



# Forest Service Planning Rule National Tribal Conference Call

## -- Summary of Participant Input --

### I. INTRODUCTION

On May 3, 2010, the Washington Office of the USDA Forest Service convened the Agency's first national tribal conference call. This 3-hour call took place in the context of the Agency's effort to collaboratively develop a new national planning rule; it was one in a series of national roundtables. The purposes of the call were to allow the Agency to share information with tribes about the process by which the Agency is developing the proposed rule, and to invite tribes' input on how they would like to see the Planning rule address the eight principles identified in the Notice of Intent, which was published in the Federal Register on December 18th, 2009. This event does not take the place of formal, government-to-government consultations, which will be initiated in coming months.

This national tribal conference call was facilitated by Lucy Moore, who participated from Santa Fe, NM. Participants called in from all over the country, using approximately 80 different telephone lines. The exact number of participants is unknown because there may have been multiple people using each telephone line. This summary of input has been prepared by Marci DuPraw, a facilitator with SRA International in Arlington, Virginia. The format used to summarize the input from this national tribal conference call is the same format used to summarize the input from each of the national roundtables. This was done to enable staff to integrate the input from all these different events and make it as accessible as possible to those writing the proposed rule. An "N/A" response stands for "Not Applicable"; it means that no one explicitly spoke about this topic during the call.

## II. General

1. What would a **GREAT planning rule** look like?
  - Protecting water resources should be a major focus.
  - Protecting threatened and endangered species should be a primary focus.
2. What **works now**; what concepts should be carried into the next rule?
  - N/A
3. What **doesn't work**; what concepts should be left behind?
  - See “All Lands Approach” section.
  - See “Use and Enjoyment” section (e.g., regarding stove-piping of Forest Service law enforcement).

## III. Plan Content

1. What **information and issues** do you want to see in a plan?
  - See below.
2. Should the planning rule support the creation of a **shared vision** for each planning area?  
If so, how?
  - N/A
3. Should the new planning rule require **standards and guidelines** in all plans?
  - N/A
4. To what extent should the planning rule require **national consistency** and accommodate **regional differences**?
  - N/A

## IV. Substantive Topics

### Restoration

1. How can the next planning rule foster **restoration** of NFS lands?

- Avoid monoculture, such as many of the current proposals on the Klamath and Six Rivers National Forest. This is reducing black oak stands that are critical to some species. Reforestation is needed instead.
- Rather than looking to the national forests as a primary source of commercial timber, the Forest Service should begin to look at timber as a restoration by-product. In the latter approach, there would be plenty of timber available. The former approach drives forest management toward a monoculture rather than restoration.

### **Climate Change**

1. How can the planning rule be proactive and innovative in addressing **climate change adaptation and mitigation**?

- We want the American people to take the issue of climate change very seriously. If people want to work against climate change, they have to stop changing the climate. For example, when people propose to put snow somewhere where it doesn't naturally occur (as is being proposed at Snowbowl), that is changing the climate. Perhaps this is something the new planning rule can speak to.

2. What, if any, climate change **assumptions** should be used in the development of plan alternatives?

- N/A

### **Water Resources and Watershed Health**

1. Should forest planning be conducted in the context of **watersheds**? If so, how?

- N/A

2. What if anything should the rule say about **water availability and quality**, including factors outside of the Agency's control?

- Water is going to be the most precious resource. Protecting and sustaining water resources is critical.
- Water is life. It's survival for us on the Navajo Nation. We get it from groundwater. We are concerned about urban areas wanting to take water from us. That's not right. We have our right to this water and a lot of people in Las Vegas just use the water for entertainment, just to look at it. When they dry up the water, they get more water. I'm concerned about plans to run a pipeline from Lake Powell into Las Vegas, via St. George. How are we going to continue to have access to the water we need to live? It seems chaotic and I'm afraid a lot of people will die because they don't have access to the water they need.
- Mining at the Black Mesa Mine by Peabody Coal was at one time they were pumping out our water, and mixing that with coal to make slurry coal. It was contaminating our livestock and everything that we depend on to survive. They also were pumping our

water via pipeline all the way to a power station in Nevada and using it to produce electricity. That was our water and we told them to shut down the mine. About 200 ponds were contaminated. We also worry about the link to acid rain.

### **Diversity of Plants and Animals**

1. At what landscape scale and how should the Forest Service analyze and provide for **diversity of plants and animals** (individual unit, watershed, landscape scale)?
  - N/A
2. How should the planning rule guide monitoring and protection of **at-risk species** of animals and plants and their habitats?
  - The Forest Service should consider introducing the concept of “continuous biodiversity inventory flocks” in areas that are being managed for restoration of fire-adapted ecosystems. (Unsure if the phrase in quotes was recorded accurately.)

### **Contribution to Vibrant Local Economies**

1. What should the planning rule say about the **provision of goods and services** (including ecosystem services) that contribute to vibrant local, regional, and national economies?
  - See “access” section.
- How can the planning rule reflect the **interdependency of social, economic, and ecological systems** in a way that supports sustainable management of national forests and grasslands?
  - The Forest Service needs to coordinate with tribes on timber harvest plans. A few years ago, the Forest Service clear-cut an area where we used to harvest huckleberries. Now, the huckleberries don’t produce berries because the sunlight is too hard on them. Had the tribes had an opportunity to provide input, there probably would have been a way to conduct the timber harvest in a way where we would still have been able to get the huckleberries.
  - See also “Restoration” section.

### **Use and Enjoyment of NFS Lands**

1. What if anything should the planning rule say about **suitable uses** and/or **places of interest**?
  - We have a lot of concerns in Florida about human impacts on the forest. For example:
    - Recreational sites that seem to have been built just for (unintelligible – guessing the reference is to tourists);
    - High-speed roadways going through the parks and forests (e.g., Highway 41; Highway 75), causing traffic fatalities; and
    - The negative impacts of “tree farms (e.g., monocultures) on natural plant and animal communities.

The animals get displaced and show up in human communities, and the humans think the animals have invaded the humans’ space. However, it is the reverse; humans have invaded the animals’ space. It’s especially bad when human activities surround a

natural place, and affect it through air and water contamination. We have to learn to “live into the land.”

- Provide tribes with continued access and use of the flora and fauna that they have traditionally used within the national forests.
- The Forest Service should control commercial harvest of first foods. In northern Idaho and western Montana, for example, there is an increasing number of commercial harvesters with permits who are harvesting such a large volume of first foods on the Forest Service lands that Native Americans are not finding enough to meet their traditional needs. This should be addressed in the planning rule and the permitting process.
- The tribes have rights to gather or harvest traditional forest resources, food resources, and medicinal resources, as well as to practice our religions and our ceremonial practices on lands that are the Forest Service’s responsibility. These things cannot be addressed in the project-level planning process. The new national planning rule provides an opportunity to give guidance to project level planning efforts.
- The new planning rule needs to clearly acknowledge the rights of indigenous people to harvest subsistence forest products such as firewood, acorns, mushrooms, basket materials and medicinal plants, as well as to practice our religion on these lands.
- A number of years ago, the Forest Service “stove-piped” the law enforcement function of the Forest Service. The result was that the agency’s law enforcement is now separate from the rest of the Forest Service, so while they drive vehicles that look the same and they wear a Forest Service uniform, the agency’s law enforcement personnel are essentially Federal Agents who are out there on the land. They have no connection to local level policies or agreements between the Forest Service and tribes. Because these law enforcement people don’t work for the district ranger, and they don’t work for the forest supervisor, it creates a huge barrier at a number of levels, including: (a) the Forest Service as an agency; (b) between their line officers; and (c) between the Forest Service and the tribes. The tribes end up having to coordinate with, and educate, these law enforcement people when we encounter them out on the ground and in the forest. These law enforcement officers tend to treat Native people as though we were criminals when we are out on our lands gathering traditional materials or even practicing our religion. These law enforcement folks are out of the loop and it’s a huge problem. Perhaps there is a way this new planning rule could remedy this situation.
- See also “Vibrant Local Economies” section.

2. What should the planning rule say about recreation **access, visitor facilities, and services?**

- Protect sacred areas like Snowbowl on the San Francisco Peak in northern Arizona, which is sacred to at least 13 tribes in the Southwest; threats include use of reclaimed wastewater on sacred sites, or anything outside of the natural order, such as snowmaking. If can't protect sacred sites, then you can have one rule or you can have a thousand rules, it doesn't matter. It will be ineffective. That's going to be a test for your rule-making principle. If you can protect San Francisco Peak and leave that area in a pristine natural condition, then your rule will have some effect.
- Think in terms of “managing people’s behavior” with respect to sacred sites, rather than “managing sacred sites.”
- Provide for tribal co-management of sacred sites.
- Provide for the return of human remains and funerary objects to the tribes who traditionally lived on the lands where those remains and objects were found.
- We are concerned about non-Native people using sacred sites in ways that we believe violate the integrity of the sites (e.g., in spiritual ceremonies involving dead animals);
- Tribes on the Klamath and Six Rivers have some ceremonies for which we would like the Forest Service in our area to close the river to recreational users during our ceremonies. The Forest Service says they don't have the authority to do that, but that response is unacceptable to us and we believe the Forest Service does have the authority to do it and they have simply been choosing not to. Perhaps the new planning rule can clarify that they do have the authority to do so, and should do so. If they do not, we would like to see legislative action to provide them the authority to protect our religious and ceremonial practices on the National Forests.
- See also “Vibrant Local Economies” section.

<b>V. Process</b>
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**Plan Revision and NEPA**

1. What are your suggestions for making forest planning **faster, simpler, more straight forward, and less expensive?**
  - When our tribes gets ready to do a prescribed burn on tribal lands, we have to then send off to the U.S. Fish and Wildlife Service for them to concur with our people’s assessment. It takes 5-9 months to get that assessment back. If there were anything the Forest Service could do in this new planning rule to help expedite that, it would be very helpful.

- With the NEPA process, we've been experiencing problems with the sale administrator and other people who are drafting contracts not being available in the room during the collaborative process or a NEPA process. So a lot of the key points that the public and tribes are bringing up during the project planning process are not being integrated into implementation. This doesn't help build trust with the tribes (where there is a fiduciary responsibility) and with the general public itself. Could the new planning rule help remedy this?
  - In addition to helping National Forest personnel make plans that set the direction for how to steward the forests, the new planning rule should build feedback loops into the planning process so the Forest Service gets information about how implementation is going and can adjust plans accordingly. In fact, more emphasis should be placed on feedback than on planning. It is especially important for the Forest Service to get feedback from tribes so the tribes know their voices are being heard and listened to. That will help them feel safe and protected by the process. Each tribe has its own unique needs with respect to feedback mechanisms – their own prayers and their own language that defines what safe really means for them. Too often, the tribes never hear back about how their input has been used, and that makes them feel unsafe.
  - Ensure that the financial resources are available to implement plans made under this rule to address tribes' concerns and issues. What often happens (especially at the state level) is that money is allocated to provide services and programs for tribes, but somehow the funds get used up before they reach the tribes.
2. How often should **plan revisions** occur; should the entire forest plan be redone in each revision cycle?
- N/A
3. What should the rule say about complying with **NEPA**?
- N/A

### **Adaptive Management**

1. How can a new planning rule build in **flexibility to adapt** to changing science, information or conditions and/or incorporate new data?
- See “plan revision” section above re: “feedback.”
2. When and how should plans be **evaluated** to see if they are working; what should trigger **amendments**?
- See “plan revision” section above re: “feedback.”

## Collaboration and Coordination

### 1. How should **stakeholders, other agencies, and governments be involved** in the planning process?

- We need to formally include the voice of the indigenous elders; this needs to be reflected in the principles that form the framework of the rule. They're the ones who can speak with the most strength and clarity when it comes to the natural elements, species and wildlife habitat. That door needs to be open for them. The Forest Service should show its commitment to the collaborative process should be shown by sitting down with the indigenous elders, not in a format like the phone conference that you have today, but in a face-to-face way, in the traditional way. So that needs to be put into this rule also because if you just do it this way, what happens is you end up moving things too quickly. Then we just become a check-off as indigenous people. You just say, "Oh, yes, we collaborated with them and we had a phone conference and there were 30 tribes on the line." But you never got to sit down with the spiritual leaders, cultural leaders, wisdom keepers and elders, who have the true, precious knowledge of sustainability. You're just kind of pushing us through the process.
- We get many more requests from the Forest Service for input that we have staff to respond. Our budget does not allow us to go out and do site surveys even to go out and look around. That makes it very hard to comment. We look at it as an unfunded mandate. And because of our inability to go out there, the Forest Service staff may think, "Well, we've consulted with the tribe and we got no comments." But that doesn't reflect the reality of the situation.
- Include tribes that are not federally recognized as well as those that are.
- The Forest Service needs to build relationships with tribes in ways that are unique to each tribe.
- It is helpful to have the opportunity to participate in this dialogue remotely (not having to travel to it since tribal budgets are very limited). However, face-to-face meetings are better; it would be very helpful if the Forest Service could provide funds to help tribes cover the cost of traveling to face-to-face meetings if they are held at the regional or forest-wide level. Alternatively, it would be helpful if the Forest Service would hold more meetings in varied locations so the tribes could meet face-to-face without traveling.
- The planning process needs to involve each of the tribes within the forest area. It would be best to hold the meeting near tribal headquarters so that all the people that need to be involved can be involved (e.g., the elders, the forestry staff, etc.). That way, the Forest Service will get all the input needed to be successful.
- We need more notice of opportunities for dialogue like this than a few days. Be sure to get the word out widely, and as early as possible.



- Include outreach to youth as part of the rulemaking process (e.g., programs that have an early impact on youth, internships, defined career paths and employment for Native Americans) to show them that they could build a career within the Forest Service.
  - See also “Role of Native Nations” and “G2G” sections.
2. What kind of **administrative review process** should be offered to the public in the planning rule? (E.g. pre-decisional objections and/or post-decisional appeal processes?)
- N/A
3. Should the forest planning process move to an **all lands approach**? If so how?
- Integrating resource management across broad landscapes is going to be important. Right now, in the current Land and Resource Management Plans, the land is fragmented by landscape designations. That is a practice which the Forest Service should leave behind.
  - If you’re looking at a landscape level approach to restoring ecological process, then those landscape designations can actually hamper that process.

## VI. Other Comments and Suggestions

### 1. Principles underlying the rule

- Add language to the eight principles that recognizes contributions to tribal economies, as well as to rural economies.
- The Nez Perce Tribe’s aboriginal territory encompasses over 13 million acres (eight National Forests). In 1855, the tribe entered into a treaty with the United States, ceding much of this land in exchange for -- among other guarantees -- the right to continue fishing at all usual and customary places as well as hunting, gathering and pasturing animals on open and unclaimed lands. Today the Nez Perce Tribe still exercises these treaty rights. Tribal members take fish in streams that run through National Forest System lands. They hunt elk, bighorn sheep, deer and bison that reside on National Forest System lands and they gather berries and ceremonial medicines in woods located in many cases only on National Forest System lands. The perpetual existence of these treaty rights was an absolute prerequisite to the agreement between the tribe and the United States. That guarantee was memorialized in the treaty, and is enforced today. In that context, the Nez Perce Tribe wanted to underscore the importance of the principles providing for the diversity of species and wildlife habitat. This principle is absolutely essential to the planning effort. The Nez Perce Tribe’s exercise of its reserved treaty rights depends on robust, vibrant wildlife habitat. The tribe would like to see habitat recognized and set aside for these important treaty reserve purposes.

- The new planning rule should contain prescriptive language that would require the Forest Service, all the way down to the district level, to analyze the effects of any proposed federal action on the exercise and continued protection of tribes' reserved treaty rights.
  - The substantive and process principles should both specifically articulate the need to include tribal issues in forest plans.
  - The Forest Service should add an additional principle that specifically outlines the substantive need to include tribal priorities and historical reflections in implementing all of the principles. That would be where the rule could speak to all the sacred site issues, and so on. Some people in the federal government may be hesitant to "single any entity out"; however, the rules clearly do. They clearly single out specific interests already – e.g., wildlife, diversity of species, rural communities. So it would be consistent to speak specifically about tribal communities.
  - The rule's process principles should indicate that, in certain instances, there needs to be additional co-management, meaning more active involvement in decision making by the tribes whose traditional lands are now Forest Service lands. This applies to the process of developing things like principles and plans, as well as the process of implementing them. The Forest Service has certain abilities to enter into co-management agreements, but not nearly in as substantive or as encompassing a way as other federal agencies can. So it would be helpful if the new planning rule addressed this explicitly.
  - The Forest Service should add a principle that says that planning and management on the national forests should not in any way abrogate or diminish traditional land uses, whether that be for ceremonial practices, medicine, plant harvesting, traditional subsistence, or subsistence activities. It should say that forest management should in no way infringe on the rights of the indigenous people or infringe on any treaty. Rather, the new planning rule should promote, protect and enhance indigenous people's right to live their spiritual way of life.
  - At least one of the principles should address the importance of feedback (e.g., from tribes) and of letting people know how their feedback has been used.
2. **Role of Native Nations With Respect to National Forests** (See also "Collaboration," "G2G," and "Principles" sections.)
- We would like to have some kind of language in the rule affirming traditional ecological knowledge (e.g., for first foods management, but also with respect to wildlife, utilitarian resources, traditional approaches to fire management in tan oak stands, etc.). Some of the new authorities in the Farm Bill, for example, provide an opportunity to draw upon traditional ecological knowledge to help with and guide scientific study through research, monitoring, and adaptive management over time.
  - It's good to recognize native people as co-stewards of indigenous lands.

- The Forest Service should utilize 8(a) contracting provisions to contract with tribes.
  - We would like to talk with the Forest Service about (how we could work together to address) the new challenges we face with the high unemployment rates that we have in Southeast Alaska.
  - The unemployment rate in some of our villages is four to five times higher than the national average and at least three times higher than what it would have been for a Great Depression.
  - The rule should encourage the Forest Service to enter into partnerships with local tribes for joint stewardship activities. There are lots of things on which the Big Pine Paiute Tribe would be interested in partnering with the Inyo National Forest.
  - There should be clearly identified tribal liaisons. The new rule should emphasize working with tribal liaisons. They should be a major part of the process so their views get integrated into planning outcomes.
  - Please let tribes know if there is anything tribes need to do to help ensure the financial resources are there to implement the aspects of the rule, and forest plans developed under the rule, that focus on tribes.
3. **Government-to-Government Consultations** (See also “Collaboration” and “Role of Native Nations” sections.)
- Be sure to include consultation with Alaska Native Corporations. We have 12 Alaska Native Corporations within southeast Alaska that own over 600,000 acres of land within and adjacent to the Tongass National Forest. We applaud President Obama’s executive order on consultation. It did not explicitly identify ANCs, but we have been advised that it implicitly included the ANCs. We also very much appreciate the USDA’s policy in which the ANCs are recognized.
  - Many times, in memoranda of understanding and stipulated agreements between the Forest Service and third-party proponents, we as a tribe are relegated to a secondary status. The thought seems to be, “Oh, we’ll consult with the tribes, by the way.” And we’re not a signatory on any of those memoranda of understanding or stipulated agreements related to restoration. We feel excluded. An example of this has been the way tribes were put in a secondary role with respect to addressing problems of water withdrawals by the City of Las Vegas and its effect on the watersheds.
  - Our tribe has a Memorandum of Understanding, or MOU, with the United States Forest Service. How will the new planning rule affect tribal/United States Forest Service MOUs (ours in particular)? The planning rule should speak to that. Ours needs to be updated. We would like to work with the Forest Service to update it. Without some sort of a rule to guide us through that, we end up back where we started from.