by the fact that more and more Americans live in urban areas—nearly 84 percent according to the 2010 U.S. Census—where opportunities to connect with nature are often limited.

The U.S. Forest Service has an important role to play in reconnecting youth, minorities and urban populations to the great outdoors. We appreciate the Forest Service's embracing of this role through its Framework for Sustainable Recreation, which promises to adapt recreation facilities and settings to reflect diversity of cultures and needs, provide recreation services that address connections with urban

[1] Juster, F. Thomas et al. (2004). "Changing Times of American Youth: 1981-2003," Institute for Social Research, University of Michigan. Child Development Supplement, http://ns.umich.edu/Releases/2004/Nov04/teen_time_report.pdf
[2] Strife, S., & Downey, L. (2009). "Childhood development and access to nature: a new direction for environmental inequality research." Organization & Environment, 22(1), 99-122.

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areas, and communicate in ways that will more effectively reach diverse audiences.3 The Forest Service now has an opportunity to codify this commitment in its revisions to the National Forest Management Act planning rule.

We believe that the proposed rule must ensure forest and grassland plans facilitate connections to and remove barriers for youth, minorities, and urban populations by building a foundation for these connections in key elements of the rule.

The assessment phase should include analysis of equitable access opportunities for youth, minority, and urban populations. The assessment phase establishes the foundation on which the forest plan is built, and without consideration of the issue at this stage, it will be difficult if not impossible to ensure forest plans provide the framework necessary for equitable access. As the Forest Service itself notes, "[t]he ethnic makeup of nearby populations leads to varying interests and recreational needs as well as varying experience with barriers to participating in recreation on national forests."4 Potential social and physical barriers such as facility sitting and design and transportation are meaningful concerns for youth, minority and urban populations who often have significantly different needs in these areas than the typical national forest visitor. The assessment is where these varying interests and needs should be examined. While the language of §219.6 of the proposed rule allows forest managers to evaluate these issues, we believe it does not go far enough in guaranteeing their consideration.

The proposed rule should also ensure the issue of equitable access for youth, minority, and urban populations is incorporated into relevant plan components. The Forest Service should consider including a requirement in the final regulation that every plan contain a goal for connecting youth, minority, and urban populations to the national forest or grassland. This would make it more likely that the required plan components (desired conditions, objectives, standards, and guidelines) incorporate and reflect the needs of diverse populations. It would also represent a good faith effort by the Forest Service to help address the pressing national policy issue of connecting youth, minorities and urban populations to the outdoors.

Finally, and perhaps most importantly, the Forest Service must actively engage youth, minority and urban populations in the forest and grassland planning process. These groups historically have been disengaged from Forest Service land management decisions, but their active participation will be critical to ensure their distinct needs and interests are reflected in forest and grassland plans. We appreciate and support the provision in §219.4 of the proposed rule that the responsible official shall encourage participation by youth, low-income, and minority populations, and urge the Forest Service to consider adding urban populations to that list.

Thank you for your attention on this important matter. We look forward to continuing to work with you to connect young, diverse, and urban Americans to our great outdoors.

Sincerely,

Henry C. "Hank" Johnson
Member of Congress

Emanuel Cleaver
Member of Congress

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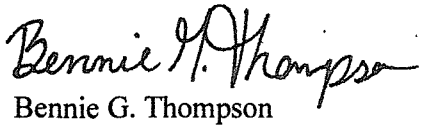
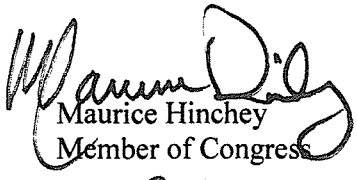
[3] United States Department of Agriculture, Forest Service. *A Framework for Sustainable Recreation* (June 2010).

[4] United States Department of Agriculture, Forest Service. *National Forest System Land Management Planning: Draft Environmental Impact Statement* (February 2011).



Bennie G. Thompson
Member of Congress

Earl Blumenauer
Member of Congress



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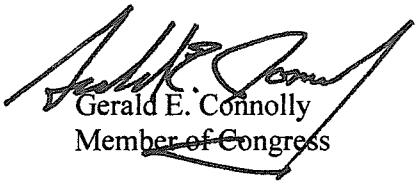

Gerald E. Connolly
Member of Congress

Marcia L. Fudge
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U.S. HOUSE OF REPRESENTATIVES
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FRD-1069

Hank Johnson
M.C.

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FRD-1070

WASHINGTON COUNTY

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May 10, 2011

Forest Service Planning DEIS
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RE: Planning Rule Comments

To Whom It May Concern:

Washington County, Utah, submits the following comments related to the proposed National Forest System Land Management Planning Rule. Washington County has several concerns with the draft rule, which has been promulgated for the purpose of soliciting comments. Thank you for allowing us the opportunity to draw your attention to those areas that we feel need to be addressed before the final rule is implemented.

Multiple-Use

When Congress established the National Forest System by way of the Organic Administration Act of 1897, it took the first step towards creating legislation concerning the management, protection, and care of the nation's forest reserves. Specifically, the Act stated the criteria for new forest reserve designations: timber production, watershed protection, and forest protection. According to the Organic Act, the intention of the forest reservations was "to improve and protect the forest within the reservation . . . securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States."

Further acts endorsed, strengthened, and clarified the Forest Service's multiple-use mandate. One act often cited is the Multiple Use Sustained Yield Act of 1960 (MUSYA). "Multiple-use" is defined in Section 4 of the MUYSA as: "the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people."

Other pertinent acts passed by the Congress are: the Transfer Act of 1905, the Forest and Rangeland Renewable Resources Planning Act of 1974, and the National Forest Management Act of 1976. The concept of multiple-use and sustained yields is a viable and credible planning blueprint for managing forest lands. One of our main concerns is that the statutorily stated concept of multiple-use is no longer on par with other stated priorities such as climate change, forest restoration, plant and animal conservation, and watershed protection.

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Expensive Litigation
Within the proposed rule's language are broad categories of non-traditional forest services that expand the original definition and intent of MUSYA. We feel that broadly definable terms such as "ecosystem services" and "cultural services" are not reflective of the MUSYA mandate and that the new rule elevates a broad classification of vague concepts such as "spiritual and cultural heritage values" to an even higher level of importance than that given to more traditional multiple uses such as timber harvesting and minerals resource development. Besides downplaying the importance of these traditional uses in the proposed planning rule, the use of these overly broad, feel-good terms could stymie development of the resources specifically cited in the enabling acts. Expensive litigation might be brought by virtually anyone who feels that his inarticulate "cause du jour" may be impacted by a more traditionally recognized and protected forest use.

The Forest Service does not have the personnel or resources to focus on its core mission of protecting the forests and their eco-systems through its multiple-use mandates (defined in its mission and based on statute) if it is constantly embroiled in litigation.

Local Coordination
Washington County feels that local coordination is vital to the ultimate success and implementation of the final Planning Rule. The current language in the proposed Planning Rule states that coordination take place "to the extent practicable and appropriate." FLPMA calls for coordination with counties "to the greatest extent possible." We believe that the final Planning Rule should incorporate language consistent with the FLPMA requirement.

We are supportive of the proposed Planning Rule's designation of the unit supervisor as the responsible official for unit level plans. Time after time, it has been demonstrated that one size does not fit all. We believe that this is especially true of the Forest Service. The flexibility of designing customized plans with local input and coordination among local government officials will offer greater flexibility in meeting the unique needs and demands of each individual forest unit. We encourage language that would clarify the circumstances under which higher officials would be able to override the local unit supervisor.

Washington County specifically supports the current requirement for the responsible unit official to encourage local governments to seek cooperating/coordinating agency status.

NACo's Comments
The National Association of Counties, working as the primary representative of 3,068 individual county governments in the United States, has submitted specific and detailed comments relative to the Proposed Planning Rule. We have read its response to the proposed Planning Rule and support the specific positions taken on each of the bulleted issues noted.

Conclusion
We appreciate the opportunity that has been extended by the Department of Agriculture to comment on the proposed Planning Rule. We believe that in its current form it does not adequately reflect the importance of the multiple-use mandate and that it elevates esoteric and

FRD-1070

loosely-defined values to a status equal to or greater than those ideas promulgated by statute: securing clean water flows, environmentally-sustainable resource management, etc. The final rule will benefit from simplification, while maintaining its focus on those mission-critical core functions and values that have been codified by law and refined through more than a century of successful forest effort and management.

Respectfully Submitted,

WASHINGTON COUNTY COMMISSION

Alan D. Gardner
Commissioner

Dennis Drake
Chairman

James J. Eardley
Commissioner

DJC:csh

WASHINGTON COUNTY
COUNTY COMMISSION
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St. George, UT 84770

FRD-1070

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Frank Stewart
Counties' QLG Forester

FRD-1071

Lassen, Plumas, Shasta, Sierra, Tehama Counties

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May 14, 2011

To Whom It May Concern:

Thank you for the opportunity to review and comment on the proposed 2011 National Forest System Land Management Draft Planning Rules. As the attached Fire Map relates, since the start of the 2000 National Fire Plan eight western states have suffered through ten new state records for annual acres burned and we in California have suffered through three of those new state records – 2003, 2007 and 2008. So far during this 2011 fire season, Texas has become the eighth state to suffer through a new state record for annual acres burned by wildland fires and it is critically important that you develop the new planning rules to support the existing laws and regulations that are applicable to national forests and strategically target management efforts and funding towards the overstocked conditions that exist on national forest lands throughout the nation.

Of the various Alternatives in the Draft Environmental Impact Statement (DEIS) only Alternative C emphasizes and coordinates the proposed planning rule process with the applicable laws and regulations governing the management of our national forests. Since the overstocked conditions on our national forest lands are growing worse annually, it is critically important that the new planning rules address this problem at the appropriate PACE and SCALE that is urgently needed to solve the catastrophic fire threat to our communities, watershed and wildlife. Just during the period of the congressionally approved Herger-Feinstein Quincy Library Group Forest Recovery Act – Pilot Project, more acres have been negatively affected by catastrophic fires in the eight county area of the pilot project that beneficial acres treated under the H-FQLG Act. The new planning rules and subsequent Land Management Plans must address and stop the current strategy of obstructionist organizations filing appeals and lawsuits against NEPA approved projects under individual forest plans.

As such, please accept these comments in support of revising the rules to meet the intent of Alternative – C:

- The 14 pages of proposed rules fail to respond to the President's executive direction for shorter, more flexible, cheaper and less burdensome regulations (January 2011 Executive Order issued by President Obama – "Improving Regulation & Regulatory Review").
- As stated above, NEPA developed projects that are designed for the reduction of hazardous fuel conditions that are threatening our communities, watersheds and

wildlife must be protected from the appeals and lawsuits filed by obstructionist environmental organizations who have political agendas to stop multiple-use management and specifically timber management on the national forest lands.

- The proposed rules strategically ignore the congressionally approved and judiciously required role of multiple-use in the proposed future management of the national forests.
- Realizing that the radical environmentalists will be filing numerous appeals and lawsuits against these draft regulations, nothing in the proposed rules clarifies how the national forests will be managed during this period of objections.
- As we move further into the uncertainties associated with climate change, it is critically important that the new rules clarify and support the critical role that active and sustainable forest management practices provide in the need for carbon sequestration and storage of carbon. As mentioned earlier, catastrophic fires are a growing threat to the national forests and catastrophic wildland fires are the third largest contributor to green house gases.
- The elevation of "ecosystem services, spiritual opportunities and sustenance" to the level of "multiple-uses" under these proposed regulations appears to be an effort to avoid the direction and intent of congress and the clarity authorized under the Multiple Use Sustain Yield Act.
- The concept of restoration needs to be expanded to include forest management activities and concepts specified for use in management of the national forests in the National Forest Management Act (NFMA). The new rules need to clarify & support the use of even-age and all-age management prescriptions and the specific use of salvage and sanitation harvests in both of these forest management strategies.
- The role of which science applies to the management of the national forests must be left to the judgment, experience & expertise of the local forest service professionals charged with management of the individual national forests and supported by various rulings of the federal 9th Circuit Court of Appeals.
- Along these lines, the "responsible official" in charge of the individual forest planning process and updates must be the local Forest Supervisor for each of the National Forests. The Forest Supervisor must be the federal authority that approves and signs the Record of Decision that selects and implements the Land Management Plan for each National Forest.
- The level of "public participation" in the land management plan process must be left to the individual Forest Supervisor's and their staff's because they are the closest to the ground and public users of each national forest.
- The planning rules and Land Management Plan process need to clearly define and separate the authorities and expectations assumed under "Collaboration" "Cooperation" and "Coordination". Of the three, the Forest Service has a legal responsibility to "Coordinate" actions and planning efforts on National Forest lands with local County Governments and specifically County Boards of Supervisors. These legal requirements are clearly specified in Section 219.7 of the existing 1982 Planning Rules and National Forest Management Act. This clarification, authority and requirement must be incorporated into the forthcoming planning rules.
- An example of county or landscape wide "collaboration & cooperation" is the County Fire Safe Council concept that is taking place in California and should be replicated and supported by federal and state agencies throughout the western states. The enclosed Plumas County Fire Safe Council County Fire Plan "Base

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Map" clearly shows the opportunities to bring all of the land owners and managers to the table for the strategic development and implementation of urgently needed hazardous fuel reduction and forest restoration projects on both private and public lands.

- Why isn't the proposed "Assessments" process developed through a NEPA and FACA process and aren't you leaving associated forest plans open to further appeals and lawsuits?

Again, thank you for the opportunity to provide my comments and I look forward to the opportunity to update our local national forest Land Management Plans.

Cordially,

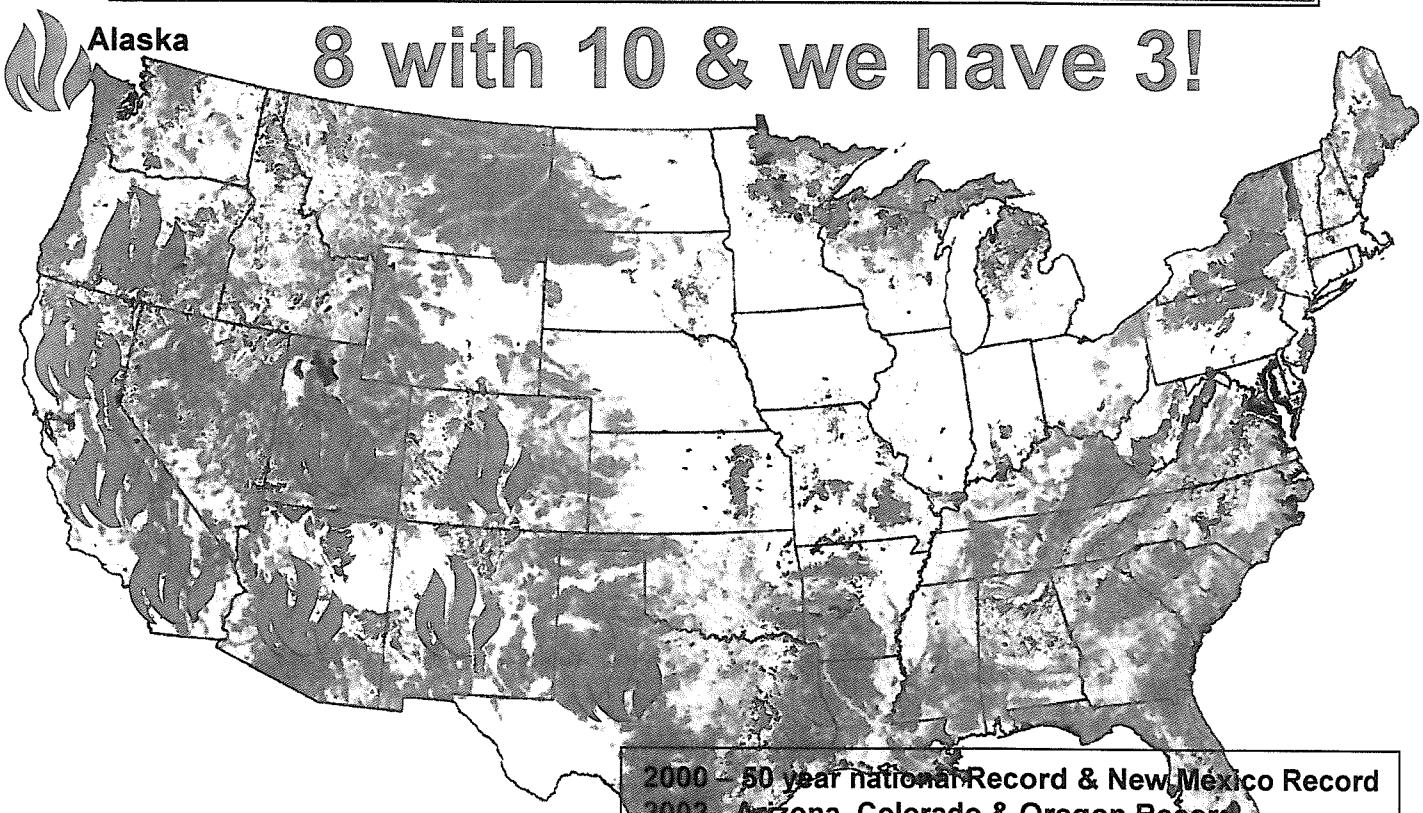
Frank Stewart

FRD-1071

A Growing Threat to Communities, Watersheds & Wildlife

The National Fire Plan was started in 2000 after New Mexico experienced its worst fire season in state history. Since 2000, Arizona, Colorado, Oregon, California (3 records), Alaska, Utah & Texas have experienced historic state fire seasons. The problem is GETTING WORSE – NOT BETTER and as we move further into the realities of climate change the annual Pace & Scale of hazardous fuel reduction and forest restoration activity acres must be increased accordingly across the landscapes throughout the western states & especially California!!

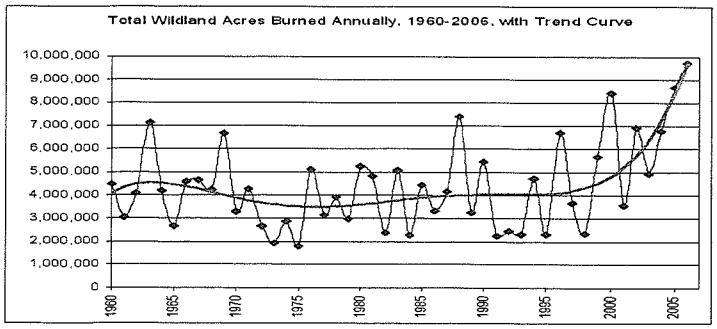
8 with 10 & we have 3!



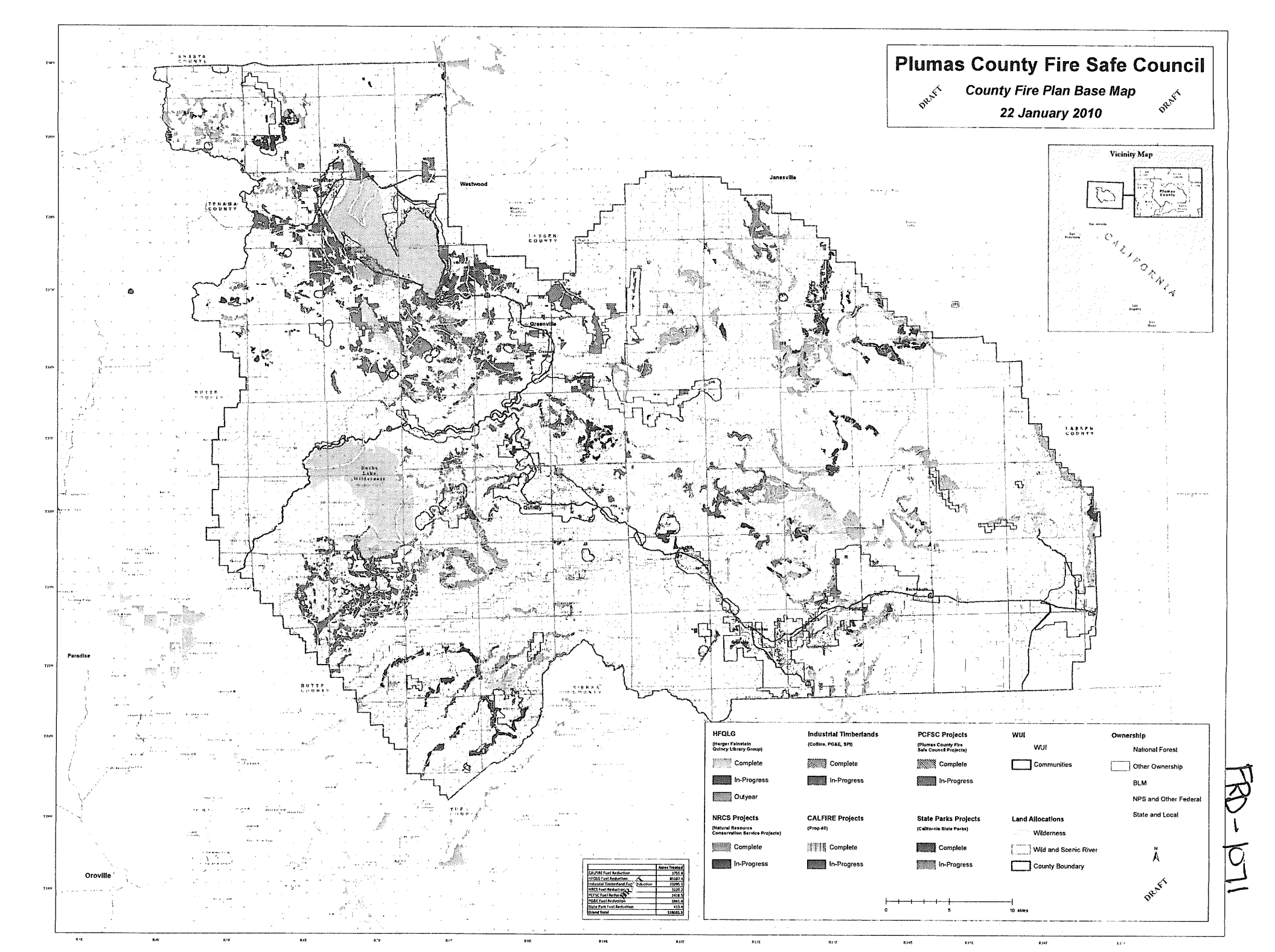
2000 – 50 year national Record & New Mexico Record
2002 - Arizona, Colorado & Oregon Record
2003 – California 1st Record
2004 – Alaska Record
2005 – *55 year national record*
2006 – New 75 year national record
2007 – Utah Record & California 2nd Record
2008 – California 3rd Record
2011 - Texas

LEGEND

- Condition Class 1
- Condition Class 2
- Condition Class 3
- Water
- Agriculture & Non –Vegetated Areas



Run Bear Run


Plumas County Fire Safe Council
DRAFT
County Fire Plan Base Map
22 January 2010
DRAFT
Vicinity Map
CALIFORNIA
Chester
Westwood
Janesville
Greenville
Quincy
Paradise
Oroville
Beckwourth
Portola
Lassen Volcanic National Park
Bucks Lake Wilderness
PLUMAS COUNTY
LASSEN COUNTY
BUTTE COUNTY
SIERRA COUNTY
SHASTA COUNTY
TEHAMA COUNTY
HFQLG
(Herger Feinstein Quincy Library Group)
Complete
In-Progress
Outyear
Industrial Timberlands
(Collins, PG&E, SPI)
Complete
In-Progress
PCFSC Projects
(Plumas County Fire Safe Council Projects)
Complete
In-Progress
WUI
WUI
Communities
Ownership
National Forest
Other Ownership
BLM
NPS and Other Federal
State and Local
NRCS Projects
(Natural Resource Conservation Service Projects)
Complete
In-Progress
CALFIRE Projects
(Prop 40)
Complete
In-Progress
State Parks Projects
(California State Parks)
Complete
In-Progress
Land Allocations
Wilderness
Wild and Scenic River
County Boundary
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Acres Treated
CALFIRE Fuel Reduction 1755.6
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NRCS Fuel Reduction 3120.2
PCFSC Fuel Reduction 2418.5
PG&E Fuel Reduction 2841.4
State Park Fuel Reduction 413.4
Grand Total 170033.1

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Frank Stewart
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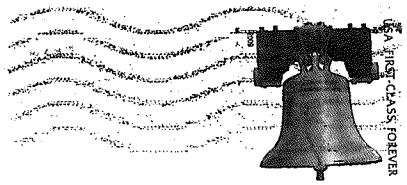

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Forest Service Planning DEIS
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Bountiful, UT 84010

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Wyoming Agriculture

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The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

May 6, 2011

FRD-1072

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 South
Bountiful, UT 84010

To whom it may concern:

Following are the comments of the Wyoming Department of Agriculture (WDA) on the proposed National Forest System Land Management Planning Rule (Planning Rule) and Draft Programmatic Environmental Impact Statement (DEIS).

Our comments are specific to our mission: dedication to the promotion and enhancement of Wyoming's agriculture, natural resources, and quality of life. As the Planning Rule and associated DEIS affects our agriculture industry, our natural resources, and the welfare of our citizens, it's important you continue to inform us of proposed actions and decisions and provide us the opportunity to express pertinent issues and concerns.

The comments below address both the Planning Rule and the DEIS.

Multiple Use

Both the Planning Rule and DEIS contain several discussions on recreation and appear to place a greater emphasis on recreation than other multiple uses (219.8 (b) and Chapter 2 ,p. 20 & p. 41). The WDA does not believe that recreation should be placed as the highest priority among multiple uses. In addition, the WDA strongly supports considering all multiple uses and resource values equally in the planning process.

The Planning Rule should continue to reference and rely upon the Multiple Use Sustained Yield Act (MUSYA) of 1960. MUSYA defines multiple use as: "the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people..." In addition, "Congress declared that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes." There is no direction providing individual resources or resource uses special consideration.

Viable Populations

The WDA does not believe the Proposed Planning Rule presents a realistic approach to manage species viability or maintain viable populations. The DEIS (Chapter 2, page 37) states that under the Proposed Rule "NFS lands would be expected to consistently provide the ecological conditions necessary to maintain the diversity of plant and animal communities." Conditions on forest lands are constantly changing, making it difficult and unrealistic to "consistently" maintain specific ecological conditions. A majority of the changes occurring or expected to occur are out of Forest Service control, making it impossible for the Forest Service to maintain populations of all native and desired non-native species on Forest Service lands.

We believe the National Forest Management Act of 1976 provides adequate guidance to maintain viable species populations and species diversity based on the suitability and capability of the specific land area in order to meet multiple use land objectives.

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We also suggest the Forest Service provide a definition of "viable population." We believe "viable population" is nebulous and cannot be achieved for all species occupying Forest Service lands, due to lack of data and ecosystem changes.

Page 8494 of the Planning Rule states; "The 1982 planning rule required the Forest Service to manage habitat to 'maintain viable populations of native and desired non-native vertebrate species in the planning area...'. The 1982 viability standard at times proved to be unattainable because of factors outside the control of the Agency." The WDA suggests the new Planning Rule is setting the bar even higher and makes the attainment of maintaining viable populations even more nebulous, unrealistic and unattainable. How does the Forest Service expect to maintain all native species and desired non-native species populations with the resources available? We do not support this unattainable goal.

Monitoring and Assessment

We want to express our concern regarding the Monitoring and Assessment programs detailed in the Planning Rule. It is apparent the Forest Service is currently unable to monitor everything they are required to monitor, let alone enlarge the monitoring program to include all native and desired species. This is a fatal flaw in this Planning Rule. The entire Planning Framework is centered on having the best available data and science to inform decisions. We view the Planning Framework as a three legged stool consisting of the Assessment, the Revision and Monitoring. If one of these legs are missing or lacking sufficient strength to stand on its own, then the entire Planning Framework will fail. The viability of the Planning Framework must be fully analyzed for these situations.

The Planning Rule should also include appropriate language requiring monitoring to occur at the project level. The Planning Rule only requires monitoring to occur at the Unit or Broader Scale and does not guide monitoring efforts at the project level. The Planning Rule should lay out the ground work for project level monitoring.

Social and Economic Sustainability

The WDA appreciates the Planning Rule's acknowledgement of the importance of economic sustainability. Local communities and businesses rely on Forest Service lands for economic sustainability through recreation, tourism, livestock grazing, etc. Forests provide social and economic sustainability in Wyoming and cannot be de-emphasized in this Planning Rule.

We do not believe the Forest Service has less influence over economic and social sustainability than ecological sustainability. It is premature to make this determination without fully analyzing the impact of Forest lands on local economic and social sustainability. We encourage the Forest Service treat each major sustainability category equally and make it clear that each category may have areas that are outside Forest Service control.

Flexibility

The WDA supports the Planning Rule's attempt to build in flexibility to make adaptive management decisions on Forest Service lands. The Planning Rule must allow Forest Plans the ability to remain flexible enough to make site specific determinations.

Climate Change

There is considerable debate concerning the science behind climate change and the appropriate management of natural resources in response to possible climate change. The WDA is extremely concerned that the "best available

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science" used to determine appropriate adaptive management in response to climate change may not be impartial in all situations and across all National Forest lands. In addition, monitoring data should be collected and used to make site-specific determinations of possible adaptive management options.

Riparian Areas

The WDA does not support the use of a default width for riparian areas around lakes, perennial and intermittent streams, and open water wetlands. The boundaries of riparian areas should be based on site-specific scientific information. If a specific riparian planning program is desired, it is important the assessment and monitoring be based on the actual riparian width and not an arbitrary riparian default.

In conclusion, the WDA appreciates the opportunity to comment on the Proposed Planning Rule and DEIS. We encourage continued attention to our concerns and look forward to hearing and being involved in proposed actions and decisions.

Sincerely,

Jason Fearneyhough

Jason Fearneyhough
Director

JF/jc/cw

CC: Governor's Policy Office
Rocky Mountain Farmers Union
Wyoming Game and Fish Department
Wyoming Board of Agriculture
Wyoming Stock Growers Association
Wyoming Wool Growers Association
Wyoming Farm Bureau Federation
Wyoming Association of Conservation Districts

STATE OF WYOMING
DEPARTMENT OF AGRICULTURE
CHEYENNE, WY 82002-0100

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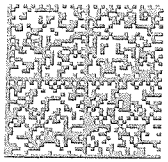

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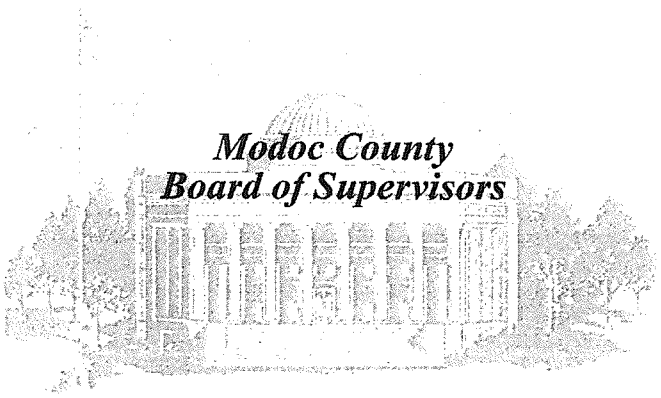

STEPHANIE NORTHRUP
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May 10, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 E. 500 South
Bountiful, UT 84010

Subject: Comments on the Forest Service Proposed Planning Rules and DEIS

To Whom It May Concern:

The Modoc County Board of Supervisors (County) appreciates the opportunity to comment on the Forest Service Proposed Planning Rules and Draft Environmental Impact Statement. Modoc County is similar to many rural forested counties in that the Forest Service controls the majority of the land base. Consequently the decisions made by the Forest Service have significant impacts on the local socio-economics, environment and the well being of the local government and its residents. Therefore it is vital that the rules developed to conduct planning on Forest Service land allow for meaningful involvement by the local governments charged with the responsibility of protecting the health, safety and welfare of its citizens.

To that end, Modoc County developed and adopted the *Comprehensive Land Use and Management Plan for the Federally and State Managed Lands in Modoc County* (Plan) under 16 U.S.C. 1604, C.F.R. Sections 1502-1508, 36 C.F.R. Section 219 and other statutes. Utilizing this plan the County and the Forest Service at all levels have successfully worked for over a decade to jointly address those proposals that might impact the environment and economy of Modoc County. As a part of the coordinated planning required by the Forest Service's statutes and regulations and expected by the County, the following comments are submitted.

GENERAL COMMENTS

The County supports the efforts of many other entities of government and organizations to extend the comment period for the Proposed Planning Rules and DEIS for another ninety days

until mid-August. The Forest Service's appointment of a "mystery" panel of scientists to review the document and then suddenly release the findings less than three weeks before the comment deadline is not acceptable. It is important for full disclosure for those scientists to be fully vetted so that their perspective can be analyzed as part of the comment process. This can only happen with a comment deadline extension. The previous four attempts by the Forest Service to revise these rules have met with either a set of rules that proved to be unworkable or thrown out by the courts. Prudence dictates that the agency should go the extra mile in transparency and they are already off to a bad start. We urge an extension of the deadline.

The current Forest Service Planning Rules require the Forest Service to coordinate their planning efforts with state, tribal and local governments. These obligations include, but are not limited to, reviewing the land use policies of other agencies, assessing the interrelated impacts of these planning efforts and consideration of alternatives for resolving any conflicts. In addition there is a requirement to meet with representatives of state, tribal and local governments early in the planning process to develop the procedures for coordination. This has not been done with Modoc County, and to the best of our knowledge, has not been done with any state, tribal or local government anywhere in the country for this planning effort. As this is the fourth attempt since 2000 to develop a new set of planning rules, we strongly suggest that the Forest Service halt the process, go back and comply with the Congressional mandate to coordinate with state, tribal and local government, and then proceed or this set of proposed rules will suffer the same fate as the previous three.

The Forest Service is not unaware that they are required to comply with this obligation. This was a principle issue raised at every round table and satellite round table held in Regions 3 and 5 during last spring's rollout of the proposed rules. We strongly suspect that this issue was also raised at many other round tables throughout the West. There is no doubt that a strong coalition of local governments will litigate if this proposed rule goes forward and continues to violate the very clear direction provided by the National Forest Management Act (NFMA) and the current regulations promulgated from it.

While the County does not object to the proposed language that increases the access to the planning process for the general public, it does object to folding state, tribal and local government into the same process. Congress very clearly intended that the government-to-government relationship described in the Federal Land Policy and Management Act (FLPMA) and the regulations promulgated from NFMA separate out the differences between government entities and the general public because of the government entities responsibilities to protect the public health and safety of its citizens. The County reminds you that the definition of coordination found in FLPMA is applicable to the Forest Service because of the legal interpretation known as "Statutory Construction." If the similar definition found in the 1982 Rules were to be removed as proposed by the new rules, then any new language would

have to be compatible with the only definition of coordination found anywhere in resource law, that being in FLPMA. The proposed language is **not** compatible with either FLPMA or Congressional intent.

Congress was very careful to separate their use of the "C" words of coordinate, cooperate, collaborate and others. They all have very different meanings, both in general usage (dictionary definition) and in federal usage. By using several of the terms in separate places in the same statutes, Congress clearly knew the difference. The proposed rules are less clear and the Forest Service personnel involved in explaining and interpreting the proposed language are completely lacking of understanding in the differences in the terms. The proposed rules can talk about collaborating with the public endlessly, but the law is very clear that the Forest Service must "**coordinate**" with other entities of government. For the rules to say otherwise is clearly a violation of NFMA and will immediately instigate litigation.

The County opposes the inclusion of non-vertebrates in the viable species mandate. Maintenance of "species viability" is not required by NFMA and has been the source of millions of dollars of habitat work as well as litigation. This proposed planning rule is headed for the same problems previous versions had in that it is unworkable and proposes tasks that simply cannot be accomplished, given the available resources. The Forest Service already cannot process the workload existing with vertebrate species. To voluntarily assign itself more work that is not required is simply unacceptable.

The science standards proposed in the draft rules are a recipe for failure. While the County supports using the best science, the proposed science standards are essentially impossible to meet. It makes no sense to prescribe, in regulation no less, an unachievable standard and a standard that is not required by any statute. Consequently it will easy for any litigant to bring agency planning to a complete halt and get paid to do so. The legal risk to go forward with this proposal is clearly not in the best interest of either the Forest Service or the land they manage.

These proposed rules substantially diminish the role of multiple use management for the traditional uses of the land. These issues, such as grazing, timber, wildlife, recreation and water, were the foundation upon which the agency mission was developed and sustained from the passage of the Organic Act and continuing on through adoption of the Multiple-Use Sustained Yield Act, FLPMA and NFMA. The balanced approach to management described in these statutes has been largely set aside by these proposed rules in the name of buzzwords like spiritual sustenance and carbon sequestration. These proposed rules go beyond the latitude allowed in the development of regulations and violate existing statutes. The County strongly urges a re-draft that supports a management approach that balances the responsibilities the Forest Service has to its neighboring communities, ecosystem values and sustainable production of wood products, forage and water.

The County is not pleased with the tone of the proposed rules. We do not believe the Forest Service has the discretion, given the existing laws that govern the operation of the agency, to change the mission of the Forest Service to one of ecological restoration. This proposed rule is simply the promulgation of planning regulations to carry out the intent of Congress as set forth in NFMA, FLPMA and NEPA. The rules must be consistent with these statutes. The Forest Service is not the National Park Service. It is the agency's mission to manage the National Forest System to produce forage, timber and water as well as ecological values and healthy communities. These proposed rules are designed to move the Forest Service further away from the production of the multiple uses just listed and the County finds that disturbing and unacceptable.

The Forest Service continues to be the most centralized department in the federal government and these proposed rules enhance that unenviable honor. Planning rules should be just providing sideboards for local managers, not prescribing decisions on the land. The local land managers must have the discretion to tailor management to best suit the conditions of their land. Modoc County is part of two top down regional landscape decisions (Northwest Forest Plan and the Sierra Nevada Framework) and they are both disasters for the environment and for local community economies. The preservation-like sideboards described in these proposed rules will not allow local forest supervisors to manage in a way that satisfies the needs of the land and local communities or the intent of Congress.

SPECIFIC COMMENTS

Coordination With Local Government

The County strongly urges the following specific changes be made to Section 219.4 of the Proposed Rules. Either replace the whole of Proposed Section 219.4 with Section 219. 6 of the 1982 Rules (public participation)and Section 219.7 of the 1982 Rules (coordination with State, Indian Tribal and local governments).

An alternative to the above would be to split Proposed Section 219.4 into two parts, the first setting forth the public participation language of the Section and the second setting forth the language of the 1982 Rules Section 219.7 describing the protocol for coordination.

Either change would reflect the Congressional mandate that sets local government in a status separate from and more intimately involved than the general public. It is a Congressional mandate that makes sense as Congress recognized that local government has a higher calling because of their responsibility for maintaining the economic stability and social cohesiveness of their communities.

The proposed Section 219.4 does not provide a process that complies with the Congressional mandate of coordination as set forth in both NFMA and NEPA.

The 1982 language clearly meets the agency responsibility to coordinate. It mirrors the language in FLPMA developed by Senator Bob Packwood of Oregon. It is the only existing language in Forest Service regulations describing the coordination process and needs to remain for two very important reasons. The first is it keeps the Forest Service legal and free of litigation on this issue which will happen if the proposed language is not changed. The recent case in the United States District Court for the Northern District of California in the case of California Resources Agency v. United States Department of Agriculture demonstrated the requirement for coordination and the validity of the 1982 rules. The second is it provides a guide to agency staff on how to comply with the mandate in clear, easy to understand language. The 1982 219.7 rule is the only place the Secretary has described in useable terms the process of coordination. It needs to remain in the rules.

The County has seen this coordination process work well. It has protected the environment from top down, one-size-fits-all directives from higher up the Forest Service decision making ladder. The County and the Modoc National Forest have combined forces on many occasions to protect the locally developed solutions to address ecological problems and often had to defend those solutions from agency bureaucrats in the Region and Washington Office that thought good environmental decisions could be made from miles away.

The County has found the language describing the coordination process found in the 1982 rules (Section 219.7 a-f) to be clear and easy to understand. When succeeding versions of the Planning Rules were written that removed the clear directions for Forest staff on how to coordinate with other government entities, problems began to occur. While the mandate for coordination was still there, without the clear steps to comply with the obligation, the process often bogged down as this is a piece of Forest Planning and NEPA that staff is not trained to do. Once direction was provided that allowed the 1982 rules to be used again, the County has seen significant improvement by Forest staff and many more local governments become interested in protecting their environments and economies by using the opportunities allowed through the coordination process. The County very strongly urges the use of the 1982 rules Section 219.7 exact wording in the proposed rules.

The County has examined the replacement language for the 1982 rules for coordination in detail and is strongly suspicious that the agency has spent considerable time trying to craft language that at first glance appears to be similar to the 1982 language. A closer look finds the proposed language to be far weaker than is intended by the Congressional mandate. The County wonders why the Forest Service would go to such lengths to deceive local governments and the public. The 1982 rules have worked well and the agency has not demonstrated any

reason that they should be changed. Given the substantial number of comments from the public and local government that the 1982 coordination rules remain, NEPA requires some sort of response other than the weak and dishonest one mentioned on page 8486 of the Federal Register of February 14 2011.

"Some local governments also asked the planning rule require land management plans to strive for consistency with local government plans.....Requiring land management plans to be consistent with local government plans: however would not allow the flexibility needed to address the diverse management needs on NFS lands and could hamper the Agency's ability to address regional and national interests on Federal lands."

First of all, it was many local governments, not some, and what they asked for was compliance with and a continuance of the 1982 coordination rules which require consideration of alternatives for resolution of conflicts with local plans, in other words, the attempt to achieve consistency. They were only requesting the continuation of the language that describes an existing and legally mandated component of coordination. The above language was crafted to make it appear these local governments were asking for something new.

The assertion that seeking consistency with local plans would not allow the flexibility needed to address the diverse management needed on Forest Service land is unsupported in the document and is untrue. The Forest Service and local governments have been complying with the Congressional mandate for coordination for years without any evidence that it has impaired the agency's ability to manage their lands. This is a NEPA document and statements are to be validated and there is no evidence contained in the proposal to back up this untruth. Besides, given the Congressional mandate, it is not optional.

Likewise the statement that seeking consistency with local plans could hamper the Forest Service's ability to address regional and national interests on their lands is also unsupported and untrue. Regional plans such as the Sierra Nevada Framework have been successfully coordinated with county government to the satisfaction of both the Forest Service and local government.

Federal Register of February 14, 2011 (page 8487) states " *In the event of conflict with Forest Service planning objectives, consideration of alternatives for resolution with the context of achieving NFS goals or objectives for the unit would be explored."* The definition of coordination found in law in FLPMA and mirrored in the 1982 rules Section 219.7 does not give the Forest Service the discretion to choose to just explore consideration of alternatives for resolution. There is a mandatory requirement that this be done and the proposed rule should reflect this obligation.

Proposed rule 219.4(a)(8) states *"Where appropriate, the responsible official shall encourage federally recognized Tribes, States, counties and other local governments to seek cooperating agency status in the NEPA process for a plan development, amendment or revision."* The County strongly suggests that the Forest Service review its mandate in law for plan development, amendment and revision. 16 U.S.C. Section 1604 (a) **"The Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies."** It is very clear what the agency responsibility is related to coordinated planning with state and local governments. To highlight a discretionary process like cooperating agency and diminish the coordination mandate (discussed at length in the following paragraphs) is blatantly dishonest.

The County finds the language that the Forest Service proposes to replace the 1982 rule coordination language to be disingenuous as well as failing to meet the legal mandate required by NFMA. The proposed 219.4 (b)(1) states *"The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies and State and local governments, to the extent practicable and appropriate."* The coordination mandate in NFMA **does not** give the Secretary the latitude to pick and choose whether he needs to coordinate based on his opinion as to whether it is appropriate. His responsibility to coordinate was debated in Congress before passage of FLPMA and NFMA and the non-discretionary requirement is clearly spelled out. The attempt to weaken the mandate with a couple of caveats is unacceptable and the Forest Service would find this set of planning rules in court just like the last several versions.

The agency attempts to add conditions to their coordination requirement again in proposed 219.4(b)(2)(iv)."*Opportunities to resolve or reduce conflicts within the context of achieving the Forest Service desired conditions or objectives.*" Again the proposed rules add conditions to resolving conflict that **do not** exist in NFMA or FLPMA. The Forest Service does not have the latitude to place the sideboards of desired conditions or objectives on their requirement for resolving conflict. This section is not in compliance with NFMA and would likewise trigger litigation.

Socio-Economics

The County agrees with the statement that *"The proposed rule considers the ecological, social and economic systems as interdependent systems, which cannot be ranked in order of importance."* However we do not agree with the interpretation that the Forest Service is just one of a broad array of factors that influence the sustainability of social and economic systems therefore ecological systems will be the primary focus of the proposed rules.

In counties such as Modoc County, Forest Service decisions, both to do and not to do management, are the primary driving force of a large segment of the local economy. There are counties that are as much as 95 percent controlled by the Forest Service and their actions are the economy. The County believes this language was included to downplay the socio-economic portion of Forest Service planning which is not allowed by NEPA. The Forest Service does not have the latitude to use discretion in how their decisions impact the local socio-economics.

The Forest Service has created a self-fulfilling prophecy in that they are a smaller part of the socio-economic landscape of forested county economies because they have ceased to actively manage the forests. When you remove a sustainable timber program, an active hazardous fuel reduction effort and continue the actions to reduce access to the land for recreationists, the Forest Service becomes a smaller portion of reduced local economy. The proposed rules will help institutionalize that unacceptable situation.

For at least two decades now, the socio-economic analysis of Forest Service projects has been dismal at best. The Forests are not staffed locally to accomplish this task (which does not diminish their responsibility to do the work) and as a consequence very poor economic work is done. The County cannot allow this poor track record to now be institutionalized by discretionary language placed into the proposed planning rules. The 1982 rules, Section 219.7 (f) was clear direction for the monitoring of impacts, which would include social and economic, on neighboring communities. Once again the County strongly urges the inclusion of the 1982 rules Section 219.7 (a-f) into the proposed rules.

The proposed rules should clearly address the failure to analyze the impacts to local communities and the environment from " non-management" of the forest. For example, when the Forest Service currently chooses to not do an action, like actively salvage after a fire, the "decision to do nothing" is not analyzed. Consequently the loss to the community of the jobs not produced or the reduced county payment from receipts from the removed timber is unknown and unavailable as a component for making decisions that are best for the land and the local communities. There is also no analysis for the increased fire hazard created by the increased buildup in fuel or the increase in greenhouse gases that will be released over time. This is completely different that the analysis of a "no action" alternative done in conjunction with a proposal to take some action. It is time that "management by default" be a conscious decision that goes through analysis and public review. The County urges appropriate language be included in the proposed rule to cover this increasing form of management.

User Friendly Rule

The Secretary has been instructing the agency to use the 1982 rules in most cases ever since the 2008 version of the Rules was thrown out by the courts. Everyone understands that the 2000 Rules, which fortunately contain the option to revert to using the 1982 Rules, are too

complex to be easily used. The County believes the Forest Service is well on their way to developing another Planning Rule that will be difficult to use.

It contains unnecessary requirements that are not needed to comply with the law such as the inclusion of non-vertebrate species in the viable species mandate. The funding for the foreseeable future is bleak and to saddle the land managers with work not required by statute is simply unacceptable. It is this sort of direction that continues to fuel the belief that the Forest Service wishes to move to a "preservation instead of conservation" mode of operation.

The science standards and species viability requirements simply won't work. There are science standards that the field managers cannot achieve as there will often be "best science" requirements for separate species that conflict with each other. The results of these kinds of conflicts will be far less active management, fewer projects and more limited access for the public to the National Forests. In addition the inability to meet standards prescribed by the proposed rules creates a field day for litigants. Once again this will result in less management which will cause harm to both the environment and the neighboring local communities. It is simply folly to develop a Planning Rule that results in increased litigation and less management on the ground, especially when there is no statute that requires such action. The County strongly suggests this portion of the proposed rule be completely rewritten with an eye towards the resources available to the agency. A default to no management is simply not acceptable.

Summary

The County believes adoption of the proposed rules as written is a recipe for many lengthy court actions. This rule will end up in the trash heap like the previous three versions. Specifically the language regarding the interaction between the Forest Service and state and local governments violates the statutes that describe the intent of Congress in this regard. That can all be resolved by merely carrying forward in its entirety, Section 219.7 (a-f) from the 1982 Rules. The 1982 Rules worked well until replaced by the 2000 rule. The new language in the 2000, 2005 and 2008 rules created confusion for both the agency staff and local government. Since the abandonment of the 2008 rules and a return to the 1982 rules, once again we have seen successes produced for the good of both the environment and the local economies. The proposed Section 219.4 is clearly in violation of the Congressional mandate for the agency to coordinate their planning activities with local governments.

The County sees the daily struggles of the agency managers as they attempt to do more work with fewer resources. This clearly will continue into the future as the nation wrestles with the fiscal crisis. It makes no sense to design a planning rule that costs more money and creates more litigation.

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The County suggests this rule needs a lot more work and undoubtedly more work than can be handled with just the finalizing of this Environmental Impact Statement. We suggest withdrawing the draft rules with the comments received from this comment period and go back to the drawing board with another round of public input that does not fall on deaf agency ears and concentrate on drafting a simple and easily used rule. The 1982 Rules are working satisfactorily and there is no time crunch to produce a new rule.

Sincerely,

Loren Crabtree

Loren Crabtree, Chairman
Modoc County Board of Supervisors

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Board of Supervisors
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ALTURAS, CALIFORNIA
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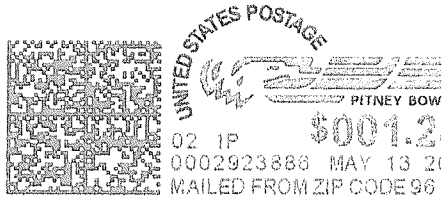

Forest Service Planning DEIS
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TOWN OF DOVE CREEK

P.O. BOX 508
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(970) 677-2255

FRD-1074

May 13, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 E. 500 S.
Bountiful, UT 84010

RE: Forest Service Notice of Proposed Rulemaking
And Request for Comments

To Whom It May Concern:

The following comments on the Proposed Rule and DPEIS are submitted to the Forest Service by the Town of Dove Creek Board of Trustees and Mayor. The Town of Dove Creek is a coordinating Local Government and as such expects our comments and concerns to be given serious consideration and standing.

219.4 (a) – Requirements for public participation. This section does not provide for coordination as mandated by the numerous Acts, Laws and regulations enacted by Congress and other Federal Agencies, therefore it is in violation. Collaboration is not and cannot be considered coordination.

219.4 (a)(8)(b) – There is no provision in the numerous Acts, laws and Regulations enacted by Congress and other Federal Agencies to allow the responsible official the discretion to coordinate only if they find it <u>appropriate.</u> This is a violation of the aforementioned Act, Laws and Regulations. This is unacceptable to local governments.

219.19 Definitions – This section does not contain a definition for "Coordination" yet it does define "Collaboration" even though coordination is required by Federal Acts, Law, NFMA, FLPMA, NEPA, TMPR, State and Local Laws and regulations. This rule should either be revised to be consistent with these Acts, Laws, and Regulations or not enacted.

The only reasonable conclusion that can be reached after review of this proposed rule is that it is doomed to fail from litigation. An approach of "Multiple Use and Sustained Yield" is absent and replaced by Radicalized Environmentalism.

FRD-1074

Sincerely,

Irvin B. Frazier
Town Manager
Town of Dove Creek

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May 13, 2011

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(801) 397-1605 – fax

To Whom It May Concern:

Thank you for the opportunity to provide comments on the U.S. Department of Agriculture's proposed new planning rule to guide land and resource management planning for all units of the National Forest System under the National Forest Management Act of 1976. Nearly 80 percent of all of Del Norte County is owned by Federal or state governments. A majority of that is within the Six Rivers National Forest and the Smith River National Recreation Area. A much smaller portion of land within the County is in the Siskiyou National Forest. Our comments are as follows:

- **Social and Economic Data**: We read several sections, including Section 219.3 (Role of Science in Planning) as specifically classifying social and economic data as scientific information to be used in the planning process. This is a positive development as social and economic data must be required and given equal importance to ecological considerations when developing forest plans.

  For example, Del Norte County is concerned about the Forest Service management philosophy within the Six Rivers National Forest. Currently, Forest Service land within the County is managed almost solely for "recreational purposes" with little evidence of an actual recreational goal. Access to the land is a constant issue for our constituents because of efforts to remove access to roads and trails and a refusal to acknowledge the existence of

historical roads long established throughout the Forest long before it became the Smith River National Recreation Area. We have formally protested the closure and decommissioning of old mining roads that have been traditionally used by recreationalists, although we have supported reasonable closure of roads that the public has indicated are not essential to recreational activity.

These management practices within Six Rivers and the Smith River National Recreation Area have a dramatic impact on the economics of our community both in lost taxes and tourism receipts. Any effort to better consider social and economic data when formulating forest management plans is a tremendous benefit to Del Norte County.

- **Coordination**: One of our most challenging efforts is to encourage the local Forest Service offices to coordinate with us on a regular basis when decisions are being made that greatly impact our community. Our hope is that this new planning rule will codify the responsibility of the Forest Service to consider the impacts new rules have on our County's tax base, constituents, and other local interests.

  Unfortunately, the proposed planning rule does not go far enough. Instead of mandating coordination, Section 219.4 (Requirements for Public Participation) lacks definitions for what is "practicable and appropriate" when coordinating planning efforts, thereby effectively leaving it up to the interpretation of the Forest Supervisor. This language is also a step back from the 1982 Rule in that it removes some of the mandated steps the Forest Service must take in coordinating with other government agencies. We strongly oppose this weak language and request that it be restored and strengthened to ensure adequate local government coordination.

  Active Forest Management: Del Norte County is a mostly rural community of 28,000 people living in the coastal area who are greatly affected by Forest Service management of the Federal lands in our backyard. When roads are not maintained or are closed, or when we have significant forest fires, such as the Blue 2 Fire which burned more than 80,600 acres in 2008, our citizens are significantly impacted.

  Given those impacts, we strongly believe the Forest Service should more actively manage and maintain its property, as well as access to that property. For example, if timber were more actively managed, not only would fire frequency and subsequent impacts be lessened, we may even have opportunities to create economic development through selective timber harvests, which at one time represented the majority of our economic output.

  In any section of the forest management plan, including Section 219.8 (Sustainability), active forest management, including managed wildland fire and selective timber harvesting, must be a part of the plan.

FRD-1075

Thank you again for the opportunity to comment on the proposed new planning rule for the National Forest System. Given that our concerns are often shared by many western counties with National Forests in their backyards, I hope the Department of Agriculture will seriously consider our concerns.

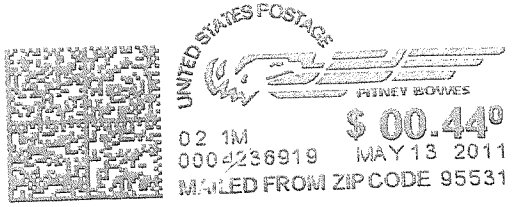
Sincerely,

Leslie McNamer

Leslie McNamer, Chair
Board of Supervisors

COUNTY OF DEL NORTE
Board of Supervisors
981 "H" Street, Suite 200
Crescent City, CA 95531

FRD-1075



Forest Planning DEIS
c/o Bear West Company
132 E. 500 South
Bountiful, UT 84010

Montana Fish, Wildlife & Parks

PO Box 200701
Helena, MT 59620-0701
(406) 444-3186 - FAX: (406) 444-4952

FRD-1076

Ref: DO117-11
May 12, 2011

Fax: 801-397-1605

Forest Service Planning DEIS Team
c/o Bear West Company
132 E 500 South
Bountiful UT 84010

RE: Proposed Forest Service Planning Rule

Montana Fish, Wildlife & Parks (FWP) is responding to your invitation to comment on the Proposed Forest Service Planning Rule.

We support the collaborative approach outlined in the Proposed Action, Alternative A. State fish and wildlife agencies like Montana FWP can provide pertinent, science-based information and insights during the forest planning process. In particular, we hope that state wildlife action plans and the fish and wildlife information tools such as the Decision Support Systems being completed by the Western Governors Association with Department of Energy funding will be used by the Forest Service to help inform plan developments, amendments, and revisions. In Montana's case, we refer you to our Comprehensive Fish and Wildlife Conservation Strategy (http://fwp.mt.gov/wildthings/conservationInAction/fullplan.html) and our Crucial Areas Planning System (CAPS, at: http://fwp.mt.gov/wildthings/conservationInAction/crucialAreas.html).

We note that the Proposed Planning Rule gives forest and grassland supervisors the flexibility to decide whether or not to include goals in the land management plan for a given area. While we appreciate the value of giving managers some latitude, as the agency with responsibility for all fish and wildlife management in Montana, we hope the Forest Service will work collaboratively with other state and federal agencies and stakeholders to amend its forest plans according to shared goals as much as possible. At the same time, we urge the Forest Service to make wildlife habitat conservation a top priority of Planning Rule implementation.

We have one specific suggestion regarding the proposed Planning Rule. Page 8491 of Section 219.8 Sustainability contains general guidance for riparian area management, including the establishment of default widths and the site-specific verification of riparian areas. We recommend expansion of this riparian area discussion to indicate that riparian widths should be designed to protect: (1) water quality; (2) aquatic habitat; and (3) wildlife habitat. Further, we direct your attention to three summary reports prepared in 2008 by Montana Audubon, for the Montana Department of Environmental Quality; these reports summarize the science behind streamside vegetative buffers and are an excellent resource for resource managers – access through: http://www.mtaudubon.org/issues/wetlands/planning2.html#2 .

Thank you for the opportunity to comment.

Sincerely,

Dave Risley
Fish and Wildlife Division Administrator

c: T.O. Smith, FWP Strategic Planning & Data Services Bureau Chief
Bruce Rich, FWP Fisheries Bureau Chief
Janet Ellis, Montana Audubon

5201

Montana Fish, Wildlife & Parks
1420 East 6th Avenue
PO Box 200701
Helena, MT 59620-0701

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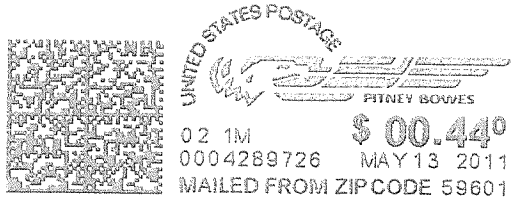

FOREST SERVICE PLANNING DEIS TEAM
C/O BEAR WEST COMPANY
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BOUNTIFUL UT 84010

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MISSOURI DEPARTMENT OF CONSERVATION

Headquarters
2901 West Truman Boulevard, P.O. Box 180, Jefferson City, Missouri 65102-0180
Telephone: (573) 751-4115 ▲ www.MissouriConservation.org

ROBERT L. ZIEHMER, Director

FRD-1077

May 11, 2011

Mr. Harris Sherman, Under Secretary
Natural Resources and Environment, USDA
Forest Service Planning DEIS
C/O Bear West Company
132 E 500 S,
Bountiful, Utah 84010

Re: National Forest System Land Management Planning, Draft Programmatic Environmental Impact Statement

Dear Mr. Sherman:

Thank you for the opportunity to comment on the N**ational Forest System Land Management Planning, Draft Programmatic Environmental Impact Statement.** The Missouri Department of Conservation (Department) is the state agency responsible for forest, fish and wildlife resources in Missouri. The Department participates in such reviews when proposals might affect these resources. The Department comments and recommendations are for your consideration and are offered to aid in the protection, management, public enjoyment and use of Missouri's fish, forest and wildlife resources.

Generally, the Department agrees with the USDA's preferred Alternative A. However, the provisions for increased interagency coordination and more prescriptive practices especially for watershed and water quality issues in Alternative D has some appeal for a multi-disciplinary agency partner such as the Department.

The Department supports USDA's All Lands concept both in funding allocations and in public outreach. This planning rule codifies the All Lands concept that natural resource management and involvement must include neighbors.

Management of water resources and riparian areas in a watershed should extend to both public and private lands, which compels increased cooperation and planning. The Department remains eager to support USDA in regional and local planning exercises and in providing technical assistance in watershed management. Effective implementation of this planning rule will benefit the nation's water supply and aquatic resources.

FRD-1077

The Department supports the adaptive management concept in evaluating science-based practices and the continual review and refinement of policies and actions of USDA in general, and the US Forest Service, as defined in this planning rule. The Department remains committed to assist in adaptive management processes that evaluate and identify effective natural resource and conservation management practices and activities.

This planning rule should strengthen ecological management at the landscape scale for natural communities that support many species. Promoting native habitats and practices that promulgate restoration and recovery of native habitats and species on both public and private land are stated in this rule as agency operational and planning goals, similar to those of the Department.

Outdoor recreation on public land is very important to Missourians. These activities should reflect USDA support for both long standing public uses such as hunting, fishing and camping, which should be managed sustainably and are compatible with other public land uses. Continued USDA support of traditional and cultural activities including various forms of sustainable recreation is clearly stated in the draft Programmatic Environmental Impact Statement.

If you have any questions about these public comments, please contact me.

Sincerely,

ROBERT L. ZIEHMER
DIRECTOR

c: Deputy Director Tom Draper
Forestry Division Chief Lisa Allen

MISSOURI DEPARTMENT OF CONSERVATION
P. O. Box 180
Jefferson City, Missouri 65102-0180

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FRD-10-17

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MR HARRIS SHERMAN, UNDER SECRETARY
NATURAL RESOURCES AND ENVIRONMENT, USDA
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C/O BEAR WEST COMPANY
132 E 500 S
BOUNTIFUL, UT 84010

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FRD-1078

BOARD OF COUNTY COMMISSIONERS

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Phone: (775)463-6531 Fax: (775)463-6533

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Ray Fierro
Vida Keller
Joe Mortensen
Chuck Roberts

Jeff Page
County Manager

May 10, 2011

Forest Service Planning DEIS
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132 E. 500 South
Bountiful, Utah 84010

Dear USFS:

The Lyon County Public Lands Advisory Management Board has advised the Lyon County Board of Commissioners (BOCC) of recommendations and comments regarding the proposed USFS Planning Rule, at the BOCC meeting of May 5, 2011. The BOCC by unanimous vote approved the comments listed below as their official response to the National Forest System Land Management Proposed Planning Rule.

1. In general, language is vague and not specific throughout the entire document and does not provide clear concise directives. "Hard" language is needed.
2. In general, social and economic opportunities, as well as recreational opportunities, need to be identified as to what is acceptable and what will be prohibited.
3. Section 219.4 – Full and documented consideration to local agencies during final decision making process must be implemented.
4. 219.62 Regulatory Planning and Review/Civil Justice Reform-No preemption of local legislative authority shall occur.
5. 219.13 No new wilderness that creates negative impacts within Lyon County shall be introduced.
6. Criteria of identification process of priority watersheds for restoration, management and monitoring is needed with specific hard language.
7. Commitment and promotion of agricultural use must be promoted, specifically grazing allotments and implementation of guidelines to assist both ranchers and USFS. A public relations campaign is needed.
8. Commitment to collaboration and coordination with local government agencies.
9. Specific language in regards to definition and criteria of the fine filter approach. How will it be implemented and used and in what instances?

FRD-1078

10. Lyon County BOCC finds that the USFS Proposed Planning Rule Revision Part 36, CFR Part 219, is not in the best interest of Lyon County and we strongly urge the Federal Government to collaborate and coordinate with Lyon County on any proposed rule-making regarding issues with public lands and also be in compliance with Lyon County's Land Use Interim Plan for Public Lands.

Respectfully,

Joe Mortensen

Joe Mortensen, Chairman
Lyon County Board of Commissioners

LYON COUNTY
BOARD OF COMMISSIONERS
27 S. Main Street
Yerington, Nevada 89447

FRD-1578

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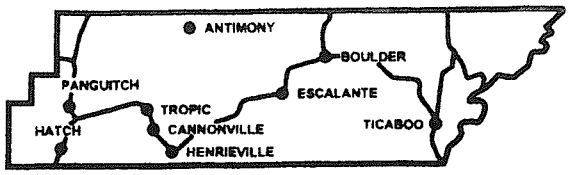
GARFIELD COUNTY



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County Commissioners
Clare M. Ramsay
H. Dell LeFevre
Leland F. Pollock
Camille A. Moore,
Auditor/Clerk

Joe Thompson, Assessor
Jeannie Henrie, Treasurer
James D. Perkins, Sheriff
Barry L. Huntington, Attorney
A. Les Barker, Recorder
Russell Bulkley,
Justice Court Judge

FRD-1079

May 9, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 East 500 South
Bountiful, UT 84010

Re: Proposed Forest Service Planning Rule

Dear Sirs:

Please consider this document comments from Garfield County, Utah regarding the Proposed 2011 Forest Service Planning Rule. Garfield County reserves the right to amend and to augment these comments as additional information becomes available. Our comments are as follows:

General 1. The preferred alternative and proposed planning rules fail to comply with NEPA and Council on Environmental Quality requirements. As currently written, the proposed rule dilutes Forest Service requirements to coordinate and cooperate with State and local governments. Council on Environmental Quality regulations specifically state the following:

> 40 CFR § 1500.4 (n) *Agencies shall end excessive paperwork by "Eliminating duplication with State and local procedures by providing for joint preparation..."*
>
> 40 CFR § 1501.5 (b) *"Federal, State, or local agencies, including at least one federal agency, may act as joint lead agencies to prepare an environmental impact statement.*
>
> 40 CFR § 1506.2 (b) *"Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements unless the agencies are specifically barred from doing so by some other law. "*
>
> 40 CFR § 1506.2 © *"Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements unless the agencies are specifically barred from doing so by some other law. Except for cases covered by (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA , Federal agencies shall cooperate in fulfilling these requirements as well as those with Federal laws so that one document will comply with all applicable laws."*

General 2. CEQ regulations require the Forest Service to develop management plans consistent with local plans to the maximum extent allowed by law (see CEQ references cited above.) The proposed planning rule eliminates that requirement and allows responsible officials to coordinate and cooperate with local government only as they see practical. The proposed planning rule sidesteps coordination requirements established by CEQ.

General 3. The proposed planning rule ignores the government to government relationship between federal agencies and local government. The Council on Environmental Quality published a document entitled *Collaboration in NEPA, A Handbook for NEPA Practitioners*. Throughout the CEQ document federal agencies are directed to treat tribal governments, State and local agencies in identical fashion. The document states the following:

> Page 1. *However, the full potential for more actively identifying and engaging other Federal, Tribal, State and local agencies, affected and interested parties, and the public at large in collaborative environmental analysis and federal decision-making is rarely realized.*
>
> Page 4. *Participants in a collaborative process need to be cognizant of the boundaries of collaborative influence and of the extent of Federal agency authority and State, Tribal and local authorities.*
>
> Page 8 *NEPA, its implementing regulations, and CEQ guidance encourage lead agencies to designate Federal, State, local and Tribal agencies that share jurisdiction, authority, or subject matter expertise as "cooperating agencies"*
>
> Page 8. *When the lead agency engages with other government agencies (Federal, State, local, or Tribal government agencies) for purposes of meeting their NEPA responsibilities, any meetings held exclusively among the government agencies are not subject to the requirements of FACA.*
>
> Page 16. *CEQ regulations implementing NEPA provide that the lead agency may designate other Federal, State, local and Tribal agencies that have legal jurisdiction or special expertise with respect to any environmental impact involved in a proposal to be cooperating agencies.*
>
> Pages 16, 17. *It is helpful to remember that working with cooperating agencies is not subject to FACA so long as the group of cooperating agencies is composed exclusively of federal officials and elected officials from Federal, State, and local governments or Tribes (or their designated employees with authority to speak on their behalf).*
>
> Page 22. *Convening experts from cooperating agencies, including tribes and local municipalities, to jointly undertake the analysis, thus bringing in additional expertise as well as increasing opportunities for agreement on the results*

Page 33. *FACA does not apply when the group is composed exclusively of federal officials and elected officials from Federal, State, and local governments or Tribes (or their designated employees with authority to speak on their behalf) and the purpose of the group is to exchange views, information, or advice relating to issue(s) of intergovernmental responsibility and administration, as is the case when working collaboratively throughout the NEPA process.*

Page 91. *The group includes one or more individuals who are not full-time or permanent part-time federal employees or elected officials of state, tribal, or local government or their designated employees with authority to speak on their behalf.*

Page 92. *The group is composed exclusively of federal officials and elected officials from Federal, State, and local governments or Tribes (or their designated employees with authority to speak on their behalf.)*

Pg 93. *Agencies can establish a collaborative working group solely with other governmental entities, e.g., other Federal, State, and local government or Tribal employees working in their official capacities.*

The failure of the proposed Forest Service's proposed planning rule to engage Tribal governments, State governments and local governments as directed by existing law/regulation is also demonstrated by Chapter 4, Consultation and Coordination. The Forest Service recognized its responsibility toward tribal governments and consulted with more than 300 units of tribal government. However, the Forest Service ignored its responsibility to local government and consulted with only two units. The selection of only two units of local government is arbitrary, capricious and violates CEQ requirements.

General 4. It appears the Forest Service has failed to comply with the Regulatory Flexibility Act requiring agencies to consider social and economic impacts on small communities. See 5 USC 601 - 604. The Forest Service has failed to recognize differences in the scale and resources of regulated entities, and the proposed plan will adversely affect competition in the marketplace, discourage innovation and restrict improvements in productivity as they relate to small local governments in general and Garfield County, Utah specifically. Failure to coordinate with small local government and achieve consistency with their plans, policies and programs will negatively impact the health, welfare, custom, culture, social and economic stability of those communities.

Section 219.1© *The objective of this part is to guide the collaborative and scientific base development, amendment and revision of land management plans that promote healthy, resilient, diverse and productive national forests and grasslands.* Webster defines collaborate as follows: to work together, especially in a joint intellectual effort. The proposed planning rule fails to collaborate with local government. It ignores local government's expertise and jurisdiction over custom, culture, economic considerations, health and welfare of the public, and harmonization of the natural and human environment.

Section 219.1(e) *This part does not affect treaty rights or valid existing rights established by statute or legal instruments.* The planning rule fails to recognize the right of Tribal, State and

local entities to participate in planning studies as a joint lead agencies. (See CEQ regulations cited above.)

Section 219.1(g) *Plans must comply with all applicable laws and regulations, including NFMA, MUSYA, the Clean Air Act, the Clean Water Act, the Wilderness Act, and the Endangered Species Act.* The proposed planning rule fails to collaborate, coordinate and involve local governments as authorized under current statutes and regulations. The proposed planning rule fails to engage state and local governments to the same extent as allowed in the Clean Air Act, the Clean Water Act, the Wilderness Act and, and the Endangered Species Act.

Section 219.4(a)(5) *The responsible official shall honor the government -- to -- government relationship between federally recognized Indian tribes and the federal government.* This statement should also include State and local governments. As explained above, there is no difference in statute between a tribal government and a State or local government. The planning rule should be changed accordingly.

Section 219.4(a)(8) *Where appropriate the responsible officials shall encourage federally recognized tribes, states, counties and other local governments to seek cooperating agency status in the NEPA process for a plan development, amendment, or revision.* This sentence demonstrates the inconsistency inherent in the proposed rule. Subsection 5 indicates the Forest Service will honor the government to government relationship between the for service in the tribes. But the rule does not provide the same opportunity for local and state governments. In this subsection the rule places tribes, local entities and state governments on the same footing.

It also fails to recognize the responsibility of the federal government to offer a cooperating agency status, which is more demanding than simply encouraging cooperating agency status. It also fails to recognize expertise and jurisdiction of tribal, state and local entities. CEQ regulations authorize joint lead agency status in these situations. The Forest Service failed to recognize such status.

Section 219.4(b)(1) *The responsible officials shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian tribes, Alaska Native Corporations, other federal agencies, and State and local governments, to the extent practical and appropriate.* CEQ regulations indicate that such coordination should take place to the maximum extent allowed by law. This section and dilutes the involvement of tribal, state and local entities and reduces their involvement to only the extent the local land manager finds practical and appropriate. This violates the spirit and intent of existing regulations. The statement should be changed to read "... *to the extent allowed by law.*"

Section 219.4(b)(2)(iv) *Opportunities to resolve or reduce conflicts, within the context of achieving the Forest Service desired conditions of objectives.* This portion of the proposed rule fails to recognize Tribal, State and local authority, jurisdiction and expertise. CEQ regulations require that plans be coordinated to the maximum extent allowed by law. This sentence allows Forest land managers to neglect scientific-based information and necessary conditions to preserve

culture custom economies and well-being of local citizens in favor of political desired conditions or objectives. This violates NEPA and CEQ regulations.

Section 219.4(b)(3) *"... nor will the responsible official conform management to meet non---Forest Service objectives or policies."* How does the Forest Service planning rule purport to collaborate and coordinate with other levels of government if responsible officials have no intention of conforming management to meet the objectives and policies of those cooperating/joint lead agencies? This statement indicates the Forest Service will give lip service to coordination and collaboration but does not intend to be sincere in its efforts. Federal regulations require planning actions to be consistent with local plans to the maximum extent allowed by law. (See citations noted above)

Section 219.6(3) *" coordinate with the regional forester, agency staff from state and private forestry and research and development, and other governmental and non-governmental partners to consolidate existing information and leverage resources for additional information needs."* This contradicts statements in the earlier portion of the rule indicating the responsible official will not conform management to meet non-forest service objectives or policies. Garfield County believes coordination is authorized by law, required by regulation and is a valuable component of the planning process. Garfield County further believes this section authorizes responsible officials to work with tribal, state and local governmental entities. Other sections of the planning rule which may negate that cooperative/collaborative effort should be revised.

Section 219.6(b)(2) *"Identify and consider relevant information contained in governmental or non-governmental assessments plans, monitoring evaluation reports and studies... "* The responsible official needs to do more than just identify and consider relevant plans and evaluations. To the maximum extent allowed by law, he should incorporate tribal, state and local government plans into his planning process. Failure to do so constitutes a violation of CEQ regulations and an abrogation of responsibilities to coordinate on a government to government level.

Section 219.7 (c)(2)(iv) *"Identify potential wilderness areas and consider whether to recommend any such areas for wilderness designation."* The Forest Service wilderness selection process and associated time period for recommending wilderness has ended. The Forest Service was under a statutory obligation to identify all suitable wilderness and recommended such to Congress prior to the deadline established by law. The Forest Service as no additional authority to identify and recommend additional potential wilderness to Congress.

Section 219.7 General. In addition to the components identified herein, the responsible official must evaluate existing land use management plans from other levels of government which may be impacted by Forest actions. Inconsistencies with local plans and management changes needed to obtain consistency between the various plans of the different levels of government need to be evaluated, considered and documented. Based on existing statutes and regulations, the responsible official should modify the Forest Service plan to be consistent with established state, local state or tribal plans unless barred by law.

FRD-1079

Section 219.8 (b) Social and Economic Sustainability. This section shifts the Forest Service's mandate from providing timber and water for the American people to providing recreation. It is believed that such a shift is beyond the Forest Service's enabling legislation. Although recreation may be considered, it should not take a dominant role above other multiple use aspects, particularly providing for the nation's wood fiber needs and community water needs.

Section 219.14 The decision document should also include a discussion of how the plan is consistent with existing tribal, State and local plans, the extent of any inconsistencies, methods for resolving the inconsistencies, and efforts taken as part of the planning process to resolve or mitigate any inconsistencies.

In summary, Garfield County, Utah is concerned by the proposed rule's failure to coordinate with local government in accordance with existing law / regulation and we request appropriate modifications to bring the document into compliance with the letter and intent of federal requirements regarding coordination and consistency.

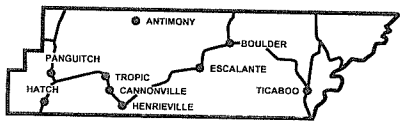
We thank you in advance for your consideration. If you have any questions regarding these comments, please contact me at (435) 676-1119.

Sincerely,

Brian B. Bremner
Public Lands Coordinator

cc: UAC
Garfield County Commission

GARFIELD COUNTY



P.O. BOX 77
PANGUITCH, UTAH 84759

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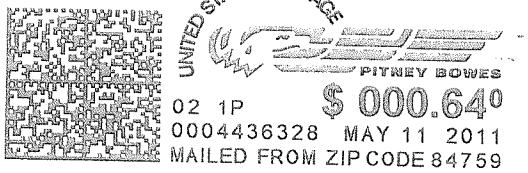

Forest Service Planning DEIS
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LAWRENCE COUNTY COMMISSIONERS

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Email: commissioners@lawrence.sd.us

FRD-1080

May 10, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S
Bountiful, UT 84010

To Whom This May Concern:

Thank you for this opportunity to submit comments on the proposed forest planning rule (76 Fed. Reg. 8480, Feb. 14, 2011).

Management of the national forests is very important to Lawrence County, South Dakota. The Black Hills National Forest makes up over 50% of the area of our county and influences almost all phases of life. Its management, or lack of, has a significant impact on our County's Culture and Custom. Many of our citizens are dependent on the jobs that come from the harvesting and processing of timber. Our county citizens also value the tremendous recreational opportunities that abound in the Black Hills like hunting, fishing, skiing, 4 wheeling, camping, pleasure driving and hiking. Everyone also values the green landscape that provides great backdrops for all residents and guests to enjoy. The Black Hills National Forest is also a great example of the Multiple Use management strategy that was legislatively adopted many years ago. Our county views forest planning as an integrated process that needs to focus primarily on the people who use and enjoy the forest. We understand that it is a national forest but NEPA even recognizes that local government and people are the primary beneficiaries of what happens on their national forest and requires the USFS to coordinate their actions and plans with local governments. We also believe that forest planning should be well-managed according to a set of multiple use priorities and within budget constraints. Unfortunately, the Proposed Rule seems to make planning an end in itself. We believe the proposed planning rule will complicate an already burdensome process that is currently overwhelming the Forest Service and will increase the time and cost for completing forest plans, resulting in less, not more, on the ground management of the national forests. This is exactly opposite of what our national forests need. Our nation has watched helplessly as national forest after national forest in the west has withered away under the onslaught of mountain pine beetle and fire over the last 10 years because they have been tied up in knots of Forest Service policies and environmental restrictions. This Planning Rule only adds to this morass.

In a time when the United States is facing record budget deficits, the Forest Service needs to be working to maximize productive work, not paper work. I urge you to revise the Proposed Rule by eliminating everything that goes beyond the statutory planning requirements contained in the Multiple Use Sustained Yield Act and the National Forest Management Act. The contents of Alternative C, contained in Appendix E to the Draft Programmatic Environmental Impact Statement for the Proposed Rule would be a good way to do this.

Following are some more specific recommendations:

Responsible official. Lawrence County agrees that the Forest Supervisor should be the Responsible Official for forest plans. (Sec. 219.2).

Distinctive roles and contributions - 219.2(b), 219.6(b)(3), 219.7(e)(ii), 219.8(b)(1) and 219.12(a)(5)(vii) all include a requirement that assessments, forest plans, and monitoring plans contain "the unit's distinctive roles and contributions to the local area, region, and Nation, and the roles for which the unit is best suited, considering the Agency mission, unique capabilities, and the resources and management of other lands in the vicinity". That language is virtually identical to the concept of "niche", which has previously been discussed in relation to some forest plans. The concept of "distinctive roles and contributions" is nothing more than an opportunity for the Forest Service to prioritize amenity attributes, such as scenery or Wilderness, at the expense of more tangible outputs, and to give more weight to national role and contributions than to local role and contributions. Every forest plan will contain a different mix of multiple use objectives and outputs. Given the diversity of the national forests and multiple use objectives and outputs, defining "distinctive roles and contributions" for any given unit will inevitably bias the entire planning process in favor of some uses, products, and services and against other uses, products, and services. As the proposed rule is constructed, once the Responsible Official identifies the "distinctive roles and contributions of the unit" in the Assessment, those "distinctive roles and contributions of the unit" becomes required content in the plan. There is no requirement in the law for identification of "distinctive roles and contributions". This is a polarizing and unnecessary concept. This will require unnecessary time and expense for the Forest Service and participants in the planning process. We believe the whole concept is flawed, and recommend that all requirements for assessments, forest plans, and monitoring plan to identify, incorporate, or monitor "distinctive roles and contributions" be deleted from the proposed rule.

Use of scientific information. The proposed rule has several references to "best available science". This seems like a good idea, but the detailed proof and documentation required in 219.3 turns it into a bad idea. Not everyone can agree on what is the "best" science. We recommend that the Planning Rule simply require that the Forest Service take into account available, relevant scientific information, along with other factors, in the amendment or revision of forest plans, without any reference to the "best" information.

Local community needs. The Proposed Rule places a lot of emphasis on public involvement (Sec. 219.4), but places more emphasis on the views of "youth, low-income and minority populations" and private landowners than on the local citizens and forest users who will be most

directly affected by the Plan. The requirements for this kind of outreach will cost money better used for projects on the ground. Interested people, from whatever sector of society, will make their views known without a requirement the Forest Service is likely to get sued for not following, with no benefit to the resources it manages. Public outreach should be left to the discretion of the responsible official. See Alternative C.

Sustainability. 219.8 requires plan components to "**maintain or restore** the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area ...." (emphasis added). However in reference to social and economic sustainability, the rule requires only that "[t]he plan must include plan components **to guide the unit's contribution** to social and economic sustainability ...." (emphasis added). We believe that social, environmental and economic considerations are not competing values, but, rather, they are truly interdependent and all play an important role in effectively managing NFS lands.

Because the USFS is in a position to have a substantial impact on all of the factors influencing ecological, social and economic sustainability, we request that the proposed rule recognize this and include language for plan components that maintain or restore all three elements of sustainability, being ecological, social and economic.

Too much process and paper work. The Proposed Rule is long on process (Sec. 219.5, 219.6, 219.7). These requirements are too cumbersome and time consuming. One of the objectives of the new rule is supposed to be that it is workable, affordable and will withstand court challenges so the Forest Service doesn't have to do it over again. Based on experience since the 1982 Planning Rule was adopted, additional process is not likely to improve our national forests or make the job of managing them any easier. These processes will just lead to more lawsuits by people who are opposed to natural resource use and management. Only those processes required by Congress in the NFMA should be included in the Planning Rule.

Species Viability. Section 219.9 fails to correct the problem of an unattainable and procedurally impossible obligation to demonstrate that a forest plan will "maintain viable populations of species". One of the most frequent legal claims in national forest litigation is that the Forest Service is not maintaining viable populations. The Forest Service should use the revision of the planning regulation as an opportunity to eliminate this fertile ground for litigation. There is no consensus on the population level that achieves a "viable" population so the regulation imposes a legal obligation on the Forest Service to ascertain what is not ascertainable. Measuring and proving that a forest plan will "maintain" or "is maintaining" a viable population is nearly impossible, leaving the Forest Service highly vulnerable to lawsuits.

The proposed rule requires the Forest Service to demonstrate it will maintain viable population for "species of conservation concern", which the planning rule defines as species for which "there is evidence demonstrating significant concern about its capability to persist over the long-term in the plan area." Requiring the Forest Service to provide a guarantee of viability for a species over which there is significant concern about viability requires the agency to guarantee something that it cannot. It puts the burden on the Forest Service to prove it will maintain a

viable population and invites litigation over the adequacy of the substantive requirements in the plan, survey obligations, and population monitoring.

Further, the proposed rule expands the "viability" requirement to include all species in all six taxonomic Kingdoms, i.e., Plants, Animals, Fungus, Bacteria, Algae, and Protozoa.

Viability and management of species are the responsibility of state wildlife and fish management agencies, and the federal agencies charged with administering the ESA. The Forest Service is not required by any law to maintain "viable populations". The Planning Rule should simply require the Forest Service to do what is required by the NFMA.

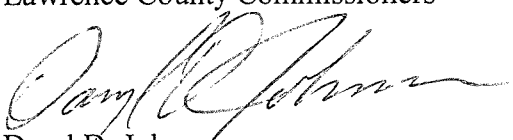
Monitoring. Monitoring is an integral part of land management and land management planning. However, implementing Section 219.12 will be impossible without investing a lot more money. The Forest Service says it will only do what it can afford to do, but the Courts are not likely to agree that that is what the Proposed Rule requires. Instead of focusing on "climate change and other stressors" and "carbon stored above ground", forest plan monitoring should focus on how well the Forest Service is achieving the Desired Conditions, forest plan objectives, and planned outputs. We recommend the Monitoring requirements in Alternative C.

Objection process. It is a good idea to limit the opportunity of object to a proposed plan to people who have participated in the planning process by submitting comments. It makes good sense to require that objections to the plan be brought up before a final decision is made. This process has worked well for Healthy Forest Restoration Act projects. The requirements of Sec. 219.50—219.62 should be included in the final Planning Rule.

Thank you for the opportunity to comment.

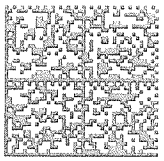
Sincerely,

Lawrence County Commissioners



Daryl D. Johnson
Chair

Lawrence County Commissioners Office
90 Sherman Street, Suite 3
Deadwood, South Dakota 57732-1370



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Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful UT 84010

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FRD-1081

Montana Department of Transportation
2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001

Jim Lynch, Director
Brian Schweitzer, Governor

May 16, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 East 500 South
Bountiful, UT. 84010

Subject: US Forest Service Planning Rule Comments

Ladies and Gentlemen:

The Montana Department of Transportation (MDT) offers the following comments regarding the draft Forest Service Planning Rule (RULE):

Recreation is an extremely important and integral part of the USFS administered lands. Types of recreation use for USFS lands has changed over the years, and includes the use of not only the land and water, but the airspace over US Forest lands as well. The importance of this use of airspace that allows aircraft to access internal trailheads was reaffirmed with the passage by Congress of House Resolution 1473. This resolution supports the presence and use of recreational aviation and backcountry airstrips on public lands. In accordance with these congressionally supported statements, the USFS RULE should explicitly define and support these types of recreational uses of USFS administered lands.

Under section 219.10 (a)(3), recreational facilities are included with general transportation facilities. The type and use of recreational facilities should be expanded to be more explicit and include the different types of facilities. These facilities should recognize the inclusion of airstrips, located on land and water, as recreational use facilities and access points for internal trailheads. Land and water airstrips should be explicitly defined and protected within the proposed RULE. This change to the definitions would help protect and define the importance of this type of recreation use for aircraft accessible trailheads.

Thank you for the opportunity to comment on this very important proposal.

Sincerely,

Jim Lynch
Director

MONTANA DEPARTMENT OF TRANSPORTATION

Aeronautics Division
PO Box 200507
Helena, MT 59620-0507

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FRD-1082

Board of County Commissioners

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Dove Creek, CO 81324

Phone: (970) 677 2383 Fax: (970) 677-2815

Email Address: dcdolocnty@fone.net

11 May 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S
Bountiful, UT 84010
http://www.govcomments.com/

RE: Forest Service Notice of Proposed Rulemaking and Request for Comments Concerning National Forest System Land Management Planning

Dear Sir/Madam:

The following comments on the Proposed Rule and DPEIS are submitted to the Forest Service on behalf of the Dolores County Board of County Commissioners. Dolores County is a Coordinating County and we have a good faith working relationship with the Dolores Public Lands Office and all staff that manage the Forest Service and BLM lands within our county. We are a small rural county with 62% of our land being public lands. We have worked hard to maintain the use and access of these lands for our constituents. Please find our comments and concerns listed in this letter as viable and with standing to allow for the management and multiple uses of these lands to continue without burden to the public.

Our first level of concern lies with the term "collaborative" found on page 8480 under Section 219. The replacement of coordination with collaboration goes against every federal statute relating to management of land, resources, and the environment. The foundation for coordination is found in the Federal Land Policy Management Act (FLPMA) Section 1712 of Title 43 of the United States Code. This Congressional Mandate ensures that the federal land use agencies coordinate their policies and management activities with any local government that is engaged in land use planning. This applies to federal agencies which operate under and implement the National Forest Management Act, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the Wild and Scenic Rivers Act, the National Preservation Act, the Federal Power Act, Soil Conservation district statutes, Homeland Security Act, and the National Environmental Policy Act, to name just a few. Collaboration will not give the public more input by taking away local government's means of government to government relationships before the public input process. Coordinated planning ensures federal agencies keep informed of local planning, policies, and activities, and eliminates duplicated efforts among various levels of government. Prior notice of planning and management activities gives local government the opportunity to make its analysis, to make its recommendations, and then monitor the consistency of

federal action to the local plan throughout the process. FRD-1082

The DCBOCC is very concerned with the changing of Multiple Use Sustained Yield Act (MUSYA) to "Sustained Multiple Uses". The Mission Statement of the Public Lands is, Multiple Use and Sustained Yield. As the Federal Register states on page 8481, "The NFMA at 16 U.S.C. 1604 requires the Agency to have a Planning Rule developed under the principles of the Multiple Use Sustained Yield Act of 1960". The Forest Service's Proposed Rule does not comply with NFMA and MUSYA, which provide the agency's land management planning authority. Neither of these statutes requires the Forest Service to manage for species viability through land management planning. Rather, the Forest Service is tasked with providing for diversity of plant and animal communities, along with providing for other multiple use objectives. The statutes are clear that providing for diversity does not take precedence over providing for other forest resources. Within the parameters of Multiple Use Sustained Yield Act, the Secretary shall assure the coordination of outdoor recreation, range, timber, watershed, wildlife and fish and wilderness. Much of the Proposed Plan seems to be focused only on wildlife. Even to the point of wanting to be able to name endangered species through focal species and management indicator species as found on page 8498 of the Federal Register. Congress should not be eliminated from this process. The DCBOCC does not want to see wildlife as becoming the Forest Service's only consideration when developing land management plans for National Forest Service lands. Adjacent to the concerns of Multiple Use Sustained Yield are social, economic, cultural and historic uses. According to the Proposed Rule on page 8492 the knowledge and expression of these would be sufficient. The DCBOCC cannot see how this would be acceptable to local governments or to the public. All current statutes must be upheld and included in this process. Recreation is another complex multiple use component as mentioned on page 8495. Each Forest has its own unique level of recreation that provides economic and social sustainability and vitality to rural communities. It would be up to the local responsible official to take sustainable recreation opportunities and uses into account when developing plans. In order for this to happen they must stay apprised of local governments land use desires set forth in their master plans.

The Proposed Forest Service Planning Rule seems to be a broad-based rule creating many new levels of subjectivity. Among those are the constant reference to global and climate changes. None of these can be predicted but monitored only through strict science based studies. Reference to climate change and carbon storage will require monitoring on all Forest Lands and each will have its own set of factors based on geography, altitude, vegetation, soil types, and emissions from local communities and businesses. The proposed Unit-Level Monitoring and associated indicators will have an impact on many responsible officials and the management of resources on the unit. It is hard to understand the efficiency or scope of this part of the plan. How will this help the ecology, social and economic conditions of the local area, region and the Nation?
The 2000 rule was costly, complex and procedurally burdensome. A new rule was issued in 2005 and revised in 2008. Each of these were found to be invalid on procedural grounds by a Federal District Court. Again this rule seems to be headed in that direction as it goes against current Federal Acts, State and County laws and regulations.

In conclusion the DCBOCC finds the Forest Service Proposed Planning Rule as it is written in the Federal Register to be more about broad based subjectivity than a rule with standards that protect the economic, social, cultural, and historical values of our public

FRD-1082

lands. The DEIS has fallen short on how to study, develop and describe alternatives to the Proposed Rule. We sincerely request that the Forest Service revise the Proposed Rule to be consistent with its authority under NFMA and MUYSA and to appropriately consider its multiple use objectives.

Sincerely,

Dolores County Board of ~~County~~ Commissioners

Julie R. Kibel, Chair Douglas Stowe Ernest Williams

Dolores County
Board of Commissioners
P. O. Box 608
Dove Creek, CO 81324
Somewhere special ...

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Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S.
Bountiful, UT 84010

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FRD-1084

BOUNDARY COUNTY
P. O. Box 419
Bonners Ferry, ID 83805

DATE: May 16, 2011

TO: **Planning Rule**
Phone:
Fax: (801)397-1605

FROM: Boundary County Commissioners
Phone: (208)267-7723
Fax: (208) 267-7814

REGARDING: **re: Comments for Planning Rule DEIS**

 # OF PAGES INCLUDING COVER SHEET: 4

COMMENTS:

Thank you,

Dan Dinning, Commissioner
Boundary County Board of Commissioners
208 267 7723

FRD-1084

This is a preview only. To edit or submit your comment, close this window.

You are commenting on a Proposed Rule:
National Forest System Land Management Planning (FS-2011-0002-0001)

INFORMATION

First Name:	Dan
Middle Name:	
Last Name:	Dinning
Category:	
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Email Address:	commissioners@boundarycountyid.org
Phone Number:	208-267-3719
Fax Number:	
Organization Name:	Boundary County Idaho
Submitter's Representative:	Commissioner Dan Dinning
Government Agency Type:	State
Government Agency:	Boundary County

COMMENT

Boundary County wishes to comment on the proposed planning rule. It is burdensome and adds many species unwarranted to the many duties that the Forest Service must already analyze.

The Viability Section of the NFMA Planning Regulation is Not Viable
The NFMA planning regulation provides that "the plan must include plan components to maintain the diversity of plant and animal communities . . . and maintain viable populations of species of conservation concern within the plan area." 36 C.F.R. 219.9.
Maintaining viable populations should not be a requirement of the regulation because –
1. The requirement to "maintain viable populations" does not appear anywhere in the National Forest Management Act (NFMA).
2. What NFMA does require is to "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives and within the multiple-use

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objectives of the land management plan." 16 U.S.C. 1604 (g)(3)(B).
3. The draft regulation fails to use the phrase in the NFMA statute "to meet overall multiple-use objectives" to make clear that the Forest Service must provide for diversity of plant and animal communities (or maintain viable populations) to meet overall multiple-use objectives and not the other way around as the statute plainly states and courts have held.
4. There is no consensus on the population level that achieves a "viable" population so the regulation imposes a legal obligation on the Forest Service to ascertain what is not ascertainable.
5. Measuring and proving that a forest plan will "maintain" or is "maintaining" the selected viable population level is nearly impossible which leaves the Forest Service highly vulnerable to lawsuits.
6. The obligation is to provide a viable population not for a focal species, but for a "species of conservation concern" which is defined as a species with significant concern about its capabilities to persist. This makes about as much sense as imposing a minimum speed limit of 30 m.ph. for bicycles which rarely attain that speed.
7. Even the Forest Service admits that using one wildlife species, in this case "species of conservation concern," provides no information about how well other species are doing and there is no sound way to establish population trends in a short period of time. In the background explaining the regulations, the Forest Service concedes "[t]he theory of [management indicator species] has been discredited since the 1982 rule. Essentially, monitoring the population trend of one species should not be extrapolated to form conclusions regarding the status and trends of other species. In addition, population trends for most species are extremely difficult to determine within the 15-year life of a plan, as it may take decades to establish accurate trend data, and data may be needed for a broader area than an individual national forest or grassland." 76 Fed. Reg. at 8499 (Feb. 14, 2011). Unfortunately, the "maintain viable populations" regulation ignores the discredited theories and extreme difficulties regarding population estimates.
8. The maintain viable population regulation will only expand the litigation over "viability" since instead of applying to vertebrate species like the current regulation, the viability requirement is now being expanded to include invertebrates such as fungi, slugs, and insects. Thus the regulation treats national forests as biological preserves rather than forests managed for the use and necessities of the people United States as required by the Organic Act. 16 USC 476. The viability regulation simply goes too far. For example, fungi cannot even be listed under the Endangered Species Act since the Endangered Species Act permits only the listing of fish, wildlife, and plants but under the planning regulation a Forest Supervisor could be required to maintain a viable population of a fungus. The Forest Service would be better off drafting a regulation that focuses on maintaining the diversity of habitats rather than imposing legal requirements upon itself to identify, survey, and maintain "a viable

population" that are not required by the National Forest Management Act.

FRD-1084

Attachments:

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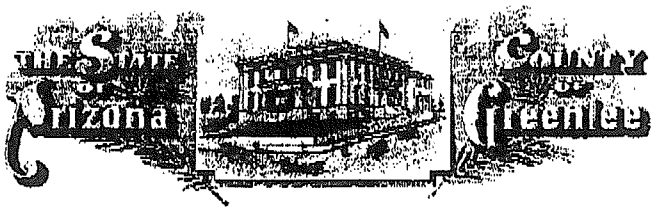
County Administrator
(928) 865-2310

YVONNE PEARSON
Clerk of the Board
(928) 865-2072

FACSIMILE (928) 865-9332



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CLIFTON, AZ 85533

DAVID GOMEZ
District 1

RON CAMPBELL
District 2

RICHARD LUNT
District 3

FRD-1085

May 13, 2011

Forest Service Planning DEIS
C/O Bear West Company
172 E 500 S
Bountiful, UT 84010

RE: Planning Rule

To Whom It May Concern:

On behalf of the Greenlee County Board of Supervisors, please accept the following comments related to the proposed National Forest System Land Management Planning Rule (Rule). We understand the objective of the proposed rule is to guide the collaborative and science based development, amendment, and revision of land management plans that promote healthy, resilient, diverse, and productive national forests and grasslands.

The following comments are provided to foster that partnership in the management of the nation's national forests and grasslands in Greenlee County.

§219.2 – Levels of planning and responsible officials
Greenlee County supports the designation of the unit supervisor as the responsible official for unit level plans. Experience has shown that early and regular face to face meetings with the governing bodies of the affected counties is the best way to initiate and maintain appropriate local-level collaboration. Elected county officials are the only legally accountable representatives of the "public" at the local level.

§219.2(b)(3) states that the local unit supervisor is the responsible official for development and approval of a plan, unless a regional forester, Chief, under secretary, or the Secretary acts as the responsible official. Greenlee County recommends adding addition language clarifying under what circumstances higher officials would be able override the unit supervisor as the responsible official.

§219.3 – Role of science in planning
Greenlee County supports the requirement that the responsible official shall consider science throughout the planning process. However, this section should additionally recognize that scientific data is one of many factors influencing a plan decision. Sound science has an important role in Forest Service planning and management. Proving what science is "best" is likely to be time consuming and of little value, but will undoubtedly lead to litigation which will further delay the planning process.

FRD-1085

While due diligence on behalf of the responsible official should be required, counties are concerned that the strict procedural requirements imposed on the responsible official to document in detail the identification, interpretation, and application of scientific findings and conclusions threaten to drain agency resources, elevate consideration of science above other considerations, and have the potential to allow for increased litigation (specific to compliance).

§219.4 – Requirements for public participation
The Federal Land Management and Policy Act (FLPMA), as well as other regulations, requires that planning efforts undertaken by the federal government consider existing state and local plans and ordinances. This level of coordination ensures a more comprehensive plan that incorporates many of the issues affecting communities located adjacent to public lands.

Under the existing rule (36 CFR 219.7) the planning process took so long that effective public participation by the affected county governments was prohibitively complex and resulted in extreme "process-fatigue" without yielding commensurate benefits. Greenlee County supports early and thorough collaboration with local government officials in the planning process [§219.4(a)], but suggest clarifying when collaborative efforts will be determined not "feasible and appropriate." Greenlee County maintains that Federal law requires agencies to coordinate with local governments and suggest that thorough collaborative efforts (with local governments) are always feasible and appropriate.

Greenlee County supports active public participation and encourages the agency to give increased weight to local communities most directly impacted by the plan.

Greenlee County supports the requirement to provide opportunities for other government agencies to participate in planning on NFS lands [§219.4(a)(8)], specifically the requirement for the responsible official to encourage local governments to seek cooperating agency status.

The National Environmental Policy Act (NEPA) requires the federal government cooperate with local governments when developing environmental documents. The white House Council on Environmental Quality (CEQ) has also provided guidance to federal agencies on granting Cooperating Agency Status to State and local governments. The Forest Service Handbook, provides additional guidance to agency managers about inviting local governments to participate in the preparation of environmental documents.

§219.4 will provide for much needed consistency across Forest Service Regions in county participation as cooperating agencies. Currently, much regional disparity exists in the use and acknowledgement of cooperating agency relationships by the Forest Service.

Greenlee County supports the requirement that the responsible official review county planning and land use policies and document results of the review in the draft Environmental Impact Statement, including how the forest plan will address the impacts

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identified and how the plan will contribute to joint goals. [§219.4(b)(3)]

Greenlee County recommends striking "to the extent practicable and appropriate" from §219.4(b)(1) and replace with "with a view toward achieving consistency between the proposed forest and local plans." As mentioned before, Greenlee County believes it is always appropriate and practicable for the agency to coordinate with local governments. Additionally Greenlee County recommends adding the following requirement: "Where the forest plan may not be made consistent with local plans, the responsible official shall document how and why its plan is not consistent with local plans, as determined by local officials, and explain why its plan cannot be made consistent with local plans."

The language in §219.4(b)(3) states "the responsible official will [not] seek to direct or control management of lands outside of the planning area, nor will the responsible official conform management to meet non-Forest Service objectives and policies." Greenlee County is concerned that this language may contradict the earlier stated objective to coordinate with local governments. In addition, Greenlee County is concerned that this section may create conflict with established Community Wildfire Protection Plans (CWPP) which include planning on both Federal and non-Federal lands.

§219.7 – New plan development or plan revision
Greenlee County requests that future planning efforts require the responsible official to consider the reduction of Fire Regime Condition Class (FRCC) in consideration of desired conditions [§219.7(d)(1)(i)]. NFS lands should be actively managed to reduce the threat of wildfire. Reduction of FRCC 3 to FRCC 2 and FRCC 1 will insure a sustainable economic and environmental legacy for future generations. Each year catastrophic wildfires throughout the nation jeopardize the national treasury, threaten fish and wildlife habitat, degrade both water and air quality, and cause devastation to forest dependent communities through loss of life, property, jobs, and the nation's timber resource.

§219.8 – Sustainability

Greenlee County appreciates that the proposed rule considers the ecological, social, and economic systems as interdependent and without ranking in importance. Nevertheless, the rule requires the unit to take affirmative actions under the plan to maintain and restore elements of ecological sustainability, but merely guides the unit's contribution to social and economic sustainability. Counties recognize that the agency has more influence over factors that impact ecological sustainability on its lands. They also acknowledge that the rule makes a presumption that land is suitable for timber production unless identified in the plan as not suitable

We have concern over how the proposed rule broadly defines "ecosystem services" and recreation as the principal contributions of national forests toward the social and economic well-being of nearby communities. Given the sheer size of these national forests, their contributions to surrounding communities must be more tangible, substantial, and sustainable for their contributions to be appropriately significant. §219.8

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should be amended to emphasize the profound role that a national forest plays in the vitality of local communities, and direct the responsible official to embrace that role through meaningful and productive coordination with elected county officials.

§219.8 (b)(4) should be clarified to provide a clear understanding of how the agency defines "sustainable," understanding that local interpretation of economic sustainability may differ from the perspective of the responsible official. All efforts should be made by the responsible official to achieve consistency between agency and local definitions of sustainability.

§219.9 – Diversity of plant and animal communities
Greenlee County is concerned that §219.9 will provide increased process and litigation by diverting scarce agency resources to expand the obligation to demonstrate that a plan will maintain ecosystem diversity and viable populations of plant and animal species. The agency is assuming a burdensome responsibility, not required by statute, to maintain the viability of "species of conservation concern within the plan area", and to extend the viability requirement to native plants and invertebrates, about which the agency has "very minimal biological information on their life histories, status, abundance, and distribution". Wildlife viability is not the only consideration of the agency when developing site-specific plans.

NFMA does not mention "viable populations" but instead the Act only requires the Forest Service to "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives and within the multiple-use objectives of the land management plan." 16 U.S.C. 1604 (a)(3)(b). In contrast, the regulation treats national forests as biological preserves rather than forests managed for the use and necessities of the people United States as required by the Organic Act. 16 USC 476.

The current planning rule makes it extremely difficult for the Forest Service to demonstrate that it is maintaining viable populations of wildlife species. One of the most frequent legal claims in national forest litigation is that the Forest Service is not maintaining viable populations. The Forest Service should use the revision of the planning regulation as an opportunity to eliminate this fertile ground for litigation. There is no consensus on the population level that achieves a "viable" population so the regulation imposes a legal obligation on the Forest Service to ascertain what is not ascertainable. Measuring and proving that a forest plan will "maintain" or is "maintaining" a viable population is nearly impossible, leaving the Forest Service highly vulnerable to lawsuits.

The forest planning regulation should not make the protection of candidate species a legal obligation when Congress has not imposed such a legal obligation in either the Endangered Species Act or the National Forest Management Act. The Forest Service has higher planning priorities than to devote its scarce resources to providing a conservation strategy in the forest plan to conserve every species for which someone has filed a petition to list or for which the listing agency has not yet determined whether listing is

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even warranted.

§219.9 and §219.10 Multiple uses / Timber requirements based on the NFMA
This section fails to recognize that per the National Forest Management Act (NFMA), ecological factors (as referenced in §219.9) are not elevated above any other multiple-use nor does it require that national forest land use plans be contingent upon such considerations. Greenlee County is concerned that the responsible official will be influenced to consider superfluous and relatively undefined "ecosystem services" above the statutory requirements of multiple use.

The agencies multiple use mandate, a mandate imposed by Congress, codified in agency regulations and affirmed by the courts, seems to be circumvented in the proposed rule. The multiple use sustained yield statutory mandate is a viable and credible planning blueprint for managing forest lands. The current proposed rule fails to adequately uphold the statutory requirements of NFMA (16 U.S.C. §1600) and MUSYA (16 U.S.C. §§528-31).

§219.19 – Definitions

The proposed rule defines ecosystem services too broadly and improperly elevates ecosystem services to the same level of importance as multiple uses under MUSYA.

The plan must provide for "ecosystem services" but the term is very broadly defined such that if a plan does not provide one of the services it will violate the regulation. Ecosystem services are defined as: "Benefits people obtain from ecosystems, including: (1) Provisioning services, such as clean air and fresh water, as well as energy, fuel, forage, fiber, and minerals; (2) Regulating services, such as long term storage of carbon; climate regulation; water filtration, purification, and storage; soil stabilization; flood control; and disease regulation; (3) Supporting services, such as pollination, seed dispersal, soil formation, and nutrient cycling; and (4) Cultural services, such as educational, aesthetic, spiritual, and cultural heritage values, as well as recreational experiences and tourism opportunities." 36 C.F.R. 219.19. The regulation states that "the plan must provide for multiple uses and ecosystem services" 36 C.F.R. 219.11. To the extent that ecosystem services trump the multiple uses in the MUSYA, the regulation is an end run around MUSYA without an act of Congress.

§219.53 – Who may file an objection

Greenlee County supports language that would limit filing of an objection to those who have submitted "formal comments" related to a plan, plan amendment, or plan revision during public participation opportunities provided in the planning process. We also support the requirement that objections be based on the substance of the objector's formal comments, unless the objection concerns an issue that arose after opportunities for formal comment. It is appropriate that the burden falls on the objector to demonstrate compliance with these requirements.

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With increased opportunities to participate and comment, objectors have no reasonable arguments against these requirements. A plan, after the exercise of a reasonable process, must be adopted and implemented to let appropriate management begin.

Greenlee County looks forward to continuing our close working relationship with the Forest Service in an effort to ensure that the public is involved in forest planning at the appropriate level and in truly meaningful ways.

As proposed, we believe the proposed rule is overly long and encumbered with inflexible mandatory requirements that preclude it from being a workable, affordable, and enduring Planning Rule. We believe that the adoption of the above recommendations into the planning rule will better enable the agency to plan for wise stewardship of the Nation's forest resources as well as to provide for the long-term stability of the forest communities we represent.

Sincerely,

Richard G. Lunt

Richard G. Lunt
Chairman, Greenlee County Board of Supervisors

David Gomez
Greenlee County Board of Supervisors

Ron Campbell
Greenlee County Board of Supervisors

DEBORAH K. GALE
County Administrator
(928) 865-2310

YVONNE PEARSON
Clerk of the Board
(928) 865-2072

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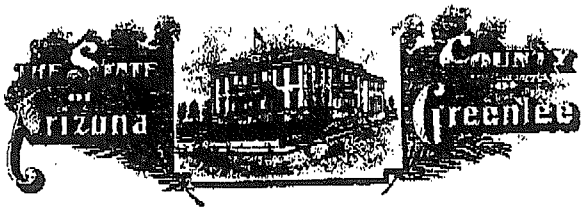

DAVID GOMEZ
District 1

RON CAMPBELL
District 2

RICHARD LUNT
District 3

FRD-1085

BOARD OF SUPERVISORS
P.O. BOX 908
CLIFTON, ARIZONA 85533

DATE: 05-16-11	NUMBER OF PAGES: (INCLUDING THIS PAGE) 7

FAX NUMBER: 801-397-1605

TO: Forest service Planning - National Forest System Land Management Planning Rule

FROM: Greenlee County Board of Supervisors

RE: Planning Rule Comments

COMMENTS: Comments have been submitted electronically as well as this facsimile. The original document with signatures has been mailed.

Kay Gale
Greenlee County Administrator
928-865-2310
Kgale@co.greenlee.az.us

FRD-1086

May 12, 2011

Sierra Soil and Water Conservation District
2101 South Broadway - Truth or Consequences, NM 87901 - Phone (575) 894-2232 - Fax (575) 894-2165

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 St.
Bountiful UT 84010

Re: Planning Rule

To Whom It May Concern:

The Board of Supervisors of the Sierra Soil and Water Conservation District, a political subdivision of the State of New Mexico, would like to submit the following comments in regards to the new proposed USDA-Forest Service planning rule:

Section 219.7: Plan Development (c) *Process for plan development or revision* (2) (iv): Potential wilderness areas

It is unclear as to what process is utilized to identify potential wilderness areas: would this be a science based process, what guidelines are utilized in the process of identifying potential wilderness areas and who has the authority to make recommendations of a wilderness designation

(e) *Other content in Plan* (i)

What process is utilized to identify priority watersheds? Would the USFS collaborate with other governmental entities in this determination; what science would be utilized to select a priority watershed

Section 219.8: Sustainability (a) *Ecological sustainability (2) Ecosystem elements)(iv)* water supplies

The plan does not address historical use of acequias and how that should be treated, since many waterways for acquias originate in the USFS

(3) Riparian areas -establishment of default width for riparian areas around lakes, perennial or intermittent streams

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What science will be utilized to determine a default width; what is the purpose of establishing a default width. A standard default width is not practical. Every lake and stream will have its own geographical conditions, along with possible social and/or economic conditions, that affect the riparian function and if a default width is required, a determination should be made on a case by case basis.

Section 219.9: Diversity of plant and animal communities *(b) Species Conservation (3)*

It does not define who, what and how species of conservation concern are identified and how would maintenance of those species affect existing use of the affected land, such as livestock grazing, mining, recreation.

Thank you for this opportunity to provide comments.

Sincerely,

Mary Jo Hall

for Willard Hall
Chairman

Cc: Senator Jeff Bingaman
Senator Tom Udall
Congressman Steve Pearce
Walter Armijo, Chairman, Sierra County Commission
Larry Cosper, Ranger, Black Range Ranger District, Gila National Forest
Eddie Vigil, NM Association of Conservation Districts

FRD-1087

JOHN M. SHIMKUS
19TH DISTRICT, ILLINOIS

2452 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5271

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shimkus.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515-1319

May 16, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 E 500 S
Bountiful, UT 84010

To Whom It May Concern:

I would like to take this opportunity to comment on the National Forest System Land Management Planning; Proposed Rule, which was published in the Federal Register on February 14, 2011. I appreciate being able to share my views on this issue, as I represent the eastern portion of the Shawnee National Forest in southern Illinois.

The opportunity for public comment is essential to proper governance. Allowing local governments and other interested parties to participate in land planning increases the success of land management plans. I particularly like Section 219.8(b) of the Proposed Rule, which requires plans to guide the unit's contribution to social and economic sustainability. When the social and economic sustainability of the area is not considered during the planning process, it can have negative consequences for the local communities. This will be beneficial to neighbors of national land, where federal land can be utilized by the local community through many avenues, such as tourism. Tourism is especially beneficial to the local economy in the case of the Shawnee National Forest, and the Proposed Rule would help to strengthen those relationships.

I was pleased to see that recreation is addressed in this planning rule as well. Section 219.8 requires the responsible office to take sustainable recreation into account when "developing plan components to contribute to social and economic sustainability" (page 8496). The Proposed Rule goes further, stating that "opportunities and access" be considered for a "range of uses" (page 8496). I believe this is important to multi-use recreation on any federal land, especially to the extent it includes motorized recreation, such as use of various recreational vehicles; and non-motorized recreation, such as use by equestrians, bicyclists, and hikers. Federal land, especially national forests, should provide a myriad of opportunities to recreational enthusiasts.

I also believe in a multi-use forest, including timber harvest. Under Section 219.11, timber is considered "one of the multiple uses of" national forests (page 8496). Not only does timber harvest contribute to the local economy, but it is also part of maintaining a healthy forest. In the Shawnee National Forest, timber harvest has been proposed to help minimize the number of pine trees on the forest while restoring it to the original oak hickory forest that it was when the Shawnee was established. I fully support the timber harvest initiative, and I am glad to see it included as a part of the Proposed Rule.

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While I am supportive of many parts of the Proposed Rule, I am concerned about the climate change monitoring requirements that are included. "Climate Change" is referenced at least 23 times in the Proposed Rule. The term is used somewhat generally. For example on page 8492, *"Maintaining or restoring the ecological conditions similar to those under which native species have evolved therefore offers the best assurance against losses of biological diversity and maintains habitats for the vast majority of species in an area, subject to factors outside of the Agency control, such as CLIMATE CHANGE. CLIMATE CHANGE and related stressors could affect many species and may make it impossible to maintain current ecological conditions..."*

The climate has been changing since the beginning of time. Man never has, nor ever will, control it. For the National Forests to be monitoring the carbon levels with the intent of using a National Forest as a "long term storage" facility of carbon dioxide is quite confusing, and it brings to mind many questions:

Does the Department of Agriculture plan to store certain carbon dioxide emissions?

How does the Department of Agriculture plan to pick which emissions of carbon dioxide it plans to "store"?

Does all plant life in the world currently act as "storage" vessels for carbon dioxide since plants need carbon dioxide to survive?

How long does the Department of Agriculture believe that the carbon dioxide is stored in the plant?

If a plant in a National Forest dies, how does that affect the amount of carbon dioxide stored in the forest?

There are simply too many unanswered questions on climate change for the Department of Agriculture to attempt to monitor and store carbon dioxide in National Forests, and I hope you take that into consideration when moving forward with the Proposed Rule. I do believe it is vital to include public input on Proposed Rules. Planning the use of and activities, such as recreation and timber harvest, on our national forests is a concern to the public. I have and will continue to support multiple uses of national forests, which are for everyone to enjoy.

Should you have any questions or require additional information, please contact my Harrisburg office at (618) 252-8271. Again, thank you for this opportunity comment.

Sincerely,

JOHN SHIMKUS
Member of Congress

JMS:4a

FRD-1087

CC: Honorable Tom Vilsack, Secretary of Agriculture
Honorable Harris Sherman, Undersecretary of Agriculture
Chief Tom Tidwell, US Forest Service
Acting Regional Forester Logan Lee, Region 9
Supervisor Allen Nicholas, Shawnee National Forest

FRD-1087

CONGRESSMAN JOHN SHIMKUS
City Hall, Room 12
110 East Locust Street
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Tel: (618) 252-8271
FAX: (618) 252-8317

FAX COVER SHEET

Date: 5-11e-11 **Office:**

To: Planning Rule Comments **Number of Pages:** 84
(including cover page)

Fax Number: 801-397-1005

Sent From:

☐ John Shimkus
Member of Congress

☐ Deb Detmers
District Director

☑ Holly Healy
District Aide

☐ _____

Memo: Planning rule comments from US Rep. John Shimkus.

Confidentiality Notice:
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FRD-1088

AOC | Association of Oregon Counties

To: Forest Service, U.S. Department of Agriculture
(fax) 801-397-1605

From: Association of Oregon Counties

Date: May 16, 2011

Subject: PLANNING RULE comments

The Association of Oregon Counties, which represents all 36 county governments ir Oregon, respectfully submits these comments on the proposed rulemaking of the National f orest System Land Management Planning.

As a matter of principle, AOC supports active, adaptive, and site-specific manageme nt, with management flexibility based on the rapidly increasing knowledge of natural proce: ses. AOC is deeply frustrated with lack of management of our national forests, caused by too n any opportunities to litigate rather than to act and excessive aversion to even modest r sk-taking by the agency. Adaptive management should be meaningful, as should the health anc productivity of the forest.

AOC finds positive elements in the proposed rules, but also notes that there are ne v grounds provided for litigation.

Responsible official (Section 219.2)

- AOC **strongly agrees with your designation of the forest supervisor**, rather than the regional forester, **as the responsible official for unit-level plans.**
- Counties have a long history of active local participation in U.S. Forest Servi e planning. The forest supervisor is the one who knows the effected land and surrounding communities best and has been hands-on in planning.
- AOC recommends that **subsection (b)(3) be clarified regarding what circum stances higher officials would be able to override the forest supervisor as the resp onsible official.**

Role of science (Section 219.3)

- AOC agrees that management actions should **take into account the best av ilable science,** and further agrees that **science is just one source of information a id only one aspect of decision-making.**
- AOC is concerned, however, that the **procedural requirements imposed on the responsible official to document in detail the identification, interpretation, and application of scientific findings and conclusions drain agency resources, e levate**

FRD-1088

consideration of science to dominance, and create new legal claims. The responsible official should be free to make management decisions informed by science and based on discretion in considering various multiple use objectives.

Public participation; coordination with counties (Section 219.4)

- As a party to the original "early and often communication" memorandum of understanding with a USFS Region, AOC supports public participation, **particularly by those communities most directly affected by the plan.**
- AOC agrees with the requirement that USFS plans strive for consistency with county and other local government plans. We **support the requirement that the responsible official review county planning and land use policies and document results of the review in the draft Environmental Impact Statement, including how the USFS plan will address the impacts identified and how the plan will contribute to joint goals.** To further strengthen the relationship of the neighbor federal government and local governments, we offer the following improvements to Section 219.4.
- Section 219.4(b)(1): The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, [to the extent practicable and appropriate] **with a view to achieving consistency between the proposed forest and local plans**.
- Section 219.4(2): For plan development or revision, the responsible official shall review the planning and land use policies of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, where relevant to the plan area. **The responsible official shall consult with officials of local governments to determine the objectives of local plans (e.g., Community Wildfire Protection Plans) and the consistency of the forest plan with those objectives and to explore means to advance local objectives within the forest plan. The responsible official shall work with officials of local governments to achieve consistency if local plans and the proposed forest plan are initially inconsistent.** ...
- New subsection of Section 219.4: **Where the forest plan may not be consistent with the local plan, the environmental impact statement shall explain how and why its plan is not consistent with the local plan, as determined by local officials, and explain why the forest plan cannot be made consistent with the local plan.**
- Section 219.4(3): Nothing in this section should be read to indicate that the responsible official will seek to direct or control management of lands outside of the planning area, nor will the responsible official conform management to meet non-Forest Service objectives or policies **if to do so is inconsistent with federal law or regulation**.

New plan development or plan revision (Section 219.7)

- AOC requests that future planning efforts **require the responsible official to consider the reduction of Fire Regime Condition Class (FRCC) in consideration of desired future conditions (subsection (d)(1)(i)). Reduction of FRCC 3 to FRCC 2 and FRCC 1 will ensure a sustainable economic and environmental legacy for future generations.** Catastrophic

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wildfires contribute to climate change, jeopardize the national treasury, threaten fish and wildlife habitat, degrade water and air quality, and cause devastation to nearby communities through loss of life, property, jobs, and resources.

Sustainability (Section 219.8)

- AOC **appreciates that the proposed rule considers the ecological, social, and economic systems as interdependent and without ranking in importance.**
- Nevertheless, the rule requires the unit to take affirmative actions under the plan to maintain and restore elements of ecological sustainability, but merely guides the unit's contribution to social and economic sustainability. AOC recognizes that the agency has more influence over factors that impact ecological sustainability on its lands. We also acknowledge that the rule makes a presumption that land is suitable for timber production unless identified in the plan as not suitable. AOC, however, notes that the tenor of the proposed rules is toward broadly defined "ecosystem services" and recreation as the principal contributions of national forests toward the social and economic well-being of nearby communities.
- **Given the sheer size of these national forests, their contributions to surrounding communities must be more tangible, substantial, and sustainable for their contributions to be appropriately significant. AOC requests that the rule emphasize the profound role that a national forest plays in the economic vitality of local communities, and direct the responsible official to embrace that role through meaningful and productive coordination with nearby communities' need for forest products and jobs. Ecological, economic, and social sustainability depends on a functioning infrastructure.**

Diversity of plant and animal communities (Section 219.9)

- AOC is concerned that the rules **create more process and litigation by diverting scarce agency resources to expand the obligation to demonstrate that a plan will maintain viable populations of species.** The USFS is assuming a burdensome responsibility, not required by statute, to maintain the viability of "**species of conservation concern** within the plan area", and to extend the viability requirement to native plants and **invertebrates**, about which the agency has "very minimal biological information on their life histories, status, abundance, and distribution".
- Wildlife viability is not the only consideration of the USFS when developing site-specific plans. These new requirements tip the scale away from management flexibility and balance. **AOC believes that it would be prudent to gather more information over time about invertebrates and other species of concern before putting this requirement in place.**

Who may file an objection (Section 219.53)

- AOC is **pleased that the rule would limit filing of an objection to those who have submitted "formal comments"** related to a plan, plan amendment, or plan revision during public participation opportunities provided in the planning process. We are

FRD-1088

likewise pleased that the rule would require that objections be based on the substance of the objector's formal comments, unless the objection concerns an issue that arose after opportunities for formal comment. It is appropriate that the burden falls on the objector to demonstrate compliance with these requirements.

- With increased opportunities to participate and comment, objectors have no responsible arguments against these requirements. A plan, after the exercise of a reasonable process, must be adopted and implemented to let appropriate management begin.

AOC thanks you for your extensive outreach efforts in development of this rule. AOC offers comments in the spirit of our long-term, productive relationship with the U.S. Forest Service. We are convinced that our suggested improvements will make the rule stronger.

Counties look forward to our continuing participation in the national forest planning process.

FRD-1089

Judy Pflueger
SUPERVISOR DISTRICT 1
TRINITY COUNTY
P.O. BOX 1613, WEAVERVILLE, CALIFORNIA 96093
PHONE (530) 623-1217 FAX (530) 623-8365

May 16, 2011

Forest Service Planning DEIS
C/O Bear West Company
172 E. 500 s
Bountiful, UT 84010
Facsimile: (801) 397-1605

Re: Proposed National Forest System Land Management Rule
Docket # FS-2011-0002

Ladies and Gentlemen,

With reference to the above planning rule, thank you for the opportunity to present my comments.

As 76% of Trinity County is Federal property, the affects of this proposed plan has great impact on our County. Therefore, you can see that your land management plans needs to be consistent with our local plans.

With that, of particular issue is proposed Section 219.4 which appears to be inconsistent with the "Coordination" requirements imposed under 16 U.S.C. Sec 1604. Section 219.4 is ambiguous at the best and does not "mandate" coordination but rather makes it discretionary as reflected in the statement "...to the extent practicable and appropriate." This leaves the decision of, or if, coordination is appropriate up to the responsible line officer. As there have already been strained relationships between local government and the USFS, this will only add more frustration.

Therefore, please amend the proposed Section 219.4 to be consistent with 16 U.S.C. Section 1604(a) so that Federal , State, and local governments can develop, maintain, and revise land and resource management plans for the health, safety, economic stability, and quality of life our citizens deserve by including the "coordination" provision.

I have also reviewed the comments from CSAC and RCRC, County of Siskiyou, and County of Shasta. I concur with their comments and position with regards to the Proposed National Forest System Land Mismanagement Planning Rule.

Thank you for your positive consideration of my comments.

Sincerely,

Judith N. Pflueger
Supervisor, District # 1

FRD-1090

WENDY OTTO

Supervisor District Five

P.O. BOX 1613, WEAVERVILLE, CALIFORNIA 96093

PHONE (530) 623-1217 FAX (530) 623-8365

May 16, 2011

VIA FACSIMILE: (801) 397-1605

Forest Service Planning DEIS
C/O Bear West Company
132 E 500 S
Bountiful, UT 84010

RE: County of Trinity, California: District 5
Comments to the Proposed Forest Service Land Management Planning Rule
Docket # FS-2011-0002

To the United States Forest Service:

I am an elected official in Trinity County, California, with three national forests located within the boundaries of my district, Shasta-Trinity, Six Rivers and Mendocino. Therefore, commenting on the proposed new planning rules designed to guide land and resource management planning for all of the units of the National Forest system is of utmost importance to me.

Trinity County is 76% federally managed, and as such, the proposed section 291.4, which speaks to the removal of the coordination statutory mandate is simply something that as a local elected official I can not tolerate.

It is VITAL to my district and Trinity County as a whole that the USFS be held to the statutory mandate for coordination, not be held to an "optional" attempt for coordination. In addition, I have concerns regarding the potential to bypass coordination with local governments by utilizing "public participation" in its place. These are two separate actions that are vital to the planing processes for land and management resource planing and are already often overlooked or ignored by the USFS.

The economic impacts of USFS land and resource management planning and implementation MUST be placed on an equal footing with environmental considerations in the development and revisions of the forest plans. This too has been overlooked or ignored by the USFS during the planning for the management of the ***public resources*** (emphasis added). While I am aware that USFS explains the lack of economic considerations by saying that they have more influence over factors that impact the ecological sustainability than it does for the social and economic sustainability of the

FRD-1090

communities affected by the land and resource management decisions, I feel that is a questionable conclusion, as decisions involving timber harvesting, fuel reductions, off-road vehicle use, grazing and mining most definitely have obvious economic impacts.

I am also aware of, have reviewed and support the comment letters from:

Shasta County Board of Supervisors
Siskiyou County Board of Supervisors
NACO
Regional Council of Rural Counties
California State Association of Counties
National Association of Forest Service Retirees
American Forest Resource Council

The future of the public agencies land and resource management interactions with the local government as well as the economic health and viability of our communities is at stake. Please continue to support the statutory mandate for coordination between the stakeholders, federal, tribal, State and local governments, along with the public in the process on parallel tracks, not one replacing the other.

I wish thank you for this opportunity to make comments on this vital document.

Wendy Otto
District 5 Supervisor
Trinity County

FRD-1091

TRINITY COUNTY

Board of Supervisors
P.O. BOX 1613, WEAVERVILLE, CALIFORNIA 96093
PHONE (530) 623-1217 FAX (530) 623-8365

May 16, 2011

Forest Service Planning DEIS
C/O Bear West Company
172 E. 500 S.
Bountiful, UT 84010

RE: Proposed National Forest System Land Management Planning Rule
Docket FS-2011-0002

To Whom It May Concern:

The Trinity County Board of Supervisors would like to thank you for the opportunity to comment on the proposed Land Management Planning Rule. In doing so, we would like to formally support and we concur with the comments submitted to you by The California State Association of Counties (CSAC), Regional Council of Rural Counties (RCRC) and the National Association of Counties (NACO)

In terms of Trinity County where the land is 78% Federal Forest and we as elected officials are task to develop best land use decisions, it is of utmost importance that a coordinated effort is achieved between the US Forest Service and local officials to develop the best forest plans. The first step in achieving such an outcome is the adoption of the Planning Rule which should include the reinstatement of the coordination language of the 1982 National Forest System Land and Resource Management Planning Rule.

The trends we see relating to wildfire and fuel loading are of concern. For instance, in the last 12 years over 500,000 acres have burned in the county with the vast majority on National Forest System Lands. By working together to manage the fuel quantities and arrangement we can help assure the highest possible resiliency to wildfire. This includes managing smoke affects that have an extremely negative affect on the health of our citizens.

Like Trinity County, many of the counties surrounding national forest lands are rural and have suffered economic decline over the years. Healthy management of the forests and a working relationship between the USFS and local government is one avenue to help turn around the economic hardship Trinity County has endured.

Sincerely,

Supervisor Judy Morris, Chair
Trinity County Board of Supervisors

FRD-1091

TRINITY COUNTY

Board of Supervisors
P.O. BOX 1613, WEAVERVILLE, CALIFORNIA 96093
PHONE (530) 623-1217 FAX (530) 623-8365

To: Forest Service Planning DEIS
C/O Bear West Company
172 E. 500 S.
Bountiful, UT 84010

From: Trinity County Board of Supervisors

Fax: 1-801-397-1605 **Pages:** _2__, including cover

Phone: **Date:**

Re: **CC:**

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments**

FRD-1092

MONTGOMERY COUNTY
Alvin Black
County Judge

105 Hwy 270 East, #7
Mount Ida, AR 71957
Phone: 870-867-3114
Fax: 870-867-4354

May 12,2011

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, UT 84010

Re: Planning Rule -- 36 CFR Part 219

Amending the current Forest Plan and keeping it up to date on various management proposals should be an important part to any Multiple Use Forest Plan. Those amendments should be a collaborative effort between the Forest Service officials and public participation throughout the planning process as the NEP A law requires.

We support a proposed rule that would engage the public in the development of a proposal and actually take the ideas presented from the public into the proposed action either by amending or revising the proposal if necessary. Also, Montgomery County has adopted a Land Use Policy Plan.

We would like to see a planning rule that would strengthen the role of public involvement in the planning process and provide more numerous opportunities for meaningful public participation and dialogue in the multiple use management of our national forests.

We would like to see proposals in these amendments to contribute to economic sustainability for each county within the national forests and to consider multiple uses such as outdoor recreation, timber, minerals, wildlife, energy and other resources.

We would support the proposed rule to create a pre-decision administrative review process to provide individuals and groups with an opportunity to resolve issues before the approval of a plan, plan amendment, or plan revision.

Montgomery County local government as well as all local governments within a national forest should have an opportunity to be involved in the planning process and development of land management plans that affect the county's customs, culture, or economic stability before the final decision is made.

Sincerely

Alvin Black

Alvin Black, County Judge

THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT
5000 W. CAREFREE HIGHWAY
PHOENIX, AZ 85086-5000
(602) 942-3000 • WWW.AZGFD.GOV

FRD-1093

May 16, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S.
Bountiful, UT 84010

Re: Proposed New Forest Planning Rule

Dear Forest Service Planning Team:

This letter is in response to the Federal Register (36 CFR Part 219), notice of proposed rulemaking and request for comment on the proposed new planning rule (rule) to guide land and resource management planning for all units of the National Forest System under the National Forest Management Act of 1976 (NFMA). In addition, comments on key themes in the Draft Environmental Impact Statement (DEIS) were also requested at open forums in Phoenix, Arizona, in which the Arizona Game and Fish Department (Department) participated. The Department has been, and continues to be, actively engaged in local Forest Service (Forest) Land Management and Travel Management Planning processes. The Department, by and through the Arizona Game and Fish Commission, has jurisdictional authority (Arizona Revised Statutes) for management of the state's wildlife resources, and safe watercraft and off-highway vehicle recreation, for the enjoyment, appreciation, and use by present and future generations. As such, the Department is committed to participating as a full partner with the Forest in the development and implementation of plans for all Forests within the state of Arizona. The Department offers the following general comments on this rule and DEIS with more specific comments on the DEIS/rule/themes as listed in the attachment.

The Department understands the challenge and complexity of developing a rule that establishes direction for land and resource management plans as required under NFMA. The Department commends the Forest Service efforts to develop a proposed framework that outlines a broad and collaborative approach that incorporates adaptive processes. This enables the Forest Service to respond to changing conditions and the ability to use new information and monitoring to support an integrated and holistic management approach.

In general, the Department supports Alternative A (proposed action); however, we urge the Forest Service to further consider the incorporation of those components from Alternatives D and E that would further ensure priority watershed protection, biodiversity, monitoring, and assessments with emphasis on a more collaborative approach and a higher degree of scientific integrity. The incorporation of components would provide stronger focus on the long term

restoration for the desired conditions necessary at a more meaningful scale versus the band aid approach tied to mitigation/protection strategies that might not otherwise yield the future desired conditions as changes over time occur. The combination of these alternatives would further provide the most balanced and collaborative approach through: increasing partnerships, sharing of scientific data/resources/knowledge, more complete information for implementation and effectiveness, and long-term adaptive management strategies across agencies and boundaries. The Department recommends building in the adaptability and flexibility within the guidelines to allow for ongoing science-based processes to inform the efficiency and needed adjustments that may be required over time to be responsive to changing conditions. Below summarizes the Department's recommendation for the combination of alternatives:

Restoration: include additional standards and guidelines for watershed and aquatic resource protection. In addition, a greater level of detail would be required for the evaluation of ecological conditions and responses.

Watershed: allow for a more consistent approach in scale to allow the consideration of broader context implications. This approach would have more required components for riparian protection and restoration. Standards and guidelines would be included to ensure condition/function improvements over time and monitoring would provide better adaptive management. In addition, plans would reflect the broader spectrum of public values. This approach may also place more significance on watersheds, especially those in the southwest.

Diversity of plants and animals: provide for a more data driven approach for conservation of biodiversity and consideration of all species. Provide more consistency in the ecological conditions the species require; adaptive management; specific monitoring elements; increased emphasis on role of science, procedures and process for a more effective and consistent approach. Specific assessments of the ecosystem diversity would result in more effective filtering and greater emphasis on monitoring that would be needed to guide adaptive management to provide the appropriate management responses. In addition, increased collaboration and coordination would better inform the decision making process and would provide for cross boundary pollination to occur, leading to a more effective approach for conservation of species as a whole.

The Department appreciates the opportunity to provide comments on the proposed rule, key themes, and DEIS. We look forward to our continued collaboration with the Forest Service on the development of future Land Management Plans. Please feel free to contact me at 623-236-7605 or javey@azgfd.gov.

Sincerely,

(acting JTA)

Josh Avey
Habitat Branch Chief

Attachment

FRD-1093

General Comments:

Consistency Across Forests

Although the Department appreciates the flexibility the proposed rule provides to the individual Forests, the Department recommends a process for ensuring consistency across Forests when inconsistent policy, decisions, and direction throughout the state may negatively impact the Department's ability to effectively manage wildlife and associated trust responsibilities.

Consistency with other Public Planning Efforts

The Department was pleased to see the incorporation of "connectivity" in the new planning rule. Planning for connectivity requires collaboration with other land owners and managers. The impact of forest decisions on neighboring lands and vice versa demands cooperation if plans are to be effective and efficient. The Department recommends that a requirement for collaboration (beyond public involvement) with adjacent landowners/managers be incorporated into the planning rule.

All Lands Approach

As described in the "Consistency with other Public Lands" described above, the Department agrees that the Forest needs to take into account the impacts on the Forest of actions and developments on adjacent and nearby lands as well as considering the impacts on neighboring lands of actions taken by the Forest.

Specific Comments:

Section 219.2 Levels of Planning and Responsible Official

The use of adaptive management and providing greater latitude to the Responsible Official (RO) would contribute to this flexibility and responsiveness, but should not be inconsistent with other ROs within the Unit or the Region. Situational changes may dictate a change in tactics that do not require a formal amendment, but a change in strategy or objectives should require full review.

The Department is particularly concerned with changes to the monitoring program that can be made as administrative changes where public notices "may be made in any way the responsible official deems appropriate". The Department requests this language be modified to require a direct notification of the appropriate state fish and wildlife agencies when any substantive change of a monitoring program in which wildlife species or habitat is the primary focus.

Section 219.3 Role of Science in Planning

The Department uses the North American Model of Wildlife Conservation in its internal planning efforts. This model strives for sustainable wildlife and habitats through sound science and active management. One of the Core Concepts of this model is that "Science is the basis for wildlife policy". The Department recommends this concept be incorporated into the Forest planning efforts as the foundation on which to build upon with additional factors such as social and economic needs. The Department also recommends inclusion of a requirement that the RO would ensure consistency with the best available science, perhaps through an evaluation, not just the documentation of considerations.

Section 219.4 Requirements for Public Participation

The Forest is to be commended for the level of collaborations exhibited within development the Rule. The Department looks forward to a future of greater collaboration with the individual forests as they develop new plans under the Rule within Arizona.

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Section 219.5 Planning Framework

Alternative A, Proposed Action:

Framework: 1-assessing the conditions and the stressors, including climate change on the NFS unit and in the broader context could create some difficulties. As the NFS unit maybe does not mean that much to the broader context (distinct role and contribution) and therefore, could be taken out of the analysis for consideration when it maybe is having many stressors and impacts. This would also be the same consideration for 3-when monitoring to detect changes on the unit and across the broader landscape and evaluate whether management actions produce the desired outcomes.

Section 219.8 Sustainability

The potential magnitude of impacts and uncertainty associated with climate change justify its inclusion as a specifically identified challenge.

The Department agrees with the focus on recovery of resiliency and ecosystem function (rather than reference points or standards) within the Rule. However, the Department recommends the inclusion of a mandate for plans to address restoration as a goal, when appropriate.

Ecological Sustainability

Aero ecology considerations for species of arthropods, birds, and bats were not addressed and can be directly impacted by the aero ecological health of the region. For example, wind developments impacting migratory birds and bats.

The Department recognizes the challenge in developing national standards that would be appropriate across all forests. The viability standard in the 1982 rule provided a level of protection that was useful in ensuring the continued existence of sensitive populations, as no species specific provisions were included. While the Forest believes that the Rule requirements provide for the diversity of plant and animal communities as practical and in meeting the needs of NFMA, reinstating the standard and also considering the addition of a broader range of combined approaches would further strengthen the Rule and continue to expand it beyond the statutory requirement.

In addition, soil conservation is a fundamental requirement for any conservation effort. The proposed rule is less specific in its direction to address mitigation, maintenance, and enhancement of soils than the 1982 rule. The Department recommends the Forest return to the level of specificity in the 1982 rule.

Section 219.10 Multiple Uses

The Department encourages the forest to continue planning for multiple forms of sustainable recreation, which in addition to hunting, fishing, and wildlife viewing should also include shooting sports and properly managed and controlled off highway vehicle use.

Section 219.12 Monitoring

The planning loop (Assessment, Implementation, and Monitoring) and the use of adaptive management are completely dependent on the information provided by an effective monitoring program and incorporation of new information. Unfortunately, budget constraints and lack of resources often prevent completion of the planned monitoring program. The Department recommends the rule continue to emphasize the importance of frequent and better quality

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monitoring as a foundation for effective adaptive management. We also recommend the Forest consider a more well-defined, adaptive management feedback loop such that plan amendments and other forms of change are directly tied to the trends in desired conditions and objectives within individual forest plans.

Affected Environment and Environmental Consequences, Chapter 3

The incorporation of Alternative A, D, and E would ensure maximizing efforts to consider the best available scientific information, more prescriptive requirements to utilize the science and ways to consider lack of science or uncertainties through use of projections.

Diversity of Plant and Animal Communities

Advancements in conservation designs and practices are integral for consideration in future management and should be acknowledged. In addition, the approach described may not provide a comprehensive multi scale evaluation sufficient to lend to the variability across landscapes and down to the unit level.

Managing Ecological Conditions

While the approach may be supported in concept, there is not clarity as to how the alternatives are to be evaluated for this.

Restoration

Stressors Associated with Changes to Aquatic Resources: Aquatic ecosystem connectivity should be considered for discussion and evaluation in the restoration of watersheds as well as in the changes to landscape patters and loss of habitat connectivity.

General comment on the brief descriptions of the stressors: These discussions do not lend to the ability of the reader to evaluate against the management alternatives proposed as minimal information is made available and the analysis seems to be missing from what management implications could be derived. In addition, these brief discussions need to encompass the variability within the different states, for example, in the discussion of fire regimes, livestock grazing, timber harvest, invasive species and insect infestation have been devastating to the health of the forest not just the fire suppression activities over time.

Watershed Protection

Riparian Area Management: there may be a misconception in this discussion regarding fire in most riparian areas as being ubiquitous. While we agree that fire is important to some systems, fire behavior within these areas can be highly variable as can be the effectiveness on the system as a whole (increases in invasive, non-native species, incidental mortalities on the upslope, impacts to water quality, etc.).

Social and Economic Sustainability

The Department commends the focus on sustainability within the Rule. Economic and ecological sustainability are specific, measurable objectives; although, it is not clearly defined as to what social sustainability is or how it can be measured. Social systems are in constant change and evolution. Are plans supposed to support the status quo of traditions, culture, and history, or support the progress and evolution of new norms? The Department recommends the Forest add language to describe the role the plan should play in social sustainability.

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Threats to Social and Economic Conditions
The discussion should include information on the impacts from decreased recreational opportunities and how these would impact the businesses, cities, towns, counties, etc. In addition, this would have impacts to those reliant on these recreational activities for sustenance and cultural significance.

The concern of access for the variety of recreational opportunities should also be addressed within the discussion. This would include discussion on how access concerns would be addressed across forest and other public lands for recreational uses.

It is not clear as to how the reader will be able to evaluate the differences of impacts from various alternatives if they will all be using these other planning frameworks (there would seem to be little difference).

Diversity of Plant and Animal Communities
Maintaining Species Viability: Consideration should be given to the limitations of the coarse-filter approach as it may not be sufficient for many species and may over simplify habitat use. While the coarse filter may be an initial place to begin, a more direct assessment should follow. In addition, emphasis should be placed on the importance of wide geographic distributions for maintaining species' viability. Consideration should be given to the advancement in monitoring methods and techniques developed for viability analysis that utilize the indirect methods that may be less costly and more time efficient.

Monitoring to Assess Effectiveness
The discussion should further include considerations to monitor those composition-based indicators such as community types, not just the species level, but the landscape level.

See previous comments on diversity.

Monitoring elements would provide increased accuracy and timeliness, in addition to strengthening the scientific integrity and facilitate the appropriate selection of response variables to be monitored including the metrics used for monitoring them (Hayes 2011).

Unit Level-Focal Species and Management Indicator Species
The use of focal species, rather than Management Indicator Species seems to be a shift more in terminology and methodology than concept. Instead of directly measuring the population parameters, the plan may identify other techniques (such as genetic testing) to measure "condition" of a small group of species. The inclusion of select ecological and watershed conditions is an improvement within the Rule in identifying changes to the ecosystem. The Department recommends the Rule require collaboration with the state wildlife management agency in selecting the species, techniques, and conditions to be used in designing monitoring programs. Focal species are identified in the monitoring component as a way to monitor how ecosystems over time are doing and are not being used as a measure of diversity. At the unit level, this could create difficulty in determining the viability of species as some species may fall out of the monitoring requirement according to the decision made by the responsible official. While, increased habitat quantity and/or quality would not be practicable for all species within a given unit, identified focal species may not be as encompassing as necessary albeit more encompassing than the MIS species from the previous framework, but again leaving the opportunity for some to fall out. This could lend to different interpretations of the rule.

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Environmental Consequences, Chapter 4

Historical Range of Variability

Use of the historic range of variability as being the baseline guide and in that if we are considering into the future conditions, would seem to contradict the high priority of climate change impacts as the response to climate change should be used to inform the future variability.

Ecological Integrity and Resilience

One key consideration when dealing with diversity is maintaining viability for as many species as possible in well distributed populations for ensuring a highly functional and resilient ecosystem.

Stressors and their Influence

Multiple use/recreational use are not addressed in this discussion. It is mentioned as a stressor within the discussion of restoration in current plans but limited to off-trail motorized recreation. In addition, grazing and/or traditional uses should equally be considered a stressor.

Water

The phrase "maintain, protect, **or** restore" riparian areas conveys the impression that any of the three options are equally preferred and may be selected. The Department recommends the wording be changed to place a greater emphasis on maintain and protect, and restore only when maintaining and protecting are not practical.

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Comment on FR Doc # 2011-02989

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Government Agency Type: State
Government Agency: Arkansas Game and Fish Commission

General Comment

See attached file(s)

Attachments

FS-2011-0002-DRAFT-1923.1: Comment on FR Doc # 2011-02989

Loren Hitchcock
Director

Don Brazil
Deputy Director and
Chief of Staff

Keeping the Natural State natural.

Arkansas Game and Fish Commission

Mike Armstrong
Assistant Director

Scott Henderson
Assistant Director,
Special Projects

May 13, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S.
Bountiful, ID 84010

Re: Comments on the Proposed Planning Rule

As a cooperative management partner for two national forests within our state boundary, the Arkansas Game and Fish Commission (Commission) values the opportunity to submit comments regarding the proposed planning rule. Our relationship with the U. S. Forest Service (USFS) is long-standing and our mutual collaborations on two million acres of forested public lands demands great accountability on the part of both our agencies. Our most recent partnerships involving the submission of two Cooperative Forest Landscape Restoration project proposals demonstrates our dedication to a continued effort to ensure these national forests remain in appropriate ecological balance with a focus on maximizing hunting and fishing opportunities while sustaining forest health for the generations to follow. Although the Land Management Plans on both national forests in Arkansas were revised simultaneously in recent years, the final planning rule will once again impact our state within the next decade by directing the future management of these national forests.

Overall, the Commission is in agreement with many of the provisions outlined in the proposed planning rule. Greater collaboration between the USFS and conservation partners is imperative to both guiding future planning efforts as well as achieving desired management activities on the ground. It is our goal that the procedures outlined in the proposed rule achieve the desired results in terms of reducing complexity while rendering management decisions that are based on sound science. The Commission encourages the USFS to exercise caution so the process of seeking greater collaboration does not serve to create additional hurdles and administrative delays in the implementation of management actions in a timely manner.

Participatory and Collaborative Process

With decades of experience in close collaboration with the USFS in our state, we have paid particular attention to the rule's description of the proposed collaborative process. The Commission, as one of 15 state wildlife agencies within USFS Region 8, shares a special role in managing wildlife and fisheries resources on federal lands. The Commission respectfully recognizes federal statutes regarding special language within the rule (and preamble) regarding USFS relations with Tribal Governments; as it is expressed, the proposed rule recognizes the government-to-government relationship that creates a unique role for federally recognized Tribes. State Fish and Wildlife Agencies (SFWA) in many eastern states share this "government-to government" commonality with the USFS. With both federal and state statutes and regulations governing fish and wildlife resources within and between these states, the SFWAs also have a unique role on national forests and thus differ from other organizations listed together in Section 219.4 of the rule. State fish and wildlife agency annual

budgets, dedication of staff and equipment play an active role in the cooperative management for both fish and wildlife resources on federal lands. Commission biologists and enforcement officers provide oversight of recreational hunting and fishing activities on national forests. Each SFWA has the ultimate authority and responsibility over all fish and wildlife species within their respective state; including game species, non-game species, the species of greatest conservation need (SGCN). Although T&E species are regulated under the Endangered Species Act, the Commission partners with the USFS for protection and management. Arkansas' state constitution, under Amendment 35, outlines the Commission's responsibility for the aquatic, migratory and terrestrial wildlife resources. Therefore, the working relationship between the USFS and the SFWAs throughout this region is better described as a "partnership" rather than "collaboration" as defined in the proposed rule thereby requiring acknowledgement as a stronger partner. Given the involvement of our agencies in the management and scientific roles on national forests, the Commission recommends separation in Section 219.4 between the level our SWFAs play in the planning process from that of other agencies and organizations.

Additionally, the requirement for the level of participation, as stated in the rule could be problematic and serve to hamper the Forest Plan development process. National forests have a history of necessarily dealing with conflicting views by special interest groups and spending significant amounts of time in conflict resolution. The Commission has already witnessed how difficult it has been for the USFS to comply with the existing planning process and still maintain a reasonable timetable for Forest Plan revisions. As more and more diverse users become engaged with our national forests, the responsible officials must be given the authority to resolve such conflicts quickly and adhere to the planning schedule.

Role of Science

The increased emphasis on the role science will have in the planning process is well-stated and better augmented by the requirement to establish desired conditions to serve as strategic guidance for management of the forests within the context of implementing monitoring actions in an adaptive manner. Management and research in the last 10 years have brought a much greater understanding of the values and functions of these forested ecosystems. As this knowledge has been provided to forest and wildlife managers, the results have benefited forest health on landscape-scales. The Commission continues to collaborate closely on federal lands in monitoring and research to continue these improvements. As partners, we have developed comprehensive, science-based plans providing the framework for management direction. When Congress enacted legislation outlining the tenets of Comprehensive Wildlife Conservation Plans requiring each state's conservation agency develop what are now called State Wildlife Action Plans (SWAP), the Commission provided the leadership role and in conjunction with all of our conservation partners, including the USFS, developed the Arkansas Wildlife Action Plan (AWAP). The AWAP details an all-encompassing list of SGCN along with the necessary conservation actions required to ensure long-term sustainability of these declining species. Therefore the AWAP, as well as other regional plans and initiatives (i.e. Northern Bobwhite Conservation Initiative), represent the wildlife community's best science (literature cited). The rule also mentions the need to use the State Forest Assessment as a guiding document providing science-based collaborative conservation strategies aimed towards forest health, sustainability and wildlife habitat needs. The Commission strongly supports the use of both of these plans in determining forest plan direction towards desired ecological conditions. The Commission recommends that additional language be added to Section 219.3 (a) and (b) and in Section 219.6 (2) to insure the value these plans add to forest planning is adequately emphasized.

Plan Framework

The Commission strongly supports the plan framework of performing assessments, developing revisions and amendments and monitoring. Collaborative assessments of landscape conditions are crucial to accomplishing the intended actions at the project level, while monitoring will provide data from which to compare and adapt management. Once a scientific basis has been established and validated, the planning rule should not further complicate similar management actions with the expense of further collaboration and investigation.

The proposed rule also states its intent to provide greater flexibility at the responsible official and unit level. The Commission supports this authority as it is very appropriate to landscape-level individual forest decisions. However, a cautionary note to Section 219.15 would be that "standards" should be developed at the unit level, serving to maintain a consistency in management actions across ranger districts and projects. Standards are more supported than "guidelines" which may or may not be adhered to at the project level. Standards coupled with desired conditions within the forest plan better ensures that proposed management alternatives are consistent and achieve landscape-level outcomes.

Diversity of Plants and Animals

In Section 219.9 (b) the proposed rule states forest plan actions will contribute to the recovery of T&E species while they will conserve candidate species; yet, they will maintain viable populations of species of conservation concern. The Commission suggests that for all declining species, including SGCN, the proposed rule should state, "the plan and plan components will contribute to the recovery of these species where feasible." Simply stating forest plan actions will maintain a viable population is not adequate to accomplish existing objectives of regional or state plans (i.e. AWAP, Forest Assessment) for certain species. For example, restoring populations of forest-interior bird species to the levels identified in both state and regional plans could not be achieved in Arkansas by simply maintaining viable populations within the national forests of the state. The intent of providing for a diversity of plants and animals should be to restore declining species to appropriate levels as outlined in the relevant regional and state plans. This comment is specific to those identified, declining species within the context of the forest plan's ability to provide positive impacts. The rule and preamble discussion on this point is appropriately stated.

As defined elsewhere in the document, the selection of "focal species" by which to monitor ecological conditions has historically been problematic in that those species selected must meet given requirements in order to be suitable indicators of the desired ecological conditions. A significant number of previous monitoring attempts have been made using either rare, difficult to monitor or simply inappropriate indicator species. As a science-based entity, the Commission recommends ample collaborations with the SFWAs and NatureServe to best develop the lists of these focal species for monitoring purposes.

Multiple Uses

In Section 219.10 (2) under (a) Integrated Resource Management, the rule states the USFS will consider renewable and nonrenewable energy and mineral resources within the context of maintaining plant and animal diversity. As on our own properties, the development of gas wells, pipelines and infrastructure related to extraction activities within the national forests should require the use of the most recent technologies in both the extraction and rehabilitation processes to minimize potential negative impacts, particularly for forest interior birds. It is critical to point out the development of energy and mineral resources should be monitored closely to determine impacts as they relate to species of concern or SGCN. Any and all consideration of renewable energy resource management on national forests should be restricted to the use of native species only.

Recreation

The preamble provides an explanation of the term "ecological services" and it is used to define consumptive and non-consumptive use. The Commission desires to call attention to the fact the proposed rule barely mentions long-standing, traditional uses that are widely accepted within our nation's conservation community as foundational tenets of the North American Model of Conservation having provided the means necessary to achieve our country's most notable conservation success stories. These foundational tenets are anchored in the core belief that wildlife is to be treated as a public trust resource and managed largely through fair-chase hunting. Section 219.10 (5) states the USFS must consider maintaining habitat conditions required by species that are hunted, fished, trapped, etc. and this is appropriate. However, the rule should be more specific to

include "maintaining public access for hunting and fishing and other consumptive recreational uses." There is great concern over the recent case on a national forest in Michigan where a court decision closed a sizeable area to hunting. This is unfortunate and the USFS needs to understand the language of the proposed rule, what is said and not said, will be used in litigation by special interests to limit these traditional uses.

Thank you once again for the opportunity to submit these comments into the public record on behalf of the Arkansas Game and Fish Commission. We look forward to a continuation of the valuable partnership between our agency and the U.S. Forest Service both now and in the future.

Sincerely,

Loren Hitchcock
Director

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Comment On: FS-2011-0002-0001
National Forest System Land Management Planning

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Comment on FR Doc # 2011-02989

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Government Agency Type: State

General Comment

The National Association of State Foresters respectfully submits comments in response to the USDA Forest Service publication of the Notice of Proposed Rulemaking for a new National Forest System Land Management Planning Rule published in the Federal Register on February 14, 2011 (Fed. Reg. Vol. 76, No. 30).

Attachments

FS-2011-0002-DRAFT-2061.1: Comment on FR Doc # 2011-02989

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FRD-1104

May 16, 2011

Forest Service Planning DEIS
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RE: Comment on the Notice of Proposed Rulemaking for a new National Forest System Land Management Planning Rule

The National Association of State Foresters (NASF) respectfully submits the following comments in response to the USDA Forest Service (USFS) publication of the Notice of Proposed Rulemaking for a new National Forest System Land Management Planning Rule (proposed rule) published in the Federal Register on February 14, 2011 (Fed. Reg. Vol. 76, No. 30). The NASF is comprised of the directors of all of the nation's state and territorial forestry agencies. Our members have a public trust responsibility for managing and protecting two-thirds of the nation's forestland, which is held in private or non-federal ownership. We appreciate the opportunity to provide comments on the proposed rulemaking for a new planning rule.

I. General Comments

Because of the interconnected nature of the threats to all the nation's forests regardless of ownership, the NASF has a strong interest in the management of National Forest System (NFS) lands, and therefore a strong interest in efforts to create a new planning rule. The ultimate measure of success of any planning rule will be on-the-ground accomplishments that improve forest health and the health and sustainability of local communities and economies. To be successful, a planning rule must afford enough flexibility for regions and forests to address their unique set of issues while providing a solid framework for management activities needed to ensure the ecological, social and economic elements of sustainability. We believe that state foresters can and should play a unique role in the planning process. As outlined below, we encourage revisions to the proposed rule to ensure that Statewide Forest Resource Assessments and Strategies are more effectively incorporated into planning efforts and that state foresters are tapped to provide local expertise as the USFS looks to advance "all-lands" management.

II. Comments on Proposed Rule

§219.3 Role of science in planning

The proposed rule mandates that "[t]he responsible official shall take into account the best available scientific information …." Fed. Reg. Vol. 76, No. 30 at 8515. In addition to introducing a standard of "best available science" the proposed rule goes further to require the responsible official to document the process, sources and type of information considered in reaching the determination as to what constitutes the most accurate, reliable and relevant

scientific information. *Id.* While the acknowledgment of the important role of science in preparing forest plans is laudable, we have concerns over the practical impact of language of the proposed rule in this section as it is currently written.

First, it is important to recognize the general limitations of science. Scientific studies are conducted on discrete parcels of land and typically provide answers to a very narrow set of questions, the development and answers to which are highly influenced by specific conditions within the original study area. Of course, the true value of scientific studies comes from utilizing these findings outside of the original study area to inform management decisions for similar forest or habitat types. However there is a level of uncertainty in extrapolating scientific findings from one site to another, and this uncertainty grows as the scientific findings are moved further away from the original study. This uncertainty is compounded by the scope of forest plans which oftentimes cover a staggeringly diverse set of forest types within one plan, and by the growing focus of the USFS on "all-lands" management, which has and will continue to broaden the scope and variety of landscapes included in planning scenarios.

In addition to the considerations outlined above, it is also important to acknowledge that scientific knowledge is constantly improving and changing. While it is important that the best and most up-to-date information be used in making management decisions, requiring ongoing documentation of each and every study used in making a decision presents the responsible official with a sizeable task. As written, the best available science standard puts the responsible official in a difficult position of having to marshal a large number of discrete studies into a planning document to support management decisions and meet the new burden established under §219.3. At best, this standard creates a new and substantial workload for the responsible official to document each and every scientific study considered at least every two years when compiling the monitoring and evaluation report and during any forest plan revision, amendment or assessment process. At worst, this section could subject the USFS to an entirely new standard of review relative to the scientific information used in forest planning documents.

In *Lands Council v. McNair*, 537 F.3d 981 (9th Cir. 2008) (*en banc*) the U.S. Court of Appeals for the Ninth Circuit addressed the role of courts in reviewing decisions involving matters within the scientific expertise of an agency. The Ninth Circuit concluded that under the Administrative Procedures Act (APA) the courts owe the greatest deference to agency decisions involving scientific determinations within the agencies area of expertise, affirming that the appropriate standard of review under the APA for such decisions is the arbitrary and capricious standard. *Id.* Nonetheless, as written and discussed by USFS personnel at proposed rule public forums, the proposed rule would place a duty on the responsible official to demonstrate that the most accurate, reliable and relevant information for any given decision was appropriately considered in reaching planning decisions. This duty to demonstrate that the best available science was considered in planning decisions is likely to prove costly and could result in the agency having plans challenged in court because of a new duty placed on the agency through its own rulemaking process.

Given the complications with best available science as outlined above and the creation of a new duty that is likely to alter the traditional deference afforded to agency decisions concerning matters of science, we are concerned that this standard may ultimately cause additional expense

in both agency time to meet the documentation standards, in defending against possible attacks to the sufficiency of the documentation itself, and in meeting a new burden of proof in court established by this section relative to proving appropriate consideration of the best available science.

The use and dissemination of scientific information by federal agencies is addressed by the Federal Data Quality Act (P.L. 106-554 §515) and subsequent guidelines from the Office of Management and Budget (http://www.whitehouse.gov/omb/fedreg_reproducible). Because the Federal Data Quality Act provides protections and assurances for the quality of scientific information used and distributed by federal agencies, we request that §219.3 be revised to remove language creating a new legal duty on the responsible official to document how each and every piece of scientific information used was determined to be among the most accurate, reliable and relevant as this duty would likely prove both time consuming and costly for the agency, as outlined above, and is duplicative with the assurances provided under the Federal Data Quality Act.

§219.4 Requirements for public participation

We are concerned that the role of tribes, states and local governments may be weakened under the proposed rule language included at §219.4(b)(1) pertaining to "[c]oordination with other public planning efforts." Section §219.7(a) of the 1982 planning rule states that "[t]he responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes." However, §219.4(b)(1) of the proposed rule states that "[t]he responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal Agencies, and State and local governments, **to the extent practicable and appropriate.**" (emphasis added). Our concern stems from the inclusion of the final clause providing the ambiguous caveat to the requirement to coordinate with other tribal and governmental efforts.

Any decision by the responsible official to exercise the discretion afforded under the ambiguous language of the proposed rule to not coordinate with an otherwise qualifying entity could become the subject of costly and time consuming litigation that could usurp resources that would be better utilized through on-the-ground management. We would like to see the language of §219.4 strengthened to ensure that this coordination and collaboration will, at the very least, continue as envisioned under the 1982 rule. The coordination section of the Resource Management Planning regulations for the Bureau of Land Management (43 CFR §1610.3-1) provides an example of stronger language relative to coordination and collaboration with other federal, state and local governments and Indian tribes. Section 1610.3-1 provides flexibility to address inconsistencies between federal and non-federal government plans, to develop management plans in collaboration with cooperating agencies, and further mandates that plan developers invite outside agencies to participate as cooperating agencies and that other federal, state and local and Indian tribes are provided "opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs." We request that the agency consider similar language in providing opportunities for other federal, state and local governments and Indian tribes to take more active role in the planning process.

§219.6 Assessments
As outlined in prior informal comments shared with the USFS on the planning rule blog, the NASF continues to advocate for the explicit inclusion of Statewide Forest Resource Assessments and Strategies in the development of forest plans. In June of 2010, state forestry agencies in every state and U.S. territory completed Statewide Forest Resource Assessments and Strategies that provide important localized data on the current state of forests across all ownership boundaries within a state. These documents were an important outcome of the 2008 Farm Bill and have been reviewed and approved by the Secretary of Agriculture. State Forest Resource Assessments and Strategies are living "all-lands" assessments that will be updated periodically and are uniquely situated to inform the USFS planning process.

While the reference to Statewide Forest Resource Assessments and Strategies under §219.6(b)(2) covering Assessments is a solid start, we are concerned that, as written, the proposed rule does not recognize the unique role and contribution to planning efforts that can come from continued collaboration with state and local partners who have already undertaken targeted planning efforts; such as State Foresters and Statewide Forest Resource Assessments and Strategies.

Under §219.6(b)(2) considering the content of the required assessment under the proposed rule language, the responsible official is required to "[i]dentify and consider relevant information contained in governmental or non-governmental assessments …." The proposed rule continues stating that "[s]uch documents **may** include State forest assessments and strategies ...." (emphasis added). While we are encouraged by the reference to the State Forest Resource Assessments and Strategies included in the proposed rule, we believe that the reference should be strengthened in reference to ensure that they are included in the content of assessments for each and every forest plan.

We strongly believe that these Statewide Forest Resource Assessments and Strategies can and should be utilized by the USFS in forest planning efforts; however, under the proposed rule there is no guarantee of such consideration of the Statewide Forest Resource Assessments and Strategies. As such, we request that an additional subsection be included under §219.6(b) to require the responsible official to consider information contained in the applicable Statewide Forest Resource Assessments and Strategies in conducting the required assessment under the planning rule.

§219.7 New plan development or plan revision
Under the 1982 planning rule, only standards are legally enforceable. The creation of a new planning rule may be the appropriate time for the agency to consider providing additional force to both goals and desired future conditions as laid out in this section. These pro-active plan components could be important tools for the agency to use in developing and defending management decisions by looking at the long term trends of the forest and undertaking actions that may result in short-term impacts but are important in achieving the goals or desired future conditions stated in the forest plan.

§219.8 Sustainability
In the explanation of the proposed rule, the USFS states that "[t]he proposed rule considered the ecological, social, and economic systems as interdependent systems, which cannot be ranked in

order of importance." Fed. Reg. Vol. 76, No. 30 at 8491. However, in the same section of the proposed rule explanation, the USFS goes on to state that "the agency has more influence over the factors that impact ecological sustainability on NFS lands (ecological diversity, forest health, road system management, etc.) than it does for social and economic sustainability (employment, income, community well-being, culture, etc.)." *Id.* It is this position that leads to the disparate treatment of social and economic systems versus environmental systems in the proposed rule.

In reference to ecological sustainability in §219.8(a) the proposed rule requires plan components to "**maintain or restore** the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area ...." (emphasis added). However in §219.8(b) in reference to social and economic sustainability, the rule requires only that "[t]he plan must include plan components **to guide the unit's contribution** to social and economic sustainability ...." (emphasis added). The NASF continues to support the initial assertion of the agency that social, environmental and economic considerations are not competing values; rather they are truly interdependent and all play an important role in effectively implementing landscape scale restoration.

Even if the assertion that the agency has more influence over factors influencing ecological sustainability than those influencing social or economic sustainability is true, this does not support the language in the proposed rule which elevates ecological considerations above social and economic considerations. The agency asserts that the proposed rule treats the three elements of sustainability as interdependent and further, that none of the elements can be ranked in order of priority. Nowhere does the agency say that factors cannot be ranked in order of importance unless the agency has differing abilities to influence the factors.

Further, we find the assertion that the agency has more influence over factors influencing ecological sustainability suspect. In the explanation of this section in the proposed rule, the agency lists a host of factors influencing ecological sustainability that are outside the control of the agency including "climate change, extreme disturbance events, and urbanization on lands outside of or adjacent to NFS lands." Fed. Reg. Vol. 76, No. 30 at 8490. This is not an insubstantial list of factors outside of the agencies control, and says nothing of the agency's ability to actively manage NFS lands in light of the near constant threat of litigation facing management activities on federal lands.

The precipitous decline in the forest industry in many parts of the country and the corresponding social and economic benefits closely coincides with the increase in the threats to ecological sustainability stemming from the lack of management on federal lands. These ecological threats include fires outside the historical range of variability and spread of native and invasive pest species at historic levels (extreme disturbance events) and are some of the primary factors currently influencing the ecological health and sustainability on National Forest System units. The agency's ability to impact factors influencing social and economic sustainability is clear from the impact on these systems following the decline in management on federal lands. What is not clear is that the agency is in a better position to impact factors influencing ecological sustainability than those influencing economic or social sustainability.

Because the USFS is in a position to have a substantial impact on all of the factors influencing ecological, social and economic sustainability, we request that the proposed rule recognize this and include language for plan components that maintain or restore all three elements of sustainability, being ecological, social and economic.

§219.9 Diversity of plant and animal communities

The proposed rule language on maintenance of viable populations in §219.9(b)(3) significantly expands the realm of species that may be considered under the proposed rule by not limiting species of conservation concern to vertebrate species as the current rule does. As this is a contentions and litigious issue under the current planning rule, we are concerned that the proposed rule has done little to reduce the likelihood of future conflicts. Specifically, the proposed rule contains no reference to meeting overall multiple use objectives in light of providing for species viability. This reference to overall multiple use objectives from the 1982 rule has been relied upon in court decisions to uphold agency decisions related to management indicator species and should be included in this proposed rule.

Both §219.8 (sustainability) and §219.9 (diversity of plant and animal communities) contain the same language at the opening of the sections that "[w]ithin Forest Service authority and consistent with the inherent capability of the plan area, the plan must include plan components to ..." either provide for sustainability or plant and animal diversity. However, the two subsequent sections, §219.10 (multiple use) and §219.11 (timber requirements based on the [National Forest Management Act] NFMA) contain very similar language with one notable addition to the language of the "fiscal capability of the unit...." This language sets up a disparity whereby the provision of multiple uses and timber requirements under the NFMA are subject to the additional caveat of the fiscal capability of the unit while efforts to provide for sustainability and species viability are not. We are concerned that the language of the proposed rule in this section goes even further than the flaws discussed above relative to the disparate treatment of ecological, social and ecological sustainability to, in practice, subjugate social and economic sustainability to ecological sustainability, despite the agency's statement that the three are interrelated and should not be ranked in order of importance. As such, we recommend that the additional limiting language in §219.10 and §219.11 be eliminated. Alternatively, the fiscal capability language could be added to §219.8 and §219.9 to ensure that all elements of sustainability are truly recognized as equal and interdependent factors in the rule.

§219.12 Monitoring

Adequate monitoring is absolutely necessary to support the adaptive management framework chosen in the proposed rule. Unfortunately, we are concerned that the monitoring framework included in the proposed rule will ultimately become a costly burden on the agency as we all face shrinking budgets. We have already seen proposed cuts in the President's fiscal year (FY) 2012 budget proposal for the Forest Inventory and Analysis (FIA) program, which acts as the nation's forest census. At the funding levels proposed in the President's budget, impacts are expected to include longer cycles between inventories and cessation of higher resolution sensing projects. With these cuts in mind, we believe it is important to continue forward with "all-lands" monitoring efforts (as envisioned under the proposed rule's course lens approach) to make sure we can build upon our current knowledge of all forest ecosystems, regardless of ownership.

We were encouraged to both read in the proposed rule and to hear from members of the USFS planning rule team at national and regional forums that they intend to leverage outside monitoring efforts being conducted by other government and non-governmental parties. We believe this is another opportunity for state foresters and State Forest Resource Assessments and Strategies to play an important role in forest planning efforts. With this in mind, we believe that the language of §219.12(c)(5) should be strengthened to require the responsible official to look to State Foresters and State Forest Resource Assessments and Strategies by including specific reference to State Foresters in §219.12(b)(2). Collaboration is an important part of continuing to improve the efficient and effective use of limited monitoring resources.

Subpart B – Pre-Decisional Administrative Review Process
§219.50-62

We support the use of the pre-decisional administrative review process for land management plan proposals as set forth in the proposed rule. We are hopeful that this review process would lead to more collaborative decisions and ultimately save litigation costs and allow the agency to more efficiently implement management on the ground.

III. Conclusion

The NASF appreciates the efforts of the planning rule team at the USFS to develop a rule that will provide a solid framework to implement on-the-ground management and address the pressing threats to NFS units. As the USFS moves forward in considering comments and revising the proposed rule, we ask that you consider our comments. Again, thank you for the opportunity to provide comment on the proposed rule, we look forward to continuing to work with the agency to ensure that the National Forest System is managed to serve the values of society.

Sincerely,

Jeff Jahnke
NASF President and CO State Forester

OT	S	RT	DT	EA	F	RI	CE

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General Comment

See attached file(s)

FS-2011-0002-DRAFT-2075.1: Comment on FR Doc # 2011-02989

May 11, 2011

To: Forest Service Planning DEIS
C/O Bear West Company
132 E. 500 South
Bountiful, UT 84010

Subject: Apache County Board of Supervisors Comments on the Forest Service Proposed Planning Rule and DEIS

Apache County Board of Supervisors appreciates the opportunity to bring forward issues and submit comments concerning the Forest Service Proposed Planning Rule and DEIS. While the public has been invited to review and comment generally on the effect of the proposed planning rule and DEIS, County governments have the additional responsibility for protecting the health, safety and welfare of local citizens and will reflect our responsibility in our comments. We recognize this responsibility with the utmost of seriousness and feel we need to deal with proposed federal actions that effect local citizen in a thorough and serious manner. We are focusing on issues with the proposed planning rule that will greatly impede the ability of Apache County to carry out its responsibilities to its citizens and put at risk the well being of the people who live in or visit our County.

The US Forest Service most important responsibility is found in its statutory authorization set forth by the U.S. Congress. While many of the subjects in the propose rule are important, the proposed rule sidesteps the real task set forth by Congress for the Forest Service. That task is multiple use, and the sustainable production of goods and services for human uses. Please refer to the Organic Act, the Multiple-Use Sustained Yield Act, the National Forest Management Act, and the Federal Land Planning Management Acts for the correct statutory authorizations and limitations on what goals and objectives that the agency can set before itself.

We also point out that in the National Environmental Policy Act, Section 102,(C)(v) the words "……the comments and views of the appropriate Federal, state, and local agencies which are authorized to develop and enforce environmental standards, shall be made available to … [and accompany]the proposal through the existing agency review processes…" is not an empty statement placed in the law frivolously. It is the intent of Congress that local governments be consulted, and the input from those governments be included and integrated into federal proposals. The proposed new rule appears to disregard this very important language.

Apache County Board of Supervisors also wishes to express its disappointment with the obvious mission shift that has occurred within the Forest Service (FS). The proposed planning rule makes it very obvious that the FS is no longer the non political, professional agency that

carried out a mission of multiple use and wise management of resources and has become totally preservation oriented, in line with many of today's power and money driven environmental organizations. The total disregard for the needs of local governments and citizen, along with the abandonment of the sustained production of natural resource through proper land resource management is very disheartening.

The use of unproven junk science and the level of political debauchery that is now practiced by the agency is shameful and a long way from the onetime non-partisan, highly professional, agency that led the nation in the sustainable production of timber, water, forage, wildlife habitat, and recreation opportunities. In Apache County over the last 15 years alone, tens of thousands of acres of old growth timber, high quality wildlife habitat and stable watersheds, along with tens of thousands of acres of highly productive rangelands have burned. These once very productive areas will remain in a very low environmental state for hundreds of years to come.

The current FS administration does not recognize the loss of ecosystems and ecosystem health caused by their current failed preservation oriented policies and show great indifference to the economic loss to the local community. The FS appears to have totally dismissed the benefit of its ability to produce revenues from these lands. It appears that no one in the FS today remembers when the FS returned enough revenue to the treasury to cover its operating cost. Now the FS totally depends upon the taxing of American citizens to generate the funding needed to run the agency.

The following statement is found in the Proposed Planning Rule *(Volume 76, Number 30, Federal Register Page 8487, Second paragraph)* is very telling of how the agency now sees it role in managing National Forest Lands. "*Requiring land management plans to be consistent with local government plans; however, would not allow the flexibility needed to address the diverse management needs on NFS lands and could hamper the Agency's ability to address regional and national interests on Federal lands."*

It is very clear that the FS now envisions itself as a <u>superior national entity</u> that no longer has any ties to the "local government", which has some more comprehensive, diverse, management needs that are somehow above the level of "local governments" to be part of or capable of carrying out. It is evident in this statement that the FS feels that it is far above "local governments" and if local citizens are allowed to be involved with the management of the National Forest land they are not capable of being flexible and would only hamper "the Agency's" abilities. The FS in this statement clearly separates local planning and local needs from what they claim as their overriding mission, taking care of "regional and national interest".

Apache County Board of Supervisors is very concerned with the FS's arrogant and divisive attitude towards the local governments and citizens who happen to live and work in rural America. Seventy six percent of Apache County is federal land of which forty two percent is managed by the FS. The citizens of Apache County, as well as many other rural counties in the Western US, are dependent upon the resources that come from the federal land located within the counties and provide much of the labor as well as many of the goods and services that are used in

the management of the National Forest land. To be excluded from and considered to be some type of burden upon the elite FS "Planning" process is a slap in the face to many local (Western US) citizens who happen to live within or adjacent to National Forest lands.

The FS needs to withdraw the current divisive and condescending proposed planning rule and start over with a planning rule that considers the needs of local governments and citizens; the citizen who will be on the ground daily caring for their National Forest. Any FS planning process should start at the local community level and not be driven by the wealthy, powerful and politically connected environmental organizations.

The following statement is found in the Proposed Planning Rule *(Volume 76, Number 30; Federal Register Page 8491 last paragraph & page 8492 first paragraph)* again is very telling of how the agency now sees it role in managing National Forest Lands. *"The distinction between these two sets of requirements recognizes the Agency has more influence over the factors that impact ecological sustainability on NFS lands (ecological diversity, forest health, road system management, etc.) than it does for social and economic sustainability (employment, income, community wellbeing, culture, etc.). National Forest System lands can provide valuable contributions to economic and social sustainability, but that contribution is just one in a broad array of factors that influence the sustainability of social and economic systems. Similar to the requirements for ecological sustainability, the requirements for social and economic sustainability reflect that NFS lands are integral parts of the larger landscape."*

This statement indicates how the FS mission has drifted from management to preservation. In this statement it is clear the FS now believes its mission is to be the ultimate protector of ecological sustainability, ecological diversity, and forest health. No longer are the multiple uses of forest resources in a sustainable manner considered to be of value for the nation. The FS has moved into the ranks of a large federal bureaucracy that no longer recognizes the value to local governments and rural citizens that National Forest lands hold.

In the above statement the FS is quick to dismiss the value of National Forest lands to local governments and the needs of rural communities by declaring "*but that contribution is just one in a broad array of factors that influence the sustainability of social and economic systems"*. In the world of Washington DC and metropolitan America, the resources that come from National Forest land may be "<u>just one in a broad array of factors</u>", but in the isolated rural communities of the Western US the natural resources produced on National Forest system lands are critical to local economies. National Forest resources once provided jobs for many citizens that live and work in rural America and once supported local tax bases that provide for fire protection, emergency medical services, law enforcement, search and rescue and many other community services provided by local governments.

The proposed FS Planning Rule and DEIS plays down and totally dismisses the importance of local governance in favor of the FS's new lofty role of protector of ecological sustainability, ecological diversity, and forest health. The reality of the situation is the FS or the wealthy environmental organizations do not have much "<u>influence over the factors that impact ecological sustainability on NFS lands (ecological diversity, & forest health)</u>. The droughts,

fires, insect infestations, wind storms, hail storms, and many other natural disturbances drive the dynamics of ecosystems much more than well managed use of the land by man.

Apache County Board of Supervisors is very concerned that the FS mission has shifted from land management and resource production to that of preservation and waste of billions of dollars worth of natural resources. As is very evident in most National Parks and Wilderness Areas, the current preservation policies in place for these lands serve the emotional single self interest of a few, while allowing tremendous amounts wood fiber and forage turn into carbon dioxide and enter the atmosphere either by fire or decomposition.

Again, the FS needs to withdraw the current misguided proposed planning rule and start over with a planning rule that address the management of National Forest land at the local level before worrying about and setting unachievable broad landscape level restrictions. Any FS planning process should start with the pieces (local issues and ecosystem) to build the whole (landscapes and populations). To dictate top down planning restrictions will never achieve Desired Future Conditions (DFC) because the people needed to accomplish the DFC's will never feel any ownership in the process.

The following statement is found in the DEIS for 2011 Planning Rule *(page 51, second paragraph)* again is very telling of how the agency now sees it role in managing National Forest Lands. *"Land management plans developed for each unit of the NFS are found at the bottom of this hierarchy of direction. Land management plans provide broad guidance to the Forest Service for project and activity decision making in a national forest, grassland, prairie, or other administrative unit. These plans reflect laws, regulations, and Agency policies. A plan does not authorize projects or activities, nor does it commit the Forest Service to take action; however, a plan can constrain the Agency from authorizing or carrying out actions. The NFMA requires that plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands be consistent with the applicable land management plan (16 U.S.C. 1604(i))."*

This statement clearly indicated that the Proposed FS Planning Rule will be higher in the "hierarchy of direction" than Forest level Land Management Plans, which are higher in the "hierarchy of direction" than the plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands. This hierarchy of direction would be workable if the FS Planning Rule was limited to defining the process to be used to develop the Forest Plans instead of dictating constraints, not allowing the authorization of projects or activities in Forest Plans and setting a national preservation agenda that impedes that ability of local level managers from making decisions base on local conditions and local needs. It is clear that the Proposed FS Planning Rule is an attempt to control the outcome of Forest Plans. If implemented the new FS Planning Rule would render most of the FS Manuals and Handbooks obsolete because the direction found in these policy and direction setting documents will be in direct conflict with the preservation direction of the new rule. It is very evident in the statement made on page 54, paragraph 1, of the DEIS that the new planning rule will take precedent over established FS policy. *"Therefore, planning rule provisions for specific land management plan guidance will*

influence a responsible official's discretion when approving a land management plan and subsequent site-specific management activities."

Apache County Board of Supervisors is very concerned that local land management decisions and locally developed land use projects will be replaced by the preservation oriented direction found in the proposed FS Planning Rule. The ability for local FS managers to develop and approve the land uses on National Forest systems lands should not be restricted by a national policy aimed at preservation.

The FS needs to withdraw the current misguided proposed planning rule and start over with a planning rule that provides for an orderly planning process and not a planning rule that redefines the mission of the FS.

The last issue with the DEIS is contained in the entire Dynamic Nature of Ecosystems treatise presented on pages 55 - 65 of the DEIS. It is very evident that this treatise is an attempt to describe and justify the FS mission shift from the production and appropriate use of resources to a preservation oriented mission where ecosystems are described as very complicated but dynamic units of land that only can be sustained if human disturbance is not tolerated. This whole new approach to FS land management totally dismisses the old mission of managing for the resources needed to support the human population and places the main objective of land management to sustaining the land in some type of dynamic status quo. This new mission fits well with the philosophy upon which wilderness management has been practiced for years across the nation.

Apache County Board of Supervisors is very concerned that the mission of managing for the resources needed to support the human population is not dropped from the mission of the FS. While most of the nation no longer recognizes or understands the value of the resources found on National Forest systems land, providing clean water, wood fiber, forage, and wildlife habitat through implementing the appropriate management practices is the life blood of rural America.

Again, the FS needs to withdraw the current misguided proposed planning rule and start over with a planning rule that provides the resources needed to support the human population while ensuring that the potential of the land is not degraded.

Conclusion:

The FS needs to relook at the purpose for setting aside the Forest Reserves from the Public Domain and the historic role these lands played in the growth and development of the nation. While there has always been abuse and misuse of the land, the ecosystems that make up the Western US landscapes have proven to be very resilient and most of the resources produced on National Forest system lands are truly renewable natural resources.

Finally, Apache County Board of Supervisors requests to meet with the US Forest Service to coordinate this proposed planning pursuant to 40 CFR 219.7.

Sincerely,
APACHE COUNTY BOARD OF SUPERVISORS
SIGNATURES

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U.S. Congressional Delegation
AZ Congressional Delegation
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See attached file(s)
FS-2011-0002-DRAFT-2086.1: Comment on FR Doc # 2011-02989

I. OVERRIDING ISSUES

1. Rationale to Revise Planning Rules Unsubstantiated

The Forest Service claims that the rules needed to be changed to address the impacts of climate change and to reduce costs. *Id*. at 8481. There is no clear evidence that the revised planning rule will reduce land use planning costs. Experience suggests that this rule will be even more expensive. If the Forest Service adds NEPA compliance to the planning process, it would seem that there will be no cost-savings. The factors that add to costs, such as poor data, controversial actions, and litigation are not resolved in the proposed planning rules.

Similarly, the issue of climate change is barely addressed in the planning rules. This makes sense since there is no data showing that climate change is more than a theory and more relevant there is no data documenting the likely impacts on National Forest System management. The theories that there will be more drought and warmer temperatures is little more than speculation. It is difficult to understand how the land use plan could be based on these assumptions when there is no evidence that they are true. Nor is there any research on how to change land management to adjust to changes in climate.

For this reason alone, CLG supports the no action alternative.

2. Proposed Planning Rule Is About Process and "Values" Not Science

The rulemaking preface states:

> Science is one source of understanding and knowledge that informs planning and decision-making. Much of planning also involves consideration of public values in land management. This proposed rule is

> very much a science-based rule and establishes a strong requirement for consideration and use of best available scientific information in planning.

Id. at 8481.

Unfortunately, nothing in the proposed rules is based on science. The planning rule does not adopt any scientific standards or criteria, as compared with the Committee of Scientists whose work was the basis for the 1982 rule. The Forest Service incorrectly states that the 1982 rule was to mitigate the impacts of 'resource extraction activities.' *Id*. NFMA was written to establish criteria for logging and revegetation, and these criteria are the core elements of the 1982 rule. Neither logging or grazing is a 'resource extraction activity' since both are renewable.

The rulemaking preface states: "The Agency needs a planning process that helps units identify their unique roles in the broader landscape and create land management plans to guide proactive contributions of the unit and of management to ecological, social, and economic sustainability." *Id*. The proposed planning rule incorrectly assumes that the 1982 rules did no mitigation and did not provide for 'proactive' management that would promote sustainability. The 1982 rules provided for species diversity, and minimum management requirements to protect, soils, vegetation and watersheds. It appears that the rule's authors know very little about the 1982 rules or the plans written under those rules.

This lack of understanding is then followed by describing the planning rule as unstable and then asserting that this rule, unlike others reflects an 'improved understanding of science and sustainability.'

Confusingly, the Forest Service states that proposed rules also will "establish requirements and constraints for on-the ground management decisions;" *Id*. at 8484. This is exactly what the 1982 planning rule did when it provided for minimum

management requirements to protect diversity of species, water quality and vegetation. 36 C.F.R. §219.29 (1982).

The reliance on collaboration and references to values also shows that the proposed rule is based on feelings and process not science or data. The premise appears to be that the current plans have not provided the public with social, economic and ecological benefits, clean water, fish and wildlife habitat, or 'opportunities for recreational, spiritual, educational and cultural sustenance.' The Forest Service offers no evidence to support the need for change. Moreover it is worth noting that no statute directs the Forest Service to provide spiritual, educational or cultural sustenance or clean water.

Elsewhere the Forest Service also attempts to justify the rule revision based on

> a growing concern about a variety of risks and stressors impacting resources, services, benefits, and uses on NFS lands. Issues included, for example: Climate change; insects and disease; recreation, timber, and shifts in other local demands and national market trends; population growth and other demographic shifts; water supply protection; and other ecosystem support services.

Id. at 8483.

There are undoubtedly many more stressors but those listed above are largely the product of Forest Service management policies that have been adopted over the last 20 years. Insects and disease reflect increased fuel loads. The fuel loads rose when logging ceased. The Forest Service has steadily abandoned the timber industry, thus leaving the National Forest System with timber that has become a huge fuel load filled with insects and disease. The drought which is entirely predictable coupled with stagnant stands of timber led to insects and disease. The Forest Service's more recent efforts to address these stands have been tentative and insufficient as shown by the catastrophic wildfires in Arizona, California, New Mexico, Oregon, Montana and Utah to

name a few states. Wyoming is very much aware that it is next for catastrophic wildfire as a large percent of the western Wyoming forests are dead or dying.

Recreation is directly affected by Forest Service efforts to restrict and end motorized vehicle use. This policy became explicit with the adoption of a new roads rule in January 2001. Thus there are fewer areas for recreation since access is constrained. Ski areas and ski area expansion are also limited as witnessed by the denial of a proposed expansion of the Crested Butte ski resort in 2010.

When the Forest Service decreased logging, it had predictably disastrous impacts on rural communities. Little has improved despite direct funding to compensate for the billions lost.

More importantly, nothing in the proposed rule will actually address the above issues. The Forest Service is not indicating that it will resume logging as part of its commitment to community stability and to provide timber for the needs of the citizens of the United States. 16 U.S.C. §475. The proposed rules do not provide for increased recreation access.

3. Cooperating Agency Direction and Rules Largely Ignored

The Forest Service failed to acknowledge or grant cooperating agency status that was requested as part of this rulemaking. The failure to respond violates the clear direction by the Council on Environmental Quality (CEQ) that state and local government agencies are to be given cooperating agency status for Environmental Impact Statement (EIS) documents. The Forest Service failure to properly handle the cooperating agency issue has led courts to set aside the roadless rule EIS. *State of Wyoming v. USDA*, 570 F. Supp.2d 1309 (D. Wyo. 2008).

The agency's failure also suggests that the claimed desire to collaborate in the rulemaking documents is false. Indeed, the Forest Service record of not responding to

or granting cooperating agency status to local governments does not reflect well on the agency. Apparently Forest Service officers have been told they can pick and choose the public officials to coordinate or cooperate with and ignore those that may not agree with the agency's policies. Careful review of CEQ direction shows that agreeing with a federal agency is not a criteria for cooperating agency status. Sadly even the Washington Office of the Forest Service has supported denial of cooperating agency status, claiming it was up to the Supervisor. Some local governments have been threatened with denial of future cooperating agency status if they continue to express disagreement with Forest Service policies.

4. National Environmental Policy Act (NEPA) Compliance

The major change effected in the 2001 planning rule was to disengage land use planning from NEPA. The Forest Service rationale was that NEPA compliance was too cumbersome and costly. Because land use plans did not actually make a decision, there was no final agency action and thus no need to complete NEPA review.

The proposed planning rules are confusing on this critical issue. Sections 219.5 and 219.7 appear to provide that land use plans will have NEPA compliance, such as an EIS. 76 Fed. Reg. 8501 (For plan development or revision, the decision document would also be accompanied by a final EIS. A plan amendment would be accompanied by appropriate NEPA documentation.); 8511; 36 C.F.R. §§219.5, 219.7 (proposed).

If we correctly understand the rules, then the question is why are state, tribal, local governments not identified as cooperating agencies? The Forest Service NEPA rules do not provide for cooperating agency status but adopt by incorporation the CEQ rules which do. 36 C.F.R. §220.1(a). Given the Forest Service failure to actively seek out and grant cooperating agency status, the planning rules need to be amended to conform.

Significantly, the emphasis on public participation also marginalizes the state and local governments. The state and local governments enjoy a higher status due to the fact that the Forest Service cannot preempt local government functions where it lacks the authority. As explained in these comments, the Forest Service, as a matter of practice, either does not understand or will not accommodate the mandate to coordinate under NEPA. By equating public involvement with coordination with local governments or the obligation under cooperating agency rules and policies, the Forest Service avoids recognizing local government jurisdiction and avoids having to deal with state and local government officials.

Access in the travel planning process is one area where this is especially important. The Forest Service has studiously ignored county road documentation preferring instead to close roads to all motorized use without regard to case law or how the road arose. CLG members appealed the Ashley National Forest Travel Management Plan on these grounds. The Forest Service issued its final decision 30 days after the close of the comment period and rejected both Utah and Wyoming appeals summarily. The DPG continues to resist coordinating with local governments on its travel plan and instead persists in using the EA process to keep the comment period to 30 days even though the plan covers more than 1.2 million acres of land.

5. Other Statutory Direction Omitted

a. Omission of mineral resources

The planning rules are largely silent on mineral development and rights-of-way. The Department of the Interior administers minerals but the Forest Service must review surface impacts. Thus, the planning rules should acknowledge this important fact and address the role of mineral development and how it may affect planning.

Alternatively the planning rule omission is a deliberate effort to exclude mineral development from the National Forest System. This would be unlawful. The National

Grasslands are specifically identified as being managed for energy development. 7 U.S.C. §1001. *See also* Energy Security Act, 42 U.S.C. §8855; Mining and Minerals Policy Act, 30 U.S.C. §21a.

b. Management Direction for National Grasslands

While the National Grasslands are part of the National Forest System, the management objectives differ and should be reflected in the planning rule. The National Grasslands are to be managed as demonstration projects for grassland agriculture and for energy development, among other uses.

c. Omission of Healthy Forests Mandates

The proposed planning rules fail to incorporate the Healthy Forests Restoration Management Act. There is next to nothing about how the plan will identify forest conditions and proceed to meet the act's criteria. Given the recognized risks of catastrophic wildfire, particularly in the Rocky Mountain States, this omission is unwarranted.

6. Role of National Forest System in Economy

The planning rule identifies the important role that National Forest System management has on social and economic factors. It fails, however, to correctly reflect either the statutory direction or original commitment to contributing to the stability of dependent communities.

The Organic Act provides in relevant part:

> No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States;

16 U.S.C. §475.

As explained in early Forest Service manuals, the Forest Service was to ensure that the land management policies took into account and provided for community and economic stability. [**Gifford Pinchot quote]. The concept of ensuring community stability was established in the Forest Service rules as part of the timber program, 36 C.F.R. Part 223; and in the statutes allocating 25 percent of National Forest System revenues to the local communities. 16 U.S.C. §500. The Secure Rural Schools and Community Self-Determination Act of 2000 which was renewed through 2011 replaced the previous act. With the ever-shrinking timber program the Forest Service revised the rules to delete reference to this objective. [**CITE].

7. No More *de facto* Wilderness

CLG members also believe that the time is long past for the Forest Service to continue to expand the lands that will be managed as if they were wilderness. The 1982 planning rules were amended to provide for wilderness study and review after the Ninth Circuit Court of Appeals set aside the national roadless area review. 36 C.F.R. §219.27 (1983).

Since 1983, however, Congress has adopted numerous National Forest wilderness bills, and released the other lands to multiple use management. This is especially true for Wyoming, where Congress expressly released all of the roadless lands to multiple use management. Pub.L. 98-550, Title II, § 201(a)(10), Oct. 30, 1984, 98 Stat. 2809, Wyoming 1984 Wilderness Act. In 2008, the Wyoming District Court concluded that the Forest Service inventoried roadless area conservation rule was unlawful, both for lack of authority and violation of NEPA. *Wyoming v. U.S. Dept. of Agriculture*, 570 F. Supp.2d 1309 (D. Wyo. 2008). Notwithstanding the law and court decision, the Forest Service continues to use the planning process as a basis to expand wilderness management. The Wilderness Act gave the Forest Service 15 years to complete its review and

recommendations. The time has long since passed for an end to the continued expansion of *de facto* wilderness management.

8. Planning Rules Need Definitions

The planning rules use a lot of terms and it is not clear that the ordinary meaning is the same that the Forest Service is using.

a. Economic sustainability

For instance, economic sustainability could mean managing the National Forest System to sustain local and state economics or it could mean shutting out particular land uses like livestock grazing on the theory that it was not economically sustainable. Unfortunately, the planning rules are coy about what is actually meant thereby frustrating meaningful public comment.

b. Monitoring; See also §219.12, proposed

The CLG strongly supports monitoring the response of resources to management as part of the land use plans. Unfortunately, the public has learned that the Forest Service definition of monitoring differs from that used by the land use community. For decades, monitoring has been defined as measuring the response of the resources to changes in land management over time. Vegetation monitoring in particular has focused on tracking particular sites and evaluating the site's responses to management (or lack thereof).

More recently, Region 1 has adopted a very different definition. Monitoring data are now equated with an initial base-line assessment or with a one-time inventory of a resource. Thus monitoring is pretty much any review of the resource without regard to measuring the response of the resources to management or changes in management

over time. A valid and defensible monitoring program is essential to adaptive management.

As a result, we believe that the definition of monitoring needs to be revised to capture the concept of measuring the response of resources to land management over time. *Id*. at 8481.

Another important aspect of monitoring is the fact that there is no penalty or consequence, if monitoring is not done. While the Forest Service has been writing land use plans pursuant to MUSYA and now NFMA for more than 50 years, it has only sporadically monitored the effects of its management plans. While the revised planning rules would make monitoring a cornerstone of land management, there is no trigger or consequence, if monitoring is not actually done.

As one example, more often than not management of grazing allotments is not evaluated by monitoring unless the permittees do it themselves. And even then the Forest Service is reluctant to accept data from a third party. When the permit is to be renewed, the Forest Service has no data to document the resources responses to management over time. If challenged, the Forest Service has few facts to defend its decisions and the livestock permittees bear the brunt of this lack of information.

CLG also questions whether the Forest Service will allocate the funds and staff for a monitoring program. It has not in the past. The proposed rule is promoted as saving money, thus suggesting that the Forest Service will not in fact allocate the necessary funds and staff to make monitoring part of its management scheme.

9. Ecosystem Services, §§219.8, 219.10 proposed

Planning rules attempt to evade the terms of the multiple use sustained yield act by defining planning in terms of ecosystem services.

> Ecosystem services'' is a term that is used today to describe many consumptive and nonconsumptive uses, as well as traditional and non-traditional uses, that people associate with national forests. In the proposed rule we use the phrase ''multiple uses, including ecosystem services'' in certain places to show an association between the terms so both are recognized in the rule and within our statutory authority as part of land management planning. The management of the multiple uses described by the MUSYA of 1960 (outdoor recreation, range, timber, watershed, and wildlife and fish purposes) has broader application in today's context.

Id. at 8484.

The Forest Service cannot revise the statutory management directives. It is important to remember that the National Forests were reserved to "to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States." 16 U.S.C. §475. The additional and supplemental purposes include "outdoor recreation, range, timber, watershed, and wildlife and fish purposes." 16 U.S.C. §528. As noted above, these are not 'consumptive' or non-consumptive uses, they are the primary land uses that the Forest Service is mandated to provide on the National Forests. The National Grasslands have similar but different objectives and they are:

> The Secretary is authorized and directed to develop a program of land conservation and land utilization, in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the

> watersheds of navigable streams, and protecting the public lands, health, safety, and welfare.

7 U.S.C. §1010.

None of the above statutory objectives resemble in any shape or form the terms that the Forest Service would adopt in the proposed rule. Given the clear statutory direction, decades of implementation, it is apparent that the Forest Service is unlawfully attempting to revise the law through rulemaking. This exceeds the agency's power.

II. SPECIFIC COMMENTS

1. Plan Framework page 8481

The planning rules need to add a step of 'assessing planning assumptions and making adjustments.' Theoretically this would be included in adaptative management. But our experience is that the Forest Service does not employ adaptive management to reconsider plan assumptions. A particularly telling example is found in North Dakota where the Forest Service assumed in the Dakota Prairie Grasslands Plan (DPG) that the grasslands could achieve a visual obstruction rating (VOR) of 3.5" for all of the National Grassland units in North Dakota and northern South Dakota with only 800 pounds per acre of production. Based on that assumption, the plan adopted a mandatory VOR of 3.5" even though a significant segment of the scientific community noted that it was unlikely that the grasslands could produce sufficient vegetation to achieve 3.5" VOR. The Forest Service further contended that the VOR reading would not lead to significant reductions in livestock grazing. The Forest Service even did an elaborate test drive which showed no grazing reductions Now the Forest Service is implementing the plan with an average of 25% reductions in grazing in each Ranger District.

These reductions are occurring because the National Grasslands cannot achieve a VOR of 3.5" unless the site produces more than 2300 pounds of forage. The Forest Service sponsored a study by the North Dakota State University to evaluate VOR ratings. The data showed that most sites will not produce 2300 pounds of forage, even before grazing and during an abnormally wet year. In areas that might achieve that production, it would require removing most of the livestock grazing. Needless to say, had this information been available when the plan was adopted, the Forest Service could not have been able to maintain that no significant reductions would occur. Rather than acknowledge that the plan assumption was incredibly wrong, the Forest Service has maintained that it will continue to 'implement the plan' without regard to the incorrect assumptions and without regard to the significant impact on one of the primary users. Even the Chief of the Forest Service has flatly stated it will implement the plan regardless of errors in the assumptions and impacts.

If the Forest Service is to have any scientific credibility, it needs to acknowledge when planning assumptions are wrong and make changes. Hunkering down and not making changes has put the Forest Service in decades of litigation.

2. Directives In Lieu of Rules Violates NFMA and the Claimed Commitment to Public Participation, §219.* proposed

CLG finds it ironic that the proposed rules would allow the Forest Service to make significant changes in the planning process by the non-public avenue of directives. The directive system is very difficult to access, is not indexed, and, of course, is adopted without notice and public comment. Forest Service rules only require public involvement for directives in narrow and self-defined cases. 36 C.F.R. §216.**. Despite repetitious references to 'collaboration' the Forest Service proposes to hijack the planning process by implementing land use planning through these secret directives.

This violates NFMA, since the Forest Service is required to use rulemaking to implement its provisions, which address the land use planning process. 16 U.S.C.

§1613. The Agriculture Secretary must also provide for “an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.” 16 U.S.C. §1612(a). Using the nonpublic directive system to implement planning flatly contradicts this clear direction.

3. Role of Science in Planning, §219.3 proposed

The planning rule falls short of the Information Quality Act or the USDA criteria. While the proposed rules use the term ‘best available scientific information’ that is not sufficient under the Information Quality Act. 44 U.S.C. §3516 note. As noted elsewhere in these comments, the Forest Service will often rely on old data, such as 20-year monitoring data for rangeland conditions, on the basis that it is the ‘best available.’ Similarly, the Forest Service will use assessment information in lieu of monitoring data, because it lacks such data. In North Dakota the DPG attempted to use computerized data estimating conditions and this was found to be so flawed that it could not be used at the project level for decisions by the Scientific Review Team.

The federal court cases frequently set aside Forest Service decisions when they rely on flawed data, on the basis that it is the best available.

The Information Quality Act requires that each federal agency follow guidelines that will ensure and maximize “the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency.” Pub. L. No. 106-554 (Dec. 21, 2000) (published at 44 U.S.C. §3516 note). The Forest Service “must use the "best available, peer reviewed science and supporting studies conducted in accordance with sound and objective scientific principles." 42 U.S.C. 300g-1(b)(3)(A) & (B).”

This was the issue in *Ecology Center, Inc. v. U.S. Forest Service*, 451 F.3d 1183 (10th Cir. 2006). The United States Court of Appeals for the Tenth Circuit vacated the Forest Service's decision because the agency failed to demonstrate that the best available science was applied, even though the Forest Service ultimately had the discretion to

decide what constituted the best available science. *Id*. at 1193, 1194 n.4 (identifying scientific controversy and holding that the "best available" science is "not just whatever the Forest Service finds on the shelf. . . [I]t still must be good science-that is reliable, peer-reviewed, or otherwise complying with valid scientific methods").

The proposed rule apparently qualifies the need to even comply with the Information Quality Act.

> the best available scientific information could be the result of expert opinion, panel consensus, or observations, as long as the responsible official has a reasonable basis for relying on that information. Regardless of the source of the information, the Office of Management and Budget (OMB) Information Quality Bulletin on Peer Review may apply.

Id. at 8485. None of the items in the above list conforms to the Information Quality Act. A single expert opinion without peer-review analysis is not sufficient nor would observations or panel consensus. CLG also notes that the Forest Service appears to assume that the Information Quality Act does not apply, when it clearly applies to all information disseminated by an agency.

Elsewhere the Forest Service notes that science only informs but does not dictate a decision. *Id*. 8485. It is difficult to understand how to reconcile putting science secondary and yet insisting that this is a science-based planning rule. The explanations within the proposed rulemaking are contradictory.

Similarly deferring the use of science to the directive system is also problematic. *Supra* at 13-14.

4. Requirements for Public Participation, §219.4 proposed

This section is notably silent about state and local governments. This issue was raised in scoping but the Forest Service fails to address it satisfactorily.

Since the rules will incorporate NEPA, then the Forest Service has no choice but to invite all state and local governments to participate. 40 C.F.R. §§1501.2(d)(3), 1506.2. CEQ direction further requires federal agencies to affirmatively bring state and local government agencies into the process. [CEQ Directive CITES]

Rather than conform, the planning rules focus on tribal relations and ignore other governmental entities. Referring to NEPA collaboration ignores earlier and explicit direction.

The text further indicates the Forest Service want to substitute collaboration or public involvement for cooperating agency process. *See e.g. Id*. at 8486.

> The proposed rule specifically would require the responsible official to encourage participation by the public, Tribes, governments, scientists, and other individuals by sharing knowledge, ideas, and resources. It is also expected that the responsible official would rely on proactive, contemporary tools, such as the Internet, to encourage widespread participation.

The Forest Service compliance with cooperating agency relationships has been disparate and inconsistent. Region 4 resisted local government cooperating agency status for the Utah Wild and Scenic Rivers Act study, saying that the Governor of Utah would represent the Wyoming local government interests. Since the Utah Governor has no relationship with the Wyoming counties, this was clearly not the case. On the other hand, Region 4 forests have recognized cooperating agency status for travel management plans. Region 1 has also varied with counties enjoying cooperating agency status for the Beaverhead but being rejected for the DPG. There is no clear or

consistent direction to follow the law and this leads to the exclusion of many local governments in the EIS process.

5. Land Use Planning Coordination and Consistency

The forest planning rule is also inconsistent with the NEPA rules. Instead of recognizing that CEQ rules require coordination, the Forest Service writes:

> The proposed rule would require that during the plan development or plan revision process, the responsible official would review the planning and land use policies of federally recognized Indian Tribes and of other Federal, State, and local governments and document the results of the review in assessments conducted by other Federal agencies, statewide forest resource assessments, community wildfire protection plans, or state wildlife action plans. The review would consider the objectives of federally recognized Indian Tribes, and of other Federal, State, and local governments, as expressed in their plans and policies, and would assess the compatibility and interrelated impacts of these plans and policies. The review would include a determination of how each Forest Service plan should address the impacts identified or how each plan might contribute to joint goals.

76 Fed. Reg. at 8486-87.

The CEQ rule states that when evaluating environmental consequences a federal agency must consider “Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See §1506.2(d).)” As additional explanation, the CEQ rules further state:

> (d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). ***Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.***

40 C.F.R. §1506.2(d).

The proposed rule fails to require reconciliation of the proposed plan with the state or local government plan. Instead, the proposed rule assumes that it supersedes state and local plans and there is no obligation to resolve the inconsistency. The Forest Service instead states that consistency would reduce Forest Service management flexibility. 76 Fed. Reg. at 8487. It is apparent that the Forest Service will continue its current inflexibility regardless of contrary law or rule. As is clear above, the Forest Service lacks the authority not to comply with the CEQ rules. *Andrus v. Sierra Club*, 442 U.S. 347, 357 (1979).

6. Planning Framework, §219.5 proposed

The proposed rule calls for an assessment that would identify "a potential need to change the unit's plan." It is not clear how the assessment would differ from the 'analysis of the management situation' that was used in the 1982 rules. CLG supports both the assessment and public involvement but notes that the public needs access to the assessment and the underlying record before commenting.

The proposed rule does not limit or tie any land use management changes to the assessment. Unfortunately, on many occasions, the Forest Service lacks the necessary data or information to write an assessment. [E.g. Bridger-Teton National Forest lacking allotment management data showing resource conditions in conjunction with wildlife, big game or livestock or historical assessments of healthy forests). On other occasions, the

Forest Service has prepared a detailed AMS but ignored it when it did not support major changes that reflected political rather than resource objectives. *See e.g.* DPG where rangeland health was improving and meeting original planning standards but DPG wanted to reduce livestock grazing. In short, the 'need for change' was political, not resource based.

If the Forest Service is prepared to rely on data and science rather than politics, then it needs to tie the assessment to later planning decisions. Otherwise, politics of the moment will continue to be the basis for forest management decisions.

The discussion implies that the public would have access to the assessment data but does not address how.

> The assessment phase would allow for early public participation—well before a proposed action—so that stakeholders could engage in joint fact-finding and develop a mutual understanding of the interconnections among social, economic, and ecological communities and systems. The development/ revision/amendment element of the framework responds to the public desire to help develop and provide meaningful input to proposals for land management plans.

76 Fed. Reg. at 8487.

The proposed rule does not address how that information will be shared. Currently, the Forest Service will not provide such information to state or local governments without a Freedom of Information Act (FOIA) request and will often assess prohibitive search and copying costs. When local governments request a fee waiver, the Forest Service will routinely deny the requests on the basis that the local governments may benefit financially or fail to show how their request will promote the public interest. North Dakota counties have a fee waiver request appeal that has been pending before the Chief's office since 2005. The documents sought addressed Forest Service records of

road ownership and control, a major issue in the land use plan and the pending travel management plan. Notably here also, the DPG did not invite state and local governments to 'collaborate' or be cooperating agencies and would have imposed a bill for more than $20,000 for the requested records. It is not sufficient that the Forest Service provide a time for comment, it must be prepared to openly share the records upon which a decision will be based and to end the practice of imposing fees as a barrier to the information.

7. Assessments,§219.6 proposed

a. Lack of clear criteria

As written the value of the assessment is severely undercut by the qualification that each unit can decide what kind of assessment is done.

> The responsible official would have discretion to set the scale and scope of the assessment but would engage the public early and would encourage participation in the assessment process. The content of assessments would be used to develop new plans and plan revisions, to develop monitoring questions, and to provide a feedback loop.

Id. at 8487.

This explanation demonstrates how the assessment phase could quickly lose any value. It would, for instance, allow a Supervisor to decide not to use its vegetation monitoring data but instead use only satellite imagery because it was easier to use although less accurate. It would allow the Supervisor to simply write rangelands are in poor condition and do not meet habitat requirements, without any evidence supporting such a conclusion. Without clear standards for assessments, this step will have little value in the planning process.

> Assessments should provide useful information to the responsible official to develop plan components and other content for a new or revised plan, to identify gaps in needed information that might be filled by a monitoring program, to identify changing conditions that the Agency might need to track, or to identify assumptions that should be tested later.

Id.

The foregoing language is even more troubling. First, information gaps cannot be filed by a monitoring program unless the planning process would be suspended for 10 years. Each plan now has a monitoring program so the question should be what does monitoring show. If the units are not actually implementing monitoring, then there should be a good explanation about why this is not occurring. Without monitoring is it unlikely that the Forest Service can substantiate resource conditions or any changes within the accepted scientific meaning of the term.

Finally, the proposed rule needs to state that the Forest Service cannot rely on one time assessments in lieu of monitoring data. Moreover, the Forest Service should be required to accept data from other entities. State university systems and other research departments have important work and studies that should be used rather than discarded because they do not fit the political objectives or were not done by the Forest Service.

b. Reliance on “existing information”

The potential value of the assessment phase is compromised because it must ‘use existing information and be conducted rapidly in order to respond to changing conditions.” *Id*. at 8487.

First, it is well-established that the Forest Service more often than not has little or no existing information. In most cases it has not implemented the monitoring objectives from the prior plans. Indeed, the second generation of plans often defaults to 20 and

30-year old data because that was the last time that the agency had vegetation monitoring.

Similarly, there is little credible forest health data, since that information used to be generated by the timber program. It is too late to assess forest health after the fire.

The proposed rule further permits the use of one-time assessments rather than monitoring data. "However, nothing in this section would restrict the responsible official from gathering new information to address the issues or questions for the assessment." *Id*. 8488. This does not ensure unbiased data development. Instead, it would override monitoring data. The danger is as follows. If the assessment is a windshield review of vegetation in a drought, then the plan will be strongly biased against grazing or recreation and not representative of actual vegetation. A quick and dirty riparian area assessment would suffer from the same infirmities, since it would not establish the causal factors or be based on soils or climate, which also affect riparian area conditions. In short this rule does nothing to improve information or data used for forest management.

8. Plan Development §219.7 Proposed

a. Process

CLG supports the direction to reach out to state and local governments. But as noted above, this will not be meaningful unless the Forest Service is willing to share information and not impose cost-prohibitive barriers to such information. As noted above there is no role for cooperating agency status because the process folds the state and local governments into the public.

b. Plan components

The proposed rule would require plans to adopt "desired conditions, objectives, standards, guidelines, and suitability of areas. Plans could also contain goals, an optional plan component." *Id*. This comes straight out of the 1982 planning rules. If properly used and based on information, it can be an acceptable format. CLG members experience instead shows that standards and guidelines are applied rigidly. Thus, it is ironic that elsewhere in the rulemaking the Forest Service pushes for flexibility but in fact opts for rigid management without regard to specific circumstances or site capability.

CLG previously recommended adopting performance objectives and providing for flexibility on how they are achieved. The proposed rule stays with standards and guidelines which are implemented without exception, even when the assumptions upon which the standards and guidelines are based are proven to be wrong.

Finally nothing in the above format is consistent with adaptive management. The rulemaking preface refers to adaptive management, the planning rule does the opposite.

i. Desired Conditions and Objectives

Nothing in the proposed rule reflects capability or location of the unit of the National Forest System. It may not be possible to achieve native vegetation, especially on acquired lands where revegetation efforts introduced non-native species. Thus, the diversity objective for native species may not be achievable and set all land uses to fail to achieve the desired conditions.

The proposed rule further fails to define if and when such desired conditions must be achieved. As written, they must be achieved immediately, even if the new desired condition is not within the site capability and without regard to the fact that resource conditions changes require time, often several decades. Most current plans provide that the land uses (project level actions) are consistent with the plan, if the objectives

are met or there is progress towards meeting the objectives. Here again, some forest units, *e.g*. adopt project level plans that penalize land users if the objectives are not met now, even though the plan provided for making progress towards meeting the desired conditions or objectives.

This is a very significant distinction, since it is probable that the objectives in a plan are not met in the numerical sense but conditions are and will continue to improve. The proposed rule needs to expressly state that objectives are not mandatory in the sense that if not met land uses will end or must be immediately change. Alternatively, the Forest Service will have to significantly revise objectives to fit actual conditions, rather than the programmatic estimates currently used.

CLG notes that elsewhere the preface describes desired conditions and objectives as aspirational. "Objectives and desired conditions are long-term aspirations whose achievement would depend on the cumulative effect of a number of agency actions, and often on factors outside the agency's control." *Id*. at 8501. Unfortunately, CLG members have learned that Forest Service employees will arbitrarily use these aspirational condition and objectives to justify grazing reductions or removal. There needs to be a lot more education of Forest Service officers at the supervisory and district ranger level.

In the same context, the proposed rule explicitly states that a project must either move resource conditions toward objectives or not preclude eventual achievement of desired conditions or objectives. *Id*. at 8501. CLG agrees with this general statement. It is important however that at least in region 1, the Forest Service is allowing implementation that requires each project to achieve the desired conditions or objectives within five years. This is not only harsh but is a deliberate effort to remove or punish livestock grazing use. The Forest Service owes it to the public and local governments to end this type of arbitrary agency action.

ii. Standards and Guidelines

The preface claims that guidelines will be requirements but are flexible. This statement belies more than 25 years of Forest Service implementation history. It is entirely disingenuous. The rigidity is found in the example regarding longleaf versus loblolly pine forests. *Id*. 848*. The standard does not consider the feasibility of changing the plant species, which is more than just burning a few acres and letting nature take its course. The imposition of a specific percentage further limits flexibility in management, even if the assumption that fire will readily restore the longleaf pine turns out to be wrong.

Moreover, the proposed rule does not limit standards to legal criteria, such as limiting nonpoint source water pollution. Instead the Forest Service is free to invent any standard that it wants to without regard to the impacts on multiple use such as motorized recreation, snowmobiling or livestock grazing.

The adoption of rigid management through standards and guidelines is not adaptive management; it is the opposite of adaptive management.

c. Goals

As defined, the goals are indistinguishable from objectives. When the 1982 planning rules were first implemented, goals were understood to be the long-term or 50-year planning horizon. Without this qualification, the planning rule is both confusing and meaningless.

9. Other Plan Content §219.7 proposed

i. Monitoring plans

CLG supports monitoring but notes that since the Forest Service has never met this objective it seems risky to make it such an important part of the planning rules. Unless

the Forest Service is prepared to actually budget and staff the monitoring program, it will not occur.

The emphasis on rapid change is even more questionable. Monitoring measures the change in resource conditions over time. Sound monitoring practices do not support abrupt management changes based on how conditions look this year. Rapid changes only invite mistakes, since it is not possible to understand all of the causal factors with a one-time assessment that might affect resource conditions. There are numerous occasions when the assumption that land uses are the cause are found to be incorrect. The proposed planning rules makes those kind of mistakes inevitable.

b. Identification of priority watersheds

The proposed planning rule focuses on watershed management even though the Forest Service has very limited authority over water quality and no jurisdiction over water quantity. The Organic Act requires the Forest Service to manage the land to provide favorable conditions for water flows. 16 U.S.C. §475. This language requires the Forest Service to manage the forests to increase water flows, which occur when logging is allowed. CLG assumes that is not the objective of the proposed rule

No other statute grants the Forest Service jurisdiction to manage watershed for water quality. The only authority is to follow a particular state's nonpoint source water pollution rules. Water quality regulation belongs to EPA and is delegated to the respective states. The Forest Service has no such authority.

This provision is based on proposed §219.8, 'water-based sustainability.' Again nothing in any federal law authorizes the National Forest System to be managed for water-based sustainability. In the western states, the legal authority over all surface and groundwater lies with the states by constitutional direction.

CLG members reluctantly conclude that this initiative in particular is aimed at further reducing the multiple uses that may possibly affect the watershed, such as motorized recreation, motorized travel, skiing, livestock grazing, and, of course, logging. Similarly such management focus will spell the end to mining and energy development in the National Forest System units, even though these are the statutorily authorized land uses for the National Forest System.

10. Sustainability, §219.8 proposed

The only apparent standard in the planning rules calls for ecological, social and economic sustainability. No law uses this term and the rules do not adequately define what the Forest Service thinks is sustainable. There would be a significant difference between sustainable indefinitely, notwithstanding factors that we cannot predict, versus sustainable over the life of the plan.

The discussion confuses rather than enlightens.

> require the development of plan components that maintain or restore the structure, function, composition, and connectivity of these systems as a whole and that maintain, protect, or restore key elements within each system.

Id. at 8490.

What kind of function are we talking about. Does structure mean soils or vegetation or both. What is the scope of 'composition.' Connectivity suggests that the Forest Service wants to manage land outside of the National Forest System unit boundaries, when it lacks any authority to do so. Nor is there any guidance on exactly how the Forest Service will identify key elements and what they will emphasize.

a. Wildland Fire

The Forest Service has embraced the concept of 'restoring the role of fire in the ecosystem.' At the same time, the largest component of the Forest Service budget has gone to fighting wildfires. More significantly, we do not see any serious discussion of the adverse impacts of wildfire or fire for that matter on the ecosystem.

The biological opinion for Region 3 is a notable exception where it documents the adverse impacts of fire on habitat for Threatened and Endangered Species. [CITE]. Fires lead to significant soil erosion since it is rarely, if ever, possible to revegetate a fire site before winter rains or snow. The soil erosion leads to increased sediment [pollution] in the water systems. Revegetation is not magically limited to native plant species. Instead wind, birds, and wildlife bring a host of invasive plant species that will out complete native vegetation. So while the land looks green in the press photos, a closer examination will show a significant percent of invasive species. *See e.g.* Forest Service discussion of invasive species on ** Allotment, which burned in 2004 in the Picnic Fire and has been in nonuse.

Fire also displaces and kills wildlife and big game as well as significantly altering or destroying habitat. More recently, sage grouse biologists have questioned the previous wisdom that sage brush needed to be burned to regenerate this habitat component.

b. Water sustainability *Id*. at 8491.

As noted above, the Forest Service has no water regulatory authority, other than to maintain favorable conditions for water flows. 16 U.S.C. §475. Nevertheless, the planning rules attempt to hijack state and federal regulatory schemes by grossly exaggerating the role of the National Forest System management on water systems. Indeed, the Forest Service has affirmatively tried to impede both the operation and expansion of water systems on the National Forests.

It is ironic that it now claims to 'administer more than 90,000 water rights in cooperation with the states. *Id*. at 8491. This is flatly untrue. The Forest Service enjoys a reserved

water right for the primary purposes of the forest reservation as determined at the time of the original reservation. US v. New Mexico, ** U.S. ** (1976). Otherwise, the Forest Service has applied for and received specific water rights for consumptive uses, e.g. range improvements, campgrounds and administrative facilities. In no case does the Forest Service 'administer' the water right, it is granted a water right. Only the respective western states administer water rights.

On the issue of access to and for hydro operations, CLG members have found the Forest Service to be a less than willing 'partner.' Many water cooperatives and rural electric associations operate under special use permits from the Forest Service. While these are of long-duration, the Forest Service regulatory process impedes management and maintenance of water systems on the National Forest System.

The conclusion that there are areas on National Forests where water resources are degraded is one of those general statements without any meaning when made out of context. One could say insufficient vegetation on 10 feet of a riparian area is 'degraded' but what does that mean in the context of thousands of miles of riparian areas? The statement may be technically true but it is not accurate and misrepresents the resource conditions. In comments on the Rangeland Reform Rule EIS, the livestock industry demonstrated that National Forests riparian areas had significantly improved.

Nor does the Forest Service provide any data supporting the premise that current management of the National Forest System currently contributes to poor water quality. While many of the National Forests are headwaters for major water systems, such as the Colorado River or the Missouri River, there is no basis to conclude it is current forest management that has caused problems.

There are many speculative reports that climate change will lead to longer and more severe drought. Any student of American history will understand that the western states have seen numerous periods of drought. None of the reports provides any data to support the theory other than it might happen.

If the Forest Service wanted to increase water flows, it need only resume logging or increase timber sales to increase water yields. For more than 25 years, the Forest Service has reduced its timber program to a mere shadow of its former size. Logging would also address the extreme fuel loads and disease that now threatens a significant number of the National Forests.

c. Riparian areas

Current range management already calls for restoring and maintaining riparian areas. It is unclear what more the planning rule would require.

Planning rules also fail to recognize that many riparian areas are not flowing waterways. The mandatory width is not supportable from a factual or scientific basis and must be deleted.

d. Social and economic stability

Until recently, the Forest Service recognized that it had a statutory obligation to maintain the economic stability of the adjacent communities. 36 C.F.R. §223.88 (1985). The Forest Service erased the role of addressing the impacts on stability of dependent communities during the Clinton Administration along with severing payments to counties from timber sale revenues.

Notwithstanding the agency's efforts to divorce itself from this principle, it is based on the Organic Act and the original intent of the National Forest System. The Organic Act states in part that the forests are to be managed to provide timber for the needs of the citizens of the United States.' 16 U.S.C. §475. Gifford Pinchot, the first Chief of the Forest Service directed the managers to first consider the needs and desires of the local communities. [Pinchot at **]. From this language and direction, the Forest Service

adopted regulations that tailored the timber sale program to consider the stability of the dependent communities. 36 C.F.R. §223.**.

CLG believes that the Forest Service efforts to divorce itself from the local communities was unfortunate and should be reversed. It is not clear that this is what the proposed rule actually does. If the terms were ensuring that the forest management sustained the social and economic structure of adjacent communities, then CLG would support it. As written however, it is apparent that the Forest Service proposes to dictate to the communities what is socially and economically sustainable. This is entirely outside the purview of a federal land managing agency.

e. Custom and culture

Along the same lines, the planning rule purports to consider custom and culture but actually will dictate changes in local custom and culture. It is also significant that the proposed rule only recognizes tribal and Alaska native culture and dismisses rural custom and culture. *Id*. 8492.

The Forest Service invites comments on 'cultural sustainability.' Again this is entirely outside of the agency's authority and one issue that it is poorly equipped to deal with. One need only look at how the Forest Service proposes to transition southeast Alaska away from timber much like how the Forest Service transitioned the Pacific Northwest from timber in the 1990s. The rural towns affected by mill closings never recovered. Minimum wage tourism jobs are not the same as mill or logging work that pays more. They also contribute less to the overall community.

Recreation access is a huge cultural issues. CLG members have seen nothing but road closures on the National Forest System units in Wyoming as well as Utah and Colorado. Despite thousands of signatures on petitions for maintaining motorized access, the Forest Service continues to unilaterally close roads, either independent of travel planning or as part of a travel plan. The Ashley National Forest is a case in point,

where it decided it was ‘too hard’ to inventory the roads to be closed but closed them anyway. This type of action demonstrates that the Forest Service is institutionally incapable of respecting rural custom and culture and proceeds without regard to the consequences of its actions.

11. Diversity of Plant and Animal Communities, §219.9 proposed

NFMA directs that plans:

> provide for diversity of plant and animal communities ***based on the suitability and capability of the specific land area*** in order ***to meet overall multiple-use objectives***, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan;

16 U.S.C. §1604(b). The planning rule notably drops two important qualifications with respect to species diversity, site capability and to achieve multiple use objectives. Instead, the proposed rule makes species diversity a stand-alone objective without regard to multiple use management and without regard to ***the suitability and capability of the specific land area***.

The proposed rule also assumes without any basis in fact that preservation of native tree species will preserve all other native plants. *Id*. at 8493.

This proposed rule also does not consider the fact that NFMA does not require native plant species only plant and animal diversity. Many areas on the National Forest System were acquired and revegetated. The National Grasslands are a case in point where USDA planted crested wheatgrass to restore soils and vegetation following severe drought during the Great Depression. Crested wheatgrass is a persistent non-

native plant and while not politically desirable remains valuable for wildlife habitat and forage. As written the proposed rule would require conversion of the National Grasslands to all native vegetation; a huge and impractical undertaking that would certainly not succeed.

CLG agrees with other comments that the Forest Service has no authority to mandate species viability on the National Forest System. No federal law provides the Forest Service with wildlife management authority. Moreover, more than 20 years of litigation history suggest that the Forest Service cannot get this right.

Along the same lines, the Forest Service has no authority under the Endangered Species Act, and the U.S. Fish and Wildlife Service defines recovery and habitat needs.

12. Multiple Uses, §219.10 proposed

The proposed rulemaking makes an impassioned but entirely wrong case for changing the definition of multiple use based on changing conditions and needs. *Id*. at 8494. Moreover, the Forest Service fails to show that there is no longer a need for timber, recreation, livestock grazing, or habitat for fish and wildlife. Indeed just the opposite is true, the United States citizens continue to need wood products, food, and a place to recreate that does not involve the time and effort that wilderness or non-motorized recreation would require.

Even though Congress recognizes the right of entities to develop the federal mineral estate on National Forest System units, the proposed rule is entirely silent on mining or mineral leasing. 30 U.S.C. §226(g) and (h); Energy Conservation Act, 42 U.S.C. §8855 (“It is the intent of the Congress that the Secretary of Agriculture shall process applications for leases of National Forest System lands and for permits to explore, drill, and develop resources on land leased from the Forest Service, notwithstanding the

current status of any plan being prepared under section 1604 of Title 16.”). It is also notably silent about rights-of-way.

Given this fact, one must assume that the Forest Service intends to sunset all mineral development on the National Forest System units, perhaps with the notable exception of the Bridger-Teton or the Little Missouri National Grassland, which produces most of the oil and gas on the National Forest System.

13. Monitoring, §219.12 proposed

CLG notes that ‘broad-scale’ monitoring is not actually monitoring, since it is unlikely that broad scale assessments will accurately measure resource responses to management changes. The move to broad scale, which is not defined is indicative of Forest Service proposals to use satellite imaging or other broad scale estimates in lieu of actual monitoring. If the Forest Service were not making such significant decisions based on the data, CLG would not object but it does. For instance, Region 4 recently released a direction threatening permit action, suspension or cancellation, if a permittee were to exceed utilization anywhere in the allotment or if grazing occurs before range ready or any other infraction of annual operating instructions or forest plan direction. If the Forest Service were to base a decision that utilization was exceeded based solely on satellite photos or a windshield assessment, then that is not monitoring and is not credible.

Moreover, satellite imagery is both expensive and unlikely to yield the detail necessary to identify causal factors or site capability.

a. Scope of monitoring

The preface suggests that monitoring will address only sustainability and diversity, not the traditional multiple uses. *Id*. at 8498. This too is equally problematic.

The discussion of species to monitor is equally unsatisfactory. Under the 1982 rules, the Forest Service tended to define management indicator species based on popularity rather than associated habitat. The proposed rules adopt a new term ‘focal species’ without any useful criteria.

Moreover, the Forest Service lacks any jurisdiction to management wildlife or fish, but has only authority to managed the habitat for fish and wildlife.

Concept of monitoring does not include assessment and documentation of causal factors. To this day, for instance, Forest Service employees will conclude that livestock grazing is the sole or primary cause of degradation to riparian areas or sites, when further investigation would have revealed heavy use by elk or the fact that the site was an abandoned sheep bedding ground that never returned to native plant species. Similarly, the Forest Service identified grazing as the cause of a riparian area segment not meeting proper functioning condition (PFC) when the changes were due to use a road acres the area for energy exploration. Similarly the default solution is to remove livestock grazing, not to manage the other resource impacts, such as excess elk or moose populations.

14. Plan amendments and administrative changes, §219.13 proposed

a. Rapidity sacrifices accuracy despite adverse impacts on users

The proposed rules again appear to promise rapid decisions, regardless of the impacts or information limitations. This rule documents the failure to actually propose or implement adaptative management. Adaptative management would use desired conditions and continue to change objectives and standards and guidelines based on careful monitoring. The rapid change concept uses broad scale assessments in lieu of monitoring but promises change without revising objectives or standards and guidelines.

It is apparent that the outcome will be the further removal of the multiple uses for the National Forest System, motorized recreation, livestock grazing, timber, and mineral development. Even the retired Forest Service employees recognized that the objective of the proposed rule is to convert the National Forests to a hybrid of wildlife refuges and park, while excluding public use to the greatest extent possible. This contradicts the statutory scheme.

b. Vague direction gives Supervisors broad power to make changes without factual basis

Consistent with the claimed rapidity, the proposed rules would allow the Supervisor virtually unlimited discretion to effect changes with or without an assessment documenting the need for change and with limited collaboration. For instance, the preface explains the supervisor could decide that the standards and guidelines are insufficient to protect a riparian area and could just do an amendment, e.g. remove livestock grazing. *Id*. 8500. This authorizes arbitrary and capricious action, as noted above in past Forest Service actions. A one time assessment often fails to consider or document other causal factors, such as lack of experience on the part of Forest Service employees.

15. Planning records, §219.14 proposed

The rule calls for the Forest Service to prepare a planning record, which has always been the case. It does not address agency policy of charging groups it does not like for providing a record that should otherwise be free of charge. This must change and be explicit.

16. Consistency with Plan, §219.15 proposed

NFMA directs that all permits be consistent with the land use plan. 16 U.S.C. §1604(i). This proposed rule takes the consistency issue to the extreme, thereby negating any

pretense of adaptive management. The proposed rules return to enforcing standards and guidelines as if they were mandatory regulations. "The Forest Service's position has been that a project's consistency with a land management plan could only be determined with respect to standards and guidelines, because an individual project by itself could almost never achieve objectives and desired conditions." *Id*. at 8501.

Consistency direction would appear to preclude mineral development and certainly biases forest management against the multiple uses that led to the establishment of the National Forest System. The preface states:

> However, even when a project is proposed for a reason other than to meet a desired condition, objective, or goal (for example, an unexpected proposed use such as a new permit application), the project would be consistent if and only if it does not foreclose the possibility of achieving any desired conditions, objectives, and goals of the plan.

Id. at 8501. If the Forest Service applies achievement of objectives within the next five years as is the case in Region 1 or some other arbitrary time frame, most if not all mineral development activities will be foreclosed. This is especially true since the Forest Service is redefining multiple uses to ecological sustainability and species diversity and viability. This will have severe and adverse impacts on local communities and ultimately on the National Forest System. Without aggressive management, consultants to CLG members conclude that much of the National Forest System in western Wyoming will burn in catastrophic wildfires. This will displace the agriculture and tourism industry, as well as big game and wildlife. Tentative efforts for a few logging projects will not address a problem of this size or scale. The proposed rule, especially §219.15 will ensure that these wildfires occur.

III. Subpart B Predecisional Administrative Review Process

1. Introduction

CLG disagrees that the Forest Service has either a sound history of resolving issues or that review is unbiased. Instead, in dealing with the Forest Service on issues relating to roads, public access or agriculture, it has always been apparent that the reviewing officer was fully briefed by the deciding officer and there was nothing independent in the review. Only a year ago, for example, the Forest Service planned major reductions for a grazing permit but had not provided for public comment on the EA. The reviewing officers comments during the 'resolution' strongly defended the process, thereby showing no independence whatsoever. This was also true for the counties' appeal of the Ashley National Forest travel plan.

Unless and until the Forest Service adopts an administrative review process used by the Department of the Interior, it will not conform to Administrative Procedure Act principles of due process.

2. Plan Objections, §219.51 proposed

The proposed rule will restrict objectors not only to those filing written comments but to the specific comments made. *Id*. at 8504. This exceeds even the APA standard, where parties have standing to sue if the issue was raised within the comment period. Again one more indication that the proposed rule is designed to limit public processes not enhance them.

3. Objections §219.56 proposed

The proposed rule would impose very short time frame of 30 days and it would be from publication rather than receipt. This short time period is completely unreasonable if applied to a lengthy EIS. The time periods should be tied to the decision, *e.g.* 30 days if categorically excluded, 60 days for an EA and 90 days for an EIS.

OT	S	RT	DT	EA	F	RI	CE

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PUBLIC SUBMISSION

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Comment On: FS-2011-0002-0001
National Forest System Land Management Planning

Document: FS-2011-0002-DRAFT-2102
Comment on FR Doc # 2011-02989

Submitter Information

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Government Agency Type: State
Government Agency: Alaska State Dept. of Natural Resources

General Comment

See attached file(s)

Attached you will find two files.

1) USFS Planning Rule Proposal and Draft EIS

2) USFS Planning Rule State of Alaska Comments

Thank you
Mary Kay Ryckman 907-269-8426
sent at 230pm Alaska time.

Attachments

FS-2011-0002-DRAFT-2102.1: Comment on FR Doc # 2011-02989

FS-2011-0002-DRAFT-2102.2: Comment on FR Doc # 2011-02989

STATE OF ALASKA

SEAN PARNELL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

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May 16, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 East 500 South
Bountiful, UT 84010

Re: Planning Rule – Proposal and Draft Environmental Impact Statement

Dear Planning Rule Team,

The Governor of the State of Alaska is charged by the State Constitution with protecting and promoting the general welfare of the people of Alaska. As the Governor's Commissioner of Natural Resources, I have land and resource management responsibilities throughout the State.

The people and communities of Southeast Alaska have, for decades, depended heavily on the resources of the Tongass National Forest for their economic well-being. Unfortunately, the centerpiece of this well-being, the Tongass timber sale program, has failed to meet the needs of traditional timber harvesting businesses, communities, and Alaskans and their families. Thousands of Alaskans lost family wage supporting type jobs that were directly or indirectly related to traditional timber harvests. The Chugach National Forest also plays an important role in the social well-being of the people living near Prince William Sound. Management of that forest also has an impact on the citizens of Alaska.

The two national forests in Alaska are the two largest forests in the National Forest System, and together comprise approximately 22 million acres. Large amounts of state land either border these national forests or are within the boundaries of the national forests. The State of Alaska has a very strong stake in the national forest planning process, which determines how these vast acreages will be used over the coming decades.

Over the years, the State has reviewed and performed significant amounts of forestry planning and implementation work on state lands and assisted or provided comments to the United States Forest Service on management of federal forests, including timber sales. During the most recent rewrite of the Tongass Land and Resource Management Plan, the State participated as a Cooperating Agency. Given the experience of state personnel in forestry management it is my sincere hope the planning team will give thoughtful review to Alaska's comments.

While the State of Alaska will continue to submit comments and try to work with the United States Forest Service to ensure the new Proposed Rule will be reasonable and effective, I have serious concerns about the current content of the Proposed Rule. The Proposed Rule focuses on a single type of use or lack of use, protecting forest lands from development, and ignores certain provisions of federal law specific to management of national forests in Alaska, namely, the Tongass Timber Reform Act (TTRA) which requires the USFS to manage national forests in a manner that honestly

and reasonably seeks to meet the demand for traditional timber harvests. This could result in further restrictions and difficulties associated with rebuilding the damaged economy of the Southeast region of Alaska. Additional concerns are set out in the attached comments.

In closing, I urge the USFS to include alternatives for study in the EIS that address our comments and concerns. I would also note that every alternative in the EIS should contain provisions clearly implementing the statutory requirement to allow for various uses of the national forest which include range and timber (16 U.S.C. Section 1604(e)(1). Each alternative must also contain adequate procedures for the USFS to develop, maintain, and revise land and resource management plans for individual National Forests in a manner that coordinates closely with the land and resource management processes and decisions of State and local governments (16 U.S.C. 1604(a).

I look forward to hearing from you. If you should have further questions, please contact our office at 907-269-8431.

Sincerely,

Daniel S. Sullivan
Commissioner

Enclosure

cc: US Senator Lisa Murkowski
US Senator Mark Begich
Governor Sean Parnell
Randy Ruaro, Office of the Governor
John Katz, Office of the Governor
Ed Fogels, Deputy Commissioner Natural Resources
Chris Maisch, Director, DNR Division of Forestry
Andrew Levi; Department of Fish and Game

May 16, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S
Bountiful, Utah 84010

RE: Comments on USDA Forest Service proposed rulemaking for NFS planning

The State of Alaska appreciates the opportunity to comment on the Draft Environmental Impact Statement and Proposed Rule for National Forest System Land Management Planning. The following pages contain the State's formal comments on the Proposed Rule as set forth in the Federal Register, Volume 76, Number 30, dated, February 14, 2011.

GENERAL COMMENTS

The State of Alaska (State) is concerned that certain aspects of the Proposed Rule are not grounded in federal law. This includes the overall approach to multiple use of National Forest System (NFS) lands, the requirement to "*maintain viable populations of species of conservation concern,*" and other matters that have system-wide application. It also includes Alaska-specific matters, such as requiring wilderness reviews in Alaska, which is prohibited by the Alaska National Interest Lands Conservation Act (ANILCA). The planning rule must not expand or alter the statutory authority and responsibility of the USDA Forest Service.

The Proposed Rule is inconsistent with Congressional direction

Legally, Congress alone sets the policies for management of federal lands, and administrative agencies must act within those legislative limits. Congress has absolute power over federal lands under the Property Clause of the U.S. Constitution and, with respect to the NFS, exercises its power through the statutes it enacts with respect to USDA Forest Service activities. *See Kleppe v. New Mexico*, 426 U.S. 529, 539-41 (1976); *United States v. City and County of San Francisco*, 310 U.S. 16, 29-30 (1940). In *Bowen v. Georgetown Univ. Hospital*, 488 U.S. 204, 208 (1988), the court said, An "agency's power to promulgate legislative regulations is limited to the authority delegated by Congress." As a result, the Forest Service only has authority to adopt regulations which conform to, and carry out, the Organic Administration Act of 1897 (OAA), the Multiple-Use Sustained-Yield Act of 1960 (MUSYA), the National Forest Management Act (NFMA), and other applicable laws including, in Alaska, ANILCA and the Tongass Timber Reform Act (TTRA).

Congress, in MUSYA, specified that "national forests...shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes" (16 U.S.C. 528), and directed the Secretary of Agriculture to "develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained there from" (*Id.* § 529). Consistent with these emphases on active forest management and utilitarian use of forest resources, MUSYA

defines "sustained yield" as the "achievement...of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land" (*Id.* § 531(b)). Thus, the Forest Service's statutory mandate under MUSYA is to provide a high-level sustained yield of renewable forest resources (through timber sales and providing areas for recreation and for enjoyment of wildlife resources, for example) and a mix of other multiple use benefits that will "best meet the needs of the American people" (*Id.* § 531(a)). The sustained yield of multiple uses is to be provided "without impairment of the productivity of the land" (*Id.* § 531(a) and (b)).

In TTRA, Congress made specific provision for an on-going commercial timber sale program in the Tongass National Forest. This legislation required the agency to seek to provide a supply of timber from the Tongass that meets annual market demand and the market demand for each planning cycle to the extent consistent with providing for the multiple-use and sustained yield of all renewable resources. Moreover, the law exempted the Tongass from the NFMA's requirement to consider economic factors in the identification of lands suitable for timber harvest. Congress thus recognized the critical importance of the economic benefits to the region of a perpetual commercial timber sale program.

Yet, the Proposed Rule's focus on preserving forest ecology as the centerpiece of all forest planning activities seems to thwart this clear Congressional mandate. The Proposed Rule essentially redefines "multiple use" in such a way that it is reduced to being one of several activities that the Forest Service has to "consider" when deciding how to manage its units. Moreover, some activities like recreation are separated off for treatment as if they are not included in the term "multiple use." The same thing applies to timber, even though timber production is identified in the OAA as one of the two principal reasons for the very existence of the NFS. There is a lot of discussion of "multiple uses" in the Proposed Rule with scant attention paid to "sustained yield of the several products and services" to be derived from the "surface resources" of the national forests. "Restoration," so prominent in the Proposed Rule, is not listed as a multiple use objective in either MUSYA or the NFMA. The planning rule needs to more accurately reflect Congressionally imposed intent and the purposes for which national forest lands were designated. The intent of Congress and the purposes for which it created and now sustains NFS lands provide the justification for those lands being managed by a unit of the Department of Agriculture, rather than by a unit of the Department of the Interior, such as the Park Service.

The Proposed Rule is unnecessarily complex and prescriptive

The State of Alaska was represented at all but one of the national roundtable meetings conducted by the Forest Service both prior to and subsequent to the release of the Proposed Rule. The State also filed formal and informal comments with the Planning Rule Team. One theme we heard expressed by a wide range of interest groups at those meetings, and which the State included in its formal and informal comments to the agency, was that the Planning Rule should be simple, concise and as non-prescriptive as possible. This theme was premised on the need to be responsive to the myriad differences between various units of the National Forest System (NFS), including

general ecology matters, forest types and social and economic dependence. In addition, some units of the NFS, in Alaska particularly, operate under additional and different sets of Federal laws, including ANILCA and TTRA.

The Forest Service does not seem to have listened to this advice. The Proposed Rule is obtusely complex, far-reaching and quite prescriptive in many of its provisions. This avoidable mistake will result in a Final Rule that is difficult and expensive to implement and will expose the agency to litigation on many matters that will be difficult to defend or resolve. At the meetings we attended, the Forest Service repeatedly emphasized its desire to produce a rule that would be defensible in court and that would reduce the amount of litigation it has to deal with in administering its activities. Yet, it is proposing a rule that very likely will not produce such conditions. The Proposed Rule seems to resurrect the faulty complexity and prescriptive nature of the 2000 planning rule, with its proliferation of compulsory reviews, procedures and decision-making standards.

As a general observation, the State believes the Proposed Rule unnecessarily and inappropriately undermines the decision making authority of Forest Supervisors and Regional Foresters by standardizing too many aspects of the NFMA planning process. The NFMA specifically designates the Forest Supervisor as the party responsible for developing Forest Plans. The Regional Forester has appeal authority. We believe this was done because Congress appropriately recognized the importance of local decision making in developing successful forest plans for each of the diverse units within the NFS. The Proposed Rule reaffirms the role of the Forest Supervisor in §219.2(b). However, by removing a great portion of the local decision maker's discretion, the Proposed Rule will have the effect of frustrating the clear intent of Congress and the corresponding provisions of the Rule itself.

Multiple use and historic patterns of use

The Proposed Rule does not sufficiently require Forest Plans to provide for the full range of multiple-use opportunities, as appropriate for each forest. One particular purpose (ecological "restoration" for example) must not be given strong preference over mandated multiple uses, especially in areas where such direction would prejudice historic patterns of use, transportation, and dependence by local communities. The following are examples of important historical uses that require attention:

a. Water resources (OAA emphasis)
b. Commercial timber harvest (OAA emphasis)
c. Mineral extraction (1872 Mining Act, MUSYA)
d. Recreation (MUSYA)
    i. Backcountry hiking
    ii. Hunting
    iii. Fishing
    iv. Road access for recreation
    v. Off-road motorized access and use
    vi. Aircraft and boat access

vii. Wildlife viewing

e. Personal use timber extraction (NFMA)

Coordination with state governments

The Proposed Rule does not make it clear that the Forest Supervisor must coordinate the planning process with relevant state governments. Instead, it uses qualifying language such as, "to the extent practicable and appropriate." It is always appropriate for the agency to coordinate land management planning activities with the government of the state in which a national forest resides. In Alaska, for example, the Governor's Office should be consulted and the Forest Service should coordinate carefully with the Alaska Department of Fish and Game and the State Forester in the Department of Natural Resources. The State of Alaska participated as a Cooperating Agency in the 2008 rewrite of the Tongass Land and Resource Management Plan. Providing the State is willing to participate, this should be the rule, rather than the exception, and the Planning Rule should make this clear. See our more detailed comments on this matter in this section and at §219.4.

State fish and wildlife agency authority and responsibility

The State of Alaska is troubled by the failure of the Proposed Rule to acknowledge state fish and wildlife agencies and their respective authorities and responsibilities. The State is concerned the Forest Service indirectly usurps state fish and wildlife management throughout the Proposed Rule. For example, all plans must address desired conditions, which are descriptions of specific ". . . *ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed.*" (219.7(d)(1)(i)) Additionally, plans ". . . *guide sustainable, integrated resource management of the resources within the plan area*...." (219.1(b)) Since "resource" is not defined, it is unclear whether fish and wildlife resources are to be included in this context.

States are responsible for the sustainability of all fish and wildlife within their borders, regardless of land ownership or designation, and have the authority, jurisdiction, and responsibility to manage, control, and regulate fish and wildlife populations – including for subsistence purposes – unless specifically preempted by federal law. As such, in Alaska, the Alaska Department of Fish and Game has primary management responsibilities with regard to fish and wildlife resources, including but not limited to setting population objectives and determining harvestable surplus. Moreover, the Alaska Boards of Fisheries and Game have authorities that include establishing allocations and harvest limits, methods and means of take and access.

The Final Rule must acknowledge the state's primary role with regard to fish and wildlife management. The Forest Service must also recognize that the public comments received in support of certain required state management activities are outside the scope of the planning rule. The statement that "*plans and their amendments reflect public values*" may not be possible with regard to state fish and wildlife management.

State forest management coordination

Because of the interconnected nature of various threats to forests, and the substantial federal forest ownership in Alaska, it is important that the new planning rule require engagement between the Forest Service and the Alaska Division of Forestry. The ultimate measure of success for any planning rule will be on-the-ground accomplishments that improve forest health and support healthy and sustainable local forest communities and their economies. To be successful, a planning rule must afford enough flexibility for regions and forests to address the issues unique to them, while providing a solid framework for management activities that ensure the ecological, social and economic sustainability of forests and communities. We believe that state foresters can and should play a unique role in the planning process. As outlined in more detail in our comments on Section 219.4, we encourage revisions to the Proposed Rule to ensure that Statewide Forest Resource Assessments and Strategies (Forest Action Plans) are more effectively incorporated into planning efforts and that state foresters are tapped to provide local expertise as the USFS looks to advance its "all-lands" management approach.

Alaska-specific concerns

The State of Alaska is extremely concerned about the socio-economic situation in Southeast Alaska, where timber harvest and forest products manufacturing has historically provided the principal means of year-round employment and economic activity. We are particularly concerned about the Proposed Rule having a long-term impact on conditions that are unique to Alaska's two national forests, the Tongass and the Chugach. The Tongass especially must remain available as a source of materials upon which to base a viable industry. The Tongass is the largest forest in the National Forest System and is very largely an intact ecosystem. It contains vast tracts of old growth timber stands, most of which are off limits to timber production and other development activities. Of the nearly 17 million acres within the Forest, approximately 10 million acres are forested, including approximately 5.6 million acres of commercial forest land. Since industrial scale harvesting began in the mid-1950s, slightly less than 500,000 acres have been converted to second growth condition. More than 60% of this second growth acreage is, however, now off limits to further development under the current Tongass Land Management Plan (TLMP) and the provisions of Federal law.

According to the most recent TLMP FEIS, as of 2008, across all ownerships in SE Alaska (including the heavily harvested Native corporation lands), 87% of the original Productive Old Growth (POG) is still standing. If you break out the high-volume productive old growth, the percentage is still 82%. If the Forest Service were to fully implement the selected alternative for the 2008 TLMP (that is, achieve the maximum allowable harvest) *and* if all Native corporations perform maximum harvest levels on all their landholdings, after 100 years, there would still be 76% of the original POG in place. By that time, much of the early harvest second growth would be well beyond the stem exclusion stage and be contributing significant value to key wildlife species as well supplying merchantable volume to the commercial timber sale program.

Moreover, Native corporations have completed first rotation harvests on most of their timberlands, and nearly two decades have passed since industrial scale timber harvests peaked on the Tongass. While there are some issues of concern, there are no scientific data rejecting the assertion that ongoing harvests at the level envisioned in the 2008 TLMP cannot take place in a manner compatible with all other uses of the forest, including sustainable wildlife and fish populations. In fact, a very deliberative conservation strategy is part of the 2008 TLMP. It incorporates both implementation and effectiveness monitoring protocols for various standards and guidelines to ensure the continuance of sustainable populations.

Therefore, the new planning rule must avoid prescriptive instructions that would preclude a revised plan from addressing unique situations like those in the Tongass in a way that will benefit local communities and their people by providing a timber sale program adequate to sustain a healthy and vibrant economy. This can be accomplished while simultaneously employing a realistic and effective conservation strategy for fish and wildlife. Yet many of the provisions in the Proposed Rule, detailed below, are likely to hinder this important goal.

General Comments on the Draft Environmental Impact Statement (DEIS)
The range of alternatives presented in the DEIS is inadequate. The alternatives examined did not include the 2008 Rule that was promulgated in response to the legal demise of the 2002 Rule. The 2008 Rule was set aside by the court on procedural grounds alone; it was not deemed unacceptable on substantive grounds. Moreover, it was the Government's most recent effort at promulgating a rule to replace the 1982 Rule. It should therefore have been considered in detail as an alternative in the DEIS.

Among the range of alternatives set forth in the DEIS, the State clearly cannot support Alternative A, the Proposed Rule, in its present form. The reasons are set forth in detail in the following comments. As we stated in our previous comments during this rulemaking process, the State supports a planning rule that tracks closely with the requirements of the NFMA and other federal laws governing plans and activities on Forest Service lands. Therefore, we would be more comfortable with the selection of an alternative in line with Alternative C. Alternative C is much less complex and prescriptive than Alternative A, and generally limits itself to following the dictates of the NFMA. Alternative C would, therefore, reserve a level of flexibility to Forest Supervisors when developing forest plans for units under their authority that we believe is needed if forest plans are to be sensitive to the unique needs of the regions in which they exist. According to the fiscal analysis included in the DEIS, Alternative C is also much more cost effective, with an estimated cost of implementation running nearly $24 million less per year than the Proposed Rule.

The Proposed Rule will clearly have an economic impact greater than $100 million and is, therefore, a "major rule" subject to the provisions of 5 U.S.C. 801-808. The State does not believe the Forest Service has provided an adequate Regulatory Flexibility Act analysis of the Proposed Rule setting forth its potential impact on small businesses, as required by Federal law. The DEIS is, therefore, deficient.

SECTION-SPECIFIC COMMENTS ON THE PROPOSED RULE

Section 219.1(c).
The MUSYA specifies that "national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes." Without a legal basis, the Proposed Rule adds "spiritual, educational, and cultural sustenance." While the SOA strongly supports the idea of protecting heritage lands and culturally significant sites, we are concerned section 219.1(c) proposes new protections for new uses, beyond those contemplated in the MUSYA. The Proposed Rule must follow Congressional direction. We request the Forest Service review the Proposed Rule and identify areas where Congressional direction is not followed, such as 219.10 where aesthetic values are mentioned, and remove those sections. It is inappropriate for the Planning Rule to establish requirements that conflict with Congressional direction or expand the management authority of the agency as established by Congress.

Section 219.1(g).
While we understand this is not intended as a complete list of laws and regulations with which plans must comply, we request that ANILCA be included, especially in recognition that the Wilderness Act (which is listed) is amended by ANILCA for all designated Forest Service Wilderness in Alaska (5.7 million acres), as well as the Nellie Juan Wilderness Study Area. In addition, there are other important provisions in ANILCA, such as Title VIII (subsistence) which apply to *all* federal public lands in Alaska. Furthermore, one section of ANILCA, Section 1323(a), applies to all NFS lands nationwide. This important and unique law, which provides specific direction on the management of federal lands in Alaska, deserves explicit recognition in the planning rule.

In addition, the State believes the Proposed Rule should include TTRA among the laws that must be followed in developing land management plans under NFMA. TTRA gives explicit direction to the Forest Service with respect to multiple use management on the Tongass National Forest in Alaska. Of particular interest to the State is the TTRA provision codified at 16 U.S.C. § 539(d), which says that the Forest Service must "seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such forest and (2) meets the market demand from such forest for each planning cycle." This language is in keeping with the OAA which states that national forests shall furnish "a continuous supply of timber for the use and necessities of citizens of the United States" (16 U.S.C. §475). A major concern of the State regarding the Proposed Rule is that future management plans for the Tongass will hinder the agency's ability to satisfy the timber supply provisions of TTRA since the emphasis of the rule reflects a prejudice against commodity production. If the rule were to explicitly direct the Forest Service to conform future plans to TTRA, a step would be taken toward addressing this concern.

Section 219.3.
The Proposed Rule requires the "responsible official" to "take into account the best available scientific information . . ." The Proposed Rule further requires the responsible

official to document the process, sources and type of information considered in reaching a determination of what constitutes the "most accurate, reliable and relevant" scientific information used in "every assessment report . . . plan decision document . . . and monitoring evaluation report."

While we understand the importance of science in land management planning and appreciate the emphasis the Forest Service places on science, we are concerned this requirement is overly burdensome and opens the Forest Service to possible litigation. It may prove difficult if not impossible to demonstrate that the scientific information used is the "most accurate, reliable, and relevant information available." Ultimately, the Forest Service may be required to prove in court that it "identified and appropriately interpreted and applied" the "best available scientific information." The deference historically accorded by the court to the agency in its discretionary use of information may be obviated by this provision of the Proposed Rule. Moreover, with regard to fish and wildlife resources, state fish and wildlife agencies have primary management responsibilities and the Forest Service should not put itself into the role of making independent judgments regarding any state's scientific work and conclusions.

Section 219.4.
This subsection lists a variety of government bodies that should be consulted in the planning process. While States are generally listed, we request specific recognition of state fish and wildlife agencies, as these agencies have management authorities that apply across all land ownerships within the state, including National Forests and Grasslands.

In addition, §219.4(b)(1) of the proposed rule says the "responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal Agencies, and State and local governments, **to the extent practicable and appropriate**" [emphasis added]. The caveat to the requirement emphasized above, is of concern to the State. It is always appropriate for the agency to coordinate land management planning activities with the government of the state in which a national forest resides, and this should not be an optional activity for the Forest Service during the formulation of management plans or revisions thereof.

Furthermore, the state forester should be consulted to ensure a coordinated approach to planning across land ownerships is considered. In June of 2010, state forestry agencies in every state and U.S. territory completed Statewide Forest Resource Assessments and Strategies (Forest Action Plans) that provide important localized data on the current state of forests across all management boundaries. While we strongly believe that these Forest Action Plans can and should be utilized by the USFS in forest planning efforts, there is no guarantee of such consideration or cooperation under the language of the proposed rule. Additionally, any decision by the responsible official to exercise the discretion afforded under the ambiguous language of the proposed rule to not coordinate with an otherwise qualifying entity could become the subject of costly

and time consuming litigation that would consume resources better utilized in on-the-ground management.

We are concerned that, as written, the Proposed Rule may not recognize the unique role and contribution to be made by state and local partners who have already undertaken targeted planning efforts, such as the Forest Action Plans. We urge the Forest Service to strengthen the language of §219.4 to ensure that coordination and collaboration will, at the very least, continue as envisioned under the 1982 rule. The coordination section of the Resource Management Planning regulations for the Bureau of Land Management (43 CFR §1610.3-1) provides an example of stronger language relative to coordination and collaboration with other federal, state and local governments and Indian tribes. Section 1610.3-1 provides flexibility to address inconsistencies between federal and non-federal government plans, and to develop management plans in collaboration with cooperating agencies. It further mandates that plan developers invite outside agencies to participate as cooperating agencies and that other federal, state and local and Indian tribes are provided "opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs." We request that the Forest Service consider similar language in providing opportunities for other federal, state, local governments, tribal entities and Alaska Native Corporations to take a more active role in the planning process.

Section 219.6.
The Proposed Rule establishes an entirely new layer of planning and preparation for plan revisions, amendments and development in what it calls "assessments." While §219.6 presents instructions for the process and content of assessments, the working definition and purpose for the assessments is set forth in §219.5. It would appear that at least some of the assessments described in these two subsections could violate NEPA, given their scope and the degree to which they may affect present and future Forest Plans developed under NFMA and this planning rule, if adopted.

The assessment process creates a plethora of new obligations for the Forest Service to perform, including notifying and encouraging various parties to participate in the assessment. Moreover it requires extensive documentation associated with every assessment that is performed. It is difficult to determine what all this activity is expected to accomplish apart from generating a lot of new papers for both the government and the public to study and discuss. It is also difficult to see how this differs in purpose from the periodic plan reviews that are already required under NFMA and from evaluative work that is routinely performed in conjunction with project level NEPA documents.

The State recommends that these burdensome new requirements be deleted from the Proposed Rule and the "planning framework" described in §219.5 be revised accordingly.

Section 219.7(c)(iv).
This part of the Proposed Rule requires the agency to "*identify potential wilderness areas and consider whether to recommend any such areas for wilderness designation.*"

However, ANILCA **prohibits** further wilderness studies on Forest Service lands in Alaska unless the agency is specifically instructed by Congress to conduct them.

> ANILCA Section 101(d) states:
> *This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people… Congress believes that the need for future legislation designating new conservation system units… has been obviated thereby.*
>
> Specifically, Section 708(4) states:
> *Unless expressly authorized by Congress the Department of Agriculture **shall not** conduct any further statewide roadless area review and the evaluation of National Forest System Lands in the State of Alaska **for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System**.* [emphasis added]

We request the rule reflect this prohibition of Federal law and suggest the following revision of the Proposed Rule:

> *Except where preempted by law, identify potential wilderness areas….*

Section 219.7(c)(v).
This section generally directs the agency to identify eligible rivers for inclusion in the National Wild and Scenic Rivers System. ANILCA also prohibits new Wild and Scenic River reviews in Alaska.

> ANILCA Section 101(d) states:
> *This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people… Congress believes that the need for future legislation designating new conservation system units… has been obviated thereby.*
>
> Specifically, Section 1326(b) states:
> ***No further studies** of Federal lands in the State of Alaska for the single purpose of considering the establishment of a **conservation system unit**, national recreation area, national conservation areas or for related or similar purposes **shall be conducted unless authorized by this Act or further Act of Congress**.* [emphasis added]

The definition of "*conservation system unit*" in Section 102(4) includes wild and scenic rivers. Congress designated numerous rivers with passage of ANILCA and provided no

direction to study additional rivers that would defeat the general applicability of Section 1326(b).

We recommend modifying this section of the Proposed Rule as follows:

Except where preempted by law, identify the eligibility of rivers…

Section 219.7(d)(1)(i).
Desired conditions are ". . . *specific… ecological conditions of the plan area… toward which management of the land and resources should be directed*." The State maintains that the Forest Service should not be setting desired conditions for fish and wildlife species. States are responsible for setting fish and wildlife population objectives within their borders, and the desired condition process seems too closely related to population objectives. We request the Final Rule specifically state that desired conditions for fish and wildlife species are not to be implemented as that is a role of the States.

Section 219.8.
The explanation of the proposed rule states that the "*proposed rule considered the ecological, social, and economic systems as interdependent systems, which cannot be ranked in order of importance*." It then goes on to say, "*the agency has more influence over the factors that impact ecological sustainability on NFS lands (ecological diversity, forest health, road system management, etc.) than it does for social and economic sustainability (employment, income, community well-being, culture, etc.)*." This presumption is reflected throughout the Proposed Rule, and results in the Proposed Rule emphasizing environmental and ecological efforts and activities, to the detriment of social and economic matters. This unacceptable imbalance violates the clear intent of Congressional direction for management of NFS lands and will lead to continued hardships for communities whose economies are dependent upon the National Forests for raw materials, such as timber.

Furthermore, it may not be feasible in Alaska to implement §219.8(a) of the Proposed Rule, especially with respect to water resources. The available data for National Forest lands in Alaska are inadequate to satisfy the Proposed Rule's requirement for addressing water issues. There are very few stream gauges available in Alaska's National Forests to determine water discharges and availability. There are even fewer locations in these Forests where groundwater information is available, which means planners will be unable to delineate sole source aquifers used for public water supply. We recommend concentrating on collecting baseline hydrology data in order manage water resources. Alternatively, the requirements for water-related data should be waived for the Tongass and Chugach National Forests.

Section 219.9.
This subsection requires plans to "*include plan components to maintain the diversity of plant and animal communities . . .*" The definition given in §219.19 of "plant and animal communities" includes any "naturally occurring" assemblage of "plant and animal

species living within a defined area or habitat." This encompasses an unbelievably large universe of species. We have several concerns with this.

First, this definition does not limit the obligation of a plan to provide for diversity among vertebrate species, as the 1982 Rule did (36 CFR 219.19). It has been difficult enough for the agency to perform at that level of requirement, without taking on the vast amount of data-gathering and analysis that will be required if non-vertebrate species are included.

Second, the new requirements of §219.9 in the Proposed Rule do not link the diversity provisions to meeting multiple use objectives as required both in the 1982 Rule and in the underlying requirements of law as set forth in NFMA, §6(g)(3)(B).

The State of Alaska requests that the Proposed Rule require plans to "*provide the diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple use objectives*," which is required under provisions of the National Forest Management Act (NFMA).

There is no requirement under the NFMA to maintain "viable populations" as required in Section 219.9(b) of the Proposed Rule. Furthermore, viability is a poor management threshold for most fish and wildlife populations including those that receive human use. Sustainable populations provide for both human use and biological integrity over time. Viability is a very low threshold and could arguably be maintained at a level slightly above what may prompt a petition for an Endangered Species Act (ESA) listing. Managing habitats for viability as a bottom level is poor resource management. The Proposed Rule should make provision for a standard of sustainability for appropriate species and should require the agency to cooperate with state fish and wildlife agencies in identifying that threshold and the habitats required to maintain it.

Third, §219.9(b)(3) of the Proposed Rule requires plans to "maintain viable populations of species of conservation concern within the plan area." This appears to go beyond the statutory requirement to maintain diversity of plant and animal communities. Under the new rule, the Forest Service would not only be obligated to provide for ecological conditions that support recovery of threatened and endangered species and to conserve candidate species, it would now be obligated to assume a major role in ensuring the "viability" of "species of conservation concern," an undisclosed and potentially ever-expanding number of species. Based on the Nature Serve list for Alaska for species ranked S1-S3 or G1-G3, this potentially adds hundreds of additional species to which the rule would apply in Alaska alone. This overly broad approach to managing habitat goes beyond what is contemplated under the NFMA and the ESA and could result in the implementation of unnecessary conservation actions to the detriment of multiple use management. The potential cost and the likelihood of exposure to litigation caused by taking on this responsibility are staggering. The State, therefore, recommends eliminating this category or making it clear that implementation is not mandatory.

Fourth, the fiscal limitations which are included in §§219.10 – 219.11 are absent from §219.9. This seems to run contrary to language in the "Section-by-Section Explanation of the Proposed Rule," found on page 8491 of the Federal Register notice. The relevant sentence reads, "The proposed rule considers the ecological, social, and economic systems as interdependent systems, which cannot be ranked in order of importance." Yet, by putting fiscal limitation caveats on "multiple use" and timber development responsibilities, but not putting a similar caveat on the agency's duty to provide for diversity of plant and animal communities, the Proposed Rule clearly makes a preferential choice in favor of ecological considerations. With respect to ESA requirements, this may be justifiable, (although duplicative and unnecessary to include in the Planning Rule), but with respect to §219.9(b)(3), we believe it is not.

Fifth, §219.9(b) specifies a requirement for components that "provide for the maintenance or restoration of ecological conditions in the plan area" that will contribute to recovery of threatened and endangered species (T&E species) and of candidate species. The State supports efforts to address recovery of T&E species. However, neither the NFMA nor the ESA place an obligation upon the Forest Service to recover or protect candidate species. Moreover, with respect to candidate species, the State has concerns because of language in the explanatory section of the Federal Register notification, found on page 8493 of the notice. The language says the "proposed rule would represent a higher level of protection for candidate species than currently exists in the planning process while still recognizing that candidate species may not have viable populations. Protection requirements for candidate species may at times contradict the protection requirements of other species or other management objectives."

The State urges the Forest Service to reconsider including requirements for forest plans to mandate added levels of protection for candidate species that go beyond the requirements of law, especially in circumstances where those protections would "contradict . . . other management objectives." Taking extraordinary measures on behalf of candidate species, above and beyond any actions required by ESA, that would hinder multiple use objectives that are required by law, should not be mandated by the planning rule.

Finally, states have primary management responsibilities for fish and wildlife within their borders and manage said fish and wildlife for sustainability. We have significant concerns, and strong objection to the statement on page 8495 of the Federal Register, which states the Proposed Rule "*is not intended to require that units support the population goals of state agencies*." **This intent must be removed in the Final Rule.** Maintaining habitats within the planning area consistent with state fish and wildlife population objectives would meet Forest Service requirements for maintaining diverse plant and animal communities. It would also be consistent with the Master Memorandum of Understanding between the Forest Service and the Alaska Department of Fish and Game.

> *The Forest Service shall: Recognize the Department as the agency with the authority, jurisdiction, and responsibility to manage, control, and regulate fish and wildlife populations on NFS lands except to the extent that such authority is superseded by federal law.*

Section 219.10(a)(1).
We question the inclusion of "recreation values." While we recognize that individuals of the public may place high importance on the values they gather from a certain place, these values are subjective and nearly impossible to measure. We request the language, "*recreational values and settings*" be replaced with "*recreational opportunities*."

Section 219.10(b)(1)(i).
We question the requirement to identify desired conditions for "*scenic landscape character*." While ANILCA does talk about "scenic values," we are unable to find Congressional direction for a "scenic landscape character" classification anywhere in the MUSYA, the NFMA or the WSRA, nor can we find such a reference in any other Federal law governing the management of Federal lands. Without a demonstrable nexus with Federal law, this provision, *as a requirement*, appears to overstep agency authority in a way that could frustrate the intent of Congress that NFS lands are to consist of working forests to the extent consistent with other multiple use objectives.

Section 219.10(b)(1)(iv).
This portion of the Proposed Rule sets forth "requirements" for plan components when a new plan is developed or an existing plan is revised. The provisions of (b)(1)(iv) purport to be based upon provisions of the Wilderness Act. The Act, at Section 2(a), states that to protect these areas the administering agency shall preserve their wilderness character. However, the Proposed Rule truncates this Section, leaving out that ". . . *wilderness areas… shall be administered for the* ***use and enjoyment*** *of the American people in such manner as will leave them unimpaired for future* ***use and enjoyment as wilderness***" and ". . . *wilderness areas… shall be administered… for the gathering and dissemination of information regarding their* ***use and enjoyment*** *as wilderness*." [emphasis added]

Additionally, Section 4(b) of the Wilderness Act states:

> *Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this Act, wilderness areas* ***shall be devoted to the public purposes of recreational,*** *scenic, scientific, educational, conservation, and historical use.* [emphasis added]

By referring *only* to "protection" in sub-section (iv), the proposed rule inappropriately reduces the Wilderness Act provisions to a single protective purpose. In addition, in

stating that plans must "*protect the ecologic and social values and character*" (219.10(b)(iv)), the rule inserts new terminology and direction not found in the Wilderness Act. As such, it appears the Service is infusing agency *policy* that may differ in substance from the underlying law, into a rulemaking intended to establish a *procedural framework* for implementing that law. The State of Alaska objects to this inappropriate policy-making effort and believes that it must be addressed before the Final Rule is adopted. We request the Forest Service fully encapsulate in the Rule that these areas were set aside "*for the use and enjoyment of the American people*" and that "*wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.*" We recommend direct quotation from the act.

Moreover, the Wilderness Act does not require protection of areas recommended as wilderness as stated in the Proposed Rule nor does it require protection of ecologic or social values. This is substantially different from maintaining the area in a manner that does not preclude it from future designation as wilderness, which is all that is necessary to maintain Congress' ability to designate wilderness in the future. We recommend separating the provisions relating to *designated* wilderness areas from the provisions relating to *proposed* wilderness areas.

Section 219.10(b)(1)(v).
Like the Wilderness subparagraph before it, this subparagraph of the Proposed Rule does not fully recognize Congressional direction. The Wild and Scenic Rivers Act protects and enhances the values which caused the river to be included in said system; however, the Act continues, "*without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with* ***public use and enjoyment*** *of these values.*" The intent of the Act is to cause minimal impact to the recreating public. This intent must be incorporated into this subsection.

Additionally, the State is unfamiliar with Congressional direction that requires protection of "*rivers eligible for inclusion in the national wild and scenic rivers system.*" We request that this portion of the subparagraph be removed.

Direction on how to implement the Wilderness Act and the Wild and Scenic River Act is established by separate policy, and decisions on implementation should be determined through the planning process on each distinct NFS unit. The State of Alaska suggests the following language be substituted for Section 219.10(b) to ensure the Planning Rule provides a framework for addressing the issues without contravening the clear intent of Congress:

> (b) *Requirements for plan components for a new plan or plan revision.* (1) The plan must address, including protection measures, as applicable under existing law:
>
> (i) Sustainable recreation;
> (ii) Cultural and historic resources;
> (iii) Areas of tribal importance;

(iv) Wilderness character;
(v) Ecological values;
(vi) Social values;
(vii) River values; and
(viii) Other designated or recommended areas that exist in the plan area, including research natural areas.

Section 219.11.
The State has a number of concerns about this subsection. Paragraph (b), allows harvest of timber to take place on lands deemed not suitable for timber production "as a tool to assist in achieving or maintaining one or more applicable desired conditions or objectives of the plan." In the examples, timber salvage is not listed. Since the list is *inter alia*, this would seem to imply that salvage harvest could be allowed in non-suitable areas. That conclusion is consistent with paragraph (a), where harvest is "prohibited for a period of 10 years," **except** for "salvage sales or sales necessary to protect other multiple-use values." Yet, in paragraph (c), salvage harvest is specifically authorized along with harvest for "sanitation" and "public health or safety" reasons "where consistent with the plan." This final clause and the interplay between the various parts of §219.11 is confusing. We suggest the meaning would be greatly clarified if paragraph (c) were rewritten as follows:

> (c) *Harvest for salvage, sanitation, or public health or safety*. Timber harvest *on lands suitable and not suitable for timber production* may be approved for salvage, sanitation, or public health or safety, where consistent with the plan.

In §219.11(d)(3), the Proposed Rule sets forth prescriptive standards for regeneration harvest methods. This is one of those prescriptive aspects of the Proposed Rule that the State of Alaska finds problematic. Such matters really should lie in the province of Regional Foresters and should be determined by local conditions and the objectives of the plan for a particular forest. There is no scientific basis for the size limits imposed in this paragraph. The second half of this paragraph is strictly a policy call imposed at the national level without any silvicultural or other scientific support.

Moreover, the prescriptions are somewhat ambiguous. The prescription for Alaska reads, "100 acres for the hemlock-Sitka spruce forest type of coastal Alaska." Presumably, this implies the 100 acre limitation would apply across the Tongass landscape, regardless of particular stand composition. But a litigant, who desired to stop a particular timber sale project, could claim, under this prescription, that hemlock-redcedar stands or Sitka spruce-Alaska cedar stands (for example) in the Tongass are subject to the 40 acre limitation for "all other forest types" set forth in the same paragraph. The litigant might lose in court, but the expense and delay of litigation could do unmitigated harm to the timber sale program and to the purchaser. To avoid this difficulty, the State proposes that subparagraph (3) be amended by deleting all language following the sentence that reads, "Plan components must include standards limiting the maximum size limits for areas to be cut in one harvest operation, according to geographic areas, forest types, or other suitable classifications." The remainder of

§219.11(d)(3) and §219.11(d)(3)(i-iii) may appropriately be placed in the Forest Service Manual as direction to the Regions and NFS units, but should not be included in the Rule.

The State of Alaska is encouraged that §219.11 does not impose restrictions on harvest methods, other than imposing maximum opening sizes in harvest units (discussed above). Silviculture considerations must be what drive harvest system requirements. In some forest types and with some tree species, even-age, regeneration harvest systems are the most ecologically advantageous approaches to tree removal and replenishment. In Douglas fir stands in the Pacific Northwest or in Sitka spruce-western hemlock mixed stands in SE Alaska, regeneration can be a problem in uneven age systems such as diameter limit or shelterwood harvest systems because these species are shade intolerant. Moreover, both western hemlock and Sitka spruce are thin bark species and damage to the bark of leave trees during harvest operations can have a significant impact on forest health. Such damage is much more common in uneven age systems. The point is not that even-age regeneration harvests should be used exclusively, but this important option should not be taken out of the timber management toolbox by the planning rule. Regional and forest-level decision making on these types of topics is essential. The agency has an obligation under NFMA to "preserve the diversity of tree species similar to that existing in the region controlled by the plan." This requires that the harvest systems used (except under exigent situations when necessary to achieve a specific purpose and need) do not result in significant type conversions within a NFS unit, which is one predictable result if even age management is not used in some circumstances.

Section 219.12.
We find the monitoring process overly complex and unrealistic. The Biennial evaluation creates the scenario of perpetual agency planning. Also, since it is possible to ever search for more information, we are concerned that monitoring may unnecessarily delay management actions.

Monitoring remains time consuming and costly, and as such, may never be completed. We are concerned this will create a situation where groups opposed to certain activities, for example trapping, will use a lack of "required" monitoring in an attempt to foreclose these activities. We request the Final Rule be modified to make clear that monitoring goals are not preconditions to approve, continue, or renew special use permits or provide for public uses, or state fish and wildlife management activities.

Additionally, Forest Service planning documents should not compete with, or attempt to supersede, monitoring requirements as established by state fish and wildlife agencies. Forest Service monitoring requirements should be designed so as to not affect state fish and game management. To the extent feasible, the planning rule should require the Forest Service to consult and coordinate with state fish and wildlife agencies in all monitoring activities that affect fish and wildlife populations.

Section 219.14(b).
The State of Alaska strongly supports the intent to require on-line posting of planning record documents. Given Alaska's expansive size and limited, or in some cases nonexistent, road system, only those that live within close proximity to the applicable District Office would otherwise be able to obtain needed information. Posting all records on line will also save staff time and paper resources when responding to requests for such records.

Section 219.15.
Under §219.15(d)(1) of the Proposed Rule, a project or activity, to be deemed consistent, must:

- Contribute to the maintenance or attainment of one or more goals, desired conditions, or objectives; or
- Not foreclose the opportunity to maintain or achieve any goal, desired outcome or objective over the long term

The Proposed Rule provides only very general guidance for project consistency evaluation and uses the ambiguous phrase, "long term," to define the evaluation period. First, we recommend defining the evaluation period as either the intended life of the plan or a fixed number of years. Second, we recommend providing clearer guidance for determining consistency or eliminating this provision entirely.

Multiple-use planning (Section 219.10) includes a wide range of activities and uses that must be considered. From these considerations, numerous goals, objectives, and desired outcomes will be developed for a plan. The consistency review requires a project to only "contribute" to maintaining or attaining any of the dozens of goals, objectives, or desired outcomes. If the project does not meet this threshold, the project must then "not foreclose the opportunity to maintain or attain any goals, desired outcome or objective." In a case where a project cannot meet the second requirement for consistency, the inconsistency may be resolved through other means.

- Project modification
- Plan amendment
- Making a project-specific amendment in concert with the approval of the project or activity to be consistent with the plan

The State generally supports sustainable development projects, and the project-level consistency review set forth in the Proposed Rule appears ill defined and open to manipulation or inconsistent application. The ease of challenging projects under the proposed consistency review may result in delays in project authorization and may ultimately discourage investment in development projects on NFS lands. We recommend removing the consistency review language from the Proposed Rule.

Section 219.19.
Conservation
Hunting, fishing, and trapping are important tools utilized by state fish and wildlife agencies to conserve fish and wildlife resources. This definition should reference that importance.

Ecosystem Services
The term "*ecosystem services*" is defined as "*Benefits people obtain from ecosystems, including…provisioning services….regulating services….supporting services….cultural services…*" Applying the term "*services*" to something that is defined as a "*benefit*" is confusing by itself. Furthermore, linking "*ecosystem services"* (a benefit) to "*multiple uses*" is also confusing. The attempt to explain this inclusion in the definition of "*multiple use*" in terms of being part of the NFS' "renewable surface resources" is also unhelpful. Resources and uses are not synonymous. To ensure the rule is understandable and capable of implementation, it is essential that the governing terminology be clear and logical.

Multiple Use
The definition states that, "[e]cosystem services are included as part of all the various renewable surface resources of the NFS." This tends to define "services" as a "resource," which makes little sense. Services certainly are not "a resource" in the same sense as is timber or water. Yet, as mentioned above, the Proposed Rule also defines "ecosystem services" as one of many "uses" by including it within "multiple use." This implies that "ecosystem services" are a "multiple use" just like motorized recreation, hiking, hunting, mining or timber extraction. Moreover, the Proposed Rule sometimes treats "ecosystem services" as if they were the "use" that trumps all other uses. This is thoroughly confusing and seems to indicate that the Forest Service doesn't really know what it wants to do with "ecosystem services" other than use it as some kind of buzzword. This confusing set of definitions needs significant additional refinement, which will have an effect on the whole document.

Sustainable Recreation
The State of Alaska is aware of situations where anti-hunting activist groups have asserted that hunting is not socially sustainable because it is not tolerated by all people. Leaving this term in the definition opens the Forest Service to potential legal challenges. We therefore strongly suggest that the phrase "*socially sustainable*" be removed from this definition.

Subpart B – Pre-Decisional Administrative Review Process

We concur that a pre-decisional review process will likely reduce the administrative burden on the Forest Service. However, we recommend making the requirements for filing and participating in an objection as straightforward as possible so as to not alienate those who comment on the planning process.

The Proposed Rule proposes to replace the present appeal process with an objection process. We recommend retaining the appeal process, *in addition to* the objection process, as these two processes complement one another. The objection process is intended to facilitate earlier collaboration and the resolution of issues, while the appeal process is meant to elevate the decision by the responsible official to the next higher organizational level for reconsideration. We believe both are useful procedures. We further recommend the inclusion of a provision that only allows an appeal to be filed by organizations and individuals who participated in the objection process.

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Government Agency Type: State
Government Agency: Governor's Office

General Comment

See attached file(s)

FS-2011-0002-DRAFT-2104.1: Comment on FR Doc # 2011-02989

FRD-1121

MATTHEW H. MEAD
GOVERNOR

THE STATE OF WYOMING

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Office of the Governor

May 16, 2011

Forest Service Planning DEIS
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Bountiful, UT 84010

Re: Comments on the Notice of Proposed Rulemaking for the National Forest System Land Management Planning Rule

Thank you for the opportunity to comment on the National Forest System Land Management Planning Rule and Draft Environmental Impact Statement.

Wyoming is home to approximately 11 million acres of forested land with 53% of these lands managed by the United States Forest Service. Over half of Wyoming's forest will be managed by the proposed planning rule, making this rule socially, economically and ecologically significant to Wyoming. Local communities are closely tied to the forest and rely greatly on the U.S. Forest Service staying true to its mission of sustaining a healthy, diverse and productive forest while upholding its mandate of multiple use. Therefore, the proposed planning rule must be one which results in implementable forest plans and provides overall direction to achieve a sustainable forest.

Moving forward with the development of this rule, I encourage consistent communication and collaboration between the U.S. Forest Service, state and local governments, and interested publics. State and local government jurisdictions should be recognized and local expertise acknowledged. I believe there is still work to be done to create a sound rule, and I am hopeful from the comments received the U.S. Forest Service will address the issues raised here and by others. I appreciate your consideration of my comments and the views of other interested stakeholders, as we all want the best rule possible.

I offer the following additional comments related to the rule. These comments are of a general nature and state agencies will provide more detail in their individual comments.

PHONE: (307) 777-7434

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Section 219.3 Role of science in planning.

I appreciate the attempt made by the proposed rule to recognize the role of science within forest plans; however, as the language currently reads I question the practical implementation of the mandate, "[t]he responsible official shall take into account the best available scientific information...," (Section 219.3 pg. 8515). There is neither adequate definition within the planning rule to define "best available science," nor is there guidance on how the responsible official determines the "best" science. Failure to define this terminology leaves room for interpretation and potential costly litigation from those who disagree with responsible official's determination of best science.

Section 219.4 Requirements for public participation.

State and local government participation in forest planning is essential. Forest plans set management criteria that directly impact local communities and the ability for members of state and local governments to participate at a cooperator level must be protected. The proposed language fails to provide the needed safeguards to ensure state and local governments maintain their right to cooperator status. The words, "where feasible and appropriate," (Section 219.4(a) pg. 8515); "where appropriate," (Section 219.4(a)(8) pg. 8516); and "to the extent practicable and appropriate," (Section 219.4(b)(1) pg. 8516) do little to instill confidence that state and local governments will be encouraged to participate at a cooperator level. The language should require responsible officials to offer cooperator status to both state and local governments.

While the proposed planning rule directs the "responsible official [to] take into account the discrete and diverse roles, jurisdictions, responsibilities, and skills of interested and affected parties," (Section 219.4(a) pg. 8515) the proposed rule fails to adequately acknowledge the jurisdiction states possess over water and wildlife within the forest. This language must be revised to specifically recognize state jurisdiction pertaining to water and wildlife. I have included further comments relating to wildlife jurisdiction below.

Section 219.8 Sustainability.

The proposed rule summary states, "[t]he proposed rule considers the ecological, social, and economic systems as interdependent systems, which cannot be ranked in order of importance," (Fed. Reg. Vol. 76, No. 30 pg. 8491). I agree with this statement; however, the proposed rule summary is not consistent with the proposed rule language. The proposed rule has specific language differences when referencing ecological systems versus social and economic

systems. The proposed rule language requires, "[t]he plan must include plan components to maintain or restore the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area," (Section 219.8(a)(1) pg. 8518). This language differs from the requirements for social and economic systems where the proposed rule reads, "[t]he plan must include plan components to guide the unit's contribution to social and economic sustainability" (Section 219.8(b) pg. 8518). The specific directive for plan components to: "maintain or restore" ecological systems is more stringent than the directive for plan components to "guide" social and economic sustainability.

I recognize this language difference has been highlighted and explained within the proposed rule summary with the stated reason, "the Agency has more influence over the factors that impact ecological sustainability of NFS lands (ecological diversity, forest health, road system management, etc.) than it does for social and economic sustainability (employment, income, community, well-being, culture, etc.)," (Fed. Reg. Vol. 76, No. 30 pg. 8491). As the rule summary recognized, these three systems: ecological, social and economic are interdependent. To emphasize ecological systems more through this proposed language disrupts the balance these interdependent systems rely on to function properly. Local communities and Wyoming counties are dependent on the balance of these systems for both economic and social reasons. In-state and out-of-state visitors alike, utilize the forest whether it be through development of forest products or recreational opportunities, and the forest must be sustained for these systems to the same extent as ecological systems. I ask you revise this section so the rule language places all three systems: ecological, economic and social on the same level rather than elevating one system higher than the others disrupting the interdependent balance.

Section 219.9 Diversity of plant and animal communities.

The proposed rule does acknowledge states may have management authority over species population; however, states' authority over fish and wildlife should be better outlined in this rule. The Wyoming Game and Fish Department has quality information related to species and their habitats. Their authority as a state management agency should be better recognized within the proposed rule. Responsible officials should be encouraged to utilize state fish and wildlife agencies resources to better streamline the process and prevent unnecessary duplication of work. The call to "maintain viable populations of species of conservation concern within the plan area" (Section 219.9(b)(3) pg. 8518) is a troubling directive when the planning rule summary acknowledges: "[t]he 1982 viability standard at times proved to be unattainable because of factors outside the control of the Agency," (Fed. Reg. Vol. 70, No. 30 pg. 8494). The continued directive to manage for "viable populations" when the Agency acknowledges this goal is a near

unattainable task, is self defeating. Moreover, the vertebrate species stipulation found in the 1982 rule is now removed with the new rule now including native plants and native invertebrates as viable species, creating more work with the added number of species. It is my recommendation this section be revised and the "viable population" language struck. The Agency should focus on factors inside their control such as maintaining habitat, rather than continuing to try to meet a nearly "unattainable" standard.

Section 219.10 Multiple uses.

The proposed rule directs, "the plan must provide for multiple uses, including ecosystem services, outdoor recreation, range, timber, watershed, wildlife and fish," (Section 219.10 pg. 8519). The draft rule later states "responsible officials shall consider...[r]enewable and nonrenewable energy and mineral resource," (Section 219.10(a)(2) pg. 8519) and "[s]ustainable management of infrastructure, such as recreational facilities and transportation and utility corridors," (Section 219.10(a)(3) pg. 8519). In an effort to fully understand what managements should be considered when creating a forest plan it is important to analyze renewable, nonrenewable mineral resources, the need for recreational facilities and transportation and utility corridors.

I recognize the listed multiple uses mandated in the proposed rule closely follow the highlighted multiple uses found in the Multiple-Use Sustained-Yield Act (MUSYA). However, there is an additional multiple-use outside the listed uses found in MUSYA: "ecosystem services." Ecosystem services is not a clearly defined term and on page 8494, Section 219.10 of the Federal Register states in reference to the term: "[o]ver time, the Agency expects understanding will continue to evolve." Because an evolving multiple-use is provided for within the rule that is not recognized under MUSYA, I argue other multiple use can also be provided for. I request Section 219.10 (a) (2-3) be included as multiple-use that must be provided for within forest planning. Mineral use, recreational facilities, and transportation and utility corridors are also part of multiple-use on the landscape, and should be provided for rather than left to the discretion of the responsible official. Creating a plan without analyzing the full range of multiple uses is inefficient and causes forests to reanalyze these options later creating potential conflicts with existing forest management plans.

Section 219.12 Monitoring.

The monitoring portion of the proposed rule allows the responsible official the discretion to set the monitoring program which includes considering "[m]easurable changes on the unit

related to climate change and other stressors on the unit," (Section 219.12 (a)(5)(v) pg. 8520). "Climate change" is a politically laden term for which there is little consensus the role it plays in natural resource management. This ambiguous consideration invites bureaucratic inaction and litigation. The proposed ruled does not describe how a responsible official will measure climate variation within the monitoring program. At what level is the responsible official to consider climate data: at the local, state, regional, national or global level? Based on these missing specifics and the lack of consensus on the issue, I recommend removing all references to "climate change" throughout the document. If the term remains, it must be well defined for the reader and official to understand how it is to be applied.

Subpart B –Pre-Decisional Administrative Review Process.

I applaud the Agency's effort to collaborate with disparate parties to avoid litigation by providing an opportunity for a pre-decisional review process that allows interested organizations and the public an independent review and potential resolution to an issue before a plan, plan amendment, or plan revision is finalized. My reservation is with the authority delegated to oversee that process. Under Section 219.56(e) it states "[t]he reviewing officer is a line officer at the next higher administrative level above the responsible official." What concerns me is the line officer at the next highest level, in all likelihood, has participated in the action, which has the potential to provide for a less than objective decision. Although I appreciate the desire for the decision to be made as close to the process as possible, I would request that you identify an individual that ensures absolute objectivity.

Roadless Management

The planning rule possesses a unique opportunity to concentrate on resolving the roadless issue and must be addressed within the proposed rule. The Wyoming roadless inventory is grossly inaccurate. Roads are scattered throughout inventoried roadless areas. For example, one inventoried area located in the Bridger Teton National Forest has a scenic byway meander through the middle of the "roadless" area. This inaccurate inventory prohibits forest supervisors and managers from managing areas with more appropriate management directives and disturbs the cohesion the forest planners work to achieve when creating forest plans. Within forest plans, roadless designation continues to cause confusion with responsible officials who often having conflicting direction at how to address the issue. By including roadless inventories in forest planning, it brings the decision to a local level and allows roadless areas to be allocated to appropriate management areas rather than sporadically placed in areas that make little sense. Proper inventory and allocation of these areas are essential to productive management on the

forest. The proposed planning rule is the appropriate avenue to address the roadless issue and I urge its inclusion in the planning rule.

I appreciate the opportunity to comment on the National Forest System Land Management Planning Rule and Draft Environmental Impact Statement. If you have any questions please do not hesitate to contact me. It is my hope there will be continued dialogue and collaboration as we work to create the best rule possible so the forest can thrive for generations to come.

Best regards,

Matthew H. Mead
Governor

cc: Senator Mike Enzi
Senator John Barrasso
Representative Cynthia Lummis
Region 2 Regional Forester Rick Cables
Region 4 Regional Forester Harv Forsgren

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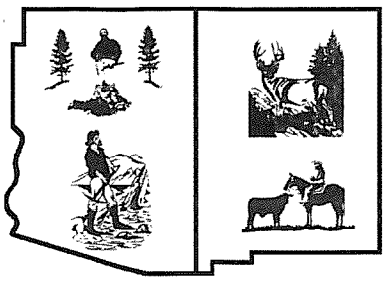
General Comment

See attached file(s)

Attachments

FS-2011-0002-DRAFT-2106.1: Comment on FR Doc # 2011-02989



Coalition Of Arizona/
New Mexico Counties
For Stable Economic
Growth

"Working together for responsible management."

May 16, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 East 500 South Bountiful, UT 84010

RE: Planning Rule and Draft Programmatic Environmental Impact Statement

Dear Sirs and Madams,

The Coalition of Arizona/New Mexico Counties (Coalition)[1] thanks you for providing the opportunity to comment on the proposed 219 planning rules and the draft programmatic environmental impact statement (DEIS). The Coalition prefers Alternative C of the DEIS and believes the public, resources and the National Forests would be better served through adopting regulations consistent with Congressional intent for management planning.

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

§ 219.1 Purpose and applicability.

.....

(c) The objective of this part is to guide the collaborative and science-based development, amendment, and revision of land management plans that promote healthy, resilient, diverse, and productive national forests and grasslands. Plans will guide management of NFS lands so that they are ecologically sustainable and contribute to social and economic sustainability, with resilient ecosystems and watersheds, diverse plant and animal communities, and the capacity to provide people and communities with a range of social, economic, and ecological benefits for the present and into the future, including clean water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural sustenance.

Comment:

The Proposed Regulations mandate that "ecological sustainability" is the overarching objective for all national forest management. According to the Forest Service ("FS"), ecological sustainability is "the maintenance or restoration of ecological system[s]". See Proposed Regulation sections 219.5 and 8.

[1]The Coalition is comprised of the Arizona Counties of Cochise, Gila, Graham and Greenlee and New Mexico Counties of Catron, Chaves, Eddy, Harding, Hidalgo, Lincoln, McKinley, Otero, Rio Arriba and Sierra along with representation from livestock, timber, mining, sportsmen, outfitter, farming and small business industries, as members of the Coalition of Arizona/New Mexico Counties (Coalition). The population of the combined membership exceeds 488,167.

Indeed, nearly every aspect of Forest Service planning envisioned by the Proposed Regulations is subservient to this objective requiring that all national forest lands would be managed to achieve ecological sustainability. Making land use planning contingent solely upon ecological sustainability is a clear violation of the applicable law.

Under the Organic Act of 1897, 16 U.S.C. §475, ("Organic Act"), national forests were expressly reserved for two purposes: to maintain favorable conditions for water flows and to ensure a continuous supply of timber. With passage of the Multiple Use and Sustained Yield Act, 16 U.S.C. §528 et. seq. ("MUSYA"), Congress allowed the Forest Service to manage "renewable surface resources of the national forest for multiple use and sustained yield of the several products and services obtained therefrom." However, while the "multiple use" mandate of MUSYA broadened the purposes for which national forests may be managed, the Act did not further reserve national forests for multiple use purposes. See United States v. New Mexico, 438 U.S. Pgs. 696, 706-18 (1978). MUSYA defines "sustained yield of the several products and services" as "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of various renewable resources of the national forests without impairment of the productivity of the land." 16 U.S.C. § 531(b). Nowhere does MUSYA mention ecological sustainability or authorize it as a dominant use.

Although the National Forest Management Act ("NFMA") does not define sustained yield or sustainability, NFMA requires forest planning to be consistent with the MUSYA. 16 U.S.C. §§ 1602,1604. Like the MUSYA, NFMA requires the Forest Service to consider environmental and ecological factors in land use planning. However, also, like MUSYA, NFMA does not elevate ecological factors above any other multiple-use nor does it require that national forest land use plans be contingent only upon ecological sustainability considerations.

The FS Proposed Regulations' attempt to elevate "ecological sustainability" above all other uses, is based upon several faulty assumptions. First, the Proposed Regulations wrongly assume that the "sustained yield" mandates of MUSYA and NFMA require "sustainability." Thus, the Proposed Regulations expand the concept of sustained yield significantly beyond what is allowed by the MUSYA and NFMA. As stated above, "sustained yield" under the MUSYA simply means the maintenance of a regular output of several renewable resources. In contrast, section 219.19 of the Proposed Regulations define "sustainability" as "meeting the needs of the present generation without compromising the ability of future generations to meet their needs." The Proposed Regulations make the maintenance and management of ecological systems the basis for sustained yield management of renewable resources. This is outside the scope of the current statutory authority for the Forest Service. Again, "sustained yield" under MUSYA means that the output of a variety of resources be maintained in perpetuity, and does not require the management of forests pursuant to the concept of "ecological sustainability." The Proposed Regulations are illegal to the extent that they expand the definition of "sustained yield" beyond that required by the MUSYA.

Second, the Proposed Regulations require species diversity under 219.9. While biological diversity indisputably affects certain legitimate uses of national forests, it is not essential to multiple use and sustained yield, as defined by the MUSYA. For example, timber harvest and water flows can be managed on a sustainable yield basis (as required by statute) with little species diversity. On the other hand, some uses, such as recreation, may require a high degree of species diversity (fishing, research, wildlife watching), while some recreational uses of the forest require little or no species diversity (rock climbing, skiing). Still others, such as mining, require no species diversity whatsoever. Certainly, ecological sustainability and species diversity are important considerations in forest land use planning, and are often essential to maintaining certain legitimate uses on a sustained basis. However, the assertion that species diversity is absolutely necessary to maintain the sustained yield of multiple goods and services, is unsupportable and cannot justify elevating the primary focus of land use planning to species diversity. In sum, the Proposed Regulations should report and reflect the true nature and role of ecology in multiple use

and sustained yield management, not elevate it over the Congressional mandates.

Third, the Proposed Regulations wrongly assume that ecological sustainability, as the primary focus of forest planning, best meets the needs of the American people. The MUSYA defines "multiple use" as the management of various renewable resources in a combination which best meets the needs of the American people. 16 U.S.C. § 531(a). Elevation of biological diversity and ecological sustainability to the chief planning factor assumes, a priori, that such values, in all cases, best meet the needs of the American people; this presumption is in error and must be established on a case by case basis.

Fourth, in addition to misreading the mandates of the Organic Act, MUSYA, and NFMA, the Forest Service implies that the enactment of various other laws, including the National Environmental Policy Act ("NEPA"), the Endangered Species Act ("ESA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA") elevates ecological sustainability as the priority of National Forest system management." This is incorrect; none of these statutes in any way change the mandates for the management of national forests. See e.g. Platte River Whooping Crane Trust v. Federal Energy Regulatory Commission, 962 F.2d 27, 34 9D.C. Cir. 1992) (holding that the ESA does not mandate that federal agencies violate their statutory authority in protecting listed species). The courts have made clear, the NEPA is a procedural act only, designed to promote consideration of environmental impacts in federal decision-making, and cannot mandate any substantive result. See Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989).

In summary, the Proposed Regulations are built entirely upon a tenuous foundation. They assume that (1) various statutes require that ecological sustainability be a dominant consideration for all management of national forests, (2) sustained yield of various goods and services derived from the forests cannot be achieved without first achieving ecological sustainability, and (3) that ecological sustainability in all cases is the highest and best use of the forests for the American people. To be supportable, these assumptions would require significant legal, scientific, and economic data. As it is, the Forest Service has submitted no such data. These assumptions are false, therefore, the Proposed Regulations are at their core flawed, and should not be adopted as a rule.

§ 219.16 Public notifications.

The following public notification requirements apply to plan development, amendment, or revision. Formal notifications may be combined where appropriate.

(a) When formal public notification is required. Public notification must be provided at the following times:

(1) To begin the preparation of an assessment for a plan or plan revision, or, when appropriate, a plan amendment;

(2) To initiate the development of a proposed plan or plan revision, or, when appropriate, a plan amendment;

(3) To invite comments on a proposed plan, plan revision, or plan amendment, and associated environmental analysis. For a new plan, plan revision, or a plan amendment for which a draft environmental impact statement is prepared, the comment period is at least 90 days. For an amendment for which a draft environmental impact statement is not prepared, the comment period is at least 30 days;

(4) To begin the objection period for a plan, plan amendment, or plan revision before approval (§ 219.52);

(5) To approve a final plan, plan amendment, or plan revision; or

(6) To announce and describe how a plan, plan amendment, or plan revision process initiated under the provisions of a previous planning regulation will be conformed to meet the provisions of this part, when

appropriate under § 219.17(b)(3).

Comment:

The regulations should state that the responsible official is required to directly notify affected state, tribal and local officials and request their input in a plan development, amendment, or revision at the earliest possible time.

Subpart B—Pre-Decisional Administrative Review Process

§ 219.50 Purpose and scope.

This subpart establishes a pre-decisional administrative review (hereinafter referred to as objection) process for plans, plan amendments, or plan revisions. This process gives an individual or organization an opportunity for an independent Forest Service review and resolution of issues before the approval of a plan, plan amendment, or plan revision. This subpart identifies who may file objections to a plan, plan amendment, or plan revision; the responsibilities of the participants in an objection; and the procedures that apply to the review of the objection.

§ 219.51 Plans, plan amendments, or plan revisions not subject to objection.

(a) A plan, plan amendment, or plan revision is not subject to objection when the responsible official receives no formal comments (§ 219.62) on that proposal during the opportunities for public comment (§ 219.53(a)).

(b) Plans, plan amendments, or plan revisions proposed by the Secretary of Agriculture or the Under Secretary for Natural Resources and Environment, are not subject to the procedures set forth in this section. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the Department of Agriculture.

(c) A plan, plan amendment, or plan revision is not subject to objection under this subpart if another administrative review process is used consistent with § 219.59.

(d) When a plan, plan amendment, or plan revision is not subject to objection under this subpart, the responsible official shall include an explanation with the signed decision document.

§ 219.52 Giving notice of a plan, plan amendment, or plan revision subject to objection before approval.

(a) The responsible official shall disclose during the NEPA scoping process and in the appropriate NEPA documents that the proposed plan, plan amendment, or plan revision is subject to the objection procedures in this subpart. This disclosure is in addition to the public notice that begins the objection filing period, as required at § 219.16.

(b) The responsible official shall make available the public notice for beginning of the objection period for a plan, plan amendment, or plan revision (§ 219.16(a)(4)) to those who have requested the environmental documents or are eligible to file an objection consistent with § 219.53.

(c) The content of the public notice for beginning of the objection period for a plan, plan amendment, or plan revision before approval (§ 219.16(a)(4)) must:

(1) Inform the public of the availability of the plan, plan amendment, or plan revision, the appropriate final environmental documents, the draft plan decision document, and any relevant assessment or monitoring evaluation report; the commencement of the 30-day objection period under 36 CFR part 219 subpart B; and the process for objecting.

(2) Include the name of the plan, plan amendment, or plan revision and the name and title of the

responsible official, and instructions on how to obtain a copy of the appropriate final environmental documents; the draft plan decision document; and the plan, plan amendment, or plan revision.

(3) Include the name and address of the reviewing officer with whom an objection is to be filed. The notice must specify a street, postal, fax, and e-mail address; the acceptable format(s) for objections filed electronically; and the reviewing officer's office business hours for those filing hand-delivered objections.

(4) Include a statement that objections will be accepted only from those who have previously submitted formal comments specific to the proposed plan, plan amendment, or plan revision during any opportunity for public comment as provided in subpart A.

(5) Include a statement that the publication date of the public notice in the applicable newspaper of record (or the Federal Register, if the responsible official is the Chief or the Secretary) is the exclusive means for calculating the time to file an objection (§ 219.56).

(6) Include a statement that an objection, including attachments, must be filed with the appropriate reviewing officer (§ 219.62) within 30 days of the date of publication of the public notice for the objection process.

(7) Include a statement describing the minimum content requirements of an objection (§ 219.54(c)).

§ 219.53 Who may file an objection.

(a) Individuals and organizations who have submitted substantive formal comments related to a plan, plan amendment, or plan revision during the opportunities for public comment as provided in subpart A during the planning process for that decision may file an objection. Objections must be based on previously submitted substantive formal comments unless the objection concerns an issue that arose after the opportunities for formal comment. The burden is on the objector to demonstrate compliance with requirements for objection. Objections from individuals or organizations that do not meet the requirements of this paragraph must not be accepted; however, objections not accepted must be documented in the planning record.

(b) Formal comments received from an authorized representative(s) of an organization are considered those of the organization only. Individual members of that organization do not meet objection eligibility requirements solely based on membership in an organization. A member or an individual must submit formal comments independently to be eligible to file an objection in an individual capacity.

(c) When an objection lists multiple individuals or organizations, each individual or organization must meet the requirements of paragraph (a) of this section. Individuals or organizations listed on an objection that do not meet eligibility requirements must not be considered objectors, although an objection must be accepted (if not otherwise set aside for review under § 219.55) if at least one listed individual or organization meets the eligibility requirements.

(d) Federal agencies may not file objections.

(e) Federal employees who otherwise meet the requirements of this subpart for filing objections in a non-official capacity must comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees must not be on official duty nor use government property or equipment in the preparation or filing of an objection. Further, employees must not include information unavailable to the public, such as Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (b)).

§ 219.54 Filing an objection.

(a) Objections must be filed with the reviewing officer in writing. All objections must be open to public inspection during the objection process.

(b) Including documents by reference is not allowed, except for the following list of items that may be

referenced by including the name, date, page number (where applicable), and relevant section of the cited document. All other documents, web links to those documents, or both must be included with the objection.

(1) All or any part of a Federal law or regulation.

(2) Forest Service Directive System documents and land management plans.

(3) Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection.

(4) Formal comments previously provided to the Forest Service by the objector during the proposed plan, plan amendment, or plan revision comment period.

(c) At a minimum, an objection must include the following:

(1) The objector's name and address (§ 219.62), along with a telephone number or e-mail address if available;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector, when multiple names are listed on an objection (§ 219.62). Verification of the identity of the lead objector if requested;

(4) The name of the plan, plan amendment, or plan revision being objected to, and the name and title of the responsible official;

(5) A statement of the issues and/or the parts of the plan, plan amendment, or plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If applicable, the objector should identify how the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy; and

(7) A statement that demonstrates the link between prior formal comments attributed to the objector and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment (§ 219.53(a)).

§ 219.55 Objections set aside from review.

(a) The reviewing officer must set aside and not review an objection when one or more of the following applies:

(1) Objections are not filed in a timely manner (§ 219.56);

(2) The proposed plan, plan amendment, or plan revision is not subject to the objection procedures of this subpart pursuant to §§ 219.51 and 219.59;

(3) The individual or organization did not submit formal comments (§ 219.53) during scoping or other opportunities for public comment on the proposed decision (§ 219.16);

(4) None of the issues included in the objection is based on previously submitted substantive formal comments unless one or more of those issues arose after the opportunities for formal comment;

(5) The objection does not provide sufficient information as required by § 219.54(c);

(6) The objector withdraws the objection in writing;

(7) The objector's identity is not provided or cannot be determined from the signature (written or electronically scanned), and a reasonable means of contact is not provided (§ 219.54(c)); or

(8) The objection is illegible for any reason and a legible copy cannot easily be obtained.

(b) When an objection includes an issue that is not based on previously submitted substantive formal comments and did not arise after the opportunities for formal comment, that issue will be set aside and not reviewed. Other issues raised in the objection that meet the requirements of this subpart will be reviewed.

(c) The reviewing officer must give written notice to the objector and the responsible official when an objection is set aside from review and must state the reasons for not reviewing the objection. If the objection is set aside from review for reasons of illegibility or lack of a means of contact, the reasons must be documented in the planning record.

§ 219.56 Objection time periods and process.

(a) Time to file an objection. Written objections, including any attachments, must be filed within 30 days following the publication date of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52). It is the responsibility of the objector to ensure that the reviewing officer receives the objection in a timely manner.

(b) Computation of time periods.

(1) All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays in the time zone of the reviewing officer. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day (11:59 p.m. for objections filed by electronic means such as e-mail or facsimile machine).

(2) The day after publication of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52), is the first day of the objection filing period.

(3) The publication date of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52), is the exclusive means for calculating the time to file an objection. Objectors must not rely on dates or timeframe information provided by any other source.

(c) Evidence of timely filing. The objector is responsible for filing the objection in a timely manner. Timeliness must be determined by one of the following indicators:

(1) The date of the U.S. Postal Service postmark for an objection received before the close of the fifth business day after the objection filing date;

(2) The electronically generated delivery date and time for e-mail and facsimiles;

(3) The shipping date for delivery by private carrier for an objection received before the close of the fifth business day after the objection filing date; or

(4) The official agency date stamp showing receipt of hand delivery.

(d) Extensions. Time extensions for filing are not permitted except as provided at paragraph (b)(1) of this section.

(e) Reviewing officer role and responsibilities. The reviewing officer is the United States Department of Agriculture (USDA) or Forest Service official having the delegated authority and responsibility to review an objection filed under this subpart. The reviewing officer is a line officer at the next higher administrative level above the responsible official; except that for a plan amendment, that next higher-level line officer may delegate their reviewing officer authority and responsibility to a line officer at the same administrative level as the responsible official. Any delegation of reviewing officer responsibilities must be made prior to the public notification of an objection filing period (§ 219.52).

(f) Notice of objections filed. Within 10 days after the close of the objection period, the responsible official shall publish a notice of all objections in the applicable newspaper of record and post the notice online.

(g) Response to objections. The reviewing officer must issue a written response to the objector(s)

concerning their objection(s) within 90 days of the end of the objection-filing period. The reviewing officer has the discretion to extend the time when it is determined to be necessary to provide adequate response to objections or to participate in discussions with the parties. The reviewing officer must notify all parties (lead objectors and interested persons) in writing of any extensions.

§ 219.57 Resolution of objections.

(a) Meetings. Prior to the issuance of the reviewing officer's written response, either the reviewing officer or the objector may request to meet to discuss issues raised in the objection and potential resolution. The reviewing officer must allow other interested persons to participate in such meetings. An interested person must file a request to participate in an objection within 10 days after publication of the notice of objection by the responsible official (§ 219.56(f)). The responsible official shall be a participant in all meetings involving the reviewing officer, objectors, and interested persons. During meetings with objectors and interested persons, the reviewing officer may choose to use alternative dispute resolution methods to resolve objections. All meetings are open to observation by the public.

(b) Response to objections.

(1) The reviewing officer must render a written response to the objection(s) within 90 days of the close of the objection-filing period, unless the allowable time is extended as provided at § 219.56(g). A written response must set forth the reasons for the response but need not be a point-by-point response, and may contain instructions to the responsible official. In cases involving more than one objection to a plan, plan amendment, or plan revision, the reviewing officer may consolidate objections and issue one or more responses. The response must be sent to the objecting party(ies) by certified mail, return receipt requested, and posted online.

(2) The reviewing officer's review of and response to the objection(s) is limited to only those issues and concerns submitted in the objection(s).

(3) The response of the reviewing officer will be the final decision of the Department of Agriculture on the objection.

§ 219.58 Timing of a plan, plan amendment, or plan revision decision.

(a) The responsible official may not issue a decision document concerning a plan, plan amendment, or plan revision subject to the provisions of this subpart until the reviewing officer has responded in writing to all objections.

(b) A decision by the responsible official approving a plan, plan amendment, or plan revision must be consistent with the reviewing officer's response to objections.

(c) When no objection is filed within the 30-day time period, the reviewing officer must notify the responsible official. The responsible official's approval of the plan, plan amendment, or plan revision in a plan decision document consistent with § 219.14, may occur on, but not before, the fifth business day following the end of the objection-filing period.

Comment:

While ostensively encouraging increased public participation in the planning process, the Proposed Regulations, in fact, decrease the right to comment and/or and appeal from that called for by applicable law and current Forest Service regulations. Specifically, the Proposed Regulations, while allegedly creating more opportunities for public participation, nearly always grant full discretion to Forest Service authorizing officers regarding how, when, and to what degree such public participation may occur. Thus, specific and mandatory opportunities to participate, which are in the current Forest Service regulations, are replaced with sweeping, discretionary programs. Furthermore, because the standards for such participation are discretionary, the opportunity for parties to appeal arbitrary and capricious agency actions is nearly

foreclosed. See Olenhouse v. Commodity Credit Corporation, 42 F.3d 1506, 1573-5 (10th Cir. 1994). In other words, increased Forest Service discretion creates fewer guarantees that the due process demanded by the NFMA, the Administrative Procedures Act, and the Constitution of the United States will be satisfied during the planning process.

There are numerous examples of increased discretion and a decreased guarantee of due process in the Proposed Regulations. For example, according to the Proposed Regulations at section 219.4, further consideration of topics of general interest or concern raised by the public are fully discretionary, and the Forest Service denial of further consideration of any topic raised by the public may not be appealed. In another section, the "assessment phase" will be used to identify and develop issues upon which proposed amendments or revisions are based. See section 219.6, However, despite the important role which such assessments will play in land use planning, there is no right to participate in or appeal the development or use of such assessments, nor are there mandatory standards or guidelines for the development of the assessments.

There is also a very limited appeal process under the new regulations. The Proposed Regulations, sections only allow for "objections" to proposed amendments or revisions. However, a denial of such objections is not subject to Forest Service appeal processes. Therefore, any person suffering an arbitrary and capricious denial of an objection has no ability to create an administrative record upon which to base judicial review.

In addition to the above comments the Coalition concurs with and wishes to join in the attached comments made by the New Mexico Department of Agriculture.

Sincerely,

Richard Searle

Richard Searle, President

NM STATE UNIVERSITY

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FRD-1123

May 13, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 East 500 South
Bountiful, UT 84010

RE: NFS Planning Rule Comments

To Whom It May Concern:

New Mexico Department of Agriculture (NMDA) submits the following comments to the Proposed Rule and Draft Programmatic Environmental Impact Statement (DEIS) for National Forest System Land Management Planning.

Part of NMDA's vision is ". . . proactive advocacy and promotion of New Mexico's agricultural industries." NMDA supports management of National Forest System (NFS) lands under the principles of multiple use and sustained yield as congressionally mandated by the Multiple-Use and Sustained-Yield Act of 1960 (MUSYA) (16 U.S.C. 528-531) and further codified by the National Forest Management Act of 1976 (NFMA) (16 U.S.C. 1601-1614). The Proposed Rule shifts management of NFS lands to advance the concepts of ecological sustainability and ecosystem diversity above multiple use and sustained yield.

The overview in the *Federal Register* notice for the Proposed Rule states that, "*Planning would consider the full suite of multiple uses including ecosystem services, energy, minerals, outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. . . .*" However, plan components would *". . . be required to provide for multiple uses, including sustainable recreation and ecosystem services, and protect cultural and historic resources and specially designated areas (such as wilderness and wild and scenic rivers).*" The elevated status of select multiple uses is further evident in text of the Proposed Rule.

Sections 219.8 Sustainability and 219.9 Diversity of Plant and Animal Communities are redundant in providing requirements that plans *". . . must include plan components to maintain or restore the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area."* Section 219.10 Multiple Uses directs planning to meet the requirements of §219.8 and §219.9 and *"consider"* a full suite of multiple uses including ecosystem services. Section 219.10 further requires that plans " . . . *must provide for . . .*" sustainable recreation, protection of cultural and historic resources,

management of areas of tribal importance, protection of wilderness areas, protection of wild and scenic rivers, protection and appropriate management of other designated or recommended areas, and other plan components for multiple uses as necessary. The Proposed Rule assigns greater importance to certain multiple uses and, in doing so, violates NFMA.

NFMA provides clear guidance regarding the equality of multiple uses at 16 U.S.C. 1604 (e) (1) "*. . . provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960, and in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. . . .*" Coordination, as defined by *Black's Law Dictionary*, means the state of being equal; of the same order, rank, degree, or importance; not subordinate. Through NFMA it is clear Congress intended that NFS planning coordinate and consider each of the listed multiple uses equally. Based on this foundation, NMDA objects to the Proposed Rule because it violates NFMA by omitting specific requirements for plan components to provide for the range program.

The Proposed Rule at §219.10 (b) (1) (IV) requires that plans extend protection of congressionally designated wilderness areas to recommended wilderness areas identified in the assessment process. It is beyond the authority of the United States Department of Agriculture (USDA) to manage an area as wilderness unless and until Congress actually designates such areas pursuant to the Wilderness Act. This requirement should be removed from the Proposed Rule.

The pre-decisional administrative review process described in Subpart B of the Proposed Rule strictly limits who may file an objection to those who have previously submitted formal comments during opportunities provided in plan development. This strict limitation is contradictory to an overall goal of the Proposed Rule to provide for meaningful public involvement throughout all stages of the planning process. Objector limitations are particularly onerous when considering issues that arise after opportunities for formal comment. A loophole is created that allows NFS planning to consider issues that the public, as a whole, is not allowed to comment on. All restrictions on who may object to a plan, plan revision, or plan amendment should be removed from the Proposed Rule to ensure meaningful public involvement throughout all stages of planning.

The DEIS provides an analysis of how each alternative meets the purposes and needs associated with the concepts of ecological sustainability and ecosystem diversity, not the principles of multiple use and sustained yield as mandated by MUSYA and NFMA. The resulting document fails to consider how each alternative will impact traditional multiple uses of NFS lands. Page 134 of the DEIS indicates that range was highlighted during scoping as one of the major contributors to community jobs and income from NFS lands. Of the multiple uses required by MUSYA and NFMA, range is the only use the Proposed Rule does not specifically require in-land management plans.

The DEIS repeatedly refers to livestock grazing as a stressor to other resources. Properly managed livestock grazing is a valuable resource management tool that can improve wildlife habitat, biodiversity, and overall ecological conditions while providing cultural and economic

benefits to communities. Unmanaged grazing, by both wild and domestic herbivores, can be a stressor to resources. The DEIS should make this distinction by replacing all references to livestock grazing as a stressor with unmanaged grazing by wild and domestic herbivores.

New Mexico contains over 9.2 million acres of land administered by the USDA Forest Service comprising the Carson, Cibola (including the Kiowa National Grasslands), Gila, Lincoln, Santa Fe, and part of the Coronado national forests. NFS authorized 549,409 animal unit months (AUM) of forage for commercial livestock operations in New Mexico, according to the Grazing Statistical Summary for Fiscal Year 2009 (USDA-FS 2009).

The 2009 Basin and Range Region Cow-calf Cost and Return Budget reports an annual value of production on a per cow basis of $472 (USDA-ERS 2009). By converting 2009 AUM authorizations to animal units yearlong (549,409/12), the number of head of cows capable of being supported by the 2009 AUM authorizations can be estimated at 45,784. Applying this estimate, the 2009 potential for value of production from NFS forage is over $21.6 million in estimated direct benefit to New Mexico communities. This figure demonstrates the importance to rural communities of continued and consistent access to forage on NFS lands for qualified ranching operations.

Beyond economic benefits, ranching represents an important and irreplaceable part of the custom and culture of agriculture in New Mexico, conserves open space, provides habitat for wildlife, and presents day-to-day stewardship of both private and federally owned lands. Continued incorporation of NFS lands with privately owned ranching operations directly contributes to meeting goals 1, 2, and 3 of the USDA Strategic Plan listed on page 3 of the DEIS. The Planning Rule should explicitly recognize and require that all forest plans developed under the rule contain provisions to provide consistent access to forage resources for the purposes of commercial livestock production as congressionally mandated by MUSYA and NFMA.

In conclusion, President Obama and USDA Secretary Vilsack share a commitment to strengthening rural America. The vitality and sustainability of rural America is and always has been tied to a continued yield of goods and services from the land. The shift in management from the principles of multiple use and sustained yield outlined in the Proposed Rule is not only inconsistent with MUSYA and in violation of NFMA but it also moves USDA in a direction away from meeting the stated commitments of its leadership.

Thank you for the opportunity to comment on this important matter.

Sincerely,

Tom J. Bagwell
Interim Director/Secretary

JM/lo

Literature Cited:

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FRD-1181

BOARD OF COUNTY COMMISSIONERS
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May 16, 2011

F11+

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S
Bountiful, UT 84010

Dear Sir or Madam:

Thank you for this opportunity to submit comments on the proposed forest planning rule (76 Fed. Reg. 8480, Feb. 14, 2011).

Management of the national forests is important to Jackson County and our local economic health. Forest planning is important because our national forests should be working for all of us and need to be well-managed according to a set of multiple use priorities and within budget constraints. Unfortunately, the Proposed Rule seems to make planning an end in itself. We believe it will add to the process burden already overwhelming the Forest Service and will increase the time and cost for completing forest plans, resulting in less, not more, on the ground management of the national forests.

The proposed rule weakens the role of planning efforts of local government. The planning efforts of local governments should have a special place in forest planning. That was the case under the 1982 rule which separated "Public participation" requirements under 36 C.F.R. § 219.6 from the "Coordination with other public planning efforts" under 36 C.F.R. § 219.7. The proposed rule weakens the requirement to consider the plans of state and local government and Indian tribes in three ways. First, it combines public participation requirements together with the section on coordination with other public planning efforts into one section which dilutes the importance of coordination with other public planning efforts. Second, within the newly combined single section 219.4, the rule compels the Forest Service to "encourage" public participation from all segments of the public except state and local government. Finally, whereas the 1982 planning rule in 219.7 clearly required that "the responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes," the rule under 219.4 adds the equivocal phrase at the end of the sentence "to the extent practicable and appropriate." This changes coordination with state and local government and Indian tribe plans from a requirement to a discretionary decision of the forest supervisor. If increasing the agency discretion is the objective, then the phrase "to the extent practicable and appropriate" should be used elsewhere in the proposed planning rule particularly with regards to species viability and consideration of the best science.

economic considerations are not competing values, but, rather, they are truly interdependent and all play an important role in effectively managing NFS lands.

Because the USFS is in a position to have a substantial impact on all of the factors influencing ecological, social and economic sustainability, we request that the proposed rule recognize this and include language for plan components that maintain or restore all three elements of sustainability, being ecological, social and economic.

Too much process and paper work. The Proposed Rule is long on process (Sec. 219.5, 219.6, 219.7). These requirements are too cumbersome and time consuming. One of the objectives of the new rule is supposed to be that it is workable, affordable and will withstand court challenges so the Forest Service doesn't have to do it over again. Based on experience since the 1982 Planning Rule was adopted, additional process is not likely to improve our national forests or make the job of managing them any easier. These processes will just lead to more lawsuits by people who are opposed to natural resource use and management. Only those processes required by Congress in the NFMA should be included in the Planning Rule.

Species Viability. Section 219.9 fails to correct the problem of an unattainable and procedurally impossible obligation to demonstrate that a forest plan will "maintain viable populations of species". One of the most frequent legal claims in national forest litigation is that the Forest Service is not maintaining viable populations. The Forest Service should use the revision of the planning regulation as an opportunity to eliminate this fertile ground for litigation. There is no consensus on the population level that achieves a "viable" population so the regulation imposes a legal obligation on the Forest Service to ascertain what is not ascertainable. Measuring and proving that a forest plan will "maintain" or "is maintaining" a viable population is nearly impossible, leaving the Forest Service highly vulnerable to lawsuits.

The proposed rule requires the Forest Service to demonstrate it will maintain viable population for "species of conservation concern", which the planning rule defines as species for which "there is evidence demonstrating significant concern about its capability to persist over the long-term in the plan area." Requiring the Forest Service to provide a guarantee of viability for a species over which there is significant concern about viability requires the agency to guarantee something that it cannot. It puts the burden on the Forest Service to prove it will maintain a viable population and invites litigation over the adequacy of the substantive requirements in the plan, survey obligations, and population monitoring.

Further, the proposed rule expands the "viability" requirement to include all species in all six taxonomic Kingdoms, i.e., Plants, Animals, Fungus, Bacteria, Algae, and Protozoa. This will make the cost of compliance soar, will establish a regulatory standard that cannot be achieved and will increase litigation over "viability". The agency acknowledges it knows very little about invertebrates. The 1982 viability requirement just for vertebrates has cost the agency many millions of dollars and 29 years of litigation that is still on-going. Adding a viability obligation for invertebrates such as fungi, slugs,

Though occasionally referenced in the proposal, the Forest Service appears to be ignoring its multiple use mandate, a mandate imposed by Congress, codified in agency regulations and affirmed by the courts. This problem manifests itself in three ways. First, the proposal fails generally to acknowledge the multiple use mandate as a guiding principle of forest planning. Second, proposed provisions specifically conflict with the multiple use mandate. Third, the proposed definition of "ecosystem services" is so inclusive and vague that it dilutes the entire concept of multiple use. The proposed rule clearly provides that preservation trumps social and economic factors, including recreation, contradicting the Multiple Use Sustained Yield Act, the statute that authorizes many Forest activities.

The proposed rule is overly long, detailed, and encumbered with inflexible mandatory requirements and jargon that preclude it from being a workable, affordable, and enduring Planning Rule. In a time when the United States is facing record budget deficits, the Forest Service needs to be working to maximize productive work, not paper work. We urge you to revise the Proposed Rule by eliminating everything that goes beyond the statutory planning requirements contained in the Multiple Use Sustained Yield Act and the National Forest Management Act. The contents of Alternative C, contained in Appendix E to the Draft Programmatic Environmental Impact Statement for the Proposed Rule would be a good way to do this. Alternative C in the draft EIS would, according to the Forest Service analysis, cost nearly $24 million (24%) less per year than the proposed rule to implement

Following are some more specific recommendations:

Responsible official. We agree that the Forest Supervisor should be the Responsible Official for forest plans. (Sec. 219.2).

Use of scientific information. The proposed rule has several references to "best available science". This seems like a good idea, but the detailed proof and documentation required in 219.3 turns it into a bad idea. Not everyone can agree on what is the "best" science. We recommend that the Planning Rule simply require that the Forest Service take into account available, relevant scientific information, along with other factors, in the amendment or revision of forest plans, without any reference to the "best" information.

Local community needs. The Proposed Rule places a lot of emphasis on public involvement (Sec. 219.4), but places more emphasis on the views of "youth, low-income and minority populations" than on the local citizens and forest users who will be most directly affected by the Plan.

Sustainability. 219.8 requires plan components to "**maintain or restore** the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area ...." (emphasis added). However in reference to social and economic sustainability, the rule requires only that "[t]he plan must include plan components **to guide the unit's contribution** to social and economic sustainability ...." (emphasis added). We strongly believe that social, environmental and

and insects assures millions more in costs over the next decade and 30 more years of litigation

Viability and management of species are the responsibility of state wildlife and fish management agencies, and the federal agencies charged with administering the ESA. The Forest Service is not required by any law to maintain "viable populations". The Planning Rule should simply require the Forest Service to do what is required by the NFMA.

Monitoring. Monitoring is an integral part of land management and land management planning. However, implementing Section 219.12 will be impossible without investing a lot more money. The Forest Service says it will only do what it can afford to do, but the Courts are not likely to agree that that is what the Proposed Rule requires. Instead of focusing on "climate change and other stressors" and "carbon stored above ground", forest plan monitoring should focus on how well the Forest Service is achieving the Desired Conditions, forest plan objectives, and planned outputs. We recommend the Monitoring requirements in Alternative C.

Objection process. It is a good idea to limit the opportunity to object to a proposed plan to people who have participated in the planning process by submitting comments. It makes good sense to require that objections to the plan be brought up before a final decision is made. This process has worked well for Healthy Forest Restoration Act projects. The requirements of Sec. 219.50—219.62 should be included in the final Planning Rule.

Thank you for the opportunity to comment.

Board of County Commissioners
Jackson County, Colorado

By: _____
Michael A. Blanton

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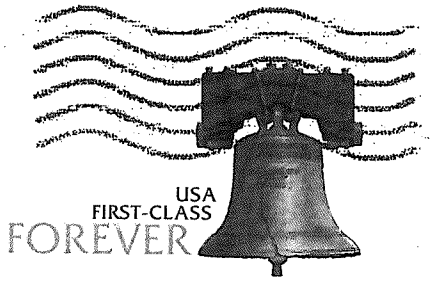

FRD-1181

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S.
Bountiful, UT 84010

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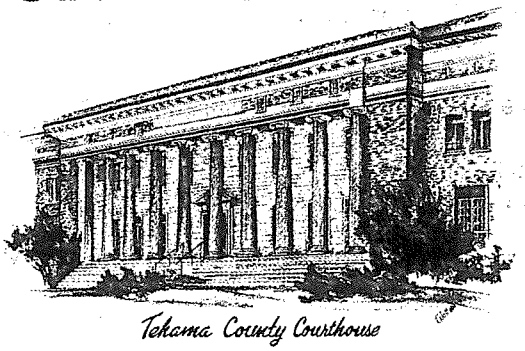
Board of Supervisors

COUNTY OF TEHAMA



Tehama County Courthouse

Williams J. Goodwin
Chief Administrator

May 3, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E 500 S.
Bountiful, UT 84010

Re: Additional Comments on the 2011 Proposed Forest Planning Rule (76 Fed.Reg.8480)

Dear Sirs:

The Tehama County Board of Supervisors welcomes the opportunity to provide additional comments on the proposed National Forest System Land Management Planning Rule. With portions of the Mendocino, Shasta-Trinity, Lassen and Plumas National Forests contained within our county boundaries, we feel that it is imperative that we offer our insights into the proposed rule.

On March 15, 2011 the Tehama County Board of Supervisors submitted the attached comment letter endorsing the analysis, concerns and suggested revisions expressed by Fred Kelly Grant, LTD and Sean Curtis regarding the draft Rule. Although we recognize there will be some local benefits in the new Rule, after thorough review we continue to note areas of the draft that we feel need to be addressed in order to satisfy our concerns.

While the draft Rule focuses a great deal on the ecological aspects of planning, we don't feel that it goes far enough in requiring that economic and social considerations are given the same level of importance. The Rule also softens some of the language from the 1982 Rule that outlines the requirements for coordination with other government agencies in that it gives responsible officers considerable leeway on how the planning process will be conducted.

The following are points that the Tehama County Board of Supervisors feel need to be addressed:

- In Section 219.4 (Requirements for Public Participation), forests are required to coordinate planning efforts with tribes, federal agencies, and state and local governments "to the extent practicable and appropriate." However, the Rule lacks definitions of what is "practicable and appropriate", effectively leaving it up to the interpretation of the forest supervisor. This is a softening of the coordination language from the 1982 Rule, in that it removes some of the mandated steps the National Forest Administrators must take in coordinating with other government agencies. Specifically, the following language contained in Section 219.7 of the 1982 Rule that deals with outreach and meeting requirements with other government agencies has been omitted:

  > "(d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced."

FRD-1205

There are no comparable requirements in the draft Rule, which takes away much of the National Forests responsibility to reach out to local governments during the planning process. Without this requirement, future plans could jeopardize the economic viability of private lands contained within and contiguous to the National Forest area.

- Section 219.7 (New Plan Development or Plan Revision) includes consideration of the environmental effects of the proposed plan as part of the process, but not economic or social impacts. Again, these must be given equal importance to the environmental concerns.

- Also in Section 219.7, partnership opportunities or coordination activities are mentioned as an element that a plan "may" include. This should be a required element within the proposed Rule.

- In Section 219.8 (Sustainability), wildland fire control, management and restoration of fire ravaged areas should be given a higher priority in ecosystem plan components.

- Section 219.8 also outlines required components for addressing ecological sustainability, but makes only general, optional social and economic sustainability considerations. These should not only be required, but should be more prescriptive.

- Section 219.10 (Multiple Uses) makes several references to "protection". Of specific concern are "recommended wilderness areas" and "rivers eligible for inclusion in the national wild and scenic river system". The question arises as to who makes the recommendations and who determines eligibility for inclusion. This is not spelled out within the Rule.

- Section 219.19 (Definitions) contains definitions of numerous words, used multiple times throughout the Rule, yet fails to define "coordination" or "protection". The definition of coordination could be dealt with by the inclusion of the aforementioned deleted language from the 1982 Rule. Protection however, should be better defined in order to better deal with differences in beliefs regarding protection versus conservation.

- Also in Section 219.19, "Species of conservation concern" is left to the determination of the responsible official, apparently without regard to sound science. This definition, once again, leaves open the possibility of a determination being made out of belief, rather than fact.

Once again, thank you for the opportunity to comment on the proposed Rule. We appreciate your efforts and look forward to your responses to our concerns.

Sincerely,

Gregg Avilla

Gregg Avilla
Chairman

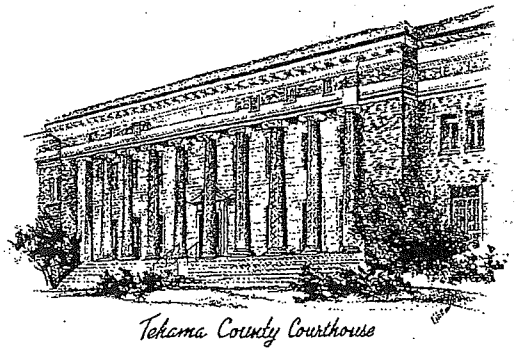
cc: Tony Tooke, USFS Ecosystem Management Coordination Director
Thomas L. Tidwell, Chief of the USFS
Congressman Wally Herger
Senator Barbara Boxer
Senator Diane Feinstein
RCRC
Tim Beals, Sierra County Dir. Of Planning & Transportation
SFAC

Attachment

Board of Supervisors

COUNTY OF TEHAMA

FRD-1205



Tehama County Courthouse

March 15, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 E. 500 S.
Bountiful, UT 84010

Re: Comments on the 2011 Proposed Forest Planning Rule (76 Fed.Reg. 8480)

Dear Sirs:

The County of Tehama hereby endorses the analysis and concerns expressed by Fred Kelly Grant, LTD and Sean Curtis in the attached comment letter.

Local governments have broad responsibility to protect the public welfare in their jurisdiction, and consequently have a unique interest in the management of National Forest lands located within their community. This special interest is reflected in Congress' mandate that all Forest Service planning decisions must be "coordinated with the land and resource management planning processes of State and local governments . . ." (26 U.S.C. § 1604(a).) The regulations under which the Forest Service has historically operated (Section 219.7 of the 1982 Planning Rule) provide a structured coordination process for Forest Service officials that faithfully implements this Congressional command. This process does not allow local agencies to dictate the Forest Service's final decisions, but does ensure that affected local governments have an active role in Forest Service land management planning, and that any Forest Service planning decision that adversely affects the local government's land use goals is made only after careful coordinated deliberation.

Proposed Section 219.4 discards this process in favor of nebulous "opportunities for the participation of State and local governments." The specific requirements that Forest Service officials meet with local government representatives, and consider alternatives where policy conflict is identified, have been removed or made discretionary. The standardless provisions of the proposed rule not only fail to implement the statutory coordination requirement, but also fail to protect the public interest of the citizens and residents who live in and near the Forests and are most affected by their management. These citizens and residents have elected local officials to represent them, and the federal

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government has a public and legal responsibility to do more than simply "provide opportunities" for participation by these officials. Rather, the Forest Service must coordinate with local governments and actively involve them in the land management process. The County of Tehama therefore supports the suggested revisions proposed by Fred Kelly Grant, LTD and Sean Curtis in the attached comment letter.

Thank you for considering our comments.

Sincerely,

Gregg Avilla
Chairman

cc: Tony Tooke, USFS Ecosystem Management Coordination Director
Thomas L. Tidwell, Chief of the USFS
Congressman Wally Herger
Senator Barbara Boxer
Senator Diane Feinstein
RCRC

Attachment

FRD-1207

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Congress of the United States
House of Representatives
Washington, DC 20515

WAYS AND MEANS COMMITTEE
SUBCOMMITTEE ON HEALTH
SUBCOMMITTEE ON OVERSIGHT

NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON NATIONAL PARKS, FOREST, AND PUBLIC LANDS
SUBCOMMITTEE ON FISHERIES, WILDLIFE, AND OCEANS

May 16, 2011

Secretary Tom Vilsack
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Dear Secretary Vilsack,

As members of Congress with an interest in the management of our nation's public lands, waterways, and fish and wildlife populations and habitat, we welcome the conservation vision expressed in your proposed National Forest Management Act planning regulations. Maintaining and restoring the integrity, resiliency, and health of our national forests and watersheds are vital goals. At the same time, we are concerned that the proposed regulations lack the measurable standards and adequate safeguards to ensure this vision is realized. Further, we believe the proposal goes in the wrong direction by rolling back longstanding protections for wildlife.

We urge that the proposed regulations be strengthened to adequately protect and restore water and watersheds. The rivers, streams, and watersheds in our national forests play key roles in both human and natural environments, providing a variety of benefits, such as drinking water for millions of Americans, recreational opportunities, and habitat for fish and wildlife. While the proposed rule includes important watershed provisions, it lacks specificity and accountability. For example, while the proposal calls for the establishment of riparian buffers around streams, it does so without setting a minimum size and without explicitly setting protective standards for those riparian areas such as restricting activities known to be harmful. In order for the Forest Service to continue providing these values and safeguarding this vital resource, the final rule must direct plans to protect and restore key watersheds in our national forests through measurable, enforceable standards.

We also strongly urge that the proposed regulations be strengthened to ensure protection for fish and wildlife populations. The proposal suffers from weaknesses which collectively eliminate longstanding and vital protections intended to ensure that all native wildlife species remain viable on our national forests. First, the proposal does not require that species be monitored to demonstrate that forest management activities are actually maintaining fish and wildlife populations. Second, the wildlife standard suffers from excessive discretion; forest managers could selectively determine which species deserve protecting on our national forests. Moreover, the agency can arbitrarily absolve itself of the responsibility to protect these species because the criteria to do so are ambiguous. National forests are home to many of our most important fish and wildlife habitats, and host more rare species than any other federal lands system. They also serve as economic engines for local communities by providing wildlife-based recreation

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FRD-1207

opportunities such as hunting, fishing, and bird watching. It is vital that the final rule include a strong standard for wildlife conservation that is meaningful, measurable, and non-discretionary.

With our forests facing unprecedented threats from climate change and unchecked energy development, strong protections for water and wildlife are essential, as we move forward in addressing these and other challenges of the 21st century. The course set by these sweeping new rules will determine the future of our national forests for generations to come – it is essential that we get this right. Wildlife and water are two fundamental indicators of the health and resilience of our forests. We urge the administration to revise its proposal to include clear standards for their protection so that future generations of Americans will not lose this legacy.

Sincerely,

Ron Kind
Member of Congress

Martin Heinrich
Member of Congress

Tim Johnson
Member of Congress

Gerald Connolly
Member of Congress

Earl Blumenauer
Member of Congress

Dave Reichert
Member of Congress

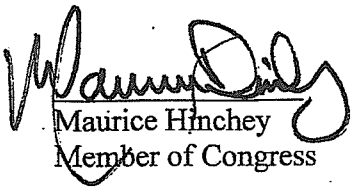
Keith Ellison
Member of Congress

Wm Lacy Clay
Member of Congress

Raul Grijalva
Member of Congress

Mazie Hirono
Member of Congress

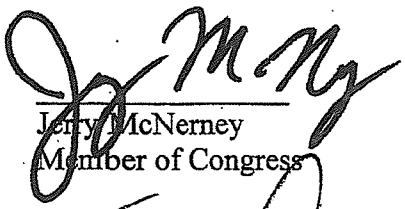
FRD-1207



Maurice Hinchey
Member of Congress

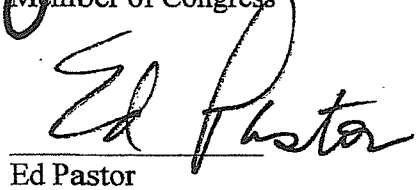
Jay Inslee
Member of Congress

Howard Berman
Member of Congress

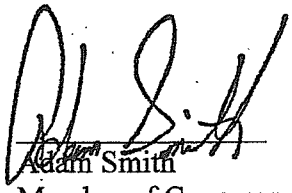


Jerry McNerney
Member of Congress

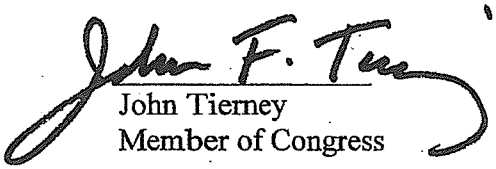
Ted Deutch
Member of Congress



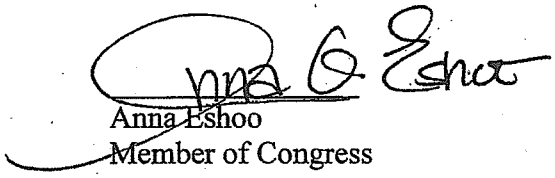
Ed Pastor
Member of Congress



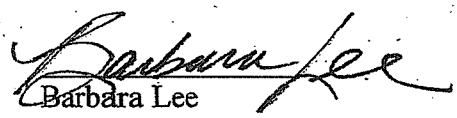
Adam Smith
Member of Congress



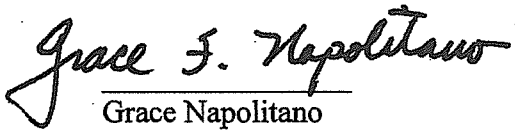
John Tierney
Member of Congress



Anna Eshoo
Member of Congress

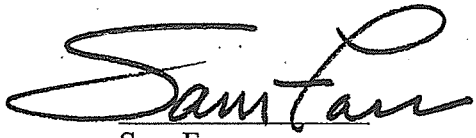


Barbara Lee
Member of Congress

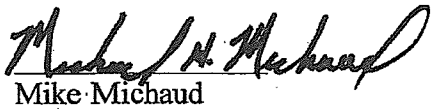


Grace Napolitano
Member of Congress

Steve Rothman
Member of Congress



Sam Farr
Member of Congress



Mike Michaud
Member of Congress

Mike Quigley
Member of Congress

Dianna DeGette
Member of Congress

FRD-1207

Lois Capps
Member of Congress

Jared Polis
Member of Congress

Dan Lipinski
Member of Congress

Peter DeFazio
Member of Congress

Charlie Rangel
Member of Congress

Pete Stark
Member of Congress

Mike Honda
Member of Congress

Lynn Woolsey
Member of Congress

George Miller
Member of Congress

Jose Serrano
Member of Congress

Jesse Jackson, Jr.
Member of Congress

Maxine Waters
Member of Congress

Judy Chu
Member of Congress

Zoe Lofgren
Member of Congress

Dale Kildee
Member of Congress

Betty McCollum
Member of Congress

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Rosa DeLauro
Member of Congress

Kathy Castor
Member of Congress

John Olver
Member of Congress

Ed Markey
Member of Congress

Norm Dicks
Member of Congress

Jim Moran
Member of Congress

Donna Christensen
Member of Congress

Donna Edwards
Member of Congress

Henry Waxman
Member of Congress

Bill Pascrell
Member of Congress

Rush Holt
Member of Congress

Gregory Meeks
Member of Congress

Marcia Fudge
Member of Congress

Louise Slaughter
Member of Congress

Carolyn Maloney
Member of Congress

Colleen Hanabusa
Member of Congress

FRD-1207

Chris Van Hollen
Member of Congress

Barney Frank
Member of Congress

David Wu
Member of Congress

Gary Ackerman
Member of Congress

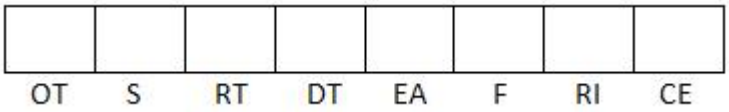
Steve Cohen
Member of Congress

Rick Larson
Member of Congress

Jim McDermott
Member of Congress

Chris Murphy
Member of Congress

Karen Bass
Member of Congress



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Form Letter:

Comments

Please See Uploaded File.

Individual(s)

Organization Type	State Government Agency/Elected Official
Organization	ASSOCIATION OF STATE DRINKING
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Title	EXECUTIVE DIRECTOR
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City	ARLINGTON
State	VIRGINIA
Zip	22209
Country	UNITED STATES
Created On	5/16/2011 5:06:00 PM

ASDWA Comments on Proposed Forest Service Land Management Planning Rule

The Association of State Drinking Water Administrators (ASDWA) is the professional association serving state drinking water program administrators in the 50 states, territories, the Navajo Nation, and the District of Columbia. The association was formed in 1984 to support states in their efforts to protect public health through the provision of safe drinking water.

ASDWA appreciates the opportunity to comment on the U.S. Forest Service (USFS) National Forest System Land Management Planning; Proposed Rule and Draft Environment Impact Statement. ASDWA commends the USFS for the inclusion of goals in the rule to protect, maintain and restore healthy watersheds, riparian areas, public water supplies, sole source aquifers and source water protection areas – since many of the nation's drinking water supplies originate from National Forest System (NFS) lands. ASDWA hopes that this rule will serve as a sound framework for the USFS as it works toward improving the management of NFS lands for multiple uses, and specifically, the sustainability of water supplies for public health, the environment, and the economy.

Recommendations

Involve State Drinking Water Programs and Water Utilities in Planning Activities: ASDWA is pleased to see that the rule provides for meaningful public engagement in the planning process and urges the USFS to specifically seek the involvement of state drinking water programs and drinking water utilities. This will be particularly important for meeting the sustainability requirement in Section 219.8 - "to maintain, protect, and restore public water supplies, groundwater, sole source aquifers, and source water protection areas." At a minimum, the planning process should require that the USFS:

- ***Recognize and Fully Consider Established State and Local Plans:*** State drinking water programs understand that requiring USFS land management plans to be uniformly consistent with state and local government plans may not always provide the flexibility the USFS needs to address its own management needs. However, the review and careful consideration of source water protection and local land use plans, in coordination with state and local agencies, will be extremely important to ensure that USFS actions do not undermine local planning efforts.

- ***Incorporate Federal, State, or Local Memorandums of Understanding(MOU's) in Planning Activities*:** Certain organizations (e.g., the Colorado Department of Public Health and Environment) have entered into MOU's with the Forest Service to coordinate on a range of water quality and forest health issues including: data sharing, wildfire risk assessment methodologies and treatment areas; source water assessment areas being recognized as municipal supply watersheds; promoting awareness of water quality protection plans; and USFS participation in local planning efforts. The Proposed Planning Rule should mention the incorporation of these MOU's into planning

activities and the USFS's commitment to business practices that integrate these planning aspects, where applicable.

- ***Notify States of Local Project Level Planning in the Forest Ranger Districts:*** A critical component necessary to coordinate water quality protections on USFS lands is appropriate notification of local planning processes and activities in the individual Forest Ranger Districts. The Proposed Planning Rule should set up a personnel notification list and an associated business process that alerts state water quality primacy agencies involved in the Drinking Water, Non-Point Source, and Source Water Protection programs. These programs can then serve as a link to the local governments, public water systems, and other stakeholder's associated planning efforts.

- ***Ensure Compliance with State Laws and Regulations:*** It is important that the forest plans include considerations for water-related statutory and regulatory requirements in each state. To that end, the planning rule should require forest plans to identify, list, and comply with applicable statutory and regulatory requirements (both numeric and qualitative), including but not limited to those established under the Clean Water Act.

Use the Adaptive Management Process to Address Changing Conditions: ASDWA commends the USFS for its commitment to follow an adaptive management process that allows plans to be assessed, revised, amended, and monitored to adapt and improve plans as conditions change. This will be particularly important as climate change and extreme weather events such as droughts and floods impact both water quantity and quality throughout the entire nation at an increasingly alarming rate. Excellent management of forest resources can help alleviate some of the impacts of these extreme events.

Serve as a Role Model for Private Forest Management: USFS land planning processes should be the model for making forestry practices sustainable for both timber production and water resource conservation. The location, timing, and conduct of their operations should drive standards for private forest managers to follow.

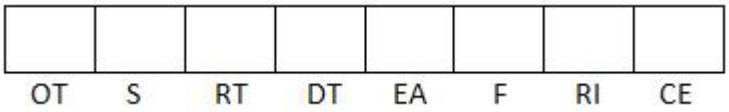
Identify Specific Outcomes and Embrace Watershed Approaches: ASDWA believes that the USFS decision to develop guidelines that allow for flexible site-specific planning components, instead of standards, may not provide the impetus for plans to achieve desired outcomes. Therefore, these planning components should identify specific and meaningful goals that guide the management of riparian areas and address priority watershed needs. ASDWA also urges the USFS to allow watershed approaches to be included in its land management plans. The watershed approach should include public and private sector management and coordination activities to address the highest priority water quality problems within hydrologically-defined geographic areas, for both ground and surface waters.

Facilitate Data Sharing to Enhance Monitoring Guidelines: A statistically sound set of monitoring guidelines should be a key element in all USFS planning efforts. ASDWA recommends that the monitoring guidelines in Section 219.12 specifically outline the need to

coordinate and pool data from multiple sources, including the U.S. Geological Survey, state drinking water and clean water programs, and water utilities. These programs maintain a large quantity of water data that the USFS can use and augment with the monitoring efforts in this planning rule. In addition, the guidelines should specifically include a regime for monitoring and assessing nutrients, bacteria, sediment, and streamflow.

Specify Criteria for the Use of Best Available Science: ASDWA supports the use of best available science for decision making but asks the USFS to clearly specify the criteria for how best available science will be determined within the planning process.

Leverage Resources with Other Governmental Agencies: Within the final planning framework, the USFS should work with other Federal, state, and local governments to coordinate program activities that maximize and leverage the use of available technical, institutional, and financial resources. This will allow multiple agencies to achieve multiple water quality objectives and avoid unnecessary duplication of efforts.



Attributes

Response Type: 1 - Letter
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IP Address: 12.17.162.50
Form Letter:

Comments

Please see the Nez Perce Tribe's comments on the U.S. Department of Agriculture's draft planning rule and Draft Environmental Impact Statement which are attached below.

Individual(s)

Organization Type	American Indian Govt. Agency/Elected Official
Organization	NEZ PERCE TRIBE
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Title	STAFF ATTORNEY
Name	MIKE LOPEZ
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Address 2	
City	LAPWAI
State	IDAHO
Zip	83540
Country	UNITED STATES
Created On	5/16/2011 4:05:00 PM

Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O.BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

By electronic (www.govcomments.com) **mail**

May 16,2011

Harris Sherman
USDA Undersecretary of Agriculture for NRE
Forest Service Planning DEIS
c/o Bear West Company .
132E500S
Bountiful, Utah 84010

Re: · Nez Perce Tribe's comments on the U.S. Department of Agriculture's draft planning rule and Draft Environmental Impact Statement

Dear Mr. Sherman:

The Nez Perce Tribe (Tribe) appreciates tbe opportunity to comment on the U.S. Department of Agriculture's draft planning rule (planning rule), draft environmental impact statement (DEIS) and associated planning docwnents. According to the USDA publiShed notice of proposed rulemaking in the Federal Register on February 14,2011, the planning rule will guide land and resource management planning for all units of the National Forest Systems (NFS) under tbe National Forest Management Act of I976. The planning rule sets forth process and content requirements to guide the development, amendment, and revision of land management plans to maintain, protect, and restore NFS lands while providing for sustainable multiple uses, including ecosystem services, so that NFS lands continuously provide ecosystem functions and contribute to social and economic sustalnability.

The Tribe supports Secretary Vilsack's overall vision for a planning rule that "protects, reconnects, and restores national forests and grasslands for the benefit of human communities and natural resources." DEIS, pg. 7. The Tribe also shares the Secretary's belief that "[a] new planning rule is needed to ensure that all plans will be responsive to issues such as tbe challenges of climate change; the need for forest restoration and conservation, waterShed protection, and wildlife conservation; and the sustainable use of public lands to support vibrant communities." DEIS,pg. 7.

In addition to Secretary Vilsack's initiative, the Tribe is pleased with the department's efforts to engage tribal governments in the development of the planning rule. Indeed, USDA's commitment to providing tribes with national, regional and local venues in which to provide critical tribal perspectives on the planning rule is a testament to President Obama's pledge, through his November, 2009 memorandum, to honor the government-to-government relationship between the United States and tribes embodied in the U.S. Constitution, treaties, statutes, executive orders, regulations, and caselaw. The Tribe submitted scoping comments in February, 2010 in response to the Notice.oflntent to prepare and environmental impact statement regarding the planning rule. The Tribe also provided remarks in one of the national tribal roundtables held by teleconference, and pmticipated in a Tribal meeting hosted by the Forest Service in Pmtland in December, 2010.

As discussed below, the Tribe is pleased that the planning rule will recognize the best available science as a driver for management decisions. The Tribe also suppmts the depmtment's recognition of the need to address climate change, improve watershed conditions, and protect wildlife. There are some areas of the planning rule, however, that the Tribe believes fall significantly shmt in honoring tribal treaty rights and safeguarding tribal sovereignty. The Tribe was disappointed to see that most of the recommendations it provided in scoping comments did not find a home in the proposed rule. Moreover, the department failed to do any analysis in the DEIS of the effects of the proposed action on Tribal interests. Accordingly, the Tribe provides the following recommendations to address these shortcomings, and hopes the department will embrace these recommendations in the fmal planning rule and Final Environmental Impact Statement. The Tribe also requests fmmal consultation with the department between draft and final so that its concerns and recommendations can be fully explored between our two governments prior to the issuance of the final planning rule.

Safeguarding Treaty Rights

The Nez Perce Tribe is a federally recognized tribe whose aboriginal territory encompasses over 13 million acres in what are now north-central Idaho, northeast Oregon, and southeast Washington. Since time immemorial the Nez Perce people have called this land home, and have relied on its abundant resources for subsistence, ceremonial, economic and cultural purposes. In 1855, the Nez Perce Tribe entered into a treaty with the United States, ceding much of this land in exchange for, among other guarantees, a pennanent homeland, as well as the 1ight to continue fishing at all usual and accustomed fishing places, as well as hunting, gathering and pasturing animals on open and unclaimed lands. Treaty with the Nez Perces, 12 Stat. 957 (Treaty ofJune 11, 1855).

Much of the land that theNez Perce Tribe ceded to the United Stated by virtue of the 1855 treaty is now NFS lands, encompassing six National Forests: the Clearwater, Nez Perce, Payette, Boise, Umatilla, and Wallowa Whitman. Today, the Nez Perce Tribe continues to exercise its treaty-reserved rights and have cultural resource interests on these lands, as well as on Lolo, Salmon-Challis, BitteJToot, and Gallatin National Forests. Tribal members take fish in streams that run through NFS lands, hunt elk, bighorn sheep, deer and bison that reside on NFS lands, and gather berries, ceremonial medicines and wood located, in many cases uniquely, on national forest system lands. In addition, many of these national forests border the Nez Perce Reservation, and therefore Forest Service management actions can affect the quality and quantity of the resource within the reservation boundaries.

The perpetual existence of the Tribe's off-reservation rights was an absolute prerequisite to the treaty agreement between the Nez Perce Tribe and the United States, and that guarantee was memorialized in the treaty, and is in force today. It is imperative that the Forest Service, as a federal agency and manager of these lands, administer them in a manner that is consistent with the rights and obligations attendant to the treaty, which is the supreme law of the land. Only Congress can abrogate the Tribe's treaty. Forest Service action, or the action of any federal agency-whether by promulgating some administrative regulation or through a project decision-which infringes on the Tribe's treaty-reserved rights, is impermissible.

In its scoping comments, the Tribe emphasized the importance of a new planning rule that expressly acknowledges the treaty, the enforceable rights that the treaty creates on National Forest System lands within the Tribe's territory, and how any direction under the planning rule will not interfere with the exercise of those rights. The Tribe also requested that the planning rule provide prescriptive direction requiring Forest Service managers to perform a detailed analysis of the effects of a proposed project or undertaking on treaty rights, if that undertaking is scheduled to occur within or adjacent to lands subject to the Tribe's treaty. The Tribe explained why this direction is so important for the new planning rule, noting that such a required analysis would provide much-needed clarity to forest service managers regarding their explicit responsibilities to safeguard treaty rights when a project is undertaken that implicates tribal interests. Requiring a treaty rights analysis would also strengthen coordination and cooperation between the Forest Service and the Tribe, since this analysis is necessarily predicated upon tribal views and perspectives that should be solicited and thoroughly explored as part of the consultation process.

The Tribe is disappointed that the planning rule reflects no such direction. The only reference to treaty rights that the Tribe identified in the planning rule is contained in section 219.1(e), which states: "This part does not affect treaty rights or valid existing rights established by statute or legal instruments." Read literally, this statement is conclusory and illogical. How can the agency assert that the planning rule *does not* affect treaty rights? Merely stating that the rule does not affect treaty rights certainly does not compel a determination that the planning rule *shall not* affect treaty rights. This conclusory assertion is even more dubious in light of the DEIS' complete failure to identify and analyze the impacts the planning rule on treaty rights or tribal interests. This language, therefore, must be amended to reflect what the Tribe is confident the meaning the department was seeking to convey with the language: This patt *shall* not affect treaty tights or valid existing rights established by statute or legal instruments. Substituting "shall" in place of"does" removes the confusion, both literally and as a matter oflaw, from the statement. This amendment is consistent with both the agency's assurances to tribes dming the national and regional tribal meetings that the planning rule *will* honor treaty rights, as well as the plain language of the U.S. Constitution, which states that treaties are the supreme law of the land.

Even with this ctitical amendment, however, the planning rule does not contain the additional management direction regarding treaty rights that the Tribe recommended in its scoping comments. Based on the Tribe's experience working on hundreds of projects on several forests over the years, Forest Service officials have often struggled with knowing when and how to approach the issue of potential effects of a forest service undertaking on treaty rights. Having

language in the planning rule that would require, at minimum, individual forests, in consultation with Tribal governments, to incorporate treaty rights analyses into NEPA planning documents on all projects that may implicate tribal interests, would serve to both clarify and reinforce Forest Service responsibilities with respect to honoring treaty rights.

Failure to Include Tribal Rights and Interests Section in the DEIS

The Tribe was surprised and disappointed to see that the DEIS did not include any identification or analysis of the effects of the planning rule on Tribal rights and interests. This analysis is indispensable to the proper identification of the effects of the proposed action on the human environment. The Tribe has treaty-reserved, cultural, religious and economic interests on NFS lands within its aboriginal territory, and the DEIS should, but did not, document the planning rule's effects on these interests. In addition, there are myriad treaties, statutes, executive orders, administrative rules and regulations and caselaw informing the United States' responsibilities to federally recognized tribes. It is the responsibility of the agency to ensure under NEPA that the planning rule is consistent with other federal laws. The DEIS did not document this analysis.

Importance of Monitoring to Success **of Rule**

The Nez Perce Tribe is a strong proponent of monitoring as a critical component of resource management. Based on a review of the planning rule and the DEIS, the Tribe is concerned that there is not adequate direction with regard to monitoring the impact of Forest Service management. As the science group RESOLVE concluded in their report prepared in connection with the DEIS:

> The fundamental insight is that monitoring design is key to the successful implementation of the activities set out in the DEIS. Moreover, monitoring is a scientifically challenging exercise that (to be useful in adaptive management) must include careful consideration of the questions to be addressed, as well as which management triggers may be dependent on the results of monitoring. RESOLVE agrees with the overall thrust of the reviewers' comments, that monitoring is key, scientifically complex, and worthy of very careful attention both in the DEIS and specific plans. To the extent that monitoring guidance can be developed at a Service wide level, it is clearly the opinion of the reviewers that the DEIS should be as explicit as is feasible regarding the goals and practice of monitoring.
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The Tribe shares this perspective reached by an independent panel. The planning rule should contain strong direction on how the Forest Service will incorporate this fundamental principle and monitor action on NFS lands.

Providing for Plant and Animal Diversity

NFMA directs the agency to specify guidelines and standards that, among other things, "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives. The 1982 planning rule states that "fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area." 36 C.F.R. 219.19 (1982). A viable population is defined as "one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area." *!d.* The 1982 rule further requires that "habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that individuals can interact with others in the planning area." *Id.*

The Tribe supports several components of the preferred alternative (Alternative A). First, the "viability" requirement under the 1982 rule is an extremely important safeguard of national forest wildlife habitat. Population viability is the foundation of wildlife management and biodiversity conservation. The Tribe is pleased to see that Alternative A contains a viability requirement. Indeed, since the exercise of the Tribe's treaty hunting right depends on healthy and harvestable populations of game animals on open and unclaimed lands, including NFS lands, Forest Service management plays a vital role in ensuring the continued presence of these hunting opportunities for the Nez Perce people. The Tribe is constantly challenging Forest proposals that, in the Tribe's view, will erode treaty hunting opportunities. Although not necessarily drafted with treaty rights in mind, the viability requirement has nonetheless proved to be an important complement to the exercise of treaty hunting rights. Without this NFMA viability requirement, the future of several animal and plant species important to the Nez Perce Tribe could be uncertain. Since NFMA requires the agency to provide for the diversity of *all* plant and animal communities, the Tribe is pleased with the agency's decision to broaden the viability provisions to include imperiled plants and invertebrates, as well as vertebrates, within the plan area.

Second, the Tribe also generally supports the course/fine filter approach. This approach is consistent with the Tribe's belief that all beings are connected and thus warrant mindfulness and respect. The course/fine filter approach emphasizes maintaining or restoring ecological conditions for a broad spectrum of plant and animal species, while focusing on species that are most at risk from stressors in the plan area.

The Tribe is concerned, however, with several changes in the planning rule's treatment of the plant and animal diversity requirement. First, Alternative A only requires that the plans provide for the maintenance of ecological conditions to maintain viable populations of species of conservation concern. The planning rule should require that plan components provide ecological conditions for maintaining viable populations of all species. The Tribe recommends, accordingly, that the planning rule be revised to incorporate a requirement to provide for viability of all species.

The Tribe also believes that the planning rule should provide more direction and clarity in dete1mining how "species of conservation concern" are selected. The definition of "species of conservation concern" in§ 219.19 is a start, but more direction is needed to inform the definition. The planning rule should require the Forest Service to establish a science-based, transparent, and consistent approach to identify species of conservation concern. In addition, the Tribe does not agree that authority to detennine species of conservation concern should be vested exclusively in forest supervisors. This approach ignores the reality that most species are limited to one forest. Having regional foresters select species of concern is consistent with the current practice of the Region choosing Forest Service "sensitive

species." Forest Supervisors may add species to the list, but Regional Foresters should retain authority to determine what species should be designated so that disparate or competing views among forest supervisors within a region concerning a species does not create unnecessary conflict.

Finally, the Tribe recommends that the agency retain the "well distributed" requirement in the definition of viable population. The Tribe also asks that the definition of viability include a "high likelihood" standard over a specified time period, similar to the definition in Alternative D.

Forest Service Resources and Assistance Requirement

The Tribe also reiterates its request that the Forest Service support its requests for tribal comments and coordination with a commitment of resources and assistance. The Tribe receives numerous letters every week requesting comments or coordination on a variety of Forest Service projects within the Tribe's treaty territory. Many of these requests, for example, require tribal staff time, travel, and resources to adequately respond to. If the goal of the new planning rule is to improve collaboration, including collaboration between the United States and the Nez Perce Tribe, then honoring the Tribe's request for resources and assistance in this regard is essential. Another example is that the Tribe often has a desire to participate as a cooperating agency in Forest Service proposals within the Tribe's treaty territory, but cannot because of lack of funding or resources. The inevitable result is that the Tribe, without staff or policy attending those coordination events, cannot adequately inject its expertise into the discussion, or otherwise contribute to the development of the project. Consequently, the Tribe is placed in the intractable position where decisions are being made about resources in the Tribe's own backyard and which affect Tribal rights and interests, but without Tribal participation. This often engenders disagreement or lack of understanding between our two governments, leading to administrative challenges and litigation that otherwise could be avoided or minimized through improved communication and coordination.

Watershed and Fishery Protection

The Tribe's seoping comments requested that the planning 1ule contain direction that provides for more watershed and fishery protection. The Tribe's treaty-reserved fishing right is enmmously important to the tribal culture and economy. Since adequate habitat, including clean and cold water, is essential for a productive and sustainable fishery, the Tribe encourages the development of Forest regulations that protect and advance the fishery.

Overall, the Tribe is pleased that the planning rule recognizes the impmtance of intact and healthy watersheds, riparian areas, public water supplies, and source water protection areas. In pmticular, the Tribe appreciates the planning mle's requirement to '·maintain, protect, or restore" lakes, streams, wetlands, stream banks, and shorelines, as well as public water supplies, sole source aquifers, source water protection areas, groundwater, and other bodies of water(§ 219.8(a)(2)(i) and (iv)).

The Tribe is pleased the planning rule requires land management plans to identify watersheds that are a priority for maintenance or restoration, but the rule fails to specifY what

criteria will be used to identifY these priority watersheds and how they should be managed. The Tribe recommends that the agency adopt an approach consistent with Alternative D, which identifies and protects a comprehensive network of key or priority watersheds well-distributed across the planning unit to serve as strongholds for clean drinking water and aquatic-associated or -dependent species (see Alternative D, § 219.8(a)(l)(v), DEIS, p. App F-10). Furthermore, we recommend that Priority Watersheds be added to the list of aquatic ecosystem elements which plans are required to "include plan components to maintain, protect, or restore"(§ 219.8(a)(2)(i) or (iv)). The rule should be explicit that these plan components must include standards and guidelines that will constrain habitat-degrading activities in priority watersheds and upslope areas (particularly those prone to landslides), as well as limit the cumulative effects of management actions across the watershed. The final rule should also ensure that Priority Watersheds are classified as unsuitable for timber production(§ 219.ll(a)(l)). With respect to roads, the final planning rule should incorporate the proposal in Alternative D that all plans "must include standards and guidelines for ... [r]oad removal and remediation in riparian conservation areas and key watersheds as the top restoration priority" (DEIS, p. App F-12).

Healthy riparian areas are integral to water quality and flow regimes. The draft rule requires plans to maintain, protect, or restore riparian areas, and it specifies that plans must establish a default width for riparian areas (§ 219.8(a)(3)). Draft section 219.8(a)(3) indicates that default widths should be set for all "lakes, perennial or intermittent streams, and open water wetlands." The Tribe recommends that Alternative D be adopted that establishes a minimum default width for riparian areas, as well as direction, including certain proscriptions, on management activities allowed within them. The Tribe recommends the agency adopt its recommended approach establishing a minimum default width of 100-300 feet based on slope and stream type; as well as limit activities that can occur within riparian areas to only those that further their natural condition as provided for in DEIS Alternative D, § 219.8(a)(3).

In summary, the Tribe appreciates Secretary Vilsack's efforts to create a management planning rule on NFS lands that is more responsive to environmental needs. The Tribe views this rule as an important opportunity to further realize the protection and advancement of the Tribe's treaty-reserved interests on NFS lands within Nez Perce Country, and looks forward to contributing its unique perspective, through staff-to-staff and formal consultation, to the development of the rule.

If you have any questions or to schedule a consultation with the Nez Perce Tribe, please contact McCoy Oatman, Natural Resources Chair, at (208) 843-7342, or Mike Lopez, Nez Perce Tribe Office of Legal Counsel, at (208) 843-7355.

Sincerely,

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Chairman