

**PLR1.**

**Planningruleno**

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**From:** Lindley, Laura [llindley@bjorklindley.com]  
**Sent:** Friday, May 11, 2007 7:41 AM  
**To:** Planningruleno  
**Subject:** Proposed EIS

Would you please place my name on the list to receive a copy of the draft and final EIS which you are preparing on the planning rule. Thank you.

Laura Lindley  
Bjork Lindley Little PC  
1600 Stout Street, Suite 1400  
Denver, CO 80202-3110  
Telephone: 303 892 1400  
Fax: 303 892 1401

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6/1/2007

## PLR2.

### Planningruleno

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**From:** Jeff Boyce [jboyce@meridianenv.com]  
**Sent:** Friday, May 11, 2007 8:10 AM  
**To:** Planningruleno  
**Subject:** Planning Rule EIS mailing list

Please include my name and address (listed below) on the mailing list for the planning rule EIS. I would like to receive hard copies of the draft and final EIS when they are published. Thank you.

Jeff

~~~~~  
Jeff Boyce, CF  
Forest Ecologist / NEPA Specialist  
Meridian Environmental  
1900 N. Northlake Way, Suite 211  
Seattle, WA 98103  
Ph: 206-522-8282  
Fax: 206-522-8277  
[www.meridianenv.com](http://www.meridianenv.com)

6/1/2007

# BJORK ♦ LINDLEY ♦ LITTLE ♦ PC

LAWYERS

PETER A. BJORK†

LAURA LINDLEY

DAVID R. LITTLE

ROBERT C. MATHES†

DARIN B. SCHEER†

KATHLEEN S. CORR

JILL D. CANTWAY†

KELLY A. REES†

CHRISTOPHER G. HAYES\*

ANN M. EASTBURN†

\*Of Counsel

\*Special Counsel

†Also admitted in Wyoming

\*Also admitted in the District of Columbia

RECEIVED MAY 25 2007

May 21, 2007

Dave Sire  
Planning Rule NOI Comments  
P.O. Box 162969  
Sacramento, CA 95816-6724

Re: Notice of Intent to Prepare an Environmental Impact Statement (EIS) to Analyze and Disclose Potential Environmental Consequences Associated with a National Forest Land Management Rule

Dear Mr. Sire:

We represent a number of oil and gas producers which explore and operate on the public lands in several states including Colorado, New Mexico, Idaho, Utah, and Wyoming and submit these comments regarding the Forest Service's Notice of Intent to Prepare an Environmental Impact Statement to Analyze and Disclose Potential Environmental Consequences Associated with a National Forest Land Management Rule as referred in the Notice of Intent issued on Friday May 11, 2007 (Fed. Reg. Vol. 72, No. 91). We would like to thank the Forest Service for the opportunity to submit scoping comments regarding this proposal.

On March 30, 2007, the United States District Court in the Northern District of California issued an order that enjoined the USDA from implementation of the National Forest Land Management planning rule published in 2005 until the agency complies with the court's order. The Forest Service has decided to prepare an EIS to comply with the order.

Given the review of the 2000 Rule finding the definitions and requirements very complex, unclear, and therefore difficult to implement, the 2005 rule needs to be re-instated. This rule received extensive public comment and clarified many of the requirements by providing a planning process that was more understandable and within the Agency's capability to implement. In preparing the EIS the Forest Service should also be mindful of two recent

Dave Sire  
May 21, 2007  
Page 2 of 2

Supreme Court cases in which the Court recognized that land use plans, whether for Forest Service System lands or lands administered by the BLM, do not in and of themselves cause or authorize changes in the human environment. *See Ohio Forestry Association v. Sierra Club*, 523 U.S. 726, 737 (1998); *Norton v. Southern Utah Wilderness Alliance*, 124 S.Ct. 2373 (2004). In both cases the Supreme Court observed that land use plans do not authorize specific actions and are instead only a preliminary step in the land management process. As such, the Forest Service should be cautioned not to expend unnecessary resources analyzing minor details or become lost in minutia when preparing an EIS for the planning rules, a procedure which itself is even more removed from the physical environment.

In conclusion, we support reasonable oil and gas leasing and encourage the Forest Service to prepare the Environmental Impact Statement associated with a National Forest Land Management Rule as soon as possible. Please place our office on the Forest Service mailing list for all future information regarding this project, including the Draft EIS, Final EIS, and Record of Decision for this project.

Sincerely,

BJORK LINDLEY LITTLE PC

A handwritten signature in black ink, appearing to read "Robert C. Mathes", written in a cursive style.

Robert C. Mathes

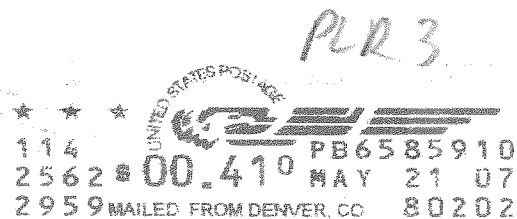
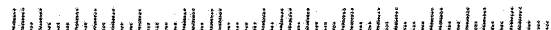
RCM:llv

BJORK • LINDLEY • LITTLE • PC  
LAWYERS

1600 STOUT STREET, SUITE 1400  
DENVER, COLORADO 80202-3110

Dave Sire  
Planning Rule NOI Comments  
P.O. Box 162969  
Sacramento, CA 95816-6724

95816-6724





# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

*Street address:* 629 East Main Street, Richmond, Virginia 23219

*Mailing address:* P.O. Box 1105, Richmond, Virginia 23218

Fax (804) 698-4500 TDD (804) 698-4021

[www.deq.virginia.gov](http://www.deq.virginia.gov)

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

(804) 698-4000  
1-800-592-5482

May 16, 2007

U.S. Forest Service  
Planning Rule NOI Comments  
P.O. Box 162969  
Sacramento, California 95816-2969

RECEIVED MAY 21 2007

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

Ladies and Gentlemen:

This note responds to your Notice of Intent to prepare an environmental impact statement on the impacts associated with a National Forest System land management planning rule. The Notice appeared in the Federal Register on May 11, 2007 (Volume 72, Number 91, pages 26775-26776).

The Department of Environmental Quality's Office of Environmental Impact Review (this Office) is responsible for coordinating Virginia's review of federal environmental documents prepared pursuant to the National Environmental Policy Act, and responding to appropriate federal officials on behalf of the Commonwealth.

We are sharing the Notice with appropriate Virginia reviewing agencies, all of which are free to provide scoping comments independently as the environmental document is being developed. The agencies include the following:

- Department of Environmental Quality:
  - Office of Environmental Impact Review
  - Water Resources Division
  - Air Quality Division
  - Waste Division
- Department of Game and Inland Fisheries
- Department of Agriculture and Consumer Services
- Department of Conservation and Recreation:
  - Division of Soil and Water Conservation
  - Division of Planning and Recreation Resources
  - Division of Natural Heritage
- Marine Resources Commission
- Department of Historic Resources

PLR4

U.S. Forest Service  
Page 2

Department of Transportation  
Department of Forestry  
Department of Mines, Minerals, and Energy.

In order to ensure an effective coordinated review of the Environmental Impact Statement, we will require 18 copies of the document when it is published. While this Office does not participate in scoping efforts beyond the advice given herein, other agencies are free to provide scoping comments concerning the NEPA documents for the proposed project.

We note, however, that the due date for scoping comments is given as June 11, 2007 (Notice, page 26775, right column) and that there are conflicting comments about the publication of the Draft EIS. First, it is "to be released in July 2007" (Notice, page 26775, right column) and then the Notice says the "draft environmental impact statement is expected [in] June, 2007" (page 26776, left column). It would appear that more time may be needed than either a June or July publication of the Draft EIS in order to use the scoping comments due on June 11.

If you have questions about the environmental review process, please feel free to call me (telephone (804) 698-4325) or Charles Ellis of this Office (telephone (804) 698-4488).

I hope this information is helpful to you.

Sincerely,



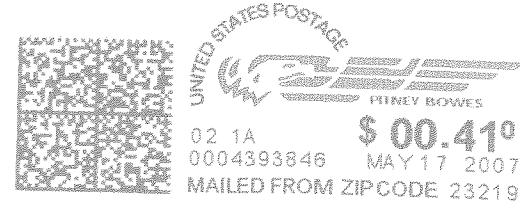
Ellie L. Irons  
Program Manager  
Office of Environmental Impact Review

cc: Joseph P. Hassell, DEQ-DWR  
Kotur S. Narasimhan, DEQ-DAPC  
Paul W. Kohler, DEQ-Waste  
Andrew K. Zadnik, DGIF  
Keith R. Tignor, VDACS  
Robert S. Munson, DCR  
Tony Watkinson, MRC  
Ethel R. Eaton, DHR  
Mary T. Stanley, VDOT  
Matthew Heller, DMME  
Todd A. Groh, DOF

**EIR**

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
P.O. Box 1105  
Richmond, VA 23218

PLR 4



U.S. Forest Service  
Planning Rule NOI Comments  
P.O. Box 162969  
Sacramento, CA 95816-2969

958162969 5031



PLR 4

Planningrulenoi

---

**From:** Kelly Gravuer [k\_gravuer@hotmail.com]  
**Sent:** Tuesday, May 29, 2007 4:41 PM  
**To:** Planningrulenoi  
**Subject:** forest planning regulations

Dear Forest Service:

The proposed 2005 regulations for Forest planning are flawed in many respects. Under these regulations there are limited opportunities for public participation, and there is no requirement for alternatives to be considered. Especially troubling is the elimination of species viability requirements and that economic considerations are given weight equal to that of ecosystem health. There are no enforceable 'standards and guidelines,' and the requirement that "best available science" be considered is eliminated. These regulations give managers unlimited discretion to amend a plan to force consistency with proposed projects, and there would be no designation of unsuitable lands or limits on logging impacts.

The Forest Service should abandon this flawed process and return to Forest planning using the 1982 NFMA regulations. Americans deserve Forest planning based on science, that ensures the protection of all resources- including clean water, intact forest systems, and wildlife- and that addresses the potential impacts of global warming on our National Forests and how we should incorporate that in all planning and activities.

Sincerely,  
Kelly Gravuer

1743 P St. NW, Apt. 405  
Washington, DC 20036

---

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## PlanningrulenoI

Form 2

**From:** Jerry Williams [jerrywilliams\_1121@yahoo.com]  
**Sent:** Saturday, May 26, 2007 9:15 PM  
**To:** PlanningrulenoI  
**Subject:** Planning Rule NOI Comments

Planning Rule NOI Comments  
PO Box 162969  
Sacramento, CA 95816-2969  
Fax: (916) 456-6724  
planningrulenoI@fscomments.org

Please accept these scoping comments for the preparation of the environmental impact statement to analyze and disclose potential environmental consequences associated with the National Forest System land management planning rule.

The public looks to the National Forest Management Act to ensure that the Forest Service will maintain viable wildlife populations and properly manage our national forests for future generations. The 2005 forest planning regulations undermine wildlife, clean water, and other environmental protections. The regulations reduced requirements for environmental review, weakened wildlife protections, and limited public participation in the development of management plans for individual forests. A critical component of past forest planning regulations is the requirement of mandatory resource protection standards for all forest plans. The EIS needs to analyze the direct and indirect effects of eliminating resource protection standards from forest plans and the impacts of eliminating wildlife viability and monitoring requirements.

In the development of the forest planning EIS, I urge that the Forest Service reconsider the exemption of forest management plans, revisions or amendments from environmental review and meaningful public input under the National Environmental Policy Act (NEPA). Without the NEPA process, the public is not given adequate information to evaluate the environmental consequences of forest plans and disregards the best available science in favor of commercial interests. Eliminating the need for forest managers to assess potentially harmful impacts on water, wildlife, recreational use, old growth and roadless areas, will make it easier for timber, oil, gas, mining and motorized recreation corporations to access national forests. Such a proposal would create a system that benefits the few at the expense of Americans who own our national forests and cherish them as a legacy for future generations. The EIS should fully analyze impacts of exempting forest plans from NEPA and consider alternatives that require full NEPA analysis and public participation.

The Forest Service should also take into account the breadth of new scientific and socio-economic information. The Forest Service should fully analyze other alternatives to the 2005 planning rule that include strong standards to protect forests, waters and wildlife, and evaluate the adoption of some or all of the 1982 and 2000 regulations. Alternatives should also include requirements for the agency to develop plans to address impacts of climate change.

Since this is the first time the public has the opportunity to participate in an EIS process for the new forest planning regulations, the Forest Service needs to modify NEPA deadlines in order to allow time to thoughtfully consider public comments throughout the NEPA process.

Thank you for the opportunity to comment,

Jerry Williams  
531 Windamare Terr  
HOT SPRINGS, AR 71913

**Planningruleno****Form 3**

**From:** Becky Johnstone [becky@secesh.net]  
**Sent:** Friday, June 01, 2007 10:10 AM  
**To:** Planningruleno  
**Subject:** Planning Rule NOI Comments

Becky Johnstone  
 PO Box 3254  
 McCall, ID 83638-6254

June 1, 2007

Planning Rule NOI Comments

Dear Planning Rule NOI Comments:

Planning Rule NOI Comments  
 P.O. Box 162969  
 Sacramento, CA 95816-6724

To Whom It May Concern:

I am writing to urge you to move as quickly as possible to complete the Environmental Impact Statement (EIS) on the 2005 National Forest System Land Management Planning Rule. In my view, this NEPA process is unnecessary and is distracting the Forest Service from the important work of revising forest plans and proposing actions to restore forest health.

The court's injunction has already disrupted several ongoing plan revisions

The 2005 rule provides much needed improvements to the 2000 rule, which was so hopelessly unworkable that the agency was using the 1982 rules.

The 2005 rule:

1. Improves public involvement. The previous processes required involvement over 5-7 years, whereas the new rule will reduce that to 2-3 years, allowing citizens to efficiently engage.
2. Focuses environmental analysis at the appropriate level. The 2005 rule focuses analysis at the project level, where specific environmental conditions are known. The court erred in forcing the agency to conduct NEPA on the 2005, which doesn't propose specific, on the ground actions.
3. Better responds to the latest scientific knowledge and changing natural conditions. Forest planning will be based on state-of-the-art scientific information as the National Forest Management Act intended.
4. Saves the government millions of dollars annually and enables the agency to better manage our national forests. The Forest Service estimates it spends more than 40% of its budget and time on administrative and legal work, rather than in the forest. The 2005 rule would save more than \$27 million annually, savings that will allow land managers to get more accomplished on the ground.

As the agency must conduct NEPA on the 2005 rules pursuant to the court order, I urge the agency to analyze only the proposed rule and the no action alternative. The agency must disclose to the public the impact of failing to reduce time and resources spent on planning, which would be the result of either dropping or significantly changing the 2005 rule.

Thank you very much for your prompt attention to this important matter.

PLR 7

This issue before you now needs expeditious remedy to avoid complications and possibly the waste of several years' effort on national forests across America.

Sincerely,

Becky Johnstone  
208-634-2888

**PLR8.**

**Planningruleno**

---

**From:** Skjelborg@aol.com  
**Sent:** Sunday, May 20, 2007 10:56 AM  
**To:** Planningruleno  
**Subject:** Planning rule, NOI comments

Dear Forest Service--

Thank you for the notice. My comments are straightforward. The 2000 plan was the result of years of negotiation (much of it through the office of Senator Feinstein) between all effected parties in the Sierras. It was not perfect, and may be difficult to implement, but it represented a very successful balancing of all of those interests. When it was first announced, the 2000 plan met with near universal acclaim, as a model of what honest negotiation and compromise can achieve.

The 2005 plan, on the other hand, represents certain of the interests who, having not got everything they wanted in the prior negotiations, took advantage of the anti-environmental bias of the current administration to 'replay' the game. The 2000 plan is the result of the coming together of many people; the 2005 plan is the result of special interests throwing their weight around. As for the so-called scientific analysis--well, the devil can quote scripture, they say.

In short, I oppose the 2005 mockery; the 2000 plan is the obvious alternative.

Steen Jensen  
1709 Curtis St.  
Berkeley CA 94702

\*\*\*\*\*

See what's free at <http://www.aol.com>.

6/1/2007

**PLR9.**

**Planningrulenoi**

---

**From:** Murlin Goeken [mgoeken@vitamincottage.com]  
**Sent:** Thursday, May 31, 2007 6:11 PM  
**To:** Planningrulenoi  
**Subject:** NATIONAL FORESTS

HERE WE GO AGAIN.

I'm writing to ensure strong protections for National Forest resources like water quality and wildlife be maintained. You need to fulfill your obligations as protectors and stewards of the national forests to analyze stronger planning regulations in the  
Upcoming EIS , including those from 1982 that required protection of wildlife habitat and tracking of wildlife population and trends.  
DO NOT! , reinstate the 2005 regulations in any form as they provide no protection for important national forest resources.

Sincerely,  
Murlin Goeken  
1700 So. Filbert Ct.  
Denver, CO 80222

Murlin W. Goeken  
Phone: 303-986-4600 x 121  
Fax: 303-986-1891  
Email- [murlin@vitamincottage.com](mailto:murlin@vitamincottage.com)

6/1/2007

**PLR10.**

**Planningruleno**

---

**From:** Marlena Lange [mar@warwick.net]  
**Sent:** Monday, May 14, 2007 6:14 PM  
**To:** Planningruleno  
**Subject:** Planning Rule NOI Comments

All forestry practice should follow the best protection of our forests as mandated by the District Court - roadless, mineless, wilderness.  
M. Lange

6/1/2007

Planningruleno1

**From:** conrue@juno.com  
**Sent:** Sunday, May 13, 2007 10:53 PM  
**To:** Planningruleno1  
**Cc:** narming@ju.edu; bcv23@aol.com; msdavis@tulane.edu; BKohl40@cs.com; Robinmann@earthlink.net; newviv@adelphia.net; dmw@bellsouth.net; cyn@healthygulf.org; aaron@healthygulf.org  
**Subject:** Fw: Notice of Intent to Prepare an Environmental Impact Statement.

May 14, 2007

509 Third Avenue

Harvey, La. 70058-2727

Re: Preparation of an Environmental Impact Statement by the Forest Service ostensibly to analyze and disclose potential environmental consequences associated with a National Forest System land management planning rule in partial response to an order dated March 30, 2007, in which the United States District Court in Citizens for Better Forestry et al. v.

USDA

(N.D. Calif.) enjoined the USDA from implementation and utilization of the National Forest land management planning rule published in 2005 until the agency complies with the courts order.

The Forest Service must immediately reject all manner of Cheney-Bush ecoterrorist intent and content, and completely remove such from any plan, planning, scheme, project, oversight, insight, budget, purpose or intent in regard to the "management", use and/or preservation of our National Forests. These lands, by definition and law, belong to the American people, not to Cheney, Bush or any other carpetbagger/ecoterrorist, nor to any private corporation. It is 100% obvious that the first priority in National Forest management must be preservation for perpetuity of every aspect of the resource, up to and including returning any part(s) thereof to "natural" condition, i.e., a condition in which Nature can be allowed to function according to its own design. Common sense intervention like removal/inhibition of introduced non-native species, removal of man-made dams, reintroduction of species formerly present but eliminated due to human activity, etc. is to be allowed, but destructive, unnatural intervention like timber cutting, trophy hunting, roadbuilding, stream channelization/elimination, mining, use of all-terrain vehicles, snowmobiles, etc. for "recreation" on any but existing paved roads, motel/hotel construction, and any other activity would fail to mimic the activity of a Nature unguided by humans is to be strictly prohibited, the only exception being activities conducted by Forest Service employees in an attempt to rescue a specific human life (lost hiker, victim falling from cliff, persons stranded within a wildfire, etc.) Certainly, oil and gas drilling must also be disallowed. Anyone who has ever flown over the West and observed the terrain below knows why. Water rights on National Forest lands must be retained by the Forest Service - this also includes groundwater rights. Use of pesticides, herbicides and defoliants must be disallowed, unless addressing a specific problem on invasive species(s) which cannot be addressed in any other way. The Roadless Rule must be preserved forever, and every roadless area within the Tongass must be included within the "no new roads" policy. Of course, one could address every single identified problem in every single National Forest. But you know exactly what must be done. If you're a "loyal Bushie", the best thing you could do for the entire planet would be to immediately resign. Remove your head(s) from your anus(es), and follow the dictates of natural science, not of Republican Party economics.

Yours truly,

Joseph I. "Jay" Vincent

Addressed to: Planning Rule NOI Comments, P.O. Box 162969, Sacramento, CA 95816-2969

**Planningrulenoi**

---

**From:** tajenkins@pol.net  
**Sent:** Monday, May 14, 2007 12:33 PM  
**To:** Planningrulenoi  
**Subject:** National Forest system planning

I am writing to register my concerns about the 2005 version of planning rules for the National Forest System, and to encourage more compliance with environmental safeguards in an updated rule. Our federal government has the responsibility to protect federal lands for their large scale benefit to our nation as a whole, rather than short term benefit of a local special interest. Local interests should have to continue to comply with federal regulations including the EPA, ESA, and any other use restrictions that are put in place with protection of national ecosystems and resources in mind.

There should be no shortcuts to enable local governments or organizations to circumvent these rules, and the federal agencies need to apply consistent and rigorous scrutiny to all use proposals with the primary goal of PROTECTION of our national ecosystems and resources. These lands have been set aside for the benefit of all including our nation's future, and their use and availability should be carefully and individually considered. Thank you for your attention.

Tracy Ouellette, MD 14078 MacTaggart Ave Bow, WA 98232

**PLR13.****Planningrulenoi**

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**From:** Ryan Moore [ridewithryan@yahoo.com]  
**Sent:** Thursday, May 31, 2007 5:04 PM  
**To:** Planningrulenoi  
**Subject:** Opinion

I enjoy national forest land for the escape it provides from humans' concrete jungle. The natural beauty of such lands must be kept in tact.

National forests provide very important resources such as: wildlife habitat (especially for species with large home ranges like lynx and bear), clean water, clean air, historic and pre-historic artifacts, and outstanding recreational opportunities for recreation, education, and scientific research. These resources are at risk from excessive oil and gas drilling, logging, off-highway vehicle use, thus there must be strong and enforceable measures in forest plans to make sure that these resources are protected.

--Planning regulations should contain requirements for forest plans that ensure protection of resources such as wildlife habitat, viable populations of wildlife, water quality, soils, primitive recreational opportunities, etc. Ask that the regulations require plans to have standards, or "must do" provisions.

--The Forest Service needs to analyze stronger planning regulations in the forthcoming EIS, including those from 1982 that required protection of wildlife habitat and tracking of wildlife population and trends. Insist that the Forest Service not reinstate the 2005 Regulations in any form, as they provide no protection whatsoever for important national forest resources.

Sincerely,

Ryan Moore  
4875 S. Eaton Park Way  
Aurora, CO 80016

---

Looking for a deal? Find great prices on flights and hotels with Yahoo! FareChase.

**Planningruleno**

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**From:** Sandra Mitchell [smitchel@alscott.com]  
**Sent:** Monday, May 21, 2007 11:12 AM  
**To:** Planningruleno  
**Subject:** comments for your consideration

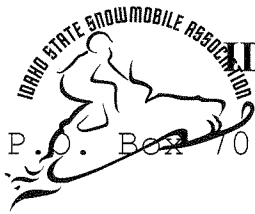
**Attachments:** Scoping Comments Rule revis 5-16-07.doc



Scoping Comments  
Rule revis 5-...

(See attached file: Scoping Comments Rule revis 5-16-07.doc)

PLR14



## IDAHO STATE SNOWMOBILE ASSOCIATION

Public Lands Office,  
P.O. Box 70001, Boise, Idaho 83707-0101  
E-Mail: [smitchel@alscott.com](mailto:smitchel@alscott.com)

May 21, 2007

Planning Rule NOI Comments  
P.O. Box 162969  
Sacramento, CA 95816-2969

E-mail: [planningrulenoifsccomments.org](mailto:planningrulenoifsccomments.org)  
FAX: (916) 456-6724

Planning rule Revision Team:

The Idaho State Snowmobile Association (ISSA) offers the following comments concerning the initiation of scoping in compliance with the National Environmental Policy Act published in the Federal Register on May 11, 2007, 72 FR 26775. We participated in the 2005 rule making process for National Forest System Land and Resource Management Planning and wish to participate in this rule making process also. ISSA is a statewide organization representing over 36 clubs, individuals and many businesses from throughout Idaho. All of our members highly value the opportunity to ride snowmobiles on our national forests. Winter snowmobiling, properly managed, has little impact on resources and utilizes both roaded and unroaded areas. It provides recreation for millions of Americans across the nation, and is of particular importance to those of us who live in Idaho. Our comments are submitted in a timely manner, prior to the June 11, 2007 deadline. Please consider them in development of the DEIS and include them in the record.

We applaud your efforts to simplify the planning process and truncate the endless cycle of planning, appeals and litigation. Our national forests, their resources and infrastructure have suffered grievous damage because of the waste of personnel and funding, and lack of effective management action resulting from this planning generated gridlock. However, we do have a serious concern about the current rule that must be addressed.

The Forest Resource Management Plans broadly allocate the use of land and, conversely, closes lands to uses. These decisions set the framework for all project specific actions that follow. The allocation of lands is one of the most far reaching and profound decisions made in management of the national forests. It affects economies of entire regions, the future of industries and the quality of life of all affected citizens. **Allocation is a major and highly significant decision and a primary purpose of all forest plans.** It is a major federal action that requires analysis at environmental impact statement level. Trying to shortcut this step will likely result in failure under the current framework of law.

PLR 141

We recommend that impact of all significant modifications to forest plans be analyzed via an environmental impact statement. Decisions in the plans that would directly or indirectly result in use closures should be considered significant.

Sincerely,

Sandra F. Mitchell  
Public Lands Director

**PLR15.****Planningruleno**

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**From:** Mary Dean [mdean@forestresources.org]  
**Sent:** Tuesday, May 29, 2007 10:42 AM  
**To:** Planningruleno  
**Cc:** Cutshall (Woodcom), Jason; Gammell (Woodcom), Tim; Hoffart (Woodcom), Vickie; Jarvis, Steven; Lewis, Richard; Meyer (Woodcom), Rick; Swanton, Joel; Ward, Neil A  
**Subject:** Planning Rule NOI Comments

**FOREST RESOURCES ASSOCIATION INC.**

600 Jefferson Plaza, Suite 350, Rockville, Maryland 20852

Phone: 301/838-9385 Fax: 301/838-9481 [www.forestresources.org](http://www.forestresources.org) [fra@forestresources.org](mailto:fra@forestresources.org)

May 29, 2007

Dear Sir or Madame:

The Forest Resources Association is a National Trade Association whose members are critically dependent on the flow of wood fiber from the nation's National Forests. Our members include approximately 100 wood using companies and 1000 wood suppliers.

We are writing to urge you to move as quickly as possible to complete the EIS on the 2005 National Forest System Land Management Planning Rule. In our view, this NEPA process is unnecessary and is distracting the Forest Service from the important work of revising Forest Plans and proposing actions to restore forest health. The court's injunction has already disrupted several ongoing plan revisions

The 2005 rule provides much needed improvements to the 2000 rule, which was so hopelessly unworkable that the agency was using the 1982 rules.

The 2005 rule:

- **Improves public involvement.** The previous processes required involvement over 5-7 years, whereas the new rule will reduce that to 2-3 years, allowing citizens to efficiently engage.
- **Focuses environmental analysis at the appropriate level.** The 2005 rule focuses analysis at the project level, where specific environmental conditions are known. The court erred in forcing the agency to conduct NEPA on the 2005, which doesn't propose specific, on the ground actions.

6/1/2007

PLR 15

- **Better responds to the latest scientific knowledge and changing natural conditions.** Forest planning will be based on state-of-the-art scientific information as the National Forest Management Act intended.
- **Saves the government millions of dollars annually and enables the agency to better manage our national forests.** The Forest Service estimates it spends *more than 40% of its budget and time on administrative and legal work*, rather than in the forest. The 2005 rule would save more than \$27 million annually, savings that will allow land managers to get more accomplished on the ground.

As the agency must conduct NEPA on the 2005 rules pursuant to the court order, we urge the agency to analyze only the proposed rule and the no action alternative. The agency must disclose to the public the impact of failing to reduce time and resources spent on planning, which would be the result of either dropping or significantly changing the 2005 rule.

Sincerely,

Richard Lewis  
President

Mary T. Dean  
Forest Resources Association, Inc.  
600 Jefferson Plaza #350  
Rockville, MD 20852  
301-838-9385  
Fax: 301-838-9481

PLEASE JOIN US AT:

FRA Fall Board Meeting, October 6-8, 2007, Grand Traverse Resort,

Traverse City, Michigan

FRA Annual Meeting, April 12-14, 2008, Marriott Hotel, Myrtle Beach, SC

## Planningrulenoi

Form 41

**From:** Delores Porph [veranda@qcsn.com]  
**Sent:** Friday, June 01, 2007 6:38 PM  
**To:** Planningrulenoi  
**Subject:** Planning Rule Comments

Dear Forest Service,

I am writing to urge the Forest Service to consider alternative rules to the 2005 NFMA changes, an alternative that will better protect our public forests, roadless areas, clean water, habitat for fish & wildlife, low-impact recreation, and a livable climate.

I strongly oppose the proposed rules because they eliminate virtually all environmental safeguards and remove a key requirement to ensure wildlife viability. These rules will mean less public involvement and more logging of big, old trees in our national forests.

Please consider the following recommendations:

1. Reconvene the Committee of Scientists to review the proposed rules as required by the National Forest Management Act. It is critical to ensure the scientific credibility of forest management decisions. All forest goods and services flow from a foundation of ecosystem sustainability, so that must be the basis of forest management.
2. Reorganize the National Forests to focus on providing ecosystem services such as clean water, fish & wildlife habitat, low impact recreation, quality of life, and carbon storage for a livable climate. Commodities such as wood products should be a by-product of restoration, rather than a goal unto themselves.
3. Reinstate the requirement to maintain habitat for viable populations of native species. Don't ignore the valuable ecological services provided by non-vertebrate species, like pollination and nutrient cycling. It is critical to maintain biodiversity during the tumultuous ecological changes that will be brought by climate change, as ecosystems move north and toward higher elevations.
4. Consider the ecologic and economic benefits of avoiding actions that would contribute to the listing of more endangered species. If the viable population requirement will be eliminated as proposed, consider the economic and ecological costs of more and more new listings.

In conclusion, please accurately describe the 2005 rules as the ecological disaster they really are, and consider alternatives that will protect and restore our National Forests that have been degraded by a century of mismanagement. The public wants to see restoration in their forests, not continued degradation and caving-in to industry interests.

Delores Porph  
301 NW Eastman Pkwy #D115  
Gresham, OR 97030

Planningrulenoi

---

From: James Roberts [jimrobj@yahoo.com]  
Sent: Friday, June 01, 2007 6:44 PM  
To: Planningrulenoi  
Subject: Planning Rule Comments

Form 5

Dear Forest Service,

I am writing to urge a thorough review of the environmental disaster that will result if the 2005 NFMA rules are adopted, and to urge the Forest Service to consider alternative rules that will better protect our public forests, roadless areas, clean water, habitat for fish & wildlife, low-impact recreation, and a livable climate.

I strongly oppose the proposed rules because they eliminate virtually all environmental safeguards and remove a key requirement to ensure wildlife viability. These rules will mean less public involvement and more logging of big, old trees in our national forests. These changes are misguided, at best.

Please consider the following recommendations:

1. Given that non-federal lands fail to sustain public values like clean water, wildlife habitat, and carbon storage, those values must be provided by public lands. Thus, commodity extraction is not an appropriate use of our National Forests. We should not compromise public values by using public lands to provide private values like wood products that already flow profusely from non-federal lands, especially when public values are already compromised and public lands are in short supply.
2. The Forest Service must stop viewing forest plans as merely strategic: Congress clearly intended for them to have concrete effect in guiding management activities on our National Forests. Environmental analysis and public involvement for these rules and forest plans must therefore be rigorous.
3. Consider the significant risks posed by the excessive discretion and lack of accountability in these rules. Forest management decisions have long-term consequences. Giving too much discretion to unaccountable bureaucrats is a recipe for big mistakes with big consequences.
4. Consider the loss of public support due to the exclusion of the public from decisions they are accustomed to participating in. The Forest Service must recognize that it exercises power only with the consent of the public. Excluding the public won't make the agency's life easier. It will make the public more distrustful, reduce public support, and effectively reduce the scope of the agency's power.

In conclusion, please accurately describe the 2005 rules as the ecological disaster they really are, and consider alternatives that will protect and restore our National Forests that have been degraded by a century of mismanagement. The public consensus is that the Forest Service should stop degrading our forests and start investing in forest restoration. Please consider this in your EIS.

James Roberts  
215 S Ellis St  
Palouse, WA 99161

## Planningruleno1

Form 6

From: Arran Thomson [Nehara777@naturmail.net]  
 Sent: Friday, June 01, 2007 6:29 PM  
 To: Planningruleno1  
 Subject: Planning Rule Comments

Dear Forest Service,

I am writing to urge a thorough review of the environmental disaster that will result if the 2005 NFMA rules are adopted, and to urge the Forest Service to consider alternative rules that will better protect our public forests, roadless areas, clean water, habitat for fish & wildlife, low-impact recreation, and a livable climate.

I strongly oppose the proposed rules because they eliminate virtually all environmental safeguards and remove a key requirement to ensure wildlife viability. These rules will mean less public involvement and more logging of big, old trees in our national forests. I don't like the idea of another sweetheart deal for the timber industry.

Please consider the following recommendations:

1. Require that areas with low road density, including all roadless areas 1,000 acres and larger, be carefully evaluated and protected. Roadless areas are the last, best places for wildlife, water, and scientific reference points. Roadless areas may be the only place to fully realize some important ecological values such as large snag habitat. Areas with low road density must be protected, not further destroyed with more roads and logging. Retain the Roadless Rule that protects 58 million acres of National Forest land.
2. Consider the value of National Forests as places to sequester carbon and help mitigate climate change. To fulfill NFMA's requirements to inventory renewable resources and identify hazards to forest resources, the planning rules must require that carbon fluxes involving forests and soil be accounted for in planning and future management. Logging and road building release vast amounts of carbon from both vegetation and soil, while healthy mature forests are a good place to securely store carbon and keep it out of the atmosphere where it causes global warming. Given the very urgent nature of our global climate problem, there is no longer any legitimate excuse for logging mature & old-growth forest.
3. Use a rational decision-making framework in all forest plan amendments by considering alternatives, disclosing environmental consequences, and consulting experts as required by NFMA and the National Environmental Policy Act (NEPA). The Forest Service must actively involve the public and consider environmental concerns at all steps of the planning process.
4. Do not presume that management activities are benign. The rules must require site-specific "suitability analysis" for each management activity. Seek the highest and best public use of our public lands, or as Gifford Pinchot says, "the greatest good for the greatest number." Do not presume that logging, mining, and grazing are suitable uses unless the weight of evidence shows them to be necessary and sustainable.

In conclusion, please accurately describe the 2005 rules as the ecological disaster they really are, and consider alternatives that will protect and restore our National Forests that have been degraded by a century of mismanagement. The public consensus is that the Forest Service should stop degrading our forests and start investing in forest restoration. There is plenty of important work to do, such as closing and fixing roads, managing prescribed fire, weed control, recreation management, stream rehabilitation, and thinning small trees in dense young stands to restore old growth characteristics. Let's get to it.

Arran Thomson  
 4613 NE 19th Ave  
 Portland, OR 97211

**PLR19.**

**Planningrulenoi**

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**From:** Benjamin Bain [freshseeker@gmail.com]  
**Sent:** Sunday, June 03, 2007 12:25 PM  
**To:** Planningrulenoi  
**Subject:** keep old FS laws

Hello,

I am writing to urge the Forest Service to not reinstate the 2005 Regulations in any form, as they provide no protection whatsoever for important national forest resources. The Forest Service should analyze stronger planning regulations in the forthcoming EIS, including those from 1982 that required protection of wildlife habitat and tracking of wildlife population and trends.

The resources included on Forest Service land should be protected by laws which will not let mining and logging companies destroy the overall health of our forests. Recreation on these lands would be severely effected if the laws made to protect this land were taken away. We should not let the current administration completely change the frame work of the Forest Service to tend to mining and logging companies.

Benjamin Bain  
3404 CR 207  
Durango, CO 81301

6/4/2007

Planningrulenoi

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**From:** Bruce Foster [bruce\_foster@compuserve.com]  
**Sent:** Friday, June 01, 2007 3:49 PM  
**To:** Planningrulenoi  
**Subject:** Comments on NFMA planning rules

Dear Forest Service,

I believe that the 2005 NFMA rules would eliminate virtually all environmental requirements, reduce public accountability, and give vast discretionary power to bureaucrats who are essentially rewarded for logging and punished for conservation. A federal court ruled earlier this year that these new rules were approved illegally without environmental review, without considering the impact on endangered species, and without adequately involving the public. I urge the Forest Service to consider alternative rules that will better protect our public forests, roadless areas, clean water, habitat for fish & wildlife, low-impact recreation, and a livable climate.

Please consider the following recommendations:

1. Commodity extraction is not an appropriate use of our National Forests. We should not compromise public values by using public lands to provide private values like wood products that already flow profusely from non-federal lands, especially when public values are already compromised and public lands are in short supply.
2. Substantial public involvement in developing rules and forest plans is essential.
3. Forest management decisions have long-term consequences. Giving too much discretion to unaccountable bureaucrats is a recipe for big mistakes with big consequences.
4. The Forest Service must recognize that it exercises power only with the consent of the public. Excluding the public won't make the agency's life easier. It will make the public more distrustful, reduce public support, and effectively reduce the scope of the agency's power.

Please develop alternative rules that will protect and restore our National Forests that have been degraded by a century of mismanagement.

Bruce Foster  
3129 Autumn View Ct  
West Linn, OR 97068

## Planningruleno1

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**From:** Susan Applegate [susapple@centurytel.net]  
**Sent:** Friday, June 01, 2007 4:50 PM  
**To:** Planningruleno1  
**Subject:** Planning Rule Comments

Dear Forest Service,

Another back door attempt to wipe out protections for clean water, wildlife habitat, sacred wild forests and genetically viable forests into the future through a 2005 rewrite of NFMA, is staring us in the eye with a deadline of June 11th. How preposterous that the average American family will not know that its public lands will be administered for the solitary benefit of the timber, mining and grazing industries. It seems the Bush Administration will not rest until the all public common wealth is entirely turned over to the extractive industries, believing that only they can claim this resource wealth.

Because I know, I am writing to urge a thorough review of the environmental disaster that will result if the 2005 NFMA rules are adopted. I urge the Forest Service to do what is right and adopt alternative rules that will protect our public forests, roadless areas, clean water, habitat for fish & wildlife, low-impact recreation, and a livable climate.

Now that I've heard the head of NASA not knowing if human beings should try to stem global warming, perhaps the USFS believes that wildlife and native forests will adapt in ten years what took a millenia in order to survive the threats global warming. Global warming will affect every level of life. Clear-cut logging old growth forests is perhaps the worst management decision to be possibly made....and yet, these rules would allow just that. Perhaps it comes down to taking a moral stance, and refuse the dilution of our NFMA rules. Please refuse to pollute our process for rule change and please extend a full disclosure to the public through a lengthened response period.

I strongly oppose this set of proposed rules because they eliminate virtually all environmental safeguards and remove a key requirement to ensure wildlife viability. These rules will mean less public involvement and more logging of big, old trees in our national forests. The public relies entirely on our public lands for clean air and clean water, not to mention recreation, spiritual and otherwise. Why? Because the private holdings have shredded any decent habitat, and have now warm, polluted streams with slides eroding silt into what once were salmon spawning streams. I don't drive anywhere without seeing a new red slash into the mountains around my ranch. Have you seen the private clear-cuts that now sport thousands of acres of scotch broom, thistle, blackberry, hawthorne, knapweed? Sure, small fir seedlings are peaking through, but the habitat is gone...

Please consider the following recommendations:

1. Given that non-federal lands fail to sustain public values like clean water, wildlife habitat, and carbon storage, those values must be provided by public lands. Thus, commodity extraction is not an appropriate use of our National Forests. We should not compromise public values by using public lands to provide private values like wood products that already flow profusely from non-federal lands, especially when public values are already compromised and public lands are in short supply.
2. The Forest Service must stop viewing forest plans as merely strategic: Congress clearly intended for them to have concrete effect in guiding management activities on our National Forests. Environmental analysis and public involvement for these rules and forest plans must therefore be rigorous.
3. Consider the significant risks posed by the excessive discretion and lack of accountability in these rules. Forest management decisions have long-term consequences. Giving too much discretion to unaccountable bureaucrats is a recipe for big mistakes with big consequences.
4. Consider the loss of public support due to the exclusion of the public from decisions they are accustomed to participating in. The Forest Service must recognize that it exercises power only with the consent of the public. Excluding the public won't make the agency's life easier. It will make the public more distrustful, reduce public support,

PLR22

and effectively reduce the scope of the agency's power.

In conclusion, please accurately describe the 2005 rules as the ecological disaster they really are, and consider alternatives that will protect and restore our National Forests that have been degraded by a century of mismanagement. The public consensus is that the Forest Service should stop degrading our forests and start investing in forest restoration. Please consider this in your EIS.

Susan Applegate  
4739 Elkhead Rd  
Yoncalla, OR 97499

Planningrulenoi

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**From:** Mary Markus [mmmarkus@earthlink.net]  
**Sent:** Friday, June 01, 2007 8:29 PM  
**To:** Planningrulenoi  
**Subject:** Planning Rule Comments

Dear Forest Service,

I am writing to urge a thorough review of the environmental disaster that will result if the 2005 NFMA rules are adopted, and to urge the Forest Service to consider alternative rules that will better protect our public forests, roadless areas, clean water, habitat for fish & wildlife, low-impact recreation, and a livable climate.

I strongly oppose the proposed rules because they eliminate virtually all environmental safeguards and remove a key requirement to ensure wildlife viability. These rules will mean less public involvement and more logging of big, old trees in our national forests. These changes are misguided, at best.

Please consider the following recommendations:

1. Given that non-federal lands fail to sustain public values like clean water, wildlife habitat, and carbon storage, those values must be provided by public lands. Thus, commodity extraction is not an appropriate use of our National Forests. We should not compromise public values by using public lands to provide private values like wood products that already flow profusely from non-federal lands, especially when public values are already compromised and public lands are in short supply.
2. The Forest Service must stop viewing forest plans as merely strategic: Congress clearly intended for them to have concrete effect in guiding management activities on our National Forests. Environmental analysis and public involvement for these rules and forest plans must therefore be rigorous.
3. Consider the significant risks posed by the excessive discretion and lack of accountability in these rules. Forest management decisions have long-term consequences. Giving too much discretion to unaccountable bureaucrats is a recipe for big mistakes with big consequences.
4. Consider the loss of public support due to the exclusion of the public from decisions they are accustomed to participating in. The Forest Service must recognize that it exercises power only with the consent of the public. Excluding the public won't make the agency's life easier. It will make the public more distrustful, reduce public support, and effectively reduce the scope of the agency's power.

In conclusion, please accurately describe the 2005 rules as the ecological disaster they really are, and consider alternatives that will protect and restore our National Forests that have been degraded by a century of mismanagement. The public consensus is that the Forest Service should stop degrading our forests and start investing in forest restoration. Please consider this in your EIS.

GIVE OUR REMAINING WILDERNESS A CHANCE!ONCE GONE, IT CAN NEVER BE FULLY RESTORED.

Mary Markus  
 10462 Ramona Way  
 Garden Grove, CA 92840

**Planningrulenoi**

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**From:** Philip E. Kreitner [pckreitner@comcast.net]  
**Sent:** Friday, June 01, 2007 10:33 PM  
**To:** Planningrulenoi  
**Subject:** Planning Rule ? Try again

Dear Forest Service,

Your job is to manage a public trust, not to cater to private exploitation. The forest profits industry (FPI) does not tell the forest how much wood fiber it wants; the forest tells you how much it can spare and you tell the FPI how much it can have. No remaining mature, mixed-age forest need be treated like (i.e., converted to) tree farm. Forests provide forest services, tree farms provide wood fiber. The FPI cannot grow any faster than the trees it exploits and those should be only those that it crops.

Philip E. Kreitner  
2814 SW Carolina St

Portland, OR 97239

Planningruleno

---

**From:** L Gray [lgshadowbloomers@yahoo.com]  
**Sent:** Friday, June 01, 2007 10:51 PM  
**To:** Planningruleno  
**Subject:** Planning Rule Comments

Dear Forest Service,  
I strongly oppose the proposed rules because they eliminate virtually all environmental safeguards and remove a key requirement to ensure wildlife viability.

Furthermore, if the Bush administration, either in part or in total, is for it...I'm against it. The devastation of nature and natural resources that has been a hallmark of this administration's time in office has got to stop. You can help.

Will you help.

Thank you for your attention..and I hope I really have it.

L Gray  
1307 S. Water St.  
Unit 12  
Silverton, OR 97381

**Planningrulenoi**

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**From:** Owen Wozniak [owen@rdwservices.com]  
**Sent:** Sunday, June 03, 2007 1:55 PM  
**To:** Planningrulenoi  
**Subject:** comments on FPMA revision

I offer these comments on the proposed 2005 NFMA changes:

Please do not weaken ecological safeguards. Specifically:

Please explicitly recognize the maintenance of ecosystem services as the highest purpose of the national forests. Commodity production should only be allowed where it serves restoration rather than competes with restoration.

Reinstate minimum habitat requirements for viable populations of all native species. This includes ecosystem services of non-vertebrate species.

Consider the ecologic and economic benefits of avoiding actions that would contribute to the listing of more endangered species.

Reconvene the Committee of Scientists to review the proposed rules as required by the National Forest Management Act.

Our national forests are dying by a death by a thousand cuts. The proposed rules simply do not fully acknowledge the cumulative impacts of a century of intensive use and management. Please revise the rules establish put ecological sustainability as the highest of the multiple uses of our national forests.

Sincerely,

Owen Wozniak  
2010 SE Sherman Street #1  
Portland, OR 97214

No virus found in this outgoing message.

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Version: 7.5.472 / Virus Database: 269.8.7/829 - Release Date: 6/2/2007 5:26 PM

## Planningrulenoi

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**From:** Mike Gundlach [mgundlach@pacific-crest.com]  
**Sent:** Friday, June 01, 2007 3:02 PM  
**To:** Planningrulenoi  
**Subject:** Comments re: Planning Rule

Dear Forest Service,

I strongly oppose the adoption of the 2005 NFMA proposed rules. From what I can tell they virtually eliminate all environmental safeguards not to mention removing a key requirement to ensure wildlife viability. This are the public's forest areas but these rules will mean less public involvement and more logging of big, old trees in our national forests.

Who did you write these rules for? Has the public been writing letters to you requesting that you reduce/eliminate the few environmental safeguards we currently have? Have Americans been writing to you demanding that you cut down more old growth trees? Have you received letters from folks that recreate in these areas, get their water for their cities, etc that are demanding you degrade our natural resources more than they have already been?

My guess is that you haven't. My guess is that you and our current administration owe some favors to big businesses that are demanding "repayment" for financially supporting republican candidates. So the story goes...the fleecing of America and Americans. These companies are literally running the government and apparently setting policy. That doesn't sound like a democracy to me.

You hear American politicians preaching to other countries to embrace democracy and weed out corruption yet our own country is full of corruption and deception of the public. Your own organization regularly writes policies based on what corporations want...not what the American public, who owns these public lands, wants. You regularly give significantly more "weight" to what corporations want to do with the forests than what the public wants to do with THEIR forests. In my book these actions are corruption...and then when you throw in reducing/eliminating public involvement you lead right to deception...

Someone in your organization needs to stand up and do the right thing for the average American citizen instead of bending over backwards to appease some corporate sponsor of an election.

Instead of constantly trying to destroy more of our resources why don't you work out a plan that is truly sustainable? I'm sure you have heard of the FSC designation for wood. You could get a lot more accomplished if you would simply mandate that all logging on public lands must meet the FSC certification criteria.

Not only would this help preserve our resources for future generations it would also help to ensure long-term economic stability for logging and the people that it supports. Instead of constantly fighting lawsuits with environmental groups you could completely disarm them by choosing sustainable practices noted in the FSC certification. We all understand that we need to use resources. What we find completely unacceptable is continued bad policies that are only designed to put another "x" million of dollars in the bottom line of some corporate executives pay.

I strongly urge you to take a thorough review of the environmental impacts that will result if the 2005 NFMA rules are adopted. The forest service must consider alternative rules that will better protect our public forests, roadless areas, clean water, habitat for fish & wildlife, low-impact recreation, and a livable climate.

Please consider the following recommendations:

1. Given that non-federal lands fail to sustain public values like clean water, wildlife habitat, and carbon storage, those values must be provided by public lands. We must ensure that any and all commodity extraction in our National Forests meets the highest ethical, moral and environmental standards possible. We should not compromise public values by degrading our public land. We have already done significant damage to

many of these lands. What remains must be cared for in a judicious manner. Economics cannot be used as the basis for destroying our land.

2. The Forest Service must stop viewing forest plans as merely strategic: Congress clearly intended for them to have concrete effect in guiding management activities on our National Forests. Environmental analysis and public involvement for these rules and forest plans must therefore be rigorous.

3. Consider the significant risks posed by the excessive discretion and lack of accountability in these rules. Forest management decisions have long-term consequences. Giving too much discretion to unaccountable bureaucrats is a recipe for big mistakes with big consequences.

4. Consider the loss of public support due to the exclusion of the public from decisions they are accustomed to participating in. The Forest Service must recognize that it exercises power only with the consent of the public. Excluding the public won't make the agency's life easier. It will make the public more distrustful, reduce public support, and effectively reduce the scope of the agency's power.

In conclusion, please accurately describe the 2005 rules as the ecological disaster they really are, and consider alternatives that will protect and restore our National Forests that have been degraded by a century of mismanagement. The public consensus is that the Forest Service should stop degrading our forests and start investing in forest restoration. Please consider this in your EIS.

Mike Gundlach  
2111 SW Sunset Blvd  
Portland, OR 97239

Planningrulenoi

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**From:** Peter & Mary Alice Belov [beltek@gorge.net]  
**Sent:** Friday, June 01, 2007 3:18 PM  
**To:** Planningrulenoi  
**Subject:** Planning Rule Comments

Dear Forest Service,

I am writing to urge the Forest Service to consider alternative rules to the 2005 NFMA changes, an alternative that will better protect our public forests, roadless areas, clean water, habitat for fish & wildlife, low-impact recreation, and a livable climate.

Something that should be kept in mind when considering these rules is that the Forest Service exists to best protect the U.S. (not Bush administration) forests, habitat, protect clean water, habitat for fish and wildlife, low impact recreation and a livable climate. These proposed rule changes do not do that, as you well know.

I strongly oppose the proposed rules because they eliminate virtually all environmental safeguards and remove a key requirement to ensure wildlife viability. These rules will mean less public involvement and more logging of big, old trees in our national forests.

Please consider the following recommendations:

1. Reconvene the Committee of Scientists to review the proposed rules as required by the National Forest Management Act. It is critical to ensure the scientific credibility of forest management decisions. All forest goods and services flow from a foundation of ecosystem sustainability, so that must be the basis of forest management.
2. Reorganize the National Forests to focus on providing ecosystem services such as clean water, fish & wildlife habitat, low impact recreation, quality of life, and carbon storage for a livable climate. Commodities such as wood products should be a by-product of restoration, rather than a goal unto themselves.
3. Reinstate the requirement to maintain habitat for viable populations of native species. Don't ignore the valuable ecological services provided by non-vertebrate species, like pollination and nutrient cycling. It is critical to maintain biodiversity during the tumultuous ecological changes that will be brought by climate change, as ecosystems move north and toward higher elevations.
4. Consider the ecologic and economic benefits of avoiding actions that would contribute to the listing of more endangered species. If the viable population requirement will be eliminated as proposed, consider the economic and ecological costs of more and more new listings.

In conclusion, please accurately describe the 2005 rules as the ecological disaster they really are, and consider alternatives that will protect and restore our National Forests that have been degraded by a century of mismanagement. The public wants to see restoration in their forests, not continued degradation and caving-in to industry interests.

Peter & Mary Alice Belov  
325 W. Darland St.  
Goldendale, WA 98620

**PLR33.**

**Planningruleno**

---

**From:** Wildlaw@aol.com  
**Sent:** Monday, June 04, 2007 8:04 AM  
**To:** Planningruleno  
**Subject:** WildLaw Scoping Comments

Attached in PDF format are WildLaw's scoping comments on Notice of Intent to Prepare an Environmental Impact Statement on new NFMA Regulations, 72 Fed. Reg. 26,775 (May 11, 2007). Please let me know if they do not come through okay.

Thank you,  
Ray

Ray Vaughan  
Executive Director  
WildLaw  
8116 Old Federal Road, Suite C  
Montgomery, Alabama 36117  
(334) 396-4729  
(334) 396-9076 (fax)  
(334) 221-9668 (cell)  
[www.wildlaw.org](http://www.wildlaw.org)

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See what's free at [AOL.com](http://AOL.com).

6/4/2007

June 4, 2007

Planning Rule NOI Comments  
P.O. Box 162969  
Sacramento, CA 95816-2969

Via: e-mail to [planningrulenoifsccomments.org](mailto:planningrulenoifsccomments.org)

Re: Comments on Notice of Intent to Prepare an Environmental Impact Statement  
on new NFMA Regulations, 72 *Fed. Reg.* 26,775 (May 11, 2007)

Dear Forest Service:

On behalf of WildLaw and our clients the Alabama Wilderness Alliance, Save Our Big Scrub, and Wild South, WildLaw hereby files these scoping comments on the proposed Environmental Impact Statement (EIS) to support the 2005 NFMA Regulations recently struck down by *Citizens for Better Forestry v. USDA* (N.D. Cal.)

### **The WildLaw Alternative**

Instead of just spending its time in a NEPA charade trying to do the minimum technical amount it can legally, the Forest Service should finally attempt to solve the problems with NFMA's implementation. The Forest Service should take the time to do a good job and really figure out new regulations (1) that really comply with NFMA and give the agency a strong scientific basis for management and (2) that resolve most of the conflict around management of the public's forests. We strongly oppose an attempt to just give cursory NEPA review of the 2005 regulations and the interim directives that agency adopted to implement them. Those regulations and directives exempted forest management plans, revisions or amendments from environmental review and meaningful public input under the National Environmental Policy Act. The vague requirements for public participation in those regulations and directives did not ensure that the public has a full and fair opportunity to participate in the forest planning process. NEPA has detailed implementation guidance and a history of implementation that the public has grown to trust and appreciate. The 2005 regulations and directives offered the public no assurances and no accountability.

NEPA requires that an EIS consider all reasonable alternatives to the proposed action. Here, we are proposing a VERY reasonable alternative, one that could, for the first time ever, start to solve many of the problems involved in National Forest management. We expect full analysis of "The WildLaw Alternative" in the DEIS.

The WildLaw Alternative is: Using cooperative conservation approaches, new NFMA regulations and directives should be developed through a facilitated group solving-problem process involving all the diverse interests involved in management of the National Forests. Instead of an agency driven and developed set of NFMA regulations, we propose a collaborative development of solutions to National Forest problems that then lead to new regulations to implement those solutions.

In February 2003, as part of the adoption of the 2005 regulations, the Forest Service brought together approximately 100 interested people to discuss options for protecting biological diversity on the National Forests under the new National Forest Management Act regulations. I was one of the participants in that workshop and the only environmentalist/conservationist who gave a presentation at it. While the agency ultimately ignored everything this group suggested, the people and the balance of types of people (agency, industry, scientists, environmentalists, etc.) at that workshop was excellent. No party of interest could claim not to be adequately represented there. Given a few more days and a real mandate to find common ground solutions to problems on the National Forests, I guarantee that that group would have found at least a handful of common sense solutions 95% of everyone would have agreed with. The agency could have then moved forward on those consensus items and left more contentious issues aside for the time being, thus accomplishing much needed work in the public forests and reducing litigation significantly. The Forest Service chose to go another route and now remains mired in litigation, most of which it loses.

Despite the legal limbo of the various Roadless Rules, the creation of the Roadless Area Conservation National Advisory Committee (RACNAC, of which I am a member) has proven to be a large and unique success. For the first time ever, the agency has successfully brought together diverse interests, got them talking without conflict baggage and seen them produce proposed solutions, some of which go beyond the boundaries of just roadless areas. Other agencies have had success with standing FACA committees and other advisory groups that work to resolve long-standing issues. It is time the Forest Service tried this conflict resolution approach on a larger scale, on the scale of planning for all the National Forests.

Once again, the Forest Service has an opportunity to either plow ahead with what it has already decided to do or the Forest Service can try a different route that has the potential to resolve (finally!) many of the decades-long issues bedeviling the agency and limiting good management on the National Forests. Our comments strongly encourage the agency to try something new in regards to NFMA regulations.

The Forest Service should convene another workshop, like the one in February 2003. But this time, the workshop should have participants who are committed to meeting for at least a week and to following up on what happens at that meeting with further meetings, reviews of documents and other support. A standing FACA committee on NFMA and planning should be created out of that workshop of those participants who have the time and resources to work on such a committee and who can adequately represent the diverse interests involved in National Forest issues.

Further, forest plans should identify scientifically valid restoration programs and have them peer-reviewed by an interdisciplinary team of scientists. If approved by the peer-review, then that process could provide some sort of streamlined site-specific implementation process later for all projects specifically tied to and in compliance with the restoration program. A forest plan could set out parameters (types of projects,

equipment, monitoring, etc.) for a restoration program from which streamlined EAs for restoration projects could be used because it would be tiered to the forest plan and restoration program. This is currently working in the National Forests in Alabama.

A part of these comments, attached at the end, we submit WildLaw's "A Modest Proposal for the U.S. Forest Service." This recently released white paper details how we think much of the management of the National Forests could be solved through cooperative conservation and a new management paradigm of restoration, protection and sustainability for ecosystems and communities. Such an approach should be the agency's focus as it decides on how to implement NFMA. We know that there are teams within the agency working on exactly such an approach. This is an opportunity to make real this new paradigm that solves problems instead of perpetuating them.

### **General Problems with the 2005 Regulations**

While the old 1982 regulations, adopted under President Reagan, had some difficulties that could have used updating or tweaking, most of the "problem" the agency had with them was not that they were hard to implement but that they were hard for the agency to avoid complying with. Despite the agency's claims of burdensome litigation and paper work, there is NOT ONE SINGLE CASE where a court overturned the Forest Service for complying with the 1982 regulations. NOT ONE! As one high level Forest Service official put it (we will protect his identity), "We never got sued for complying with the 1982 regulations. We lost lawsuits because we did not comply with the regulations. We cut corners and got caught." Hard to imagine making a good case with the public why totally new regulations are needed if the reason for getting rid of the 1982 regulations is that you got caught violating them too many times. The 1982 regulations were not "liberal" rules.

When the Forest Service DID try to comply with and properly implement the 1982 regulations, they were hugely successful at it. In 1992, the National Forests in Alabama were the WORST of the forests in the whole Forest Service system; they violated every federal law as often as they could in order to "get the cut out." A series of lawsuits, appeals and other legal actions shut down all logging in the National Forests in Alabama in 1999. Since then, the leadership of the Forests and much of the staff changed. Now, the National Forests in Alabama are implementing scientifically-valid restoration programs, all of which were prepared under (and in full compliance with) the 1982 NFMA regulations. If the 1982 regulations can be followed in Alabama, this could be done anywhere. Being the first to do this new type of restoration work under the 1982 regulations, the Conecuh National Forest prepared a full Environmental Impact Statement (EIS) on what restoration is needed for that forest's unique Longleaf Pine/Wiregrass ecosystem (the rarest forest type in North America) and on what work could be done in five years to correct past mismanagement and restore the natural and healthy forest native there. That restoration plan was not challenged legally in any way and succeeded.

Now, all the National Forests in Alabama and National Forests in Louisiana, Florida and parts of Mississippi are also doing great work at Longleaf Pine restoration, all in

compliance with the 1982 regulations. Actual population trend data on management indicator species is being collected and analyzed. Survey data on threatened, endangered and sensitive species is being collected and analyzed. Public participation is open and good. NEPA analysis for most of these projects is exemplary and does not slow down the agency at all. Indeed, these forests have found that doing NEPA analysis right, instead of trying to shortcut NEPA, makes their final decisions better and more successful. Other examples of good people in the agency doing good work under the old regulations exist in many other areas as well.

So, if there are real, ongoing and tangible examples of the Forest Service successfully implementing the 1982 regulations, why would the agency abandon those rules and replace them with something totally different and untried? It seems that the agency simply does not value or even believe in its personnel who actually do their jobs correctly and successfully. These new regulations seem to be an attempt to immunize, indeed elevate, mendacity, mediocrity and failure in the agency. We hope that is not the case.

The Forest Service was offered the opportunity to figure out how to fix real problems and then encourage the real innovations and successes the agency does have. An effort like that would have been an exciting thing that would truly have produced a better agency, better public relations and much less litigation. Sadly, the agency chose not to take that opportunity. Indeed, this entire scheme of having an EMS for each Forest was NEVER submitted to the public for review and comment, until now under a court order.

But this EIS is yet one more opportunity to try to REALLY solve many of the problems in National Forest management. We sincerely hope that the agency will change course and try something new and exciting this time.

The Forest Service could meet us half way and make a real attempt to solve the real problem areas in NFMA planning and thus come up with a system and set of regulations that bring out the best in the agency. Such an open and cooperative effort could truly solved the "process predicament" and "analysis paralysis" the agency has moaned about for years. Many of us in the conservation community have repeatedly offered to make such a process work with the agency; we were turned down. We make that offer once again.

Another major problem with these new regulations is that, instead of fixing the problems with the old regulations and updating them, the Forest Service decided to throw them out completely and come up with an entirely new and unknown system for National Forest planning. Many have said that the Forest Service "threw the baby out with the bath water." True, these new rules do that, but they also "bring in a new puppy." As this EMS/adaptive management puppy grows into a big dog, it will be interesting to see if it is as easy to train and control as the Forest Service wishes. It may well turn out that this new dog will eventually turn on its master and bite it in the rear. Eliminating planning as it has existed for 25 years and putting in a new system of environmental management systems and "ongoing planning," the agency is dumping a set of problems it knows and could deal with successfully for a whole bunch of new problems that are a total mystery

at this point. We have talked with a number of forest rangers about the new regulations, and every one of them finds the new rules to be unintelligible. "Greek to me," as one ranger put it.

Apparently thinking that a new system, especially a system that has served industry so well in "green washing" itself, would "solve" its problems, the Forest Service hopes these new regulations will insulate the agency from review and interference. Why a public agency would want to separate itself from the public it is supposed to serve is strange but obvious in the current day. But what is really shocking is that the Forest Service thinks this will really make things easier for them. Such an attitude is appallingly naïve. The new regulations will require a total overhaul of how the entire agency and its thousands of employees do things. To think that will go smoother than the work of the past is almost laughable. Instead of resolving the alleged "process predicament," it seems that the agency issued these new rules in order to increase its problems with paperwork and costs.

**The ONLY thing that will make management easier for the Forest Service is for the agency to engage in real dialogue with the various groups of people interested in the National Forests and finally start to try to solve problems in a cooperative atmosphere of mutual respect and give-and-take. That is "The WildLaw Alternative."**

Further, ditching a "known problem" for an entirely new system is a recipe for disaster, or at least great difficulty, in any context. The rule of unintended consequences will play a large role for the Forest Service in the coming years as its struggles to implement these new regulations. Even on the face of the new rules, it is clear that the Forest Service is doing a number of things the agency clearly did not think through very well. Some examples:

- In the past, the Directives (the Forest Service Manual and Forest Service Handbook) were mostly unenforceable in court. The new regulations make the Directives mandatory and enforceable.
- If the agency then tries to make the Directives too loose and thus unenforceable, they will be in violation of NFMA, because NFMA makes certain unavoidable requirements on the Forest Service and the new regulations put implementation of those requirements in the Directives. If the agency does not meet NFMA's requirements in the regulations, they HAVE to meet them in the Directives, but if they do not meet NFMA's requirements in the Directives, then they HAVE to meet them in the regulations. It is a nice "Catch-22" the Forest Service has invented for itself. Unless some mandatory and enforceable requirements to meet NFMA's dictates are SOMEWHERE, the Forest Service will be in such violation of the law that a lawsuit could shut down an entire Forest, or maybe even the entire National Forest System. Maybe the agency wants such a manufactured "catastrophe" to occur so it can run to Congress and demand that NFMA be gutted, but such a scenario would be a cynical sham. The Forest Service has the power and the opportunity to

solve most of its problems right now, but the agency seems to want to complicate its problems, not solve them.

- Failing to do NEPA alternatives analysis at the planning stage will mean projects will have to consider forest-wide alternatives and identify and consider cumulative impacts forest-wide, a prospect so daunting that we do not envy the poor staffers we know who will have to do this task. But it sure gives us a great legal hook to stop bad projects. We know of a way for the Forest Service to solve this dilemma and have offered that solution to the agency many times, but we will see if the Forest Service continues to refuse our assistance now.
- While an EMS under ISO 14001 was voluntary for industry and not enforceable, as a company could opt out of its EMS any time it wanted and suffer nothing more than only a loss of "certification," incorporating the ISO 14001 into these regulations makes the ISO's requirements mandatory for the Forest Service. By melding the ISO's requirements into the regulations, the Forest Service has given those previously voluntary requirements the force of law against the agency. As litigators, we welcome the opportunity to ask courts to enforce the better parts of the ISO against bad plans and projects. But as owners of these Forests (which is more important), we hope that the Forest Service will do the right thing and really comply with the spirit and letter of the ISO so as to engage in good management, thus avoiding legal unnecessary problems.

The Forest Service can now use this review of its NFMA planning regulations as an opportunity to engage the public, bridge divides and solve real problems. It can build on the working examples of the best of the agency and made a real difference and a real improvement. Along with others in the conservation community, WildLaw explicitly offered repeatedly to work with the agency, instead of being forced to be its adversary. We make that offer once again.

But if the agency moves ahead with rubberstamping the 2005 regulations and directives, we submit the following comments that need analysis and explanation.

### **NEPA**

NEPA includes several valuable elements that contribute to high quality decision-making and ultimately better forest plans. Trying a new approach that gets the various interests involved in the National Forests talking and working together, instead of just fighting over proposals generated entirely inside the agency would have tremendous benefits. At a minimum, this NEPA review of the 2005 should seriously look at changing the 2005 regulations to provide for more analysis and more public participation (especially up-front collaboration) in the development of management plans for National Forests.

The benefits of NEPA include:

1. use of high quality information and accurate scientific analysis;
2. consideration of all reasonable alternatives;

3. rational and balanced comparison of alternatives, including the no action alternative;
4. "hard look" consideration of direct and indirect environmental impacts;
5. cumulative impacts analysis (e.g. how will this forest plan combined with all other forest plans impact sensitive wildlife species?);
6. consideration of the views of credible experts who disagree with the agency's conclusions;
7. the requirement that environmental considerations be documented;
8. use of an interdisciplinary team;
9. public involvement at both the scoping stage and draft EIS stage, and
10. consideration of mitigation and monitoring.

Under the 2005 rules and their interim directives, there will still be some form of minimal public notice and comment (36 C.F.R. § 219.9), but those requirements remain vague and untested while most of the tried and true NEPA requirements enumerated above will no longer apply to the plan development process. Significantly, the large body of NEPA case law will not apply either, so there will be few if any opportunities to hold the Forest Service accountable for ignoring relevant information and excluding the public.

Interestingly, NFMA § 1604(g) mandates that the NFMA implementing regulations "shall include, but not be limited to (1) specifying procedures to insure that land management plans are prepared in accordance with [NEPA], including, ... direction on when and for what plans an environmental impact statement ... shall be prepared." While this does not explicitly require full EISs for every forest plan, it does indicate that Congress thought an EIS may be required, at least sometimes, and as the Forest Service well knows, when the significance of impacts is in question, the proper course is to prepare an EA that evaluates significance, and produces either a Finding of No Significant Impact, or, in cases where the effects may be significant, a Notice of Intent to prepare an EIS. Wholesale exemptions from the intent of NEPA do not meet Congressional intent that potentially significant impacts be considered and evaluated.

While it is true that forest plans are programmatic documents, and this view is reinforced by the recent Supreme Court decisions cited by the agency, it is also true that agencies' programmatic plans are still subject to NEPA analysis, most often in the form of an Environmental Impact Statement. The CEQ regulations (40 C.F.R. § 1508.18) define "major federal action" to include both "new and continuing" --

- "plans ... which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based."
- "programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive." And
- "policies ... formal documents establishing an agency's policies which will result in or substantially alter agency programs."

One cannot read this without coming to the conclusion that forest plans are clearly under the penumbra of major federal actions potentially requiring an EIS.

The Forest Service tries to dismiss the reality that forest plans might have significant effects by saying that the plans are “aspirational” and do not control on-the-ground activities. Under the Forest Service’s view, since forest plans do not influence on the ground activities, then they become essentially meaningless paper exercises. This is NOT what Congress intended when it passed the Resource Planning Act of 1974 or the National Forest Management Act of 1976. The Ninth Circuit has explicitly rejected this interpretation of plans in cases such as *Citizens for Better Forestry*, 341 F.3d 961 (9th Cir. 2003) and *Idaho Conservation League*, 956 F.2d 1508 (9th Cir. 1992). The reality is that forest plans do directly influence on-the-ground activities. NFMA § 1604(i) explicitly requires that “Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans.” This makes very clear that forest plans are meaningful and have potentially significant effects requiring an EIS.

### **The Forest Service will be Required to Comply with the Law Somewhere**

Either the regulations, the directives or the plan adopted under them must have the force and effect of law, or the agency is effectively advocating that its employees act without legal direction. By pushing decision-making to increasingly less formal avenues, the Forest Service is risking the judicial deference it has enjoyed in the past. “[C]ourts properly may accord less weight to such guidelines than to administrative regulations.” *General Elec. Co. v. Gilbert*, 429 U.S. 125, 141 (U.S., 1976) (discussing the EEOC’s guidelines interpreting and enforcing Title VII where Congress had not given the EEOC the authority to promulgate rules or regulations pursuant to that Title). Under the 2005 regulations, the Forest Service is likely moving all of the actual substance of its direction to employees into the directives in order to take advantage of D.C. and 9th Circuit precedent that says that neither the Forest Service Handbook nor the Forest Service Manual has the “independent force and effect of law.” *Western Radio Services Company, Inc. v. Epsy*, 79 F.3d 896, 901 (9th Cir. 1995). A D.C. District Court agreed, holding that “the manuals, although published in the Federal Register, are not ‘binding’ and do not carry the same weight as regulations,” despite the fact that they were subjected to public comment. See *City of Williams v. Dombeck*, 151 F.Supp.2d 9, 36 (D. D.C. 2001).

The *Fifty-Three Parrots* requirements discussed in *Western Radio* which give an agency pronouncement the “force and effect of law” are that it:

“(1) prescribe substantive rules -- not interpretive rules, general statements of policy or rules of agency organization, procedure or practice -- and, (2) conform to certain procedural requirements. To satisfy the first requirement the rule must be legislative in nature, affecting individual rights and obligations; to satisfy the second, it must have been promulgated pursuant to a specific statutory grant of

authority and in conformance with the procedural requirements imposed by Congress.”

*United States v. Fifty-Three (53) Eclectus Parrots*, 685 F.2d 1131, 1136 (9th Cir., 1982)(internal citations omitted). In *Fifty-Three Parrots*, the “internal procedure for alerting Customs officers to possible infringements of 19 U.S.C. § 1527 was not intended as a substantive rule, and was not entitled to the force and effect of law against the government.” *Id.*

The 2005 regulations and the directives adopted for them are different for a few reasons. First, they were developed after the Forest Service made a stink about the alleged “analysis paralysis” and “process predicament” the agency manufactured for the media, and not as internal guidance to agency employees. This history should be made apparent in the DEIS. Second, these were intended as substantive rules, no matter what the agency said. Once again, the history of the location of these types of direction can be used to help in this argument.

The Forest Service clearly hopes that the combined effect of *Western Radio*, *SUWA*, and *Ohio Forestry* is to greatly restrain judicial oversight of the Forest Service—the agency wants the freedom to operate outside of the law. We doubt the courts will be as willing to give the agency such unbridled discretion.

There are other problems with the Forest Service’s tactic. *Western Radio* is an extreme opinion, out of line even with the precedent the court cites—the weakest link in the trifecta discussed above. It simply is not as easy as the opinion suggests to determine what is and what is not a regulation. If it were, there would not be hundreds of cases addressing the point. Even *Brock v. Cathedral Bluffs Shale Oil Co.*, which *City of Williams* relies on, does not pretend that the distinction between regulations and general statements of policy is so clear—“[u]nfortunately, there is no axiom to distinguish between regulations and general statements of policy.” See *Brock*, 796 F.2d 533, 536-37 (D.C. Cir. 1986).

Even a quick read of *Brock* makes clear that the *City of Williams* court took an incredibly superficial look at that case which is so important to its decision. While *Brock* does say that publication in the *Code of Federal Regulations* certainly creates binding regulation, the court does not stop there, and the inverse (failure to publish in the federal regulations means that a policy or rule is not binding) is certainly not true. *Brock* at 538. *Brock* also considered the degree of freedom of discretion retained by the administrator, the characterization the agency gives the statement, the language of the statement itself, the fact that the statement in question dealt with enforcement discretion, and efforts the Secretary made to keep the enforcement guidelines out of the *Code of Federal Regulations*. *Id.*

On top of all of the problems discussed above, there is the additional problem that the D.C. Court of Appeals has recognized that in addition to legislative rules, “an agency’s other pronouncements can, as a practical matter, have a binding effect.” *Appalachian*

*Power Co. v. EPA*, 208 F.3d 1015, 1021 (D.C. Cir. 2000)(see quote at beginning of section V). Certainly at least parts of the FSM and FSH as well as the other documents we relied on will be considered binding in the D.C. Circuit regardless of whether they can be pegged “legislative” or “substantive.”

There is at least one factual problem with the Ninth Circuit ruling as well. The *Western Radio Services* court says that the FSM and FSH are not published in the *Federal Register*. This is not true. At least some part of the FSM are published in the *Federal Register*. See, e.g., amendments to Forest Service Manual Chapter 1920, 53 FR 26,807 (July 15, 1988). These directives were published in the *Federal Register*.

The agency’s care to avoid standards in plans by calling them guidelines and avoiding helping verbs will not matter. The stated purpose of these directives is “to provide consistent overall guidance to Forest Service line officers and agency employees in developing, amending, or revising land management plans.” 70 Fed. Reg. 14637 (March 23, 2005),

If an agency acts as if a document issued at headquarters is controlling in the field, if it treats the document in the same manner as it treats a legislative rule, if it bases enforcement actions on the policies or interpretations formulated in the document, if it leads private parties or State permitting authorities to believe that it will declare permits invalid unless they comply with the terms of the document, then the agency’s document is for all practical purposes “binding.” *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1021 (D.C. Cir. 2000).

The agency gains a broader protected sphere of discretion when it goes through formal rulemaking. If decisions are made on an *ad hoc* basis by line employees, rather than guided by rules, courts will show less deference to agency determinations. While the general rule under *Chevron* is deference to agency interpretation of a statute, there are definite limits to the doctrine. If a statute that an agency administers “is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute.” *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). “Judicial deference to reasonable interpretation by agency of statute that agency administers is dominant, well-settled principle of federal law.” *National R. Passenger Corp. v. Boston & Maine Corp.*, 503 US 407 (1992). Pushing all decisions to the project level by allowing frequent plan amendments without environmental review is not a reasonable interpretation of laws requiring the Forest Service to plan.

There is also the issue of the vacuum left in the place where substantive regulations used to be. The agency has taken it upon itself to vacate the level of law-making that Congress clearly intended to organize when it adopted the National Forest Management Act.

“The National Forest Management Act (‘NFMA’) requires the Secretary of Agriculture, who is responsible for the Forest Service, to develop ‘land and resource management plans’ to guide the maintenance and use of resources within

national forests. 16 U.S.C. §§ 1601-1604. In developing these plans the Secretary must determine the environmental impact these plans will have and discuss alternative plans, pursuant to the National Environmental Policy Act ('NEPA'), 42 U.S.C. § 4321 et seq."

*Sierra Club v. Marita*, 46 F.3d 606, 608-609 (7th Cir., 1995). "Administrative agencies do not possess the discretion to avoid discharging the duties that Congress intended them to perform." *Marathon Oil Co. v. Lujan*, 937 F.2d 498, 500 (Colo. 1991).

Substantive as well as legal problems will arise from a too-casual planning process. For example, it is unclear how the Forest Service, having delegated all monitoring decision-making to the individual forest level, will comply with FLPMA's inventory requirements. 43 U.S.C. § 1711(a) requires that "[t]he Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values." Yet the new regulations allow "[m]onitoring information in the Plan Document or Set of Documents [to] be changed and updated as appropriate, at any time." See § 219.6(b). Especially if the directives are not binding, the Forest Service may find less hospitable standards of judicial review in areas of such clear conflict. By relieving itself of the detailed 1982 regulations and substituting watered-down regulations and bulky directives the Forest Service has provided its opponents with a good argument that it is not doing any planning at all at the plan level.

### **Cumulative Effects in Relationship to Other Administrative Initiatives**

Cumulative effects of the proposed NFMA regulations and directives must also be analyzed. This proposal is one of several related administrative proposals and directives relating to national forest management. Some, but not all, of these administrative actions are part of the Bush Administration's Healthy Forests Initiative. The other changes include:

- CE of hazardous fuel reduction projects from National Environmental Policy Act (NEPA).
- CE of timber sales up to 70 acres and salvage sales up to 250 acres.
- Guidance from Council on Environmental Quality concerning environmental assessments of fuel reduction projects.
- Guidance from U.S. Fish and Wildlife Service and National Marine Fisheries Service concerning endangered species consultations on fuel reduction projects.
- Interim Directive on NEPA Categorical Exclusions and Extraordinary Circumstances.

A comprehensive analysis of the cumulative impacts of these efforts to "streamline" land management and planning on the national forests is required by NEPA before these or any other regulations can be finalized. Failure to do a full EIS on the impacts of the new NFMA regulations, the new CE for management plans, and the others is a clear violation

of NEPA, because the impacts of changing literally every regulation dealing with the national forests and their management are clearly significant. The cumulative effects are to eliminate virtually any opportunity for the public to comment on or appeal these kinds of projects and to eliminate NEPA cumulative effects and alternatives analysis from the entire management of 192,000,000 acres of public land.

Cumulative impacts analysis is mandatory in any NEPA analysis. Yet the Forest Service is openly planning not to do NEPA analysis for this proposal and all the other related actions. You are failing to consider cumulative impacts for this proposal. CEQ regulations mandate consideration of cumulative impacts at the threshold, EA stage of NEPA process. As the 10th Circuit recently explained:

“In determining whether a proposed action will significantly affect the environment and therefore trigger an EIS, the agency must consider: [w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. ...CEQ regulations define a cumulative impact as: the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.... Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Therefore, in determining whether the [proposed action] will significantly affect the environment, the [action agency] must consider the impact of reasonably foreseeable future actions.”

*Airport Neighbors Alliance, Inc. v. U.S.*, 90 F.3d 426, 430 (10th Cir. 1996), citing 40 C.F.R. § 1508.27(b)(7); 40 C.F.R. § 1508.7.

Cumulative impacts analysis must incorporate empirical data whenever possible in order to anticipate the significance of proposed action. See 42 U.S.C. § 4332; 40 C.F.R. § 1500.2. However,

“It must be remembered that the basic thrust of an agency's responsibilities under NEPA is to predict the environmental effects of proposed action before the action is taken and those effects fully known. Reasonable forecasting and speculation is thus implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as crystal ball inquiry.”

*Sierra Club v. Sigler*, 695 F.2d 957, 970 (5th Cir. 1983) (internal quotations omitted), quoting *Scientists' Institute for Public Information, Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C. Cir. 1973)).

As stated by the Ninth Circuit in *Thomas v. Peterson*, 753 F.2d 754, 760 (9<sup>th</sup> Cir. 1985):

“We believe that consideration of cumulative impacts after the road has already been approved is insufficient to fulfill the mandate of NEPA. A central purpose of an EIS is to force the consideration of environmental impacts in the decisionmaking process. *See, e.g., Columbia Basin Land Protection Ass'n v. Schlesinger*, 643 F.2d 585 (9th Cir. 1981); *City of Davis v. Coleman*, 521 F.2d 661 (9th Cir. 1975); *Lathan v. Brinegar*, 506 F.2d 677, 693 (9th Cir. 1974) (en banc); *Calvert Cliffs' Coordinating Committee v. AEC, Inc.*, 146 U.S. App. D.C. 33, 449 F.2d 1109, 1113-1114 (D.C. Cir. 1971). That purpose requires that the NEPA process be integrated with agency planning ‘at the earliest possible time,’ 40 C.F.R. § 1501.2, and the purpose cannot be fully served if consideration of the cumulative effects of successive, interdependent steps is delayed until the first step has already been taken.”

To claim that the adoption of management plans will not have a significant impact on the environment is patently wrong, especially when their interactions with the other proposed regulatory changes for the National Forests are considered.

### **Categorical Exclusion for Management Plans**

Part of this proposal to readopt the 2005 regulations means that the agency will also propose to adopt a Categorical Exclusion (CE) for the adoption, revision and amendment of management plans. That proposal is also not wise or legal.

The Forest Service is inappropriately trying to extend the Supreme Court decisions in *Ohio Forestry* (which generally held that the substantive requirements of a forest plan are not enforceable until they are implemented at the project level) and *Norton v. SUWA* (which held that the public does not have a right to compel the government commit resources to undertake certain actions that are called for in planning documents). The questions addressed in these cases are clearly far different than the question addressed by this CE (whether an EA or EIS is required for preparation of a programmatic forest plan).

The Forest Service tries to dismiss the reality that forest plans might have significant effects by saying that the plans are “aspirational” and do not control on-the-ground activities. Under the Forest Service’s view, since forest plans do not influence on the ground activities, then they become essentially meaningless paper exercises. This is NOT what Congress intended when it passed the Resource Planning Act of 1974 or the National Forest Management Act of 1976. The Ninth Circuit has explicitly rejected this interpretation of plans in cases such as *Citizens for Better Forestry*, 341 F.3d 961 (9th Cir. 2003) and *Idaho Conservation League*, 956 F.2d 1508 (9th Cir. 1992). The reality is that forest plans do directly influence on-the-ground activities. NFMA § 1604(i) explicitly requires that “Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans.” This makes very clear that forest plans are and have potentially significant effects requiring an EIS.

The proposed CE will not work.

### Forest Plans Do Make Final Decisions

The main justification in the new regulations for not doing NEPA analysis at the plan revision stage is “Typically, a plan does not include final decisions approving projects or activities.” 70 *Fed. Reg.* 1,023, 1,025 (Jan. 5, 2005). The Forest Service even miscites *Ohio Forestry Ass’n v. Sierra Club*, 523 U.S. 726, 737 (1998) for this proposition that plans “don’t actually do anything.”

But this excuse is not viable. *Ohio Forestry* did not hold that plans never include final decisions. The basic ruling in *Ohio Forestry*, which is a ruling on ripeness, is that **general** forest plan decisions that do not have on-the-ground effects until a second phase of decision making (at the project level) by the Forest Service cannot be challenged on their face. Rather, in most instances, one has to wait until a project is proposed based on the faulty forest plan decision. However, the Supreme Court indicated two exceptions to that rule. First, challenges to NEPA violations in preparation of the plan could be brought once the NEPA documentation is final. Similarly, procedural violations under NFMA could possibly be brought after the forest plan is finalized. A third exception, not applicable in that case, is that any final decision the plan itself makes (such as the decision on what areas to recommend as wilderness) can be challenged without waiting for projects, because such final decisions in a plan do not need a later, project-level decision to become operative.

Up until now, National Forest plans did indeed make a number of important final decisions. As examples are the new revised plans for six National Forests in Region 8 which were finished in 2004. These plans covered the National Forests in Alabama, the Chattahoochee and Oconee National Forests in Georgia, the Cherokee National Forest in Tennessee, the Sumter National Forest in South Carolina, the Jefferson National Forest in Virginia, and the Daniel Boone National Forest in Kentucky. Total, these new plans cover 3.9 million acres of public land in a region of the country with very little public land. Each and every one of those plans stated that it was indeed making certain final decisions. Here is the list of final decisions made by the new plan for the National Forests in Alabama:

“The revised Forest Plan will decide and establish the following:

- “1. Determining the Forest-wide multiple-use goals, objectives, and standards for the Forest, including estimates of the goods and services expected.
- “2. Determining multiple-use management prescriptions and management areas containing desired conditions, objectives and standards.
- “3. Identifying land that is suitable for timber production.

“4. Determining the allowable sale quantity (ASQ) for timber and the associated sale schedule.

“5. Recommending wilderness areas.

“6. Recommending wild and scenic river status.

“7. Determining monitoring and evaluation requirements.

“8. Identifying the lands that are administratively available for mineral development (including oil and gas), and consent to lease the available lands.”

All the other plans make the same decisions. If the Forest Service is no longer going to make these final decisions during planning, when will the agency make them? For many of these decisions, the new regulations do not say, which will be a major problem for the agency both in court and in practical application, because many of these decisions are forest-wide decisions which cannot be made in a site-specific project analysis.

The 2005 regulations attempt to shift some of these decisions to the Directives or to individual projects. But decisions about the recommendations for things like wilderness areas and wild and scenic rivers will still come at the planning stage usually. Indeed, even the new regulations anticipate this final decision for wilderness recommendations. Section 219.7(a)(5)(ii) specifically states, “Unless otherwise provided by law, all National Forest System lands possessing wilderness characteristics must be considered for recommendation as potential wilderness areas during plan development or revision.” This is a final decision with great “on the ground” implications. If the Forest Service does not do an EIS or similar level of analysis for making the final decisions on what areas do and do not deserve wilderness protection, that lack of information and analysis would have serious *California v. Block* type problems. Any supporting data or studies expressly relied upon in making decisions about wilderness recommendations must be “available and accessible” to the public. *California v. Block*, 690 F.2d 753, 765 (9<sup>th</sup> Cir. 1982) (quoting *Trout Unlimited, Inc. v. Morton*, 509 F.2d 1276, 1284 (9<sup>th</sup> Cir. 1974)). A failure to consider a reasonable range of alternatives on wilderness recommendations would be an obvious and easily litigated NEPA violation.

The regulations contain other irreconcilable problems for the agency in this area. In § 219.7(a)(2)(v), the agency deals with “special areas.” “Special areas such as botanical areas or significant caves may be designated, by the Responsible Official in approving a plan, plan amendment, or plan revision. Such designations are not final decisions approving projects and activities.” One cannot designate an area as “special” without some kind of analysis to support that designation, and the designation is indeed a final decision. Just because it is not a “final decision approving projects and activities” that does not mean it is not a “final decision.” A decision to make a “special area” closed to all logging, mining and drilling done without NEPA analysis would surely not be something the Administration and its friends in industry would agree is “not final” and

thus beyond their ability to challenge in court. Calling a rock a potato does not make it taste good when fried.

The agency is trying to create a distinction that does not apply here. As stated in their notice adopting these regulations:

“The Department emphasizes that project or activity decisions are generally not appropriate for inclusion in a plan level document; experience has shown that including project and activity decisionmaking in planning has actually delayed the planning and project and activity processes without improving natural resource management or public participation. Thus, by sharpening the distinction between planning and project and activity decisions, the Department expects both better planning decisions and more useful and timely environmental analysis for project and activity decisionmaking.” 70 *Fed. Reg.* 1,203, 1,040 (Jan. 5, 2005).

No one disputes that project decisions are different from plan level decisions. The agency thinks that by emphasizing the distinction between a plan and project level decisions, it can evade NEPA analysis for a plan. But the real requirement for NEPA analysis is not the type of decision made (project versus plan) but **whether a final decision is made**, period. If a plan makes a final decision, even if that is not a “project or activity decision,” the plan does something that triggers NEPA requirements. Yes, general guidelines and similar things in a plan are not final decisions, even if they would affect project decisions directly, but plans DO make final decisions, such as designation or special areas, opening of lands to mineral exploration and development, and recommendations for wilderness areas. No poorly executed trick of semantics will save the Forest Service from this reality.

Under the National Forest Management Act, plans must

“(1) provide for multiple use and sustained yield of the products and services obtained [from national forests] 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; and

“(2) determine forest management systems and procedures...and the availability of lands and their suitability for resource management.”

16 U.S.C. § 1604(e).

Coordinating the various resources, as required by paragraph (1) above, has become increasingly difficult, as national forest use is at an all time high, and continues to increase. Some uses conflict with other uses, such as motorized versus non-motorized recreation, and large scale logging and grazing versus providing habitat for wide-ranging species of wildlife. Thus the Forest Service has a difficult job balancing all these demands. To accomplish this, many decisions are made in forest plans that determine, to a considerable degree, what type of management can later take place, since emphasizing

a certain type of management on a given area of national forest land reduces the likelihood of some activities prevailing on that same land. For example, land designated in a plan for timber production will have reduced wildlife values compared to land that is managed to maintain or improve wildlife habitat.

Designations made in forest plans can and do preclude other uses from occurring. For example, designating a research natural area in a plan means that manipulative activities such as logging and certain forms of recreation will likely be prohibited from occurring on that land. Similarly, areas designated for developed recreation would not be managed to maintain habitat for threatened, endangered, or sensitive species of wildlife, nor for dispersed recreation that provides solitude.

Furthermore, decisions made in a forest plan to emphasize a certain type of management on a given piece of land are seldom changed at the project level. Any such change would require a forest plan amendment.

Implementing any forest plan over its 15-year life is likely to involve the implementation of many projects, such as timber sales, fuels reduction, livestock grazing, travel management, watershed restoration, etc. None of these projects would occur if not first authorized by a forest plan. In other words, forest plans authorize broad programs which consist of a potentially quite large number of individual projects.

Even under the vague, stripped-down plans that would be produced under the new Planning Regulations, the decisions made would set the stage for what projects could later occur, as such plans would include determinations of suitability of land for various resources and the designation of special areas. See 36 C.F.R. § 219.7(a)(2)(iv) and (v), 70 *Fed. Reg.* 1,057. Specifically, plans would decide the fate of lands possessing wilderness characteristics (36 C.F.R. § 219.7(a)(5)(ii)), an extremely important aspect of forest planning. Plans also make decisions on which lands are available for mineral leasing. See 36 C.F.R. § 228.102(c) and 70 *Fed. Reg.* 1,039.

The Preamble to the previously proposed rule allowing CEs for forest plans even admits that plans set the stage for later projects and activities:

“In essence, a plan simply is a description of a vision for the future that, coupled with evaluation, provides a starting point for project and activity NEPA analysis.”

70 *Fed. Reg.* 1,063.

Finally, the Preamble to the 2005 Planning Regulations admits, “approval of a plan, plan amendment, or plan revision is a final action under the CEQ regulations”. 70 *Fed. Reg.* 1,031.

In sum, forest plans determine what types of projects can occur and where they can occur, even if they do not determine exactly which projects will occur or when. Since all

projects, permits, contracts, etc. must be consistent with the forest plan (16 U.S.C. § 1604(i)), it is clear that plans are important in determining what activities can occur.

### **The Legal Cases Cited by the Forests Service do not Support this CE**

In the Federal Register notice announcing the comment period for the issue of environmental documentation of plans, the Forest Service cited two Supreme Court cases, *Ohio Forestry Ass'n v. Sierra Club* and *Norton v. Southern Utah Wilderness Alliance* (70 Fed. Reg. 1,032 and 1,062 et seq. (January 5, 2005)), to support its proposal to no longer require environmental documentation for forest plans. Neither of these cases supports this proposition.

A. OHIO FORESTRY. In this case, the U.S. Supreme Court ruled that a substantive challenge to the Wayne National Forest plan was not ripe for judicial review because the plaintiffs could not show the type of immediate, legally recognized harm required for judicial involvement. However, the decision does not stand for the proposition that forest plans have no significant environmental impacts because they are just management tools, as the Preamble to this rule implies. On the contrary, the case makes it clear that, even if a plaintiff cannot show harm from the substance of an adopted plan, it can show harm, and even sue, if it can show that the plan was adopted without the environmental impacts analysis required by NEPA. See *Ohio Forestry*, 523 U.S. 736, 737 (1998).

In fact, Justice Breyer's decision for the majority recognizes the potential environmental impacts of a proposed forest plan when it states:

“Despite the considerable legal distance between the adoption of the Plan and the moment when a tree is cut, the Plan's promulgation nonetheless makes logging more likely in that it is a logging precondition; in its absence logging could not take place.”

*Ohio Forestry*, 523 U.S. at 730.

B. SUWA V. NORTON. In this case, environmental organizations sought to force the Bureau of Land Management to take action to protect the suitability of certain areas of land for wilderness designation. Because no action was planned by the agency, the Court ruled that an EIS was not required because there was no major federal action pending. This is clearly not the case here, where the Forest Service's proposed rule governs what is undisputedly a federal action – formulating and approving a forest plan. Nor does the case support the proposition that the adoption, revision and amendment of forest plans have no significant environmental impacts, as is alleged in the Preamble to the proposed rule. The U.S. Supreme Court does point out the obvious fact that land management plans serve to guide future agency action, but it does so in the context of a determination that, as such, the agency's failure to enforce the specific provisions of the plan is not necessarily actionable. The Court's discussion does not in any way address, much less support, the proposition that management plans have no significant environmental impacts that would allow documentation of forest plans with a categorical exclusion.

That land management plans have a primary purpose to provide general management direction is a truism that requires no U.S. Supreme Court citations. The cases cited do not support the Forest Service's contention that forest plans have no significant environmental effects.

### **NEPA Problems with a Planning CE**

Part of the rationale for the dropping of NEPA analysis for new or revised plans is:

"From more than 25 years of NFMA planning experience, the Department concluded that it can most efficiently and appropriately evaluate and analyze the environmental consequences of an array of potential projects and activities when those matters reach the status of a proposal. Making planning a more continuous process, not dependent on environmental impact statements that only give a prediction at one point in time, will actually make plans more relevant to projects by collecting, evaluating, and monitoring data on an ongoing basis, thereby maintaining a current base of information that Forest Service can use at the project or activity level." 70 *Fed. Red.* 1,023, 1,041-42 (Jan. 5, 2005).

While there is some truth and appeal to this dropping of the long and cumbersome planning EIS process, we fail to see how the Forest Service will do a legally adequate job at only the project level of meeting NEPA's requirements for analysis of alternatives and an analysis of indirect and cumulative impacts. Despite the burdensome nature of doing an EIS when revising a plan, that process did have a real positive feature – it provided a detailed analysis of alternatives and overall indirect and cumulative impacts that projects could tier to. Now, the Forest Service has pushed the very onerous job of analysis of alternatives and indirect and cumulative impacts onto the very first project that occurs after a revised plan is adopted. Surely this is not a consequence that the agency intended or wants. But this consequence exists, because while the agency may be able to avoid doing this required analysis at the planning stage, it will HAVE to do it sometime. No project will be able to move forward legally until this analysis is done.

Cumulative effects analysis requires "some quantified or detailed information. . ." *Neighbors of Cuddy Mountain v. U.S.F.S.*, 137 F.3d 1372, 1379 (9th Cir. 1998). "General statements about 'possible' effects and 'some risk' do not constitute a 'hard look' absent a justification regarding why more definitive information could not be provided." *Id.* at 1380.

NEPA regulations require that the Forest Service "integrate the NEPA process with other planning at the earliest possible time." 40 C.F.R. § 1501.2. Many courts have recognized this means cumulative impacts analysis cannot be deferred. In *Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985), the Forest Service prepared an EA for a logging road, considering only the impacts of the road itself and ignoring the impacts of logging timber the road was designed to access. The Forest Service promised cumulative impacts would be considered in EAs or EISs prepared for individual timber sales. *Id.* at 760. The

Ninth Circuit found this impermissible under NEPA. The court concluded that NEPA “cannot be fully served if consideration of the cumulative effects of successive, interdependent steps is delayed until after the first step has already been taken.” *Id.* The court stated that “consideration of cumulative impacts will serve little purpose if the road has already been built. Building the road swings the balance decidedly in favor of timber sales. . .” *Id.* The Ninth Circuit went on to state clearly in *Neighbors of Cuddy Mountain v. U.S.F.S.*, 137 F.3d 1372 (9th Cir. 1998), that the Forest Service cannot “defer consideration of cumulative impacts to a future date. ‘NEPA requires consideration of the potential impact of an action before the action takes place.’” 137 F.3d at 1380 (quoting *City of Tenakee Springs v. Clough*, 915 F.2d at 1308, 1313 (9th Cir. 1990); see also *Kern v. Oregon Natural Resources Council*, 284 F.3d 1062, 1075 (9th Cir. 2002) (not appropriate to defer consideration of cumulative impacts when meaningful consideration can be given now).

The Forest Service argues that the impacts of the management activities proposed in the plans are too far in the future and are too vague or uncertain to be considered in detail in the plans. The Forest Service made a similar argument without success in *Thomas v. Peterson*, where the court said the Forest Service “may not escape compliance with the regulations by proceeding with one action while characterizing the others as remote or speculative.” 753 F.2d at 760; see also *Kern*, 284 F.3d at 1072 (“we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as ‘crystal ball inquiry.’”). In one case where the court allowed the Forest Service to defer detailed cumulative effects analysis to the project level, the court still required the Forest Service to “analyze [cumulative] impacts, including possible synergistic effects from implementation of the Plan as a whole, before specific sales.” *Resources Ltd. v. Robertson*, 35 F.3d 1300, 1306 (9th Cir. 1994). The court recognized that “consideration of specific projects in isolation is insufficient to replace analysis of the impact of a program as a whole.” *Id.*

### **ISO 14001**

Adoption of ISO 14001 was also part of the 2005 regulations. Because the EMS in the ISO 14001 that the agency has chosen to incorporate into its 2005 regulations requires clear goals at the planning level, the agency may have created internal conflict in its regulations by trying to move that power to the line officer level simultaneous with adopting ISO. The planning regulations say that where a desired project does not conform to the plan, the Responsible Official may “[a]mend the plan contemporaneously with the approval of the project or activity so that it will be consistent with the plan as amended. The amendment may be limited to apply only to the project or activity.” 36 C.F.R. § 219.8(e)(3) (2004). Such amendments may be made without public notification. 36 C.F.R. § 219.9(b) (2004). Since there is no limit on the number of amendments (and no public check on the agency), Forests may be administered in an *ad hoc* fashion that is contrary to Congressional intent. See, e.g. 16 U.S.C. § 1601 (establishing the “necessity for a long term perspective in planning”). Allowing an opt-out at any time the project of the day does not comply with the plan not only undermines the whole reason for planning, but it turns the requirement of NFMA on its head. NFMA requires that

“resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans”. 16 U.S.C §1604(i). If there is essentially no plan, it is impossible to be consistent. This description of project-by-project planning does not fit with the policy driven EMS any more than it fits into the legal requirements of NFMA.

“For that part of the EMS within the scope of the land management planning process, the land management plan identifies the most pressing environmental issues that need attention. The land management plan also outlines important resources and special environmental niches. The Responsible Official, usually the Forest Supervisor, will be considered top management, who makes the commitment to continual improvement of environmental performance, prevention of pollution and compliance with legal requirements within the environmental policy. (FSM 1921.04c).”

FSH 1901.12 chapter 20.23, exhibit 01, Selected ISO 14001 Elements, Planning Documents, and Relationship of Planning Documents and EMS. The choices made at the planning level are actually more important with the ISO in use than they were before. ISO is just a tool—a framework for making decisions. It cannot operate in an environment where goals are hazy and constantly changing.

### **Comments on Specific Regulations and Directives**

Unless the agency does take a “hard look” at The WildLaw Alternative and moves in that direction to try something new, we regretfully suspect that this EIS will be a rubberstamp exercise of the 2005 regulations and the directives that followed them. Thus, for the record, we submit these comments on the problems we found in the 2005 regulations and directives. NEPA requires that the DEIS analyze these comments, these problems and the potential impacts from these problems, IF you decide to go through with the proposal as it is.

### **2005 Regulations**

§ 219.2(b): Departs from old regulations in approval of forest plans in that now the forest supervisor approves them instead of regional forester. Old § 219.4(b)(3). Regional Forester or Chief may now elect to approve plan or plan amendment. However, under both the old and the new rules, the forest supervisor has the ability to amend the forest plan.

§ 219.2(d)(3): New rules require plan revision at least every 15 years as opposed to a 10 year preference for revision, but at least every 15 years in the old rules. Old § 219.10(g).

§ 219.3(a): Nature of land management planning: No real equivalent to this section was in the old regulations, but where the new regulations talk about land management that is “adaptive” and is based on “useful and current information,” the old regulations talked about using a “continuous flow of information”. Old § 219.4

- Additionally under the old regulations, there was a detailed provision on monitoring and evaluating how well forest objectives and standards were being met. Old § 219.12(k). Through this process, recommendations could be made which would precipitate a forest plan amendment/revision.

§ 219.3(b): This regulation is an obvious departure from how courts were previously interpreting the force and effect of plans. Under this regulation, plans do not create any legal rights and do not approve or execute projects and activities. The obvious question in light of this regulation is what is the purpose of plans are if they do not carry any legal authority.

- This provision seems to fly in the face of NFMA which states that “resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans.” 16 U.S.C §1604(i). Bottom line is that if plans are only goals or objectives and do not create any legal rights then there is no need for projects to be consistent with the plan, and this violates the Act.
- The Forest Service relies on the *Ohio Forestry* case for the proposition that forest plans are merely “tools.” The agency quoted directly from *Ohio Forestry*: plans “do not grant, withhold, or modify any contract, permit, or other legal instrument, subject anyone to civil/criminal liability, or create any legal rights.” The *Ohio Forestry* court was actually paraphrasing Justice Brandeis in *United States v. Los Angeles & Salt Lake R. Co.*, 273 U.S. 299, 309-310, (1927). *Ohio Forestry* is a case about ripeness and when judicial review of forest plans is permitted. Obviously forest plans did not exist in Brandeis’ day; there is an argument to be made that the Forest Service took this part of *Ohio Forestry* out of context. The Forest Service also seems to contradict their contention that forest plans do not matter further on down in the regulations.
- The Forest Service also seems to like the SUWA case, *Norton v. Southern Utah Wilderness Alliance*, 124 S. Ct. 2373 (2004). First off this case is on BLM land and although it involves a land management plan, FLPMA instead of NFMA is the controlling statute. Secondly, SUWA was attempting to enforce mere statements in the BLM’s plan to monitor off road vehicles in wilderness study areas. This should be distinguished from forest plan standards, which under the new regulations do not exist since they have only “guidelines.” Justice Scalia does concede that under the APA the BLM does need to act in accordance with and conform to LUPs. Additionally the BLM is prohibited from taking actions that are inconsistent with provisions of LUPs.
- § 219.8(e) seems to contrast and be inconsistent with earlier sections of the regulation since it says that approved projects and activities must be consistent with applicable plan components.

§ 219.4: A controversial regulation that eliminates preparation of an EIS for all forest plan revisions based on a categorical exclusion. The justification is that since forest plans are aspirational or tools, there are no significant impacts on the environment based on a

forest plan. This initial premise will need to be successfully overcome for a successful NEPA challenge to the categorical exclusions of forest plan revisions from NEPA.

- The Act does not seem to be helpful on this point since NEPA applies in situations where the regulations describe “when and for what plans an EIS” is required. 16 U.S.C. §1604(g)(1). Presumably the agency could say that an EIS is never required for a Forest Plan revision; however, the Act does somewhat imply that in some cases an EIS would be required, otherwise Congress would not have included this provision.
- This regulation is a very wide departure from the old regulations which had detailed provisions for preparation of an EIS for forest plans. An argument could be made that, by removing wildlife protections for MIS and species listed under the ESA, there is a significant impact on the environment, and an EIS would be required for a forest plan revision.

#### § 219.5 Environmental Management Systems

- This new section requires each National Forest to develop and maintain an environmental management system (EMS) according to the requirements of ISO 14001.
- A detailed discussion of EMS and ISO 14001 is below.

#### § 219.6 Evaluations and monitoring

- This provision is not as new and exciting as the Forest Service would have people believe, since there were similar requirements under the old regulations under § 219.7(f). Additionally, under a monitoring and evaluation program, forest plans could be revised accordingly. Old § 219.10(g), also see old § 219.11(d).
- The plan monitoring program described in § 219.6(b) is not really new at all either, since this was previously required under old § 219.12(k).
- § 219.6 (a)(1)(ii) *Conditions and trends*. The current social, economic, and ecological conditions and trends, and substantial changes from previously identified conditions and trends must be described based on available information, including monitoring information, surveys, assessments, analyses, and other studies as appropriate. Evaluations may build upon existing studies and evaluations. There really is no process for assuring the Forest Service will collect relevant and necessary information. Permitting merely the use of available information (especially if the available information is nothing) gives the agency an excuse for not collecting the right monitoring information to begin the process.

§ 219.7(a)(2)(ii): “Objectives” are said to be aspirational but previously seemed to be more concrete and were a measurable timed result. Old § 219.3.

- Part (iv) suitability is out of line with the old regulations and the Act, which requires “the secretary to identify lands within the management area which are not suited for timber production....” 16 U.S.C. § 1604(k).
- The old regulations required the Forest Service to avoid logging areas that could not be adequately restocked or where resource damage could not be

avoided because of lack of technology. Old § 219.14. The new regulation on suitability does not make any reference to lands that should be treated as unsuitable as directed in the Act. The suitability of an area will apparently be determined at the project level, which conflicts with the Act.

§ 219.7(a)(5)(ii) states, “Unless otherwise provided by law, all National Forest System lands possessing wilderness characteristics must be considered for recommendation as potential wilderness areas during plan development or revision.” Arguably, this is the regulations’ one improvement over the old rules. The 1982 regulations in § 219.17 had a longer and more detailed section on wilderness recommendations, but § 219.17 boiled down to a constrained and convoluted analysis of only inventoried roadless areas. The new section allows “all” lands having wilderness characteristics, not just those in the official inventory, to be considered for wilderness. Now, the agency may gut this in the Directives, but on its face, this is the one new section that seems to hold some promise.

§ 219.8(e) Ensuring project or activity consistency with plans:

“If an existing (§219.8(a)) or proposed (§219.8(b)) use, project, or activity is not consistent with the applicable plan, the Responsible Official may take one of the following steps, subject to valid existing rights:

“(1) Modify the project or activity to make it consistent with the applicable plan components;

“(2) Reject the proposal or terminate the project or activity, subject to valid existing rights; or

“(3) Amend the plan contemporaneously with the approval of the project or activity so that it will be consistent with the plan as amended. The amendment may be limited to apply only to the project or activity.”

- This section seems to undercut any teeth or even the purpose of a plan. Like with zoning that can be swallowed and destroyed by the variances that allow incompatible things to happen anywhere, these new regulations say there will be a plan, but the plan means nothing as it can be amended any time to allow anything.
- With forest planning and projects, NFMA requires the agency to put the chicken before the egg, but § 219.8(e)(3) allows the Forest Service to put the egg first.

§ 219.9: A lot of discussion here about public participation, but obviously, since there will be no forest plan EISs, public participation could be severely reduced and almost entirely at the discretion of the forest supervisor.

§ 219.9(b)(2)(iii): “Public notification of evaluation reports and monitoring program changes may be made in a manner deemed appropriate by the Responsible Official.”

- This is going to cause confusion. Some National Forests make better use of the web, etc. than others, but this will give a reluctant Forest Supervisor an easy out

for hiding reports. This really doesn't even leave much room for the Forest Service to address this in the Directives.

- These regulations should be changed to require that all public notification info should be required to be put on the web and mailed or e-mailed to all persons who request it.

§ 219.10(b) Sustaining ecological systems: The weak and fuzzy language in this section seeks to "provide a framework to contribute to sustaining native ecological systems by providing ecological conditions to support diversity of native plant and animal species." Unfortunately, NFMA is somewhat unhelpful in that the Forest Service is only required to provide for diversity of plant and animal communities to the extent that doing so meets multiple use objectives. 16 U.S.C. § 1604(g)(3)(B). Steps taken to protect tree species diversity are only necessary "to the degree practicable". *Id.*

§ 219.11 Role of science: This is a major change since the new regulations only require the Forest Service to "take into account" best available science, whereas in the draft 2002 planning regulations the agency was directed to take actions "consistent with" the best available science. This provision apparently directs the Forest Service to look at the best available science, but it seems they can dismiss it if they choose. The Forest Service is not obligated to use peer reviewed science or any other science advisory board. One hope for giving teeth to this section is litigation over what the subsections in § 219.11(a) mean. A court may well find that the consideration requirements here mean more than simply cursory consideration and summary rejection of the science.

- § 219.11(a)(1) requires that the proposed plan document how the best available science was taken into account in the planning process within the context of the issues being considered.
- § 219.11(a)(2) requires that the proposed plan evaluate and disclose substantial uncertainties in that science.
- § 219.11(a)(3) requires that the proposed plan evaluate and disclose substantial risks associated with plan components based on that science.
- § 219.11(a)(4) requires that the proposed plan document that the science was appropriately interpreted and applied.

§ 219.12 Suitable Uses: Seems to relate to § 219.7(a)(2)(iv): This regulation talks vaguely about areas that could conceivably be considered "unsuitable" for logging. Under this regulation, it seems the Forest Service could easily not designate any areas as unsuitable, and furthermore this regulation does not comply with the Act. The old regulation § 219.14 detailed certain environmental conditions that would preclude logging in certain areas. These conditions include logging methods that would not allow the soil resource to recover or if the area in question could not be adequately restocked.

- By contrast, the new regulation only precludes logging if the land is not forest land or if achievement of desired conditions and objectives would not permit logging. However, these conditions and objectives are merely aspirational and would probably do nothing to cause an area to be designated unsuitable.
- The Act requires that timber be harvested only in situations where:

- Soil, slope, or other watershed conditions will not be irreversibly damaged. 16 U.S.C. § 1604(g)(3)(E)(i).
- There is assurance that such lands can be restocked within 5 years. Id.
- Protection is provided for water bodies of all types including protection of water quality, prevention of sediment build up, deterioration of fish habitat. Id.
- The old regulation § 219.14 outlined prevention of resource damage as described in the Act. Additionally prevention of resource damage was outlined under old regulations § 219.23 and § 219.27. This could be an area where the Forest Service is vulnerable, since they did not establish specific conditions where logging would be considered unsuitable in a certain area.

§ 219.13: Objections to plans: This process is to replace the old § 217 appeals process for forest plans. The justification for the change is that the public and the agency spend too many resources to comply with procedural requirements, and they wanted to make the process more in line with the BLM process. It seems that under the old regulations the appeals process was not described in the NFMA regulations, but instead referenced another section of the CFR detailing the appeals process. In this case, the appeals or objection process is described in the NFMA regulations itself. The new 30-day objection period is not an adequate time to review and comment on an entire forest plan. Once again, public participation is reduced.

§ 219.13(c) *Responding to objections*. (1) The Reviewing Officer (§219.16) has the authority to make all procedural determinations related to the objection not specifically explained in this subpart, including those procedures necessary to ensure compatibility, to the extent practicable, with the administrative review processes of other Federal agencies. The Reviewing Officer must promptly render a written response to the objection. The response must be sent to the objecting party by certified mail, return receipt requested

- This is the quintessential double standard—objections come with a time limit, however, the response does not.

§ 219.14(f) MIS: The Forest Service says that the MIS concept is flawed, because they say the science says that population trends of MIS cannot represent trends for other species. They do not cite any studies for this supposition, and more importantly, they do not offer an alternative that would ensure adequate wildlife viability across the board.

- The regulations do say that collection of population trend data for MIS would still be required if the Forest Plan requires this, but otherwise analysis of habitat would suffice. The Forest Service wants to make any requirements that relate to MIS very flexible, and calls for a “range of methods” to be available for evaluating MIS. MIS monitoring is also not required for individual projects and project areas. Most of this stuff conflicts with the MIS case law under the old 1982 regulations and may not survive legal challenge.

### **Notable Omissions in the New Regulations**

There is no mention of clearcutting in the new regulations. Since the Act requires that plans contain guidelines on clearcutting it follows that the regulations should also describe the parameters for clearcutting. NFMA clearly prescribes that there be guidelines in plans which allow clearcutting, but the Act does not necessarily prefer this method. 16 U.S.C. § 1604(g)(3)(F). Clearcutting is, of course, permitted, but only if it is the optimum and meets other requirements. Plans are also to establish maximum size limits for areas to be cut in a certain operation. Cuts are also to be carried out so that natural resources are protected.

The new regulations reference the Renewable Resource Program, 16 U.S.C. § 1601 and § 1602, which requires a report on personnel requirements, multiple use objectives, etc. Most noteworthy in the RRP is the requirement to “account for the effects of global climate change on forest conditions,” including the effects of climate change on species. An assessment under this program described in § 1601 requires “an analysis of the potential effects of global climate change on the condition of renewable resources on the forests and rangelands in the US.”

- We would be surprised if the Forest Service ever took a close look at this issue during this rushed EIS process, despite some excellent work within the agency about this issue and how it interacts with the National Forests and their management. It took a tremendous amount of foresight by Congress to include this language in law back in the mid-70s. Recent studies (*Nature*, 2004) on this subject indicate that climate change has increased the occurrence of wildfires in Idaho.
- Will this play into any plans or the EMS for any forest? It should.

### **FSM Directives for the 2005 Regulations**

- FSM 1330: “The EMS shall conform to the consensus standard developed by the International Organization for Standardization (ISO) ISO 14001: Environmental Management Systems Requirements (FSM 1921.9).” These standards should be published in the Federal Register, or at least in the directives. Secret laws, or laws accessibly only by those with the financial means to pay for access are not acceptable. The directives do require that “[e]ach Forest Service unit will also keep a copy of the international standard available for public review.” FSM 1331.1 (new directives).
- FSM 1301.5: The definition of independent audit includes the following sentence: “The audit team shall include at least one person from a Regional or Washington Office.” This does not sound like an independent audit.
- FSM 1301.5: The definition of ISO 14001 actually illuminates the reason the ISO is not a substitute for planning. “ISO 14001: An international standard that specifies requirements for an environmental management system to enable an organization to develop and implement a policy and objectives, which take into account legal requirements.” In other words, the ISO is value neutral. The ISO is merely a system to implement the policies and objectives that a business, or in this case, the agency, has chosen. The ISO does not eliminate the hard part of planning, which is considering an adequate range of alternatives and choosing among them.
- FSM 1900: states that the changes to the zero code will make the definitions

consistent with the 2004 planning regulations, but does not provide proposed definitions for public comment;

- FSM 1903: “reasonable manner, at reasonable costs, in a reasonable amount of time....” What is “reasonable”? Digest says this section provides additional guidance on what is “reasonable,” but it does not.
- FSM 1903.4: “Terms used in planning and evaluation shall conform to prescribed definitions found in FSM 1905.” The ISO uses the same terms as the planning regulations, but in different ways. Definitions should be consistent to avoid confusion.
- FSM 1905:
  - The definition of “Activity” seems pretty narrow - are you attempting to limit what is an agency “action”? Courts will not be so limited.
  - “Characteristics of Ecosystem Diversity” is not defined it with some quantifiable measures, so line officers can tell the public what was the historical ecosystem diversity, what is there now, and what planning is aimed to achieve. The term is so fluffy now that it gives very little direction.
  - The definition of cost efficiency states that in measuring cost efficiency, “some outputs - including environmental, economic, or social impacts - are not assigned monetary values, but are achieved at specified levels in the least cost manner.” How in the world can economic outputs be measured with anything other than a monetary value?
  - The definition of “Forest Land” does not require that there actually be any trees in place: “Land at least 10 percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for nonforest uses. Lands developed for non-forest use include areas for crops; improved pasture; residential or administrative areas; improved roads of any width and adjoining road clearing; and power line clearings of any width (36 CFR 219.16).”
  - The definition of multiple use has a troubling amount of attention paid to mineral extraction: “Consistent with the Federal Land Policy and Management Act of 1976 (FLPMA), multiple-use includes Federal energy and mineral resources underlying National Forest System lands. Exploration and production of those resources is considered one of the “principle or major uses” under FLPMA which, under Sec. 202(e)(1) of that Act, are to be given special consideration in the planning process.” This individual attention is not given to any other use of Forest Service land and is actually in violation of FLPMA by elevating one use over all others.
  - The definition of “Natural Forest” is good: “The condition of a forest environment at any point in time, including associated plant and animal communities that has been reached through natural disturbance regimes and the process of natural succession.” This term should be included in as many planning documents as possible, if it remains unchanged in the final version.
  - The definition of “Net Public Benefits. ...whether they can be quantitatively valued or not.” actually seems good, but it appears to conflict with the definition of “cost efficiency.”
  - The agency is attempting to make no part of the plan binding for the project and activity level. “Objectives. Concise projections of measurable, time-specific

intended outcomes. The objectives for a plan are the means of measuring progress toward achieving or maintaining desired conditions. Like desired conditions, objectives are aspirations and are not commitments or final decisions approving projects and activities (36 CFR 219.7)."

- FSM 1920.3: "When Responsible Officials prepare plans or plan revisions, they must 1. Conduct sustainability evaluations within an area large enough to consider broad-scale social, economic, and ecological factors and trends over large landscapes." We fail to see how this requirement will be met with the analysis level of merely a CE.
- FSM 1921.03e: "Collaboration: The Responsible Official has discretion to decide on actual methods and timing for public participation and involvement (36 CFR 219.9)." This is too much discretion. NEPA requires public participation as early in the process as possible.
- FSM 1921.14: "Responsible Officials use guidelines to built operational controls into project and activity decisions, such as mitigating measures to reduce environmental impacts. ...A Responsible Official may depart from guidelines when it is necessary." Again, what is the point of even having NFMA regulations and these directives if the responsible official can deviate from them or the Forest's plan at any time for any reason?
- FSM 1921.17c: "Lands identified as not suitable for timber production in the plan document or set of documents shall be reviewed at least every 10 years, as needed, to respond to changed conditions in the plan area, or, as otherwise prescribed by law, to determine their suitability for timber production." This is quite a one-way street since there is no requirement to review changes that may take lands OUT of the "suitable for timber production" category.
- FSM 1921.17d: This provision appears to allow timber harvest in excess of the long-term sustained-yield capacity. FLPMA defines "sustained yield" as "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use." 43 U.S.C. § 1702(h). Harvest volume is increased in two ways: as already mentioned, by allowing harvest in excess of what is sustainable, and second by including all "land where timber harvest could occur" rather than production lands only. Thus, the amount of timber that can be harvested sustainably is artificially inflated.
- FSM 1921.17e: The addition of guidelines of maximum size limits for even-aged regeneration harvest is a positive change, however, we need to know what those guidelines are before we can comment on whether the likely size of these projects under the guidelines will be acceptable.
- FSM 1921.17f: Culmination of mean annual increment (CMAI) is inappropriate for use in any areas that are not in even-aged management. The Forest Service should be moving away from the tree farm method of management, especially in the southeast where the pine beetle has done its best to prove how imprudent this method of management is. The incorporation of CMAI suggests that the Forest Service plans to either continue or commence even aged management. This is not a good idea.
- FSM 1921.31: "plan revision process begins when the Responsible Official decides." A RO can decide to "revise" a plan without higher approval? ROs are given so much authority - when these a public lands to be managed for generations. The directives need to have safeguards that to protect future generations from the potential abuse of

an RO who is there for only a few years.

- FSM 1921.31b: “The Responsible Official has the discretion to determine the appropriate source, scale, degree of scientific rigor, or other relevant considerations, including timeliness of the information, available staff, and reasonable costs incurred to obtain the information. The Responsible Official should use a three-step process for information collection.” This is outrageous - this is the type of info the Directives should be providing - some “Direction” the agency is providing here! This type of “anything goes” forest planning will not pass muster in court.
- FSM 1921.32b(2): “The Responsible Official shall determine the scope and applicability of the amendment.” What does this mean - can the RO determine that a Project Decision amendment is only applicable for that one project? This seems to make the plans even more of a farce.
- FSM 1921.33: “Unless otherwise provided by law, all National Forest System (NFS) lands possessing wilderness characteristics shall be considered for recommendation as potential wilderness areas during plan development or plan revision” While we agree with this requirement, how will the agency determine what lands possess wilderness characteristics? Without specific directives here, each plan will be open to the claim that the consideration required here was totally arbitrary.
- FSM 1921.51: “The Responsible Official shall involve the public in designing the monitoring program.” While we agree that the public should be involved in the monitoring programs, and we have seen successful examples of this in other contexts, how will it be accomplished? What members of the public will be invited and how will they be involved in designing the monitoring program?
- FSM 1921.61b: Should be required to tell people if they submit anonymous comments they won't have standing; this section does not require that.
- FWM 1921.71: “Social, economic, and ecological evaluations must take into account the best available and relevant science.” How will this be accomplished? Again, the directives contain no direction for the responsible officials.
- FSM 1921.74: Intent here is to reduce the need for species-specific analysis, which is a dangerous scenario. How will the agency know that their ecosystem guidance covers all species, as claimed?
- FSM 1921.74b: “Identified species should be those for which valid, existing information is sufficient to indicate risk levels.” How will the RO determine that information is valid and sufficient to indicate risks? Again, no direction in the directives.
- FSM 1921.76: “The extent of trend analysis for any options considered is at the discretion of the Responsible Official.” Trend analysis - considered at the discretion of the RO, but then gives duties; there seems to be conflicting guidance here. Where is the direction that directives should give?
- FSM 1921.77c: “as deemed appropriate by the Responsible Official consistent with the limits of agency authorities.” You can't even require the RO to contribute to conserving federally listed species? There a huge potential ESA § 7(a)(1) problem here.
- FSM 1921.82: “A science advisory board may be created by the Responsible Official to conduct the review.” You don't even have consistency in the way the agency uses science. Some forests will have plans based on top-notch scientific review, others

will not = anything goes.

- FSM 1922.04: "The Chief reserves the authority to approve the schedule for revising individual forest plans." This conflicts with above total discretion given to the RO.
- FSM 1926.13d: a 30-day objection period is way too short. The regulations do not say anything about extending the time period; the agency should put that ability that in here.
- FSM 1926.31: "The Reviewing Officer's response does not need to be a point-by-point review of the issues." This not needing to respond in a point-by-point review is not in the regulations, and such a response should be required.

### **EMS and ISO 14001**

The Forest Service seems to be betting the ranch on the use of EMS as set out in the ISO 14001. ISO 14001 was developed for the use of businesses and corporations for polluting facilities. All too often, the ISO has been used to "green wash" a company to make it look like they were concerned for the environment. Other times, it has been effectively used to improve a facility's operations and lessen its environmental impacts. It has been used by some government agencies on limited scales, but it has never been used agency-wide or even proposed for use on the scale the Forest Service now plans. The Forest Service is literally walking into unexplored territory here; the DEIS must fully analyze all of the potential impacts from this new territory.

The thrust and purpose of the ISO 14001 is process driven; it is designed to provide the process for meeting an organization's environmental goals and objectives while assessing, and hopefully reducing, its environmental impacts. The ISO will do little to make the Forest Service set good goals and policy, other than the ISO does mandate that an organization's policy must have "a commitment to continual improvement and prevention of pollution." ISO 14001 § 4.2. The Forest Service could choose bad policies and goals, such as maximizing subsidized logging of all remaining old growth, but given the media and public relations implications of opening stating bad intentions, it is doubtful the agency would do that. Goals and policies will come in the plan, but the ISO will provide requirements for meeting those goals. If past plans and these new regulations are any indication, the Forest Service will probably set up broad but good sounding goals and policies in its plans; they will probably not openly advocate goals and policies 75% of the public disapprove of. With such "good" goals and policies in place, it may be possible to use the process requirements of the ISO to mandate projects and actions in line with the "good" intentions of the agency. Litigation over the enforcement of the ISO will be a brand new field of law, created thanks to the Forest Service.

The current cost of the ISO 14001 at the American National Standards Institute (ANSI) website is \$81.00. The cost was \$78.00 on December 23, 2004, the day the Forest Service announced the new regulations. Apparently, ANSI anticipates more people buying the ISO as a result of the new rules. Or perhaps it was a regular price increase at the start of the year. Regardless, \$81.00 is an outrageous sum to ask each and every member of the public to pay just so they can participate in the planning and management of their National Forests. It is unprecedented, and the Forest Service has no legal

authority to force the public to make such expenditures in order to participate in the management of their public lands.

The ISO 14001 is a copyrighted product. ANSI will not allow people to have it unless they buy it, and the copyright license is for each copy to be used only by the person who bought it and then on only one computer. Even the person who buys the ISO cannot copy it for their own use. The Forest Service itself will have to work out a large bulk licensing deal with ANSI just in order for its very own employees who must develop the EMS for each Forest to even read the ISO. And the agency complained about the cost of doing planning under the 1982 regulations!

While ANSI has the legal right to enforce their copyright, having a public agency base the management of public land on standards in a document the public cannot see unless they pay for it is very problematic.

When we asked, Forest Service top personnel refused to give the ISO to WildLaw. Granted they were nice and honest about why they could not do so, but the reality remains that they want comments on the new Plan CE and they want people to trust their use of the ISO, all without ever allowing the public to see the standards they are going to use to manage 192,000,000 acres of public land. Almost needless to say, courts will have a real problem with this arrangement; managing public land while keeping the basis for that management secret from the public. As stated by Fred Norbury, Associate Deputy Chief of the Forest Service:

“As I understand it, we can’t distribute copies of the ISO itself because it is copyrighted. This is a question that has been raised by a number of Federal agencies that are following the ISO, and we understand that the Office of the Federal Environmental Executive in the White House and CEQ are working on a solution.

“As you can well imagine, this is a frustrating situation for us, and we’re wide open to any suggestions you have as to how we might work around it.”

E-mail communication to Ray Vaughan, Jan. 14, 2005. Seems odd and somewhat thoughtless that the Forest Service did not have this problem “worked around” prior to releasing and implementing these regulations. It is one of many signs that, despite the great amount of time the agency took on these regulations, the Forest Service did not really think through many of the implications of what they were doing in adopting an entirely new system of National Forest planning.

Sharon Friedman, Assistant Director, NEPA and Project Planning, U.S. Forest Service, had this to say:

“Units of federal agencies in the past have become certified under ISO and the lack of public access hasn’t been an issue with these units.

“We recognize that land management agencies are subject to an entirely different level of scrutiny and interest. One option would be to redraft the standard and then go by the redrafted version, but then people could say that we weren’t using the ‘real’ standard. Plus auditors would have to know the differences from what they usually do. Which is why the public administrator side of me would say ‘if we use the same as everybody else, there will be a fairly competitive market for training, auditors, etc. and the taxpayer will benefit.’ Another option is to talk to ANSI to see, given what you have pointed out about FOIA, we could arrange some creative form of licensing that would solve the problem. It is good for ANSI and good public administration for the feds to adopt this standard.

“We are also exploring a site license for FS employees which apparently EPA and DOD have, which addresses some of your concerns, but this doesn’t help with the public.”

E-mail communication to Ray Vaughan, January 14, 2005.

All this puts the agency in a bind. By adopting the ISO into these regulations, the Forest Service will technically make the ISO a public document, and someone could send a Freedom of Information Act (FOIA) request for it and would have the right to get it that way. No exemption in FOIA will shield the agency from having to release the ISO. Then, THAT requesting party would be able to distribute the ISO without paying for the copyright (so long as they distributed it for free for public policy purposes), as legally, the ISO would be a public document secured under FOIA and subject to fair use and other exceptions of the copyright law. And it would be the Forest Service, not the FOIA requester, ANSI would have to go after for putting their copyrighted material into the public domain. And on the flip side, if the Forest Service could somehow keep this ISO out of the public’s hands under FOIA, then the entire set of regulations will most likely fall to a legal challenge of basing management on a system hidden from the public. Even before these regulations get implemented, problems are already coming up that make it look like the agency itself is not going to like everything about how this new system works out.

### **Legal Requirements for an EMS**

Proposed 36 C.F.R. § 219.5 requires that each unit of the National Forest system establish an environmental management system (EMS). The EMS must include at least “the land management planning process defined by this subpart.” Thus, it would appear that each Forest, even if it does not need to revise or amend its plan (such as the six Forests in Region 8 that adopted new revised plans in 2004), must incorporate the new regulations requirements into their management, via the EMS. Without an EMS, it will not be possible for a Forest to meet the requirements of these new regulations.

Under the 2005 regulations, each and every National Forest must have its EMS in place within three years. New 36 C.F.R. § 219.14(b) provides, “Transition period. For each unit of the National Forest System, the transition period begins on January 5, 2005 and

ends on the unit's establishment of an EMS in accordance with § 219.5 or on January 7, 2008 whichever comes first." With all the newness and uncertainty surrounding the new rules and the requirements for an EMS, it seems difficult to imagine all the National Forests, or even a majority of them, meeting this deadline. It could be argued in court that any Forest that has not met this deadline should not be allowed to implement ANY projects until it does finish its EMS.

The proposed regulations require that "plan development, plan amendment, or plan revision" be completed in accordance with the Forest's EMS. § 219.5(a).

The EMS "must conform to the consensus standard developed by the International Organization for Standardization (ISO) and adopted by the American National Standards Institute (ANSI) as 'ISO 14001: Environmental Management Systems—Specification With Guidance For Use' (ISO 14001)." § 219.5(b). This subsection effectively makes anything in the ISO 14001 that is required a binding requirement on the agency. Therefore, although the ISO 14001 is loose and broad in many aspects, it does have mandatory requirements and the regulations now make anything mandatory in the ISO mandatory for each Forest. In effect, the new regulations make the requirements of the ISO 14001 legally mandatory requirements on the Forest Service, just as if the regulations spelled those requirements out in the regulations themselves. It will be a good legal argument that any failure to comply with ISO 14001 is a failure to comply with the regulations, thus voiding any action taken by the agency that is based on that failure to meet ISO 14001. In the past, legal cases argued that the Forest Service broke the law by not complying with its own regulations; now we will be able to argue that the Forest Service breaks the law by not complying with the ISO 14001. That makes the details of the ISO 14001 very vital.

ISO 14001 requires that an organization working under the ISO "shall establish, document, implement, maintain and continually improve an environmental management system in accordance with the requirements of this International Standard and determine how it will fulfill these requirements." ISO 14001, § 4.1, at 4. Therefore, the Forest Service can be legally held to these requirements, including the requirement to "continually improve" each Forest's EMS. The ISO states it more explicitly at § 4.3.1, which requires, "The organization shall document this information and keep it up to date." Thus, if a Forest adopts an EMS and it sits on a shelf while they go about doing whatever they want, that would be a failure to comply with the ISO, which would automatically be a failure to comply with the regulations.

Another major indication that the Forest Service has released these regulations prior to thinking them through fully is that the agency does not know if the development of an EMS will be "top down" or "bottom up," meaning directed by the national headquarters or by the people who know a particular Forest best. In response to a question from Chris Crews of the Buckeye Forest Council, here is what Sharon Friedman, Assistant Director, NEPA and Project Planning, stated on a message board on the Forest Service's web site:

“[O]ne more question you had was whether the EMS would be ‘bottom up’ or ‘top down.’ This is something we have had many internal discussions about.

“My own feeling is that determining the most important environmental issues for a given forest to address should be determined locally. But complying with statutes and regulations is part of an EMS. So I could see that forests would want to address issues like the Endangered Species Act, Clean Water Act and Clean Air Act, if there were compliance issues, litigation or appeals on those.

“In our discussions internally, I've had difficulty imagining an important environmental concern that would be the same for National Forests of Florida, the Custer and the Tongass. Other than something generic like improving conditions for wildlife and clean air and water- but exactly what you need to do to improve the environment for those broad issues would be different on each forest. But that's where we are.. some think that national things to work on would be a good idea.. but which ones and how specific?”

<http://www.fs.fed.us/forums/eco/get/ew/publiclands21-forum/30/2.html> (Dec. 28, 2004).

The response from Chris is noteworthy:

“While I agree that local direction is important, an EMS has to work with the existing legal framework (ESA, APA, NEPA, etc), not create alternative ones. Maybe we are looking at this issue differently, but I can see a whole host of areas that are similar for all of the national forests. Here are a few examples that I think would apply across the board, regardless of the forest:

“1. Restoring damaged watersheds from decades of destructive industrial logging and resource extraction like oil, gas and coal

“2. Restoring native plant communities while simultaneously removing invasive plant communities, with priority to endangered, rare and threatened species

“3. Development of a comprehensive plan for restoring damage caused by illegal ORV/OHV use, including closing illegal trails and actively enforcing closures

“I believe the 2nd and 3rd were identified by the Chief as major priorities for the entire Service, so it seems odd that no one would see these as obvious areas to start? While the exact techniques would obviously differ from region to region, having an overarching national framework to begin the process would help facilitate that work better. None of them is a generic cleaner water goal, but rather specific actions (restoration or enforcement) that the Service already should know how to do, and is doing in some places.

“That topic can then be subdivided into more detailed action items within that action, like identifying abandoned portals that are leeching acid mine water and

closing them, or surveying current threatened plant communities and looking for viable areas to further restore them into.

“Obviously there are regional and state specific projects that can best be addressed on a local level, but are not mutually exclusive from national planning. I personally think that local or bottom up planning is essential for ecosystem management and restoration, simply because that is the only way possible to seriously approach it.

“Take ORV use. Here in Ohio on the Wayne ORV use is a major problem, with hundreds, if not thousands, of undocumented and illegal trails. The Service is aware of this problem, and has made some efforts to address it, but at the same time they are talking about expanding ORV access and considering OHV (4 wheel jeep style) access. With limited resources (staff and money) to patrol, very little enforcement actually happens. Even with that reality the forest is still unwilling to acknowledge the magnitude of the problem.

“If there were a national priority, let’s say as part of this new EMS, that placed ORV damage, enforcement and land restoration as a major focus or ‘significant aspect’ of the forest focus, and the FS funded it accordingly in the budget, then we might actually see some real solutions and work accomplished. Without a focus and willingness to address a problem head on, I’m not sure how an EMS will really make any difference, regardless of whether it is developed nationally or locally.

“I guess what I really can’t get a grasp on is exactly why the Service thinks an EMS will make anything different. From all the analysis I have seen so far, and from my own research on EMS, it appears to me to be an easy way to make pretty words sound great on paper and give the illusion of great business management, but actually require little changes in the actual operations of a business. I worry that this same thing will happen with the FS. How is the FS addressing this type of concern, knowing that the EMS is still fairly new and there is no accepted scientific standard for forest management using an EMS? What is wrong with NFMA now that requires an EMS?”

<http://www.fs.fed.us/forums/eco/get/ew/publiclands21-forum/30/2/1.html> (Jan. 11, 2005).

#### **Details of ISO 14001:2004**

- The ISO itself is not a very long document, just 23 pages. The requirements section of the ISO takes up only six pages (single-spaced). The rest of the 23 pages is mainly an “Annex A,” which is titled “Guidance on the use of this International Standard.”
- Since the Forest Service is proposing to adopt the ISO 14001 environmental management system (EMS), it is worth noting that the ISO itself states, “The success of the system depends on commitment from all levels and functions of the organization, and especially from top management.” ISO 14001, at v (2004). Thus,

unless the EMS required of all National Forests in the new regulations is a sham, then the entire agency must demonstrate its commitment to the standards in the ISO 14001.

- There will be an inherent tension between the EMS developed for each Forest and the regulations themselves. Effective monitoring is vital to a real and successful EMS. Indeed, it is one of the four key parts of an EMS methodology. "Check: monitor and measure processes against environmental policy, objectives, targets, legal and other requirements, and report the results." ISO 14001, at vi. The regulations do not require any particular monitoring and allow each forest to change its monitoring any time it sees fit. Such lackadaisical monitoring requirements do not even meet the flexible standards of the ISO. Note that the ISO requires monitoring and measuring of the agency's processes against legal requirements, such as NFMA's legal requirement to maintain diversity of species. Unless the Forest Service actually and consistently monitors SOMETHING that will measure its results in meeting the legal requirement to provide for diversity, it will be hard for the agency to support ANY project in court. The ISO says that it "contains only those requirements that can be objectively audited." ISO 14001, at vi. Thus, unless the new regulations and the directives require somewhat consistent monitoring for the EMS for each Forest, it will not be possible to "objectively audit" shifting and random monitoring. It will be easy for one to argue in court that a failure to provide definitive and consistent monitoring such that a Forests' EMS can be "objectively audited" means that the agency action is arbitrary and capricious. Therefore, the agency may well be unwittingly setting up the various National Forests for failure. The idea behind these new regulations is to give the agency more discretion in planning and implementing projects according to plans. But the regulations attempt to give such unlimited discretion that individual Forests will lack the guidance and internal agency limitations necessary to meet even the loose standards of the ISO. Therefore, an EMS that fails an audit or that can be shown in court not to meet the ISO's requirements would then automatically be in violation of the regulations, regardless of how loose their specific requirements (or lack thereof) are. A demonstrated failure to meet the ISO would automatically be arbitrary and capricious.
  - Another indication that the Forest Service has not thought through these new regulations very well is in the ISO audit area. In a message board on the Forest Service's web site, again in response to Chris Crews of the Buckeye Forest Council, Sharon Friedman, Assistant Director, NEPA and Project Planning, stated:

"The independent audit process is still being thought through. We want to design a process that is objective. Technically, to conform to the Executive Order (13148) standard we could use auditors from other units of the Forest Service, other federal agencies, or contractors. Ongoing discussions also include developing our own 'third party' organization for ensuring objectivity of the audits- this could possibly involve an NGO with a board composed of people with different interests and with the involvement of people knowledgeable about ISO and the academic community.

“Do you or others on the forum have any ideas and experience to share on this?”

<http://www.fs.fed.us/forums/eco/get/ew/publiclands21-forum/30/1/1.html> (Dec. 28, 2004).

- The word “shall” has strong legal implications, implications that were not lost on the Forest Service when it proposed and adopted these new regulations. Interestingly, the six-page requirements section of ISO 14001 uses the word “shall” 61 times; the new regulations use it only 12 times.
- Section 4.2 requires an “environmental policy.” Top management of the agency must “ensure” that the policy

- “a) is appropriate to the nature, scale and environmental impacts of its activities, products and services,
- “b) includes a commitment to continual improvement and prevention of pollution,
- “c) includes a commitment to comply with applicable legal requirements and with other requirements to which the organization subscribes which relate to its environmental aspects,
- “d) provides the framework for setting and reviewing environmental objectives and targets,
- “e) is documented, implemented and maintained,
- “f) is communicated to all persons working for or on behalf of the organization, and
- “g) is available to the public.”

ISO 14001, § 4.2, at 4. Arguably, this section requires a great deal of the Forest Service. The policy must be appropriate on the scale of 192,000,000 acres to the nature of the National Forest System.

- Section 4.3.1 requires, “The organization shall ensure that the significant environmental aspects are taken into account in establishing, implementing and maintaining its environmental management system.” “Environmental aspect” is defined as “element of an organization’s (3.16) activities or products or services that can interact with the environment (3.5).” ISO 14001, § 3.6. “Significant environmental aspects” are those “that have or can have significant impact(s) on the environment.” ISO 14001, § 4.3.1. The ISO does not define “significant.” Therefore, since the Forest Service intends for the EMS to mesh with and compliment their NEPA requirements, it is logical to argue that the definition of “significant” in any EMS situation should be the same as in the NEPA context.

“The Department has chosen to require each administrative unit to carry out an EMS based on standards developed by the International Organization for Standards (ISO). Each administrative unit’s EMS will serve as a framework for land management planning, adaptive management and, at the project level, provide information for EISs, EAs, or CEs where required by NEPA.” 70 *Fed. Reg.* 1,023, at 1,042 (Jan. 5, 2005).

- The ISO requires the establishment of objectives and targets. ISO 14001, § 4.3.3. The details of this section are worth quoting, as they set up a series of requirements that may cause trouble for the Forest Service.

“The objectives and targets shall be measurable, where practicable, and consistent with the environmental policy, including the commitments to prevention of pollution, to compliance with applicable legal requirements and with other requirements to which the organization subscribes, and to continual improvement.

“When establishing and reviewing its objectives and targets, an organization shall take into account the legal requirements and other requirements to which the organization subscribes, and its significant environmental aspects. It shall also consider its technological options, its financial, operational and business requirements, and the views of interested parties.

“The organization shall establish, implement and maintain a programme(s) for achieving its objectives and targets. Programme(s) shall include

“a) designation of responsibility for achieving objectives and targets at relevant functions and levels of the organization, and

“b) the means and time-frame by which they are to be achieved.”

- The ISO has good requirements for making sure that the people and resources are available “to establish, implement, maintain and improve the environmental management system.” ISO 14001, § 4.4.1. We are all familiar with how the Forest Service in the past often shortchanged the resources needed to do things like monitoring, mitigation and anything other than build roads, cut trees and drill wells. It is strongly arguable that the ISO requires better:

“Management shall ensure the availability of resources essential to establish, implement, maintain and improve the environmental management system. Resources include human resources and specialized skills, organizational infrastructure, technology and financial resources.

“Roles, responsibilities and authorities shall be defined, documented and communicated in order to facilitate effective environmental management.

“The organization’s top management shall appoint a specific management representative(s) who, irrespective of other responsibilities, shall have defined roles, responsibilities and authority for

“a) ensuring that an environmental management system is established, implemented and maintained in accordance with the requirements of this International Standard,

“b) reporting to top management on the performance of the environmental management system for review, including recommendations for improvement.”

- How many times has one seen the Forest Service use the lack of personnel suited to the decisions being made as an excuse for cutting corners? The ISO frowns on such things. “The organization shall ensure that any person(s) performing tasks for it or on its behalf that have the potential to cause a significant environmental impact(s) identified by the organization is (are) competent on the basis of appropriate education, training or experience, and shall retain associated records.” ISO 14001, § 4.4.2.
- The ISO also has requirements for a number of other things, including communications inside and outside the agency, documentation, control of documents and many other items. We will not go into all of them here, but once plans are being revised, Forest EMSs are being developed and projects are being implemented, it will be wise to compare carefully what the Forest Service does to the requirements of the ISO. We will mention further only some key things about the ISO.
- Again, monitoring in the ISO is more than just window dressing:

“The organization shall establish, implement and maintain a procedure(s) to monitor and measure, on a regular basis, the key characteristics of its operations that can have a significant environmental impact. The procedure(s) shall include the documenting of information to monitor performance, applicable operational controls and conformity with the organization's environmental objectives and targets.

“The organization shall ensure that calibrated or verified monitoring and measurement equipment is used and maintained and shall retain associated records.”

ISO 14001, § 4.5.1. These requirements do not seem to authorize unbridled and ever-changing monitoring. This does not sound like the type of unfettered discretion the agency may have been looking for. Any failure to do actual, real monitoring would be a violation of the ISO, which would be a legal failure to comply with the regulations.

- In the past, when things did not go as the Forest Service planned, there were few requirements that they actually do something about that. Arguably, the ISO makes a major change in this area such that the agency will have to develop new means to deal with failures of their actions. The ISO makes it clear that problems that occur must be addressed adequately:

“The organization shall establish, implement and maintain a procedure(s) for dealing with actual and potential nonconformity(ies) and for taking corrective action and preventive action. The procedure(s) shall define requirements for

“a) identifying and correcting nonconformity(ies) and taking action(s) to mitigate their environmental impacts,

“b) investigating nonconformity(ies), determining their cause(s) and taking actions in order to avoid their recurrence,

“c) evaluating the need for action(s) to prevent nonconformity(ies) and implementing appropriate actions designed to avoid their occurrence,

“d) recording the results of corrective action(s) and preventive action(s) taken, and

“e) reviewing the effectiveness of corrective action(s) and preventive action(s) taken.

“Actions taken shall be appropriate to the magnitude of the problems and the environmental impacts encountered.

“The organization shall ensure that any necessary changes are made to environmental management system documentation.”

IOS 14001, § 4.5.3. “Nonconformity” is defined as “non-fulfilment of a requirement.” § 3.15.

- The ISO provides for an internal audit procedure. These audits must be impartial. “Selection of auditors and conduct of audits shall ensure objectivity and the impartiality of the audit process.” ISO 14001, § 4.5.5. Thus, a demonstration that an audit was not objective and impartial would be a legal failure of the agency to comply with the regulations.

## **Annex A**

- The requirements of the ISO take up only six pages (single-spaced). The rest of the 23 pages is mainly an “Annex A,” which is titled “Guidance on the use of this International Standard.” Annex A contains the ideas and “strictly informative” materials “intended to prevent misinterpretation of the requirements” in the ISO. This is where much of the perceived and actual “softness” of the ISO comes from. We will not be able to make a court require the Forest Service to do anything in Annex A; nonetheless, Annex A is useful in interpreting the requirements in the ISO itself.
- Annex A is clearly written with industrial facilities and similar corporate organizations in mind; most of what it talks about directly applies to such private organizations and how the ISO must be broad enough to cover the myriad possible variation of such facilities. Since the Forest Service is a federal agency, some of the nonbonding guidance in Annex A will apply and much will not. Still, the main thing that separates the use of ISO 14001 by industry and by the Forest Service is that adoption of the ISO into the agency’s regulations makes the requirements of the ISO

mandatory for the Forest Service. A corporation can choose to abide by ISO 14001 or not, or even choose to abide by it and then change its mind and not abide by it. But the Forest Service has legally “locked itself in” with ISO 14001 and must abide by it; the agency cannot decide not to comply with requirements in the ISO unless it repeals the regulation § 219.5.

- Annex A has a statement very applicable to the Forest Service under these new regulations”

“An organization with no existing environmental management system should, initially, establish its current position with regard to the environment by means of a review. The aim of this review should be to consider all environmental aspects of the organization as a basis for establishing the environmental management system.

“The review should cover four key areas:

“— identification of environmental aspects, including those associated with normal operating conditions, abnormal conditions including start-up and shut-down, and emergency situations and accidents;

“— identification of applicable legal requirements and other requirements to which the organization subscribes;

“— examination of existing environmental management practices and procedures, including those associated with procurement and contracting activities;

“— evaluation of previous emergency situations and accidents.

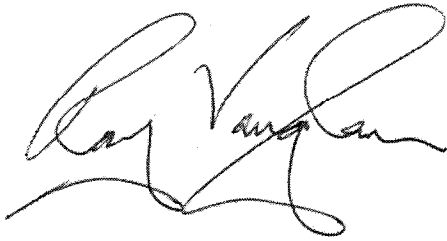
“Tools and methods for undertaking a review might include checklists, conducting interviews, direct inspection.”

Every Forest starting its EMS process should be encouraged to begin with this type of review as part of the process.

### **Conclusion**

Thank you for the opportunity to provide comments on the Forest Service’s proposal to prepare an EIS on new NFMA regulations. Please provide me at the address below all future announcements or documents on this proposal, including the draft EIS.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray Vaughan". The signature is fluid and cursive, with the first name "Ray" and last name "Vaughan" clearly distinguishable.

Ray Vaughan  
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## **A Modest Proposal for the U.S. Forest Service**

A White Paper by Ray Vaughan,<sup>1</sup> WildLaw<sup>2</sup>

“Harmony with land is like harmony with a friend; you cannot cherish his right hand and chop off his left.” “A thing is right when it tends to preserve the integrity, stability and beauty of the biotic community. It is wrong when it tends otherwise.” Aldo Leopold.

“Conservation is the foresighted utilization, preservation and/or renewal of forests, waters, lands and minerals, for the greatest good of the greatest number for the longest time.” Gifford Pinchot, first Chief of the U.S. Forest Service.

After decades of conflict over a handful of issues involving our National Forests, perhaps it is time to ask whether common ground can be found and progress made on areas of agreement. Can those parties and interests who have fought so long over the public lands put aside those conflicts and work together on other issues that make the public’s forests healthier? Can an agency so long captured by a political mindset of short-term extraction move toward the goals of stewardship and sustainability it was originally formed to achieve? Can a way of resolving issues be found instead of people being stuck in a backward-looking paradigm of endless conflict?

We think that the answer to all those questions is “Yes.” Here are our suggestions for moving forward.

### **WildLaw’s History with National Forest Issues**

In 1987, WildLaw’s founder, Ray Vaughan, filed his first appeal of an action by the United States Forest Service (USFS). Now, 20 years later, reflecting back on WildLaw’s work on National Forest issues, we ask what has been accomplished what has worked, and, more importantly, what has not worked and needs a new direction.

Briefly, what have Ray Vaughan and WildLaw done in those 20 years? Here are the raw numbers:

- We have reviewed more than 6,000 USFS NEPA documents (EISs, EAs and CEs).
- WildLaw filed detailed and project-specific comments on at least 2,000 of those proposals.
- We have appealed approximately 400 of those 2,000 projects on which we commented.

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<sup>1</sup> Member, USDA Roadless Area Conservation National Advisory Committee (RACNAC).

<sup>2</sup> WildLaw, 8116 Old Federal Road, Suite C, Montgomery, AL 36117. [www.wildlaw.org](http://www.wildlaw.org) Many thanks to all the WildLaw staff who helped with this white paper, especially senior staff attorneys Tammy Belinsky, Brett Paden and Steve Novak, and SFN Director Alyx Perry. Also, special thanks to our Board Chair Lamar Marshall of Wild South.

- Out of those 400 appeals, we litigated over 250 of them.
- Out of those 250, we won in court (either through a court order or settlement), 210 of them.
- Of the 150 appeals we did not litigate, we won 55 of those.
- We won two successful lawsuits filed under the 1995 Salvage Rider, rare things indeed under that law.
- Through these successful appeals and lawsuits, we stopped more than 450,000 acres of proposed logging that violated the law or was scientifically unsound. We stopped more than 4,000 acres of proposed strip mining. We protected more than 20,000 acres of historic and archeological areas. We attained a new wilderness area in Alabama, Dugger Mountain, that never would have been designated by Congress if some damaging projects we stopped had instead gone forward.

But such numbers would not mean much, if that was all we had done. Legal action that stopped bad agency actions was not an end unto itself for WildLaw; we wanted the legal tools to open the door to good agency actions and to better management of our public forests. We have had some success in this area:

- By stopping bad management actions and encouraging better management, more than 4,000,000 acres of National Forests in the South now have management plans and projects that are based on good science and emphasize restoration of native ecosystems and sustainable management.
- WildLaw was the source of the model program for identifying, designing, and implementing restorative and sustainable management on each National Forest that solves problems on the land and resolves conflicts over management of these Forests.
- Ten National Forests now have such restoration and sustainable management programs in place right now, all starting with the Conecuh National Forest in 1999.
- Ray Vaughan, WildLaw's Executive Director, was appointed to the RACNAC, an advisory committee to the USDA that has truly brought diverse and often competing interests together in a way that has fostered mutual understanding and problem solving.

From all this experience, WildLaw has developed a model for sustainable management that ends most conflicts over our National Forests, that restores healthy and resilient forests, that gives the USFS positive management and career possibilities, and that provides sustainable economies for communities in and near the Forests. This model is the main subject of this white paper.

While all this is good, it is not enough. What would be enough and what would it look like? What does WildLaw want?

First, what we do not want. WildLaw does not want an agency that is a slavish and harried servant of the irreconcilable self-interested and shortsighted demands of "multiple use," as if anyone really knows what that term means. We do not want an agency

wrapped in controversy and endless conflict. We do not want a land management agency that hides in a bunker of "agency expertise," afraid of really engaging in conversation with the people who own the forests, who pay the salaries of their managers and who often know those forests better than the agency experts.

We want a USFS that is a model agency the public can be proud of, an agency taxpayers want their money spent on, and an agency that Congress sees as a problem-solver it wants to support. We want a Forest Service that embraces genuine ecological restoration, protection and sustainability such that the many uses of and desires for the National Forests can finally be reconciled by a guiding principle that puts the good of the forest first, in the long-term, over the good of any one interest in the short-term. We want an agency driven by science, not politics. We want an agency that accepts the various public interests involved in our National Forests as indispensable partners in land management decision-making. We want a new USFS.

And a new USFS is coming; internal agency demographics and external realities make that inevitable. The issue is what type of new Forest Service we will have. This is our proposal.

### **From Conflict to Cooperative Conservation**

From our many conversations with USFS personnel at all levels, industry folks, and other interested people, it is clear that a critical mass of people involved in our National Forests are ready to change how business as usual is done. The seemingly endless days of conflict and trench warfare among competing concerns wear down parties while the needs of the forests are sidelined.

Instead of frustration and anger, we propose a new course for positive change in the USFS and on our National Forests. Instead of focusing on the issues and principles we each hold that have divided us over the past decades, we need to begin talking with each other with respect and open minds. Let us focus on the areas of common ground where we can agree on the problems facing our forests, on the issues involved and on the solutions. We can always come back to the contentious issues later, and when we do, we may well find that after a few years of cooperation on common ground issues, we are not so far apart on those problem issues either.

We all now have an opportunity to figure out how to fix real problems and encourage the real innovations and successes the agency can achieve. Such an effort can be exciting while producing a better agency, better public relations, more certainty in forest management, and much less litigation. While there will be issues and areas where we do not agree, we can put those aside for the time being and work on the issues and areas upon which we can agree. In our experience, we find that 20% of the issues on the National Forests divide us, and the conflict around those issues prevents conversations and solutions on the other 80%. In every instance where we have been open to exploring the neglected 80%, we have found common ground with all reasonable people who care for our public lands.

As one of the top litigators against the Forest Service, WildLaw knows where the agency cuts corners and where the agency shines. We know many good people in this agency, good people who are true public servants. We also know the few bad people in the Forest Service, bad people who will do anything they can to make short-term money for their buddies in industry at the expense of the public at large. The few bad folks spoil things for the many good agency employees. Every agency or collection of people is subject to this dynamic of a few dragging down the work of the whole; this is not unique to the Forest Service. But, at this time, we believe that we all really have the chance to reverse this dynamic for the Forest Service, to seize this opportunity to end the days of the few holding back the rest.

We have never sued the Forest Service because we do not like the agency; indeed, we have sued the Forest Service so much because we like this agency. We *do* believe in its true potential to be the greatest land management and protection agency in the world. We *do* have faith in the many good people in the Forest Service; we *know* that if the good people are given the chance to do their jobs, they produce great results with which no one can argue. The Forest Service and the various industries and interests involved with the National Forests could meet environmental and conservation interests half way and make a real attempt to solve the real problems in our National Forests and thus come up with a system that brings out the best in the agency. Such an open and cooperative effort can truly solve the “process predicament” and “analysis paralysis” the agency has moaned about for years.

The current Chief of the USFS, Gail Kimbell, has stated that she thinks that it is time to find some common ground. As she stated recently in a speech:

“Much of her work in forestry came during exciting and contentious times for the Forest Service, she said... ‘There’s a lot to be learned through debate and discourse,’ she said, adding that while debate is very healthy, ‘I hope sometimes we can agree on things.’”

“Forest chief cites OSU roots,” *Corvallis Gazette-Times* (May 12, 2007)  
[www.gazettetimes.com/articles/2007/05/12/news/community/2aaa05\\_forestchief.txt](http://www.gazettetimes.com/articles/2007/05/12/news/community/2aaa05_forestchief.txt).

It is clear that collaborative efforts and cooperative conservation plans have been notably successful in many areas throughout the nation; WildLaw and our Executive Director Ray Vaughan have participated in several such efforts and know some of those successes. But as admirable as those success stories are, they are still the exception, not the rule, of how conservation work is done in America or on our National Forests. Clearly, more efforts are needed so that they become more of the rule. Though it is unclear whether cooperative conservation efforts can be applied more often, more problematic is whether they can be applied to problems on a scale and timeframe beyond that which have been applied thus far. But it is time to try.

While the mechanism of forcing government and industry to do the "right" thing may have lost strength, it is by no means a given that those who once did whatever they could get away with are now reformed. Make no mistake, we will always believe that we need reasonable laws and regulations to form the sideboards of acceptable management, and to prevent the truly bad actions of people who put themselves before others and who put their own economic interests before those of the forests, our country and world. Force, however, is no longer a tool that should be used readily and as a first choice.

So it has been for so many decades -- we talk at each other and when we do not hear, we use the weapons at our disposal to force our will. Environmentalists use the courts. Corporations and government agencies use politicians and money. We both use the media. We all win and lose our share of battles, but what of the war? Who is winning the war?

From what we can tell, no one is winning. Some get rich. Some get power. Some get recognition. Some get short-term satisfaction. But what do the people get? What does the Earth get? What do the forests, rivers and critters get? What do my children get out of all this endless trench warfare? Yes, there has been some progress on many fronts, and I do not mean to discount any of that work.

Our concern is with whether that progress continues. Perhaps the air is cleaner than it was in 1970, but is it really that much cleaner than it was in 1990? Not where I live. Perhaps our rivers are better than they were in 1970, but the sewage treatment plants built in the 1970s now are straining under loads many times their capacity and our waters are really not much better than they were in 1990. Rivers in which we swim are more polluted now than in 1990 and perhaps even 1970. We know of species that are extinct now that were still with us even in 1990.

No major law intended to improve environmental quality in any area has passed Congress since 1990. Sprawl and habitat loss continue unchecked plagues on our natural resources. Some lawsuits have made positive changes -- real improvements on the ground that can be seen. Some cases won only paper victories, as is true of all environmental litigation. On the flip side, much of the legislation passed to suspend, weaken or bypass environmental protections did not work out as well as its proponents thought it would, and upon admission of that fact, we have an opportunity to start really solving problems.

Have we reached the functional end of where command-and-control regulation can take us? While we think that better enforcement could take us a bit further in this direction, it seems clear to us that this era has run its course. If we are not at a dead end yet, the end of this road is plainly just a block or two ahead. We cannot backtrack on the progress we have made; anyone who uses cooperative conservation as a cover to just roll back environmental protections is a scoundrel of the worst kind. Yet, neither can we move forward on the current road. We must find a way to move to a new path that takes us ahead, that does not sacrifice past progress but yet still finds new ways to restore and improve the forests and our lives.

Many know that we have reached the limit of the regulatory paradigm but instead of risking change they defend the status quo. The Bush administration is not trusted and forest management has become far too partisan -- something that should be completely *nonpartisan*. Supporting innovation in natural resource management should not be avoided simply because "the other side" suggests it or because it is not how we did things in the past. I was wrong to judge others, including President Bush and all his appointees. Those appointees whom I have gotten to know personally and professionally seem to be as genuine and honest as any environmentalist I know; they just come from a different perspective. And I cannot say that their perspective is wrong, and it is not my place to judge what is in their hearts.

We hope all those involved have learned some lessons. Maybe it is time to lay aside the weapons with which we are so comfortable and familiar and try some new tools. Cooperative conservation efforts on our National Forests can produce results as good as the rhetoric. One example of success is the largest timber sale in agency history: the Hurricane Katrina salvage project in Mississippi (490,000,000 board feet) was conducted by a collaborative, cooperative process, and it was a success at every level.

If cooperative conservation succeeds on a broader, national scale, all of us can celebrate. If it does not, our forests will continue to degrade and command-and-control regulatory warfare will return. Trusts will be betrayed if cooperation does not lead to better forest management, but the possibilities cannot be known without trying.

A couple of years ago, Congressman Barton said that environmentalists need to come out of the trenches and meet people like him half way and try to solve problems in new ways. Implicit in that statement is that economic and political interests will also have come out of their trenches, meet public interests half way and try new ways of doing things. Cooperative conservation can never mean "I am going to do what I wanted to do anyway, but this time, you will agree with me just because I talked with you about it first." We must have a truly collaborative process with real, measurable results on the land, water and air. We have been amazed at the knowledge gained, improvements on the ground and even the profitability of collaborative forest management. We look forward to continuing to be amazed at what we can learn from the USFS and how the USFS will do to might make the environment better.

WildLaw is willing to climb out of the command-and-control trench, and has already done so to some extent. We can show you the "bullet holes" for doing so and we may even receive more. But we believe that the opportunity to create a new paradigm is more promising than our remaining entrenched in the status quo.

### **Details of the WildLaw Proposal for National Forests**

Since WildLaw's founding a decade ago, litigation and other legal actions have been our key methods for stopping egregious and illegal projects on public lands. During these ten years, we have developed critical links between regional efforts to facilitate restoration-

based management on both public and private lands. Building upon and branching out from litigation, we have learned to use a broad array of tools in a proactive approach to both public and private resource management issues in our region: legal defense, economic reform, community empowerment, capacity building, and technical support.

WildLaw's concept of ecological restoration and sustainability for National Forests can help serve as a national policy statement to guide sound forest management. By including social and economic criteria, ecological restoration also bridges the gap between what is good for the land and what is good for communities and workers. Our concept would increase the amount of good work being done in our forests and reverse centuries of unwise resource extraction and development that have fundamentally altered most of America's forests. This history of unguided management has directly contributed to a dramatic loss of habitat, decline in water quality, and disappearing old-growth forests, as well as economic and social harm to communities and workers. Such good restoration efforts only work, however, if they are based on science and recognize that ecosystems are complex and our understanding of them is still limited.

Through a process of truly doing what is best for the land through restoration and management based on sustainability, the Forest Service needs to fully examine the role it could play in restoring community-based forestry economies and cultures in the regions surrounding our National Forests. During a period of significant change in forest policies at the federal, state and local level, WildLaw's vision of ecological forest restoration and sustainability establishes a viable vision for restoring natural ecosystems and a sustainable human relationship with the land.

Simply being an oppositional organization seeking to stop bad projects, while a worthwhile strategy and an integral part of our history, cannot be the only focus for WildLaw. We have an obligation to find ways to make the National Forests more vital and functioning ecosystems that meet the needs of a diverse set of people who use and love these lands. Through our initial experiences with pushing science-based ecological restoration and sustainability, WildLaw has begun a new and proactive/positive avenue of affecting forest management for the better.

*We are faced with a synergistic combination of crisis and opportunity, and WildLaw is proposing three strategies:*

1. *Facilitating ecosystem-based forest management that restores and enhances the ecological health and sustainability of forests while producing services and goods for human communities, whether those economic opportunities are recreational or physical byproducts of ecosystem restoration.*
2. *Developing local, regional, and national markets, value-added enterprises, and business networks that maximize the economic benefits of sustainable forest management for the Forest Service, local private landowners, workers, and communities.*

3. *Developing a skilled workforce of forestry professionals with access to the technical expertise, equipment, and financial resources required to carry out restoration and low-impact management activities on the ground.*

**Facilitating ecosystem-based forest management that restores and enhances the ecological health of forests while producing services and goods for human communities**

Ecological Restoration Projects

In the late 1990s, WildLaw pioneered the model of ecosystem restoration on the National Forests in the South. Starting in Alabama, WildLaw worked with the USFS to develop the first forest-wide, science-based restoration programs in the nation. These restoration programs in the National Forests in Alabama have been extremely successful and have become national models. Our goal is to spread this model throughout the entire National Forest system nationwide.

Obviously, what is restoration of functioning forest ecosystems and what is sustainable management of those ecosystems will vary from forest to forest. There clearly can be no “one size fits all” approach to what is required on the ground. Some areas will need a hands-off approach, letting nature heal itself. Some areas will need road maintenance, road obliteration, stream restoration and other site-specific actions. Some areas will need thoughtful, long-term manipulation of the vegetation, sometimes through mechanical treatments, sometimes through prescribe fire. Some areas will need aggressive invasives treatment. Some areas will need planning for eliminating uncontrolled harmful recreation while still providing fun and safe areas for all forms of recreation. There is much genuine restoration work to be done.

While the work required on the ground might be different for each Forest, the process for arriving at a consensus of what the restoration and sustainable management needs of a particular Forest are can be universal. It is not a matter so much of using once set of laws and regulations over another. It is more about common sense, openness, humility and a willingness to listen and learn from others whom you may not agree with right now.

To make cooperative restoration programs work on our National Forests, folks like us at WildLaw must maintain vigilance in reviewing, commenting on and, when necessary, challenging projects on our public lands. Cooperative conservation only works when those who would abuse the land and the public for short-term gain cannot do so and when those whom they would adversely influence know they have the room to do the right thing, despite the politics of exploitation. So, we are not going away if cooperative conservation works; if anything, we will be more involved. We hope that the Forest Service and industry will get more involved also; that will be the only way for solutions to work.

**For the USFS, to make a change in direction that solves most of the current problems in management of the National Forests, it needs to do these things:**

**Follow the law, use good science, be honest and open with the public.**

For folks in the industry who are frustrated by the unpredictable and intermittent flow of materials from the National Forests and for agency personnel frustrated by the inability to get work done and the inability to do needed management, I want you to image something. Imagine a place where the flow of timber off the National Forests is at a known level and stable and predictable for at least 50 years, a place where the harvesting of that timber is not controversial and projects to approve that harvesting are not appealed or litigated, a place where industry, , forest practitioners, environmentalists, scientists and agency personnel have all agreed on the management needed. Well, you do not have to imagine such a place. That place is the National Forests in Alabama.

Which takes longer? (1) Doing a quickie EA in four months, or (2) Preparing a full and thorough EIS for two years? Answer: (1). Consider one timber sale we challenged. EA came out, and it was garbage. We appealed and won. Second EA came out much the same, and we appealed and won. Third EA came out, and, yep, WildLaw appealed and won again. Fourth EA came out; it was finally better but still lacking. It got stopped by a lawsuit. So, the project for which the EA took four months to prepare still has not been implemented now ten years after it was started. Near the same time, the Conecuh National Forest started a full EIS on longleaf pine restoration on the forest; it took them about two years to plan and prepare the EIS. They are now starting the phase two EIS tiered to the first EIS. That Ranger won numerous awards, got a bigger vehicle to drive than his Forest Supervisor, and made the local loggers and politicians happy. Scientists and all environmentalists involved in that forest are pleased. The other Ranger who did the crappy EA has disappeared somewhere into the bureaucracy.

The solution to analysis paralysis lies not in changing the rules of analysis but in changing how you do your method analysis. For too long, the agency has compartmentalized (literally) its forests and its work. Trying to make each project look small and insignificant seemed like a good way to avoid doing population data collection, cumulative impacts analysis and a host of other things required by law for "big" projects. This scheme has not served either the forests or the Forest Service.

The Forest Service must stop managing merely by compartment and individual project. Instead, step back and assess at a landscape or watershed level what it is that the forests need and what can be done to meet those needs over a longer term, at least five years. Fifty years would be better. This is not planning but how to implement plans with a broad vision instead of a microscope. The Forest Service also must not focus on "product" being produced for sale; having timber quotas has never helped the forests or the agency. It would be far better to focus on acres restored, watersheds healed, rivers and streams restored, wild places protected, visitor experiences enhanced, conflicts resolved, new workforces created, and the like. Do what the land needs, use the right tools to do the right job, and there will be products and services provided in their own due course. Focus on the work, the land and the people; the rest will take care of itself and be much better than artificial targets.

Take a year or two to develop a full and quality EIS on what restoration really means for your district or forest. Think big. Look at all forest needs, road repair and road obliteration, stream rehabilitation, indeed entire watershed rehabilitation, invasives removal, native forest restoration, etc. Involve all stakeholders at every step, especially at the start of the process. Instead of proposing actions, share each Forest's problems with all the collaborative stakeholders and seek their input on what the solutions (and thus the management actions) should be to solve those problems. Seek out ideas and assistance. Think big. Instead of a series of "small" projects that cumulatively are big (but which you claim are not), admit that what you are doing is one big project and analyze and act accordingly.

Take the time to do a bang-up analysis. Yes, that takes longer than an EA, but the rewards for an agency line officer could be significant. Here are some of them:

- No need to do NEPA analysis, NFMA data collection or ESA consultation for five years. Instead of doing EAs and having to do the same analysis over and over for each project, do all the analysis at once and do 20-40 projects together as one restoration plan. Then, the 20-40 projects will make more sense and do a better job for the land than if you did them all piecemeal. Do the analysis once and then do work in the woods for five years before you have to do analysis again.
- 95% of your opposition will be gone. Why? If you comply with the law, collect and use good data, utilize good science and be open with everyone and keep them involved, the result will be better.
- Really "bulletproof" your work. For years I have heard about Forest Service people trying to "bulletproof" their EAs by using certain language or by making up shortcuts that they think will look like compliance with the law. The only way to "bulletproof" the work is to do the work right. Follow the law, use good science, be honest and open with the public, and no attorney with any sense will dare sue you.
- Awards, big vehicles, commendations, accolades, promotions and fast career advancement (for solving the "analysis paralysis"), and admiration from your fellow agency people and from a variety of folks in the public.

In woodworking, the saying goes "measure twice, cut once." It means to take the time to make sure the planned action is correct and then you get to take that action without making major mistakes and without having to do the work over. For NEPA, NFMA and ESA analysis, the same is true. Take the time to make sure what you are doing is right and done well, then you can do it without having a judge tell you to go do it over again. And over again....

To see how to do this right, look at the Conecuh National Forest in Alabama which prepared an EIS on a five-year program to restore Longleaf Pine over some 4,222 acres. It would give Forest Service restoration work better direction and improved validity if it abandoned all the piecemeal projects and instead looked at the forest as a whole to

prepare and implement a full EIS on a comprehensive restoration program for each forest that could guide the timber management and other actions for a five-year period. One comprehensive and more-thorough analysis gives a better picture of the work that needs to be done (and where it *really* needs to be done) and can be done without the problems that arise from piecemeal implementation.

Read the Conecuh Longleaf Pine Restoration EIS; it is not a long EIS in page-length as it is a good example of site-specific detail and data without unnecessary filler. When they did it, they got a lot of flack within the agency about how “this is not the way we do things,” but guess what? Once it was done, it was not appealed or sued over (not even by that 5% who oppose logging for even good reasons), and the Conecuh is now winning awards and national recognition for their work. And rightfully so.

Now, all the forests in Alabama have prepared restoration programs. The Talladega National Forest released their five-year Longleaf Pine restoration EIS in early 2004. It covers 19,000 acres. They had MIS data for the entire area over several years, as well as complete PETS surveys for every acre of that 19,000 acres. That created a baseline and a need which no one could challenge.

Below are photos showing how the Conecuh National Forest uses clearcuts with reserves to eliminate unnatural Slash Pine plantations to restore them to native Longleaf Pine:

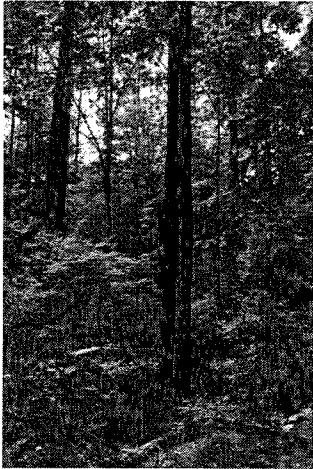


**Figure 1: All Longleaf is retained and debris is spread to prevent erosion and rutting.**



**Figure 2: Longleaf seedlings are planted and prescribed fire maintains the composition of the stand.**

These photos show how using prescribed fire for restoration purposes works in the Conecuh.



**Figure 3: Longleaf forest in need of fire.**

**Figure 4: Prescribed fire in action.**

**Figure 5: Restored Longleaf forest after thinning and with regular prescribed fire.**

### **Benefits of a Restoration/Sustainability Paradigm for the Forest Service**

There are many benefits for all interested parties from a shift to this paradigm for the Forest Service:

- The USFS reduces conflict and litigation, most likely a significant amount.
- An end to “analysis paralysis,” “process predicament,” or whatever you call the excessive paperwork the agency engages in to justify plans and projects.
- Legal requirements for the development and implementation of projects and programs become clearer and better defined.
- Resources needed to plan and propose programs and projects are reduced while resources for actual implementation of work and monitoring on the ground increase.
- The timber industry and local communities gain a predictable and sustainable supply of economic and ecologic services and products from the National Forests. This paradigm will never recreate the unsustainable heyday of 12,000,000,000 board feet of lumber coming off the National Forests, but the intended sustainable reality of a more diverse economic engine from the National Forests will emerge.
- The public and conservation organizations gain the comfort that special areas in the National Forests are not the target of exploitation and management resources are expended on restoration of areas that really need that better management.
- Conflicts over hot-button issues are reduced, and “judgment day” on dealing with those issues is postponed, if not eliminated.
- Communications, dialogue and cooperation among previously adversarial parties increases and could lead to a new level of understanding that will solve many of the problems and conflicts on these public lands.
- Restoration and sustainable management improve habitat conditions for all native wildlife on the National Forests.

- The number of species headed toward extinction will be reduced, and those listed under the Endangered Species Act will head more toward recovery.
- Habitat for game species will be enhanced and improved.
- Protection of watershed values and clean water coming off the National Forests will increase.
- Clean air provided by natural forests will increase.
- Forests will become more resilient. Long-term restoration and sustainable management will reduce the National Forests' susceptibility to major damage from fire, insects, drought, hurricanes and other events.
- Restoration of natural ecosystems and sustainable management of those ecosystems will make the forests better able to handle changes due to climate change.
- Restoration and sustainable management make the National Forests a partial solution in reducing the severity of climate change.
- Conflicts between recreational users will be reduced as careful planning of where and how to accommodate the various uses sustainably will help resolve these conflicts.
- Training and new opportunities for forest practitioners and local communities will increase and provide long-term, predictable opportunities.
- A unified and agency-wide program for solving problems through this new paradigm with the widespread support of diverse interests could convince Congress to be more supportive of the agency and its funding needs.
- The National Forests and their management paradigm of restoration and sustainability would be a powerful and true model for the management of private forest lands.
- Work on the National Forests would be a jumpstart for the development of sustainable local economies based around the forests. There has been a lot of difficulty of developing new markets for private forest landowners and practitioners. The National Forests could provide the genesis for this and give it the ability to grow into the broader realm of forestry on all lands.

#### US Forest Service and Its Opportunities with Communities

WildLaw feels that the US Forest Service has both a relationship to the communities in the areas surrounding its forests as well as an opportunity to help better those same communities. First, many areas near National Forests tend to be rural, with little or no real industry to provide employment. Second, the artificially high and unsustainable harvests of the 1970s and 1980s created a reliance on those forests for jobs that were not sustainable for the long-term. Third, by harvesting most of the resource "capital" from these forests without any accompanying reinvestment, the Forest Service in effect stole from residents in communities surrounding these forests, and they have an obligation to right those wrongs from past mismanagement.

After years of dis-investment from rural forest dependent communities, it is time for a major change. Elsewhere, especially in the West, communities and the Forest Service have recognized this need and have been working towards the creation of a restoration

economy. The trick is how to get dollars for the work. The Forest Service and Congress seem intent on trying to make the forests pay for this out of dwindling forest reserves. To accomplish this, the Forest Service all too often puts out timber sales that involve harvesting the limited old growth or mature, functioning forests in order to pay for restoration. This is like borrowing money at 8% to reinvest it at 4%. It is taking the last capital out of the bank which will continue to bankrupt the forests and surrounding communities.

A sounder approach is to recognize the depleted accounts and to make a reinvestment that could be used to rebuild the capital so that once again we could live off the interest of a sustainable endowment in our forests and communities. This approach allows for the development of local workforces due to the sustainable nature of forest investments and activities, each Forest having its unique set of restoration needs and unique situation for sustainability.

WildLaw feels strongly that the Forest Service is in a position to do this. Science-based ecological restoration could provide the dual benefits of improving and restoring areas of the forests to more natural state and at the same time providing sustainable, well-paying jobs in the process.

*As an agency guiding principle, the US Forest Service needs to recognize and embrace the need for ecological restoration and sustainable management on the National Forests. True restoration and sustainability implemented on National Forests can be accomplished by engaging in the following strategies:*

1. Every National Forest should engage in an open, cooperative public process to develop a vision for what that Forest needs and should move toward, like all the National Forests in Alabama did. All the restoration needs of that Forest need to be examined and prioritized in a collaborative process that gives all interests the assurance that they are heard and that their needs are met to at least a reasonable level. All available scientific knowledge and expertise on the particular Forest's ecosystems must be fully integrated into the entire collaborative process. The agency should let proposed management actions come out of that process instead of proposing actions prior to the process. If additional authority and funding for this collaborative process are needed, the agency should go to Congress to seek that, showing them the successes the agency has thus far and how this approach can solve many of the problems facing the National Forests. WildLaw and many others we know would be happy to support the agency in this at every level.
2. At the project level and the Forest planning level, the USFS should advocate for ecological restoration whenever appropriate, including having restoration-only alternatives developed for proposed projects. As an example, the 2004 revised plan for the National Forests in Alabama emphasizes restoration as the main management goal for the next 15 years in all the Forests in the state.
3. At every level, starting at the Washington Office, Forest Service decision-makers need to make it a priority to move the National Forests toward this model of ecological restoration, protection and long-term sustainability. Needed changes to

regulations, additions to the Handbook and the Manual, and any needed guidance on this type of work should be developed and adopted with full public participation.

4. More work by the Research Stations should be focused on restoration and sustainability, both in general and in what particular Forests need. For some ecosystems, Longleaf Pine as the primary example, the actions needed to restore the ecosystem are well known. For most forest ecosystems, though, what is needed to restore the forest to a healthy state and keep it in a sustainable management regime is not yet known, or not well known. For such forests, restoration plans should start with well-monitored pilot and experimental projects before moving to a large scale, forest-wide program. For a well designed and monitored project to test restoration techniques for such forests, all parties involved must be willing to accept risk and be willing to allow the agency to fail occasionally without punishment.
5. To make all of the above possible and attractive for Line Officers in the agency, the Forest Service should engage in a thorough and comprehensive training program for its personnel to show them how to engage in the collaborative process to produce good restoration and sustainable management for their individual Forests. There are personnel in the agency who know how to do this; folks in groups like WildLaw and in industry also know how to do this. The agency should sponsor a program of training and education that brings together these people who have experience in this new paradigm so that they can educate others in this process and help them find the cooperative solutions that work for their individual Forests. WildLaw is fully prepared and ready to assist in this educational effort wherever it is needed.

Litigation risk and adversarial relationships would diminish drastically with this approach.

*The US Forest Service needs to recognize and embrace its relationships to the communities and workers in the areas surrounding National Forests by exploring and demonstrating the economic incentives created by the quantity of work needed to restore portions of our forests to a more natural state.*

1. Explore and demonstrate the economic incentives created by the quantity of work needed to restore portions of our forests to a more natural state.
2. Explore how best to integrate these concepts with the communities. What forms of economic activity will best mesh with the restoration, protection and sustainability needs of individual Forests? For some places, it may be a dispersed recreational emphasis focused on enhancement and protection of major wild areas. For some, more developed recreation will be the best fit. Stream restoration may be the main priority for some forests and how to get local people well-employed doing that work will be key. Many forests will need extensive vegetative management, and training and supporting a work force that can do that work through the best methods possible could provide a great economic boost for

the local communities. We imagine that in most places, it will be a combination of these and more.

3. Assess current capacity of communities with regard to infrastructure, worker capacity, and training. Learn how those capacities mesh with a Forest's restoration needs. Where those capacities do not exist in a Forest's local area, explore ways to bring in or grow locally those capacities. The long-term, predictable nature of restoration work naturally tends to give people (and bankers and investors) the stability they need to invest in new equipment, training and new ways of doing things.
4. Develop and cultivate those resources if not already present. Work with Congress to expand current programs to give grants, low-interest loans and other incentives to areas where the capabilities and resources are needed. Where success grows and conflict wanes, Congress should be willing to invest more.
5. Use the models and markets created from restoration work on the National Forests to broaden the sustainable management of forests to private lands, thus benefiting both the ecosystems and economies of areas beyond the public lands themselves.

**Developing a skilled workforce of forestry professionals with access to the technical expertise, equipment, and financial resources required to carry out restoration and low-impact management activities on the ground**

One of the greatest obstacles to accomplishing good forest management on the ground is the lack of skilled professionals practicing low-impact forestry. Our forest industry has mainly evolved to rely on large-scale logging operations that maximize short-term timber production, often at the cost of forest health. As a result, the vast majority of our logging workforce is deeply invested in expensive harvesting systems that require very high "production efficiency" to achieve profitability. While timber harvests have increased, the size of our workforce has actually declined. Loggers have had little choice but to follow the lead of industrial forestland owners and timber buyers to remain competitive.

With increasing interest in, as well as demand for, ecosystem-based forest management, the time is right to begin facilitating skill development for logging crews and other forestry and restoration practitioners. Pursuing this goal will require a significant investment in education, equipment financing, business development assistance, and technical assistance, and will require that we engage a new array of partners.

*The US Forest Service needs to work with partners such as community colleges, universities, established local logging crews, local mills, and nonprofits such as WildLaw and the Southern Forests Network (SFN) to explore opportunities for workforce development using such strategies as:*

1. Meet with potential partners to introduce them to new ideas and gauge their interest in working together (our SFN program recently met with a local university forestry program and community college forestry & logging program).
2. Facilitate collaborative development of pilot projects on National Forests where there is the need to learn how to restore the forest ecosystems there.

3. Examine new markets and new products that can come from restoration activities, including small diameter wood products and products from thinning and clearing of undergrowth (including biomass energy, mulch, specialty crafts, carbon sequestration market credits, and other products).

## EVALUATION

While a new paradigm in forest protection and management will take time to take hold and grow, there are ways to recognize and know that it is doing just that:

- Increasing number of valid restoration programs and projects on more National Forests.
- Open recognition by the USFS at all decision-making levels that restoration and sustainability are the goals of management.
- Increased involvement and interest by private forest land interests in the restoration work on National Forests and use of that restoration work as models for their private land work.
- New and increased market and economic opportunities for local communities and forest practitioners in sustainable forestry work, both on public and private lands.
- More National Forest management plans that directly and openly embrace restoration as the primary management goal, such has been done in Alabama, and to a lesser extent, Florida.
- More individual National Forest projects that are restoration based and fewer projects that fail to comply with the law.
- Where legal actions are necessary, they lead to the litigants and the Forest Service using the cases as opportunities to reevaluate management, instead of blindly defending past mistakes or blindly attacking the agency. And for those who challenge the agency, those groups must be open to finding a new direction for management, instead of just saying “no” to management. Industry must be willing not to demonize environmentalists who challenge real violations of the law and bad management decisions; industry should not defend bad agency actions in a mentality of “defend it all, right or wrong.” Industry must be willing to admit that certain activities should not be conducted on the public lands (or not conducted in certain ways or for certain reasons) in order to get better and truly sustainable management on the National Forests. Basically, trench warfare amongst all parties must end, and litigation must be reserved for truly illegal and unwise management decisions. For those instances where some uncooperative groups sue over valid and good projects, based on nothing more than blind allegiance to ideology, other environmental groups must be willing to break ranks and stand up for the good work of the agency. WildLaw is willing to do this and willing to stand by agency decisions that we see were developed through good cooperation and that implement true science-based restoration.
- Increased reporting of the ideas and implementation of restoration and sustainable management, both in the mainstream press and in forestry and academic publications.

- New and increased participation by traditional forestry industry in sustainable forestry efforts to help communities and workers make their work truly sustainable for the land and themselves.

### **What WildLaw is Willing to Contribute to this Effort**

WildLaw is willing to contribute to this effort to remake the Forest Service and create a new management paradigm in the following ways:

- We are willing to share our knowledge and experience in helping the agency develop restoration programs and projects with anyone, including other USFS offices, industry, other environmental and conservation groups, and the public.
- WildLaw is willing to help develop, implement and participate in an education effort to bring the methods of cooperative conservation and the fundamentals of restoration and sustainable management to agency offices and staff nationwide.
- WildLaw can help flesh-out for the agency and other partners the legal requirements for doing this type of work and how the work can be done in the most efficient process possible, while still complying fully with the law. WildLaw pioneered the use of using the processes in the Healthy Forests Restoration Act of 2003 (HFRA) to do salvage and restoration work that resulted in better management. The first HFRA project in the nation was not proposed by the agency but by WildLaw, the Hurricane Ivan salvage done in the Conecuh National Forest. That salvage was not done in isolation but developed in and tied to the existing ecosystem restoration program the Conecuh already had, thus making the salvage not about pulling timber off the forest but about moving the Forest further down the road to healthy sustainability and storm resilience. That pioneering use of HFRA was replicated after Hurricane Katrina to do a very successful job of salvage in the De Soto and Bienville National Forests in Mississippi while enhancing the Longleaf Pine restoration work there and while meeting the requests of local scientists that most of the damaged trees be left where they were for forest health reasons.
- Litigation that we initiate against the Forest Service will be reserved for true grossly illegal and unwise management decisions. We will try internal agency processes and dialogue first before pursuing any legal options. We have never once filed a frivolous or harassing lawsuit or one not based on clear violations of law. Our record of success in litigation proves that fact. Under a restoration management paradigm, we will be more willing to give on first-time, technical, paperwork violations so long as the proposed work on the ground was developed through good science and a good collaborative process and does implement real restoration goals, but we will also expect the agency to do what it takes to prevent such short-cutting of legal and administrative processes in the future. We understand that mistakes happen and that people new to a process often do not fully understand how it is supposed to work. But once a line officer does learn how the process is supposed to work, we will expect them to fulfill that process appropriately. Bad process usually leads to bad work on the ground. Good process usually leads to good work on the ground. That is why WildLaw has

been so willing over the years (and is willing to do more in the future) to help agency personnel learn how the legal and administrative processes should work and can work most effectively. Sham restoration projects will be met with overwhelming and unrelenting opposition.

- For those instances where some uncooperative groups sue over valid and good restoration projects, based on nothing more than blind allegiance to ideology, WildLaw will be willing to break ranks and stand up for the good work of the agency. WildLaw is willing to stand by agency decisions that we see were developed through good cooperation and that implement true science-based restoration.
- WildLaw will stand by and support the agency in seeking from Congress legislation and funding that will facilitate implementation of restoration and sustainability programs on the entire system and that will assist in community and work force development to do the types of work needed for this new paradigm.
- We will not just speak up when we see the USFS doing things wrong; we will do more to emphasize and publicize the positive and exemplary work of the agency.
- We will provide the resources, contacts and expertise of our Southern Forests Network program to bring in the people and knowledge needed on better forestry practices, certification, small market creation and much more.

The time has come for the U.S. Forest Service to grow into the agency it was always meant to be; it has always been closer to this goal than most people realize. It was just that the conflict over a few issues often hid the many good things that were happening unnoticed. A lot of work has gone on inside and outside the agency to make this possibility real; even much of the conflict which has divided and hurt us all for so long was an important and vital part of making this moment possible. We believe that the people in the agency and the people outside the agency who care about these public lands can come together at this time and make this new paradigm happen.

### **What are you willing to do to make this change happen?**

We welcome any and all thoughts, concerns and reactions.

Thank you,  
Ray Vaughan, Executive Director  
WildLaw  
8116 Old Federal Road, Suite C  
Montgomery, AL 36117  
(334) 396-4729  
[wildlaw@aol.com](mailto:wildlaw@aol.com)  
[www.wildlaw.org](http://www.wildlaw.org)

**PLR34.**

M. Robert Cooper, M.D.  
3113 Fraternity Church Road  
Winston-Salem, NC 27127

May 24, 2007

RECEIVED MAY 30 2007

Planning Rule Notice of Intent Comments  
P.O. Box 162969  
Sacramento, CA 95816-6724

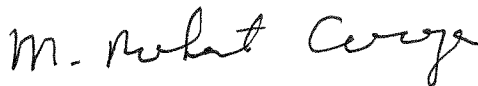
Dear Sir:

I am writing to support the National Forest System Land Management Planning Rule Environmental Impact Statement, which is intended to simplify the forestry planning process and facilitate forestry planning in a more efficient and meaningful manner. The current National Environmental Policy Act complicates the planning process and requires durations over time that retard the implementation of the planning process in a meaningful manner.

I support the 2005 rule, which provides much-needed improvement to the 2000 rule. The 2005 rule improves public involvement and decreases the planning process to 2-3 years, compared to 5-7 years for the previous rules. The 2005 rule focuses analysis at the project level where specific environmental conditions are known. Further, the 2005 rule responds to the latest scientific knowledge and changing natural conditions. This will save the government millions of dollars annually and enables the agency to better manage our national forests.

Let us be reasonable in the development of rules and regulations and facilitate the implementation of the 2005 rule, which will save us more than \$27 million annually by implementing timely plans with modern science.

Sincerely,



M. Robert Cooper, M.D.  
Certified Tree Farmer  
North Carolina Tree Farm Program

M. Robert Cooper, M.D.  
3113 Fraternity Church Road  
Winston-Salem, NC 27127

PIEDMONT TRIAD AREA  
NC 274 4 T  
25 MAY 2007 PM



**PLR34.**

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Sacramento, CA 95816-6724

95816-6724



Mark W. Belles  
9318 Willard Street  
Rowlett, TX 75088

Planning Rule NOI Comments  
PO Box 162969  
Sacramento, California 95816-2969

RECEIVED MAY 18 2007

11 May 2007

Dear Forest Service,

Regarding the Notice of Intent to Prepare an Environmental Impact Statement for the National Forest System Land Management Planning project published in the Federal Register on May 11<sup>th</sup>, 2007 (Volume 72, Number 91) please place my name on the mailing list for this project.

Prior the 2005 Planning Rule I commented on what was then the proposed rule. I am gratified to read that the Courts have issued the injunction against the 2005 rule. I have always felt the 2005 rule violated NEPA and other public laws. It seems this opinion was valid.

The Notice of Intent cited a review of the 2000 Rule undertaken at the direction of the Office of the Secretary that found in part a need for action because of the following findings:

- (1) The 2000 rule has both definitions and analytical requirements that are very complex, unclear, and, therefore, subject to inconsistent implementation across the agency;
- (2) Compliance with the regulatory direction on such matters as ecological sustainability and science consistency checks would be difficult, if not impossible, to accomplish; and
- (3) The complexity of the 2000 rule makes it difficult and expensive to implement.

Based on these findings, it is important to note that the review did NOT determine that there was a technical deficiency in the 2000 rule, but rather asserted that the 2000 Rule would be costly and inefficient to implement.

The Environmental Impact Statement undertaken by this project must present objective data to substantiate these assertions which form the Purpose of and Need of the project. Without this justification the entire 2005 Planning Rule is unnecessary and should be abandoned.

Thank you,





Mark Belles  
9318 Willard St  
Rowlett TX 75088-4403

NORTH TEXAS P&DC  
TX 750 5 T  
15 MAY 2007 PM



PLANNING RULE NOI Comments

P.O. Box 162969

Sacramento, CA

**PLR36.**

95816-2969

95816+2969



**Planningrulenoi**

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**From:** wallachrc@mindspring.com  
**Sent:** Monday, June 04, 2007 7:46 PM  
**To:** Planningrulenoi  
**Subject:** forests

National forests provide very important resources such as: wildlife habitat (especially for species with large home ranges like lynx and bear), clean water, clean air, historic and pre-historic artifacts, and outstanding recreational opportunities for recreation, education, and scientific research. State that these resources are at risk from excessive oil and gas drilling, logging, off-highway vehicle use, thus there must be strong and enforceable measures in forest plans to make sure that these resources are protected. Planning regulations should contain requirements for forest plans that ensure protection of resources such as wildlife habitat, viable populations of wildlife, water quality, soils, primitive recreational opportunities, etc. Ask that the regulations require plans to have standards, or "must do" provisions.

Forest Service should analyze stronger planning regulations in the forthcoming EIS, including those from 1982 that required protection of wildlife habitat and tracking of wildlife population and trends. The Forest Service should not reinstate the 2005 Regulations in any form, as they provide no protection whatsoever for important national forest resources.

**Planningrulenoi**

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**From:** Cheryl Spencer [cheryl@2spencers.com]

**Sent:** Monday, June 04, 2007 3:54 PM

**To:** Planningrulenoi

**Subject:** Agency Regulations

As a regular user of our National forests, I want you to know they are important to many individuals. They also provide very important resources such as: wildlife habitat, clean water, clean air, historic and pre-historic artifacts, and outstanding recreational opportunities. Unfortunately, these resources are at risk from excessive oil and gas drilling, logging, off-highway vehicle use, thus there must be strong and enforceable measures in forest plans to make sure that these resources are protected.

I am therefore demanding that planning regulations contain requirements for forest-plans that ensure protection of resources such as wildlife habitat, viable populations of wildlife, water quality, soils and primitive recreational opportunities.

The Forest Service needs to analyze stronger planning regulations in the forthcoming EIS, including those from 1982 that required protection of wildlife habitat and tracking of wildlife population and trends. Please do not reinstate the 2005 Regulations in any form, as they provide no protection whatsoever for important national forest resources.

Cheryl Spencer

**PLR39.**

forests

re: Forest Service Planning

DO NOT allow any of President Bush's 2005 illegal and weak forest service plan to be implemented. I use the National Forest's regularly throughout then year. We need to have enforceable standards not just "goals" of maintaining healthy forests. national forests provide very important resources such as: wildlife habitat (especially for species with large home ranges like lynx and bear), clean water, clean air, historic and pre-historic artifacts, and outstanding recreational opportunities for recreation, education, and scientific research.

these resources are at risk from excessive oil and gas drilling, logging, off-highway vehicle use, thus there must be strong and enforceable measures in forest plans to make sure that these resources are protected.

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the Forest Service should analyze stronger planning regulations in the forthcoming EIS, including those from 1982 that

required protection of wildlife habitat and tracking of wildlife population and trends. Insist that the Forest Service not reinstate the 2005 Regulations in any form, as they provide no protection whatsoever for important national forest resources.

How could you even consider a Forest plan coming from the most environmental UN-friendly President we've seen?

Say NO to Bush's insane 2005 Forest service regulations.

Thank You.  
Bill Vana  
3129 w 4th ave  
Durango, CO  
81301  
970-259-2454

916-456-6724



Naropa University, Department of Writing and Poetics  
*The Jack Kerouac School of Disembodied Poetics*

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 303-546-3508 • Fax 303-546-5297

Prof. Andrew Schelling

Planning Rule NOI Comments  
 PO Box 162969  
 Sacramento, CA 95816-2969

**I. RECEIVED JUN 05 2007**

May 30, 2007

Dear Sirs,

I'm writing with regard to National Forest zoning and planning regulations. I spend a great deal of time in Colorado's National Forests, in particular I own a cabin adjacent to the Indian Peaks Wilderness area, surrounded by National Forest. This is an area with high recreation use by hikers, hunters, skiers, snowshoers, students of natural history, and so forth—and I use the forest for all these purposes.

The most important resource in the forest is its wildlife. That it provides habitat for elk, deer, pine marten, cougar, red fox, many species of birds, beaver, and possibly lynx, gives us in the United States a land and an identity no other country holds. Additionally, these mountains are where our clean water, good air, and sense of open possibility come from. Above my cabin archaeologists have found artifacts and once-inhabited sites that go back as much as 8000 years. These kind of resources are precious. I lead students up into the heights for purposes of study and writing at times, and I brought up my daughter to camp, cook over open fires, ride horseback, and shoot a gun. Undeveloped wilderness is the only place we can pursue these activities.

When you draw up regulations for forest planning, it is imperative that you ensure the protection of wildlife habitat (this means adequate ranges for wild animals, covering significant areas for top-of-the-food-chain predators). Equally important is the maintenance of air quality, water cleanliness, quality of soil, and the protection of undeveloped areas for primitive recreation. Any use of the forests should require careful planning, which is guided by carefully laid out standards concerning land use.

The planning regulations developed in 1979, and altered slightly in 1982, seem the best we Americans have developed. One regulation insisted that national forests monitor wildlife populations, with the goal of maintaining long-term viability of all vertebrate populations. Please use those 1982 standards as a template. The Bush Administrations effort to overturn those with vague standards in 2005 will lead to the swift erosion of all that we Americans hold precious about our forests, our wildlife, and our resources. Do not permit those 2005 regulations to go into effect, in any manner. They will end our American way of life by damaging our wild lands, and potentially wiping out habitat of wildlife, good air and water.

Thank you for your attention. It is clear not only our forests but our way of life is being undermined by the push to permit drilling, mining, development of roads, and so forth. please do not cave in to the demands of special interest lobbies that want quick profit, at the expense of our lands and our children's lands!

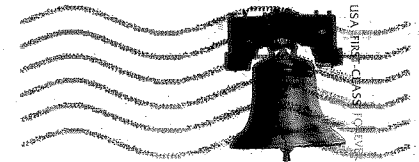
*Andrew Schelling*  
 Andrew Schelling



*Schelling*  
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2130 Arapahoe Avenue  
Boulder, Colorado 80302-6697

DENVER CO 802

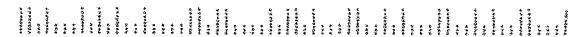
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PLR 40

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30 May 2007

Planning Rule NOI Comments  
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Sacramento, CA 95816-2969

**RECEIVED JUN 05 2007**

**Re - National Forest System Land Management Planning Draft Environmental Impact Statement Scoping Comments [Federal Reg. notice 72(91):26775-26776]**

Dear Planning Rule Team:

Thank you for providing an opportunity to provide comments regarding the proposed National Forest Planning System land management planning rule. I am a private citizen, a frequent user of national forest lands and have no financial interests that would be impacted directly by any USDA decisions.

National forest planning is of vital interest and importance to me because the long-term health and management of these lands directly impacts my personal comfort, welfare and security. Living in close proximity to the Tonto National Forest and witnessing the devastation of the almost quarter million acre 2005 Cave Creek Complex fire demonstrated to me that proactive management of our forests focused on the principles of conservation and sustainability is essential to safeguard the health and economic vitality of entire regions.

I request that the following issues be analyzed in the draft environmental impact statement:

The direct and indirect economic benefits and environmental services we obtain from our forests ultimately reflect the underlying ecological vigor that management policies establish and defend. Consequently, **developing plans consistent with the “best available science” is vital and the new draft should analyze ways to mandate and document these efforts and incorporate the acquired knowledge into meaningful actions.** The 2005 rule promoted this idea, but fell short on implementation by requiring only that such information be “taken into account” and/or “considered”. Given the intent to create strategic rules, providing some specific structure regarding this facet of planning would be beneficial.

Incorporating the best available science into plans cannot be accomplished in a single episode undertaken at the outset of the process. **Strategies to ensure that best available science inputs occur and are evaluated periodically throughout the plan lifetime should be analyzed in the draft environmental impact statement.** The 2006 publication by D. C. Donato et al., “Post Wildfire Logging Hinders Regeneration and Increases Fire Risk” (*Science* 311:352), generated immediate controversy (discussed in another article written by Erik Stokstad, *Science* 311:761). This situation not only reveals the extreme challenge forging a scientific consensus sometimes represents, but

also illustrates clearly that the initial best available science review should only be considered a rational starting point for a process that continues over the entire life of the plan. **A means to allow planners the flexibility to consider the full range of information available, including even contradictory studies, synthesize one or perhaps several approaches to issues that will be subjected to frequent on-the-ground outcomes evaluation and validation in an adaptive management framework should be analyzed in the draft statement.** Clearly, plans cannot and should not necessarily change with the publication of every new study, but rules that chart a course empowering managers to systematically evaluate and incorporate new information stand a far greater chance of attaining desired future conditions.

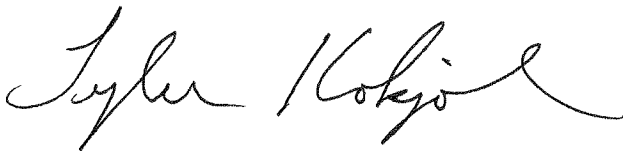
**Climate conditions and patterns are changing and plans should accordingly include projections of anticipated impacts as well as prescribe methods and strategies to assess the pace and on-the-ground consequences of emerging climate changes.**

While individual forest plans must necessarily focus down to the local level, **the draft plan should establish mechanisms to ensure managers undertake actions in accord with the overall regional or national strategic context.**

Assuming that the new rules will retain a commitment to employ adaptive management principles, **the new draft should analyze provisions for monitoring and assessments and consider a feedback mechanism that ensures new information regarding conditions, departures from expectations, action failures, etc., are transformed into institutional knowledge and effective operational responses.** This is not a demand for an enormously detailed plan of action, but rather a request that new rules establish some general and uniform guidelines for monitoring and assessments frequencies and information flow. Leaving such activities entirely discretionary could result in plans where monitoring is sporadic, perhaps even random, and potential opportunities to improve operations are not recognized or squandered.

Thank for you considering my comments and your efforts on behalf of our national forests.

Sincerely,

A handwritten signature in black ink, reading "Tyler Kokjohn". The signature is fluid and cursive, with the first name "Tyler" and last name "Kokjohn" clearly distinguishable.

Tyler Kokjohn  
4040 W. El Cortez Trail  
Glendale, AZ 85310  
(623) 572-3225  
[tkokjo@midwestern.edu](mailto:tkokjo@midwestern.edu)



PLR 41



*Kokjohn*  
**MIDWESTERN UNIVERSITY**

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Planning Rule NOI Comments  
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**Planningrulenoi**

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**From:** Chris Conrad [CConrad@spi-ind.com]  
**Sent:** Wednesday, June 06, 2007 5:25 PM  
**To:** Planningrulenoi  
**Subject:** Comments

Christopher J. Conrad  
20405 Brook Drive  
Sonora, CA 95370

June 6, 2007

Planning Rule NOI Comments  
U.S. Forest Service  
PO Box 162969  
Sacramento, CA 95816-6724

To Whom It May Concern:

I ask that you move as quickly as possible to complete the EIS for the 2005 National Forest System Land Management Planning Rule. This rule will improve public involvement, save the government millions of dollars annually, enable the agency to better manage our national forests, focus environmental analysis at the appropriate level, and better respond to the best scientific information.

Since the agency must conduct NEPA work on the 2005 rule as per the court order, I urge you to analyze only the proposed rule and the no action alternative. The agency must disclose to the public the impact of failing to reduce time and resources spent on planning as a result of dropping or significantly changing the 2005 rule.

Please accelerate your efforts to get through the NEPA process required by the court and get on with the management of our national forest lands.

Thank you for consideration of my views.

Sincerely,

Christopher J. Conrad

**Planningruleno**

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**From:** Marc Fink [mfink@biologicaldiversity.org]

**Sent:** Wednesday, June 06, 2007 10:35 AM

**To:** Planningruleno

**Subject:** Comments on USFS Notice of Intent to Prepare EIS - National Forest System planning rule

Attached are comments submitted by the Center for Biological Diversity regarding the Forest Service's notice of intent to prepare an EIS regarding its National Forest System land management planning rule. Please confirm that these comments have been received. Thank you.

Marc D. Fink, Attorney  
Center for Biological Diversity  
4515 Robinson Street  
Duluth, Minnesota 55804  
Tel: 218-525-3884  
Fax: 218-525-3857  
mfink@biologicaldiversity.org



June 6, 2007

Planning Rule NOI Comments  
P.O. Box 162969  
Sacramento, CA 95816-2969

**Re: Comments Concerning Scope of Analysis for National Forest System Land Management Planning Rule EIS**

Dear Madam or Sir,

Please accept these comments on behalf of the Center for Biological Diversity ("the Center"), a non-profit organization with over 35,000 members. The Center is dedicated to protecting imperiled species and their habitats by combining scientific research, public organizing, and administrative and legal advocacy. The Center appreciates the opportunity to provide comments on the potential environmental impacts and consequences of the proposed National Forest System land management planning rule.

**I. The Forest Must Sufficiently Analyze Potential Environmental Impacts *Prior* to Making Its Decision Regarding the National Forest System Land Management Planning Rule**

"NEPA requires federal agencies to prepare an environmental impact statement (EIS) for any action that will significantly affect the environment." *California Coastal Commission*, 150 F. Supp. 2d 1046, 1055 (N.D. Cal. 2001), *citing* §42 U.S.C. § 4332(C). The EIS must consider (i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action would it be implemented. 42 U.S.C. § 4332(C). Prior to preparing the EIS, the agency must consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to the any environmental impact involved. *Id.*

"Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." 40 C.F.R. § 1500.1(b). NEPA "ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger [public] audience that may also play a role in both the decisionmaking process and implementation of that decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349, 109 S.Ct. 1835, 1845 (1989).

“Proper timing is one of NEPA's central themes.” *Save the Yaak Committee v. Block*, 840 F.2d 714, 718 (9<sup>th</sup> Cir. 1988). The very purpose of NEPA is for agencies to analyze and disclose the environmental consequences of their proposals “before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b). For the NFMA planning rule, however, it appears that the Forest Service is merely going through the motions and has already made its final decision. Even though the Forest Service is accepting these scoping comments on its “proposed” action through June 11, 2007, the agency states that it expects the draft EIS to be completed in June, 2007. *See* 72 Fed. Reg. at 26776. Unless the final decision has already been made, there is no possible way for the agency to review, digest, and incorporate the requested scoping comments, and analyze the various issues and concerns raised in these comments for this nationwide EIS, within a matter of days.

Agencies must integrate the NEPA process with other planning “at the earliest possible time to insure that planning and decisions reflect environmental values.” 40 C.F.R. § 1501.2. The EIS must serve “as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.” 40 C.F.R. § 1502.2(g). As again stated in the NEPA regulations, the EIS must be prepared early enough “so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made.” 40 C.F.R. § 1502.5. Therefore, the NEPA process must guide and help define the decisionmaking process of the agency - it is not a meaningless paper exercise to be prepared independent of the actual decision being made. For the NFMA planning rule, however, the Forest Service again miraculously plans to have a rule ready to publish within a matter of days of receiving the requested scoping comments on the required EIS. 72 Fed. Reg. at 26776 (“The Agency expects to publish a rule for comment in late June.”). This directly conflicts with the entire purpose and intent of NEPA.

## II. The Forest Service Must Analyze a Full Range of Alternatives

The alternatives section is the “heart” of an EIS. 40 C.F.R. § 1502.14; *see also* 42 U.S.C. § 4332(2)(E). The Forest Service must “[r]igorously explore and objectively evaluate all reasonable alternatives. *Id.* at § 1502.14(a). The EIS must present the environmental impacts of the proposal and all of the reasonable alternatives “in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” *Id.* at § 1502.14. The Forest Service is also specifically directed to consider a “no action” alternative. *Id.* at § 1502.14(d). And, the Forest Service must use the NEPA process “to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” *Id.* at § 1500.2(f).

The Forest Service must first properly identify the “no action” alternative for its proposed action. For the 2000 NFMA regulations, the Forest Service noted serious concerns with these regulations soon after being sued, *see Citizens for Better Forestry v. U.S. Dept. of Agriculture*, 341 F.3d 961, 968 (9<sup>th</sup> Cir. 2003); the Forest Service never utilized the 2000 regulations for any Forest Plan amendments or revisions; the Ninth Circuit held that the Forest Service violated NEPA in promulgating the regulations, *id.* at 970; and in January, 2005, the Forest Service formally withdrew and removed the regulations in their entirety, effective immediately. 70 Fed. Reg. 1022 (Jan. 5, 2005). The 1982 NFMA regulations, on the other hand, have been in use by

the Forest Service for well over twenty years, individual national forests continue to use the 1982 regulations in preparing Forest Plan revisions, and no court has found any legal deficiencies with the agency's development or promulgation of the regulations. It is therefore clear that the 1982 NFMA regulations should be considered the "no action" alternative that is fully assessed in the EIS for the proposed action.

Regardless of whether considered to be the "no action" alternative, the 1982 NFMA regulations must be fully assessed as a reasonable alternative to the proposed action. The 1982 regulations were in effect for two decades, resulted in the first round for forest plans for the entire National Forest System, were never found by a court to be improper or illegal, and provide a well-established and well-understood benchmark by which to assess all other alternatives. Consideration of the 1982 regulations should also include consideration of the recommendations of the original Committee of Scientists, which was convened in 1979 by appointment of the Secretary of Agriculture. As required by NFMA, the Committee provided "scientific and technical advice and counsel on proposed guidelines and procedures to assure that an effective interdisciplinary approach [was] proposed and adopted." 16 U.S.C. § 1604(h)(1). These recommendations included a commitment to the viability of all vertebrate species in accordance with the NFMA requirement to provide for a diversity of plant and animal communities. See Noon, B.; Parenteau, P.; Trombulak, "*Conservation Science, Biodiversity, and the 2005 U.S. Forest Service Regulations*," *Conservation Biology*, Volume 19, No. 5 (Oct., 2005).

The Forest Service must also consider the 2000 NFMA regulations as a reasonable alternative to the proposed rule that must be fully assessed in the EIS. These regulations, which were set forth at 65 Fed. Reg. 67513-67581 (Nov. 9, 2000), were the result of years of work by the agency, as well as another 13-member Committee of Scientists, which was convened by the Forest Service pursuant to NFMA to review the Forest Service planning process and offer recommendations. The Committee held public meetings across the country before issuing its final report in March, 1999, which led to the issuance of the 2000 regulations. The Committee's 1999 report had two overarching themes: (1) ecological sustainability is a prerequisite to social and economic sustainability and should be the first responsibility of the Forest Service and (2) the public needs to have early, broad, and continuous involvement in national forest planning and stewardship. See Noon, B.; Parenteau, P.; Trombulak, "*Conservation Science, Biodiversity, and the 2005 U.S. Forest Service Regulations*," *Conservation Biology*, Volume 19, No. 5 (Oct., 2005). While the Forest Service later identified problems with the implementation of these regulations, the regulations, or a variation thereof, should still be considered as another reasonable alternative to the proposed action that must be assessed in this EIS.

Due to the scientifically recognized changes in the global climate that have already begun as a result of the increased atmospheric concentration of greenhouse gases,<sup>1</sup> along with the expected, foreseeable, but uncertain impacts to forests and biodiversity, the Forest Service must also consider an alternative that provides a substantial increase in protection for the fish and wildlife species that depend on the National Forest System. NFMA specifically directs that the

<sup>1</sup> See e.g., Intergovernmental Panel on Climate Change ("IPCC") February, 2007, Summary for Policymakers, "*Climate Change 2007: The Physical Science Basis*," available at <http://ipcc-wg1.ucar.edu/wg1/wg1-report.html>.

NFMA regulations provide for the diversity of plant and animal communities based on the suitability and capability of the land. 16 U.S.C. § 1604(g)(3)(B). Scientists, including Forest Service researchers, have recognized global warming as a key threat to biodiversity. See e.g., Malcom, Jay R.; Liu, Canran; Neilson, Ronald P.; Hansen, Lara; Hannah, Lee, “*Global Warming and Extinctions of Endemic Species from Biodiversity Hotspots*,” *Conservation Biology*, Vol. 20(2): 538-548 (2006).<sup>2</sup> Due to uncertainties over the extent and impacts of global climate changes on biodiversity and NFMA’s mandate to provide for the diversity, the Forest Service must consider and fully analyze an alternative that errs on the side of caution by offering a safe harbor and refuge for these fish and wildlife species.

As stated by former Forest Service Chief Dale Bosworth, the greatest number of imperiled species in the United States are found on the National Forest System, including about half of federally listed species that are found on federal lands; and “the national forests and grasslands have always been the best refuges - the best places for endangered species to make a final stand.” Bosworth, Dale, “*Managing the National Forest System: Great Issues and Great Diversions*,” Speech to Commonwealth Club in San Francisco, CA (April 22, 2003). This protective “refuge” alternative must therefore recognize the critical importance of the national forests and grasslands in maintaining biodiversity during this time global warming and climate change.

In sum, to consider a full range of reasonable alternatives, the Forest Service must consider, at the very least: (1) a no action alternative (the 1982 NFMA regulations), (2) the 2000 NFMA regulations and associated 1999 Committee of Scientists Report, (3) the proposed action, and (4) a substantially more protective alternative that considers the magnitude of the current climate crisis and provides additional protection for the fish and wildlife species that depend on National Forest System lands.

### **III. The Forest Service Must Describe the Affected Environment**

The EIS for the proposed rule must “describe the environment of the area(s) to be affected or created by the alternatives under consideration.” 40 C.F.R. § 1502.15. For the National Forest System, this should include, at a minimum: (1) the present status and distribution of sensitive, threatened, and endangered species that depend on national forests and grasslands; (2) the current condition of rivers and streams on national forests and grasslands; (3) the amount and distribution of remaining old growth habitat on the National Forest System; (4) the extent and impacts of invasive species; (5) a description and assessment of the existing network of roads and trails; (6) an assessment of the current extent of livestock grazing across the National Forest System; (7) the current status of oil, gas, and mineral development on national forests; and (8) the extent of past timber harvest and clearcutting.

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<sup>2</sup> See also Matthews, Stephen N.; O’Connor, Raymond J.; Iverson, Louis R.; Prasad, Anantha M., “*Atlas of Climate Change Effects on 150 Bird Species of the Eastern United States*,” Forest Service Northeastern Research Station Gen. Tech. Report NE-318 (2004) (projecting that as many as 78 of 150 common bird species may decrease by at least 25 percent due to global climate change); and the IPCC’s April, 2007, Summary for Policymakers, “*Climate Change 2007: Impacts, Adaptation and Vulnerability*,” available at <http://www.ipcc-wg2.org/index.html>.

The most recent scientific reports from the IPCC make clear that the atmospheric concentrations of greenhouse gases have significantly increased, which is unequivocally warming and changing global climate systems, and resulting in substantial environmental impacts across the globe.<sup>3</sup> In assessing and describing the affected environment, the Forest Service must therefore also consider and disclose the extent to which global climate change has already affected the National Forest System. As recently recognized by Forest Service and other agency scientists, the past century has already been a period of “dynamic change for many western mountain ecosystems.” Stephenson, N.; Peterson, D.; Fagre, D.; Allen, C.; McKenzie, D.; Baron, J.; O’Brian, K., “*Response of Western Mountain Ecosystems to Climate Variability and Change: The Western Mountain Initiative*,” (2006). “By documenting the past response of natural resources to climate variability at annual, decadal, and centennial scales,” the Forest Service will be able to establish “an important context for inferring the effects of a warmer climate.” *Id.*

Changes that have already occurred include increased droughts, increased extent and severity of wildfires, forest dieback, vegetation type conversion, decreased snowpack, and changes in soils. *Id.*<sup>4</sup> Only by properly recognizing, considering and disclosing current conditions can the Forest Service accurately and meaningfully predict the reasonably foreseeable, future management impacts on forest resources.

#### **IV. The Forest Service Must Consider the Environmental Consequences of the Proposed Revision of the NFMA Regulations**

The “environmental consequences” section of the EIS “forms the scientific and analytic basis” for the comparison of alternatives. 40 C.F.R. § 1502.16. This discussion must include “the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented.” *Id.* This section must include discussions of both direct and indirect effects and their significance, along with the environmental effects of the alternatives. *Id.*

<sup>3</sup> See IPCC’s February, 2007, Summary for Policymakers, “*Climate Change 2007: The Physical Science Basis*,” available at <http://ipcc-wg1.ucar.edu/wg1/wg1-report.html>; and IPCC’s April, 2007, Summary for Policymakers, “*Climate Change 2007: Impacts, Adaptation and Vulnerability*,” available at <http://www.ipcc-wg2.org/index.html>.

<sup>4</sup> See also IPCC’s April, 2007, Summary for Policymakers, “*Climate Change 2007: Impacts, Adaptation and Vulnerability*,” p. 2 (increased run-off and earlier spring peak discharge in many glacier- and snow-fed rivers; warming of lakes and rivers in many regions, with effects on thermal structure and water quality; earlier timing of spring events, such as leaf-unfolding, bird migration and egg-laying; poleward and upward shifts in ranges in plant and animal species); *id.*, p. 3 (alterations of disturbance regimes of forests in Northern Hemisphere due to fire and pests).

The Ninth Circuit has recognized that because the NFMA regulations control the development of both Forest Plans and site-specific projects, the substantial revision of the NFMA regulations, as proposed by the Forest Service, will result in an actual, physical effect on the environment in national forests and grasslands. *Citizens for Better Forestry v. U.S. Dept. of Agriculture*, 341 F.3d 961, 973 (9<sup>th</sup> Cir. 2003). The Ninth Circuit further recognized that lowering environmental standards at the national programmatic level, as with the proposed rule, will result in lower environmental standards at the site-specific level. *Id.* at 975. Pursuant to NEPA, the Forest Service must therefore analyze, consider, and disclose the direct, indirect, and cumulative environmental effects of the proposed action in the EIS.

Significantly, in analyzing the potential environmental impacts of its proposed action and alternatives, the Forest Service must recognize that it is not drafting new regulations on a blank slate. Rather, the agency must acknowledge and analyze any proposed changes in relation to the previous and existing regulations. This is because by proposing new regulations, the Forest Service is thereby also proposing to eliminate the previous regulations that had been in place.

#### **A. The Forest Service Must Consider Potential Impacts to Fish and Wildlife Species**

The 1982 NFMA regulations provided mandatory and meaningful protection for fish and wildlife species. The Forest Service was required to manage fish and wildlife habitat to maintain viable populations of existing fish and wildlife species. 36 C.F.R. § 219.19 (1982). In order to ensure viable populations, the agency was required to provide at least a minimum number of reproductive individuals and the habitat was required to be well distributed so that the individuals could interact with others in the planning area. *Id.* Moreover, in order to estimate the potential effects on fish and wildlife populations, the Forest Service was required to identify “management indicator species,” and monitor their population trends. *Id.* And additional protection was provided to threatened and endangered species and their habitat. *Id.*

The mandatory requirements of the 1982 regulations resulted in Land and Resource Management Plans (“Forest Plans”) that included mandatory and quantifiable protection for fish, wildlife, and their habitat. In turn, numerous timber sales and other proposed projects were stopped or modified by citizen administrative appeals and litigation due to the mandatory protection offered by the applicable Forest Plans and the regulations themselves. By contrast, the proposed 2005 regulations “completely eliminate the requirement that forest plans maintain viable populations of vertebrate species, along with the requirement that management indicator species be designated and monitored.” Noon, B.; Parenteau, P.; Trombulak, “*Conservation Science, Biodiversity, and the 2005 U.S. Forest Service Regulations*,” *Conservation Biology*, Volume 19, No. 5 (Oct., 2005). There is no question that the elimination of the 1982 viability requirements will lead to fewer if any mandatory standards and guidelines in Forest Plans, as the very purpose of the proposed rule is to provide individual Forests with more discretion and flexibility. *See* 70 Fed. Reg. at 1024 (acknowledging that Forest Plans under the proposed 2005 rule would be “less prescriptive in nature than under the 1982 planning rule.”).

In assessing the potential impacts of the proposed rule, the Forest Service must include an analysis of the potential impacts to fish and wildlife species from the elimination of the 1982

viability requirement. Even with the protection offered by the 1982 regulations, and the Forest Plans prepared under the 1982 regulations, numerous fish and wildlife species were placed on the agency's list of sensitive species or designated as threatened or endangered under the Endangered Species Act during the 1980s and 1990s.<sup>5</sup> It is also now known that these species face additional threats from global climate change, continued habitat fragmentation, and other factors.<sup>6</sup> Increased threats coupled with less protective standards and decreased opportunities for meaningful public oversight will undoubtedly decrease the overall protection offered to the fish and wildlife species that depend on the National Forest System. The Forest Service must therefore fully analyze and disclose the potential impacts of its proposed rule, including the elimination of the previous regulatory framework, on fish and wildlife species.

The 1982 regulations also required the Forest Service to prepare "regional guides" for each Forest Service region to "provide standards and guidelines for addressing major issues and management concerns which need to be considered at the regional level to facilitate forest planning." 36 C.F.R. § 219.8(a) (1982). The Forest Service must also assess the proposed rule's elimination of these previously required regional guides and the potential consequences to wide ranging and migratory species that need to be considered and addressed at the regional level.

#### **B. The Forest Service Must Consider the Potential Impacts to the Remaining Old Growth Forests**

Past timber harvest has decimated old growth forests throughout the National Forest System, and the many wildlife species that depend on these old growth forests are struggling for survival. The mandatory viability requirement of the 1982 regulations led to mandatory, numeric protection for old growth forests within Forest Plans, including the Northwest Forest Plan in the Pacific Northwest, the Northern goshawk and Mexican spotted owl plan amendments in the Southwest, and the 10% old growth standard included within numerous Forest Plans in the Northern Rockies. Many national forests are not meeting these numeric old growth requirements, and are thereby continuing to place old growth species at risk. Since the proposed rule would eliminate the 1982 viability requirement, and emphasizes agency discretion and flexibility over mandatory, numeric standards for individual Forest Plans, the proposed rule may result in attempts to eliminate the mandatory, numeric protection for old growth forests. The EIS must fully assess and disclose the potential impacts of the elimination of this protection for old growth forests and dependent species, and address how the Forest Service would still be able to meet NFMA's diversity requirement.

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<sup>5</sup> As just one example, even with the mandatory viability requirement in the 1982 regulations, lynx was still designated as a threatened species in 2000 due to the lack of sufficient protection for lynx in Forest Plans. 65 Fed. Reg. 16052 (March 24, 2000). Decreasing and eliminating standards at the national level will only further decrease protection at the regional and local level, further worsening conditions for wildlife species dependant on national forests.

<sup>6</sup> See IPCC's April, 2007, Summary for Policymakers, "*Climate Change 2007: Impacts, Adaptation and Vulnerability*," pp. 5-6 (recognizing increased risks to ecosystems and imperiled plant and animal species as result of rising temperatures and climate change).

**C. The Forest Service Must Consider the Potential Impacts of Eliminating Enforceable, Numeric Standards for Additional Forest Resources**

In addition to the fish and wildlife viability requirement, the 1982 NFMA regulations included a number of mandatory, quantifiable standards referred to as "management requirements," including numeric limits on the size of clearcuts and stream side buffers. 36 C.F.R. § 219.27; *see* 16 U.S.C. § 1604(g)(3) (setting forth the provisions and protection that must be included in the NFMA regulations). The EIS must assess the likely and potential environmental consequences resulting from the proposed elimination of these enforceable, numeric standards.

**D. The Forest Service Must Consider the Potential Impacts of Authorizing and Increasing the Extent of Commercial Logging, Livestock Grazing, Oil and Gas Development, and Other Activities on Global Climate Change**

The IPCC, made up of over 1,000 scientists from over 100 countries, recently concluded that it is "very likely" (90 percent probability) that human activities are the main cause of global warming. The potential environmental consequences that may be caused by global climate change are both enormous and alarming. In this nation-wide EIS concerning the management, standards and guidelines for the 190 million acre National Forest System, the Forest Service must assess and disclose the potential contribution of projects and activities that are authorized on national forests and grasslands to the ongoing, human-caused changes to the national and global climate.

Forests are the most significant terrestrial stores of living carbon, and in fact slow global warming by storing and sequestering carbon. *See* Union of Concerned Scientists, "*Recognizing Forests' Role in Climate Change*," available at [www.ucsusa.org](http://www.ucsusa.org).<sup>7</sup> "Forest plants and soils drive the global carbon cycle by sequestering carbon dioxide through photosynthesis and releasing it through respiration." *Id.* Through photosynthesis, plants capture carbon dioxide and convert it to plant matter that then feeds the base of the entire planetary food chain. *See* Heiken, D., "*The Straight Facts on Forests, Carbon, and Global Warming*," available at <http://tinyurl.com/2by9kt>. Old-growth forests are able to store massive amounts of carbon in their trunks as well as in the soil. *Id.*

When forests are degraded or logged, their stored carbon is released back into the atmosphere during harvest and through respiration, thus becoming net contributors of carbon to the atmosphere. Union of Concerned Scientists, "*Recognizing Forests' Role in Climate Change*." Tropical deforestation, for instance, is responsible for approximately 20% of total human-caused carbon dioxide emissions each year. *Id.*

Forests are able to help mitigate for global warming in at least three ways: conserving existing forests to avoid emissions associated with forest degradation or clearing; sequestration by increasing forest carbon absorption capacity - occurring primarily by planting trees or

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<sup>7</sup> *See also* Heiken, D., "*The Straight Facts on Forests, Carbon, and Global Warming*," available at <http://tinyurl.com/2by9kt>

facilitating the natural regeneration of forests, and the substitution of sustainability produced biological products. *Id.* In other words, to help our forest store more carbon, and thereby alleviate the leading cause of global warming, we need to let our forests grow. *Id.*

Because the proposed rule would decrease and eliminate existing limits on logging practices, the rule will likely result in an increase of the amount of logging occurring in the National Forest System. The Forest Service must consider and disclose the potential consequences of increased timber harvest on global warming.

The Forest Service must also consider the proposed rule's continuation of existing livestock grazing and its contribution to climate change. A recent report from the Food and Agriculture Organization of the United Nations found that livestock are responsible for eighteen percent of greenhouse gas emissions, representing a larger share than that of transport. See Steinfeld, H.; Gerber, P.; Wassenaar, T.; Castel, V.; Rosales, M.; Haan, C., "*Livestock's Long Shadow, Environmental Issues and Options*," (2006). Livestock grazing is widespread across the National Forest System in the western United States, and the proposed rule is unlikely to lead to any significant decrease in the extent of grazing, but rather may further increase such use. The contribution of this widespread livestock grazing on climate change must be assessed and disclosed.

Relaxed mandatory standards and protection at the national level, coinciding with increases in demand, would also likely result in increased oil and gas development on national forests. The ultimate burning of these fossil fuels would further increase global warming pollution, which needs to be considered and disclosed in this EIS.

## **V. The Forest Service Must Consider and Disclose the Threats Posed by Global Climate Change to the National Forest System in its Environmental Analysis**

Global warming and climate change is one of the foremost problems the nation faces today, and implicates all aspects of the management of our national forests. Global warming is also undeniably one of the greatest threats to our nation's biodiversity. Global warming is already adversely affecting numerous fish and wildlife species in the United States, and these impacts are expected to accelerate and continue. See e.g., IPCC's April, 2007, Summary for Policymakers, "*Climate Change 2007: Impacts, Adaptation and Vulnerability*," pp. 5-16 (discussing "current knowledge about future impacts" resulting from climate change, including fresh water resources, ecosystems, forest products, and more specific information on North America).

NEPA is recognized as "our basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a). NEPA "is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." *Id.* at 1500.1(c). Information in an EIS must be of "high quality," and accurate scientific analysis is recognized as "essential to implementing NEPA." *Id.* at § 1500.1(b). The Forest Service must use the NEPA process to identify reasonable alternatives that will avoid or minimize the adverse effects of its actions on the environment, and to use all practicable means to restore and enhance the quality of the human environment. *Id.* at 1500.2(e-

f). In light of these explicit purposes and policies, it would be inconceivable for the Forest Service not to address and disclose the real threats to the national forests and grasslands resulting from the scientifically recognized changes in climate and the potential implications for the National Forest System within this nationwide EIS. *See also* 42 U.S.C. § 4331(b) (federal agencies have a continuing responsibility to use all practicable means to “fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.”).

#### **A. Potential Impacts of Climate Change on Forests**

Federal agency scientists recognize that global climate change will result in significant impacts and changes to forests in the western United States. Stephenson, N.; Peterson, D.; Fagre, D.; Allen, C.; McKenzie, D.; Baron, J.; O'Brian, K., “*Response of Western Mountain Ecosystems to Climate Variability and Change: The Western Mountain Initiative*” (2006). The Western Mountain Initiative is an agency research program focusing on understanding and predicting responses of western mountain ecosystems to climatic variability and change. *Id.* Scientists predict that the anticipated increase in temperature may shift the ideal range for many forest species by about 200 miles to the north. Insect and pathogen outbreaks may also increase in severity. *See* IPCC’s April, 2007, Summary for Policymakers, “*Climate Change 2007: Impacts, Adaptation and Vulnerability*,” p. 10 (disturbances from pests and diseases projected to have increasing impacts on forests). The EIS must consider and disclose the findings of relevant scientific research regarding the expected impacts of climate change on forests as it analyzes the affected environmental and the proposed rule’s potential environmental consequences.

#### **B. Potential Impacts of Climate Change on Biodiversity**

Global warming is recognized as a key threat to biodiversity. *See* Malcom, Jay R.; Liu, Canran; Neilson, Ronald P.; Hansen, Lara; Hannah, Lee, “*Global Warming and Extinctions of Endemic Species from Biodiversity Hotspots*,” *Conservation Biology*, Vol. 20(2): 538-548 (2006). One-third of U.S. species are already at risk and of conservation concern, with more than 500 species likely already extinct. *See* Precious Heritage: The Status of Biodiversity in the United States,” (March, 2000); *see also* Matthews, Stephen N.; O'Connor, Raymond J.; Iverson, Louis R.; Prasad, Anantha M., “*Atlas of Climate Change Effects on 150 Bird Species of the Eastern United States*,” Forest Service Northeastern Research Station Gen. Tech. Report NE-318 (2004) (projecting that as many as 78 of 150 common bird species may decrease by at least 25 percent due to global climate change).

Moreover, twenty-six percent of imperiled species are found in the National Forest System, including about half all the populations of federally listed species that are found on federal lands. *See* former Forest Service Chief Dale Bosworth speech to Commonwealth Club of San Francisco, CA (April 22, 2003). For species that are already on the brink of extinction, such as the Selkirk and Cabinet-Yaak populations of grizzly bears and the few remaining woodland caribou, the expected changes in climate could be the final blow to these species’ survival unless the Forest Service takes action to significantly increase their protected habitat. The Forest Service must therefore assess and disclose the potential consequences of global climate change

on the fish and wildlife species that depend on national forests for their survival, including the already sensitive, threatened, and endangered species.<sup>8</sup>

### C. Potential Impacts of Climate Change on Wildfire

The increased atmospheric concentrations of greenhouse gases also means that the risk of large wildfires will remain high and will continue to increase in many forests. Westerling, A.L., “*Climate Change Impacts on Wildfire*,” Chapter 12 in *Climate Change Science and Policy* (2007); IPCC’s April, 2007, Summary for Policymakers, “*Climate Change 2007: Impacts, Adaptation and Vulnerability*,” p. 10 (disturbances from fire are projected to have increasing impacts on forests in North America, “with an extended period of high fire risk and large increases in area burned.”). As recognized in a recent memo to Interior Secretary Dirk Kempthorne, forests are increasingly overgrown, the climate is getting warmer and drier, and the government is running short of money to employ firefighters. See November 21, 2006, Oregonian newstory by Michael Milstein, “*Fires Likely to Exceed Agencies’ Resources*.” A record 9.4 million acres burned in 2006, surpassing the previous record of 8.7 million acres that burned in 2005. *Id.* Climate studies predict that the West will grow warmer and drier, making forests more flammable and blazes more dangerous and unpredictable. *Id.* The EIS must therefore consider and disclose the implications of global climate change on the threat and intensity of future wildfires within the National Forest System.

### D. Potential Impacts of Climate Change on Recreation

As stated, the proposed action would only exacerbate global climate change by likely increasing timber harvest, maintaining or increasing livestock grazing and allowing the Forest Service to proceed with its increased emphasis on oil and gas development. The EIS must explore and disclose the already occurring and expected impacts of climate change on the millions of recreational users of the National Forest System. This must include consideration of the adverse impacts to ski resorts located on national forests, snowmobile use, cold-water fishing, and other affected recreational uses.

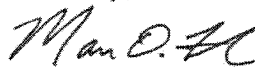
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<sup>8</sup> See also IPCC’s April, 2007, Summary for Policymakers, “*Climate Change 2007: Impacts, Adaptation and Vulnerability*,” p. 5 (“The resilience of many ecosystems is likely to be exceeded this century by an unprecedented combination of climate change, associated disturbances (e.g., flooding, drought, wildfire, insects, ocean acidification), and other global change drivers (e.g., land use change, pollution, over-exploitation of resources.”); *id.*, p. 6 (“Approximately 20-30% of plant and animal species assessed so far are likely to be at increased risk of extinction if increases in global average temperature exceed 1.5-2.5° C.”); *id.* (“For increases in global average temperature exceeding 1.5-2.5° C and in concomitant atmospheric carbon dioxide concentrations, there are projected to be major changes in ecosystem structure and function, species’ ecological interactions, and species’ geographic ranges, with predominantly negative consequences for biodiversity, and ecosystem goods and services e.g., water and food supply.”).

Conclusion

Thank you for the opportunity to provide comments. We look forward to seeing how our concerns are incorporated into the Draft EIS and proposed action, and for the opportunity to provide additional comments upon review of the Draft EIS, as required by NEPA.

Sincerely,



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**Planningruleno**

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**From:** Marv Hoyt [mhoyt@greateryellowstone.org]  
**Sent:** Wednesday, June 06, 2007 10:20 AM  
**To:** Planningruleno  
**Subject:** National Forest land planning rule comments

The Greater Yellowstone Coalition and the Wyoming Outdoor Council submit the attached scoping comments on the proposed National Forest System land planning rule.

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## Greater Yellowstone Coalition

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June 6, 2007

Planning Rule NOI Comments  
P.O. Box 162969  
Sacramento, CA 95816-2969

To Whom It May Concern:

The following comments are submitted on behalf of the Greater Yellowstone Coalition (GYC) and the Wyoming Outdoor Council in response to the May 11, 2007 Notice of Intent to prepare an EIS to analyze and disclose potential environmental consequences associated with a National Forest System land management planning rule.

Our National Forest System includes 192 million acres of land in 42 states, Puerto Rico, and the Virgin Islands, including 155 national forests and 20 national grasslands. National forests are a critical reservoir of biological diversity, supporting more intact populations of rare species than any other U.S. public land system. Over 3,000 species of birds, mammals, reptiles, fish, and amphibians, and more than 10,000 plant species call national forests home, including over 400 endangered and threatened species and more than 800 sensitive species. National forests also encompass a wide variety of ecosystems, including large, relatively intact habitats that are critical to such species as grizzly bears, wolves, wolverines, lynx, elk, and bighorn sheep.

In 1982 the USDA Forest Service promulgated a revised rule for managing national forest lands. The 1982 Rule established specific standards and guidelines for developing, adopting, and revising forest plans and for undertaking site-specific actions. The 1982 Rule imposed many wildlife management obligations, including that wildlife habitat shall be managed to maintain viable populations, and defining a viable population as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the relevant area. The 1982 Rule also contained minimum specific management requirements, setting forth mandatory directives which all forest plans must follow, and specific, quantifiable baselines below which no forest plan or site-specific plan can fall.

Just one year later, in 1983 GYC was formed by a group of scientists, conservationists, and

federal agency personnel who were concerned about the fragmentation of the lands and habitat surrounding two of America's premier national parks, Yellowstone and Grand Teton. Not surprisingly a main impetus for forming GYC was much like the impetus for Congress to pass the National Forest Management Act (NFMA) and the subsequent promulgation of the 1982 Rule - to insure that rare and listed species, such as the grizzly bear were not lost by an American public who value their wildlife legacy.

GYC is a regional, membership conservation organization based in Bozeman, MT with offices in Cody and Jackson, WY, and in Idaho Falls, ID, with approximately 11,500 individual members, ninety member organizations, and 100 business members. GYC's mission is to protect the lands, waters, and wildlife of the Greater Yellowstone Ecosystem (GYE), now and for future generations. The GYE is an area of approximately 18 million acres encompassing all or parts of six national forests and includes and surrounds Yellowstone and Grand Teton National Parks. It is the largest intact ecosystem in the lower 48 states.

The Wyoming Outdoor Council was founded in 1967 to protect Wyoming's environment and quality of life for future generations. Because Wyoming's boundaries encompass parts of eight National Forests, our members have a vested interest in the regulations that will govern the management of these areas and the wildlife species that inhabit them.

GYC and the Wyoming Outdoor Council have serious reservations about the Proposed Action. Namely, we are concerned that reinstatement of the 2005 regulations will substantially and negatively effect the six national forests that make up a significant portion of the GYE as well as the other forests in Wyoming by eliminating protections for wildlife, minimizing accountability to science, and taking public opinion out of public land planning.

The Proposed Action is the same as the rule that was enjoined by court order March 30, 2007. See Citizens for Better Forestry v. U.S. Dept. of Agriculture, --- F.Supp.2d --- (N.D.Cal. 2007) 2007 WL 966985. This rule provides inadequate environmental safeguards compared to the regulations under which all previous forest plans were developed. In particular, our organizations are troubled by the elimination of the requirement to maintain adequate habitat to support viable populations of native vertebrate species. The viability requirement is the primary legal basis for limiting multiple human activities (e.g., logging, cattle and sheep grazing, off-road vehicle use, road construction, route construction, mining) that have in the past wreaked havoc on the national forests lands and waters.

## **Comments**

### **Inadequate comment period**

First and foremost we would like to point out the complete inadequacy of the length of the scoping comment period. A paltry thirty-day comment period does not do justice to an issue as important to our members and the American public as the future management of our National Forest lands and the wildlife, recreational, and water quality values they hold. The inadequacy of the procedures the Forest Service initially followed—specifically with respect to NEPA—in promulgating the 2005 rule resulted in the injunction mentioned above. The Forest Service

should take a measured and comprehensive approach to meeting its NEPA obligations here. For example, the Forest Service cannot simply do away with public meetings on this regulation based on any public meetings it previously held years ago. Given the broad disapproval of the now-enjoined rule, and the failure of the Forest Service and the current administration to protect wildlife habitat, clean water, and the recreational values of National Forest lands over the past six years, the public should be given every opportunity to provide comment on this proposal, rather than be intentionally shut out of the process.

Perhaps even more egregious than the inadequate comment period and failure to provide for public meetings, is the fact that Forest Service apparently intends to virtually ignore any comments it might receive. This is evidenced by the Forest Service's stated intention that "[t]he draft environmental impact statement is expected June, 2007..."<sup>1</sup>, and "The Agency expects to publish a rule for comment in late June."<sup>2</sup> Given the time frame provided in the NOI, the Forest Service proposes to develop the draft Environmental Impact State that would address future management of 193 million acres of public lands in less than three weeks.

To put this in perspective, it generally takes twelve to thirteen months for the Forest Service to develop a legally adequate environmental assessment for a timber sale and up to two years to develop an EIS for a timber sale. Clearly, if the Forest Service is able to adhere to the proposed time frame for this EIS, many important decisions have likely already been made. This is the very thing Congress sought to avoid when it passed the National Environmental Policy Act. See 40 C.F.R. § 1502.5 ("The [EIS] shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made.") (citations omitted). We are concerned that long before the public can even weigh in, and long before the Forest Service can properly review the public's comments, the Forest Service has already made its decision. In such a short time frame, it will be virtually impossible to conduct a proper content analysis and then incorporate relevant and substantive comments into one or more alternatives. Should the Forest Service continue down this path, the EIS and new rule will be vulnerable to legal challenges due to the arbitrary nature of its decision making process.

### General Comment

The Proposed Action makes a significant change to the 1982 regulations implementing the National Forest Management Act of 1976 (NFMA) that affects every aspect of forest management. NFMA requires the Forest Service to develop land and resource management plans for the National Forests and to revise those plans at least every 15 years. In 1982 the Reagan Administration adopted regulations to guide the forest planning process. In 2000, the Clinton Administration issued new regulations. Those regulations were suspended by the Bush Administration, which proposed its own set of regulations in 2005. A court has now enjoined the 2005 regulations. See Citizens for Better Forestry v. U.S. Dept. of Agriculture, --- F.Supp.2d --- (N.D.Cal. 2007) 2007 WL 966985 (March 30, 2007).

<sup>1</sup> 72 Fed. Reg. 26775 (May 11, 2007).

<sup>2</sup> Ibid.

The enjoined rule and its regulations water down protection of wildlife and the environment to the point where they could hardly be characterized as “rules”, making them virtually meaningless. Furthermore, the regulations fail to include important environmental protection measures mandated by Congress under the 1976 National Forest Management Act and reverse more than 25 years of protection for wildlife and other resources without any scientific basis for doing so, including removing all requirements to use measurable standards to protect wildlife. Further, the rule and the regulations threaten to undermine public participation in the forest planning process. The proposal would eliminate all analyses required under the National Environment Policy Act in developing forest plans, scrap wildlife protections established under the 1982 regulations and limit any requirement that the Forest Service has to record and adequately respond to public input during the forest planning process.

In a nutshell, the effects of the proposal will make the National Forests far more vulnerable to environmentally destructive logging, mining, gas and oil development, and other harmful management activities as no NEPA analysis is required that will take a comprehensive look at future management decisions and their impacts on the environment

### **Specific Problems with the Proposed Action**

#### NEPA

The Proposed Action eliminates the requirement to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA) whenever a forest plan is revised or significantly amended. Instead, the proposal allows that forest plans “may be categorically excluded from NEPA documentation” [36 C.F.R § 219.4(b)], which means that the Forest Service can entirely bypass thorough analysis whenever it revises or amends a forest plan. This is exactly what has occurred for all plan revisions begun after the 2005 rule was promulgated.

Eliminating environmental analysis severely limits public involvement and consideration of environmental values in the forest planning process. For example, people will have less access to information about the environmental impacts of Forest Service’s proposed management plan. The Forest Service will not be required to examine alternatives to its proposed plan or to supply information about the comparative advantages of various alternatives. Concerned citizens will no longer have legal recourse for submitting citizen alternatives, which has resulted in significant and positive changes to forest plans in the past. In addition, the Forest Service will not be required to study or disclose to the public the cumulative environmental effects of management activities across the forest.

While the 2005 regulations provided for public involvement, even that provision is highly discretionary – literally left to the whim of the Forest Supervisor or their designated lead for the revision planning process. Because of this, public involvement can vary widely from forest to forest. This inconsistency is especially disconcerting where forests like the Shoshone and the BTNF are adjacent to each other and share many of the same natural resources that are essential for wide ranging wildlife in the Greater Yellowstone Ecosystem. In the case of the Shoshone’s plan revision process, the forest planner provided ample opportunities for public participation. In

the case of the BTNF, the exact opposite was the case. There were only a handful of public meetings scattered around the communities adjacent to the Forest. And often times those meetings addressed separate, unrelated management issues. The public was left to literally follow the process from one meeting and town to the next if they were expected to keep abreast of the planning process.

Thus, as examples of how the removal of the NEPA requirement has affected the public participation process over the past two years since the 2005 regulations were adopted, one need only look at how the Shoshone National Forest and the Bridger-Teton National Forest (BTNF) handled—in remarkably different ways—the public participation requirement.

From our perspective a significant problem is the vague nature of the envisioned new forest plans and the lack of certainty for the public and the Forest Service staff in knowing how the plan will be implemented. These plans supposedly make no final decisions, deciding instead to defer these decisions to the project level, at which time some NEPA analysis will be prepared. Without a comprehensive analysis from which to tier, this process leads to uninformed decision making at the project level. The Shoshone National Forest issued drafts of its plan, which failed to make over-arching decisions such as what activities would be appropriate for certain areas of the forest with NEPA analysis to back it up.

Compounding the effects of removing the development of forest plans from NEPA review are other NEPA-related actions by the current administration. For the past four years, the administration has adopted a series of regulatory changes – mostly under the umbrella of the “Healthy Forests Initiative” -- aimed at reducing the Forest Service’s duties to comply with NEPA at the project level, such as for timber sales. These actions undermine the credibility of the administration’s assurances that full NEPA analysis for proposals under new forest plans will be accomplished at the project level and therefore NEPA review is unnecessary at the planning level.

Instead of NEPA, the final regulations require the Forest Service to establish an “environmental management system”(EMS) for each national forest. [36 C.F.R. § 219.5]. EMS is a planning and monitoring process that has been adopted by large timber companies like Weyerhaeuser Corporation to deal with environmental regulations while maximizing corporate efficiency and profits. It has never before been applied to federal forestlands, and it appears to be an entirely inappropriate substitute for NEPA to advance the public’s interest in protecting the environmental integrity of the national forests. Furthermore, given our experience with forest planning on the Shoshone National Forest, we know no more about how or if an EMS can be established. In the case of the Shoshone plan revision, EMS was mentioned in the public meetings a few times at the beginning of planning process in 2005. Few detail were give about the EMS after the plan revision was initiated. Similarly, when you go to the BTNF website, the section in their draft plan for EMS is blank as late as May 23, 2007.

The remedy is simple. The Forest Service must include a NEPA review requirement for all forest plan revisions in the new rule.

#### Standards v. Guidelines

The proposed regulations entirely eliminate the use of mandatory “standards” in forest plans, in favor of discretionary “guidelines.” The preamble to the regulations explains that the choice of “guidelines” is meant to emphasize that agency officials have “discretion to act within the range of guidelines, as well as the latitude to depart from guidelines when circumstances warrant it.”<sup>3</sup> In other words, local agency officials can simply ignore any and all guidelines the plans might contain to protect wildlife or water quality. Without mandatory safeguards in forest plans, in the form of enforceable “standards”, agency decision-making will become more vulnerable to the influence of timber, mining, oil and gas development and other forms of commercial exploitation of the national forests. The most troubling aspect of the proposal to do away with standards, as the 2005 rule does, is that the public will have difficulty knowing whether their fish, wildlife, water quality, and recreational resources are being protected or not. And if they determine they are, the public will have little if any ability to challenge harmful proposals. All alternatives for the final rule should include measurable and enforceable “standards”.

### Alternatives

The Purpose and Need section of the NOI indicates that the 2005 rule was adopted to address problems with the 2000 Rule. It then goes on to state that at least two alternatives will be analyzed, a “No Action” alternative and the proposed action (the 2005 rule). Obviously, a third alternative should be the 1982 regulations as amended. Other reasonable alternatives would be a combination of the 1982 regulations and regulations promulgated pursuant to the 2000 rule.

### Wildlife Viability

The Proposed Action eliminates one of the most important aspects of national forest management, the requirement to maintain “viable populations” of native fish and wildlife species in the national forests. This requirement has been a primary legal basis for some of the Forest Service’s most important forest conservation initiatives, including the Northwest Forest Plan and the Sierra Nevada Forest Plan. In place of the viability requirement, the regulations simply provide an “overall goal” to “provide a framework to contribute to sustaining native ecological systems by providing ecological conditions to support diversity of native plant and animal species in the plan area” [36 CFR 219.10(b)]. In fact, forest plans will no longer have to specifically address wildlife needs at all unless the Forest Service determines that the “ecosystem diversity” provisions of the plan need to be supplemented for a particular species [36 C.F.R. § 219.10(b)(2)]. The regulations also remove the Forest Service from any duty to monitor wildlife populations [36 C.F.R. § 219.14(f)].

All alternatives, in particular the selected alternative, for the final rule must include the requirement to maintain “viable populations” of native fish and wildlife species on forest service managed lands.

### Threatened & Endangered Species

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<sup>3</sup> Federal Register / Vol. 69, No. 188 / Wednesday, September 29, 2004 / Rules and Regulations **58055**

Directly related to the failure of the Proposed Action to include mandatory requirements to maintain viable populations of fish and wildlife is the issue of effects on threatened or endangered species. Section 7 of the Endangered Species Act imposes a rigorous duty on federal agencies. Each agency must insure that any proposed action is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of its critical habitat. If an agency determines that action it proposes to take may adversely affect a listed species, it must engage in formal consultation with the expert agency – the United States Fish and Wildlife Service (FWS) and/or National Marine Fisheries Service, depending on the species at issue.

After consultation, the expert agency provides the agency a biological opinion, explaining how the proposed action will affect the species or its habitat. The purpose of the consultation procedure is to allow either the Fisheries Service or the FWS to determine whether the federal action is likely to jeopardize the survival of a protected species or result in the destruction of its critical habitat, and if so, to identify reasonable and prudent alternatives that will avoid the action's unfavorable impacts.

The Proposed Action not only alters the process for amending and revising forest plans, but also eliminates or weakens substantive standards and protections for numerous forest resources, including fish and wildlife species. Under the 1982 Rule, for instance, USDA was required to insure viable populations of wildlife species, and listed species were often selected as “management indicator species” subject to additional monitoring requirements.

There are hundreds of threatened and endangered species (“listed species”) that depend on habitat in the National Forest System, and the Proposed Action will directly and negatively impact many of these listed species and indirectly impact many more listed species. The EIS must disclose and thoroughly analyze the effects on all species listed under the Endangered Species Act under all alternatives. Further, as part of the EIS process, the Forest Service is obligated to engage in formal consultation—as this dramatic change in regulations governing forest management may adversely affect myriad species—with the FWS and the National Marine Fisheries Service. After consultation, the expert agencies must provide the Forest Service with a biological opinion, explaining how the Proposed Action will affect all listed species or their habitats.

### Role of Science

Although the current administration claims to be strengthening the role of science in forest planning, in reality the final NFMA regulations give local agency officials broad discretion to reject scientific evidence and recommendations. The final regulations only require agency officials to “take into account” the best available science [26 C.F.R. § 219.11(a)]. The preamble to the final regulations [p. 18] (need fed. Reg. citation) makes it clear that science “is only one aspect of decisionmaking” and that “competing use demands” and other factors can override scientific input. In contrast, the draft rule issued in December 2002 gave science a much more prominent role in the planning process by requiring that Forest Service decisions must “be consistent with” the best available science.

The selected alternative for this proposal should included a requirement that all project level decisions “be consistent with the best available science”.

### Special Management Areas

The 2005 rule allows for “Special Areas” to be designated in recognition of their unique or special characteristics, such as botanical areas and significant caves (36 CFR 219.7(a)(2)(v)). The subsequent directives included extensive guidance in the evaluation of potential wilderness areas and wild and scenic rivers. However, our experience with the BTNF planning process leads us to believe that actually having areas designated as Special Management Areas is far from straightforward and difficult.

The public was instructed by BTNF staff and the Forest Supervisor that it was necessary to fill out a 63-page survey in March 2006 in order for the BTNF to receive input to enable Forest staff to craft a Desired Conditions chapter of the new forest plan. Further, the public was told that any areas on the forest that they thought needed additional protections were to be accurately described in the special area designations section of the survey. GYC described approximately 20 areas on the BTNF that we felt merited special protections. These areas were primarily migration routes, parturition areas, and winter ranges for big game, movement corridors between the various mountain ranges for large predators, and stream reaches that still contained native cutthroat trout. Upon review of the draft version of the plan it appears that none of these documented suggestions were incorporated.

### Timber Management

The enjoined 2005 regulations essentially ignore large parts of the NFMA in respect to timber harvest. In an effort to protect the national forests from excessive and destructive logging, Congress specifically instructed the Forest Service through the NFMA to develop regulations that, among other things, limit the size of clearcuts, protect streams from logging, ensure prompt reforestation, and restrict the annual rate of cutting. Prior NFMA regulations complied with the statute by limiting clearcuts to 40 acres, requiring 100-foot stream buffers, and restricting the amount of timber cutting in each national forest.

However, the 2005 regulations did none of these things. Instead, they simply state that procedures for complying with NFMA requirements will be included in the Forest Service’s internal directives system (the Forest Service Manual and Handbook) [36 C.F.R. § 219.12(b)]. One major problem with this strategy is that federal regulations have the force of law, but management direction in the Forest Service’s directives system is generally not legally enforceable. The agency’s directives system is also much less visible and accessible to the general public and therefore is an inadequate forum for engaging people’s interest in important forest management issues.

Also, the 2005 regulations completely ignore the NFMA’s requirement that forest plans identify lands that are economically unsuitable for timber production [36 C.F.R. § 219.12(a)(2)]. Consequently, forest plans promulgated under the 2005 rule provide little if any information

about the extent to which the Forest Service's plans may result in below-cost timber sales and taxpayer subsidies to the timber industry.

The selected alternative for this EIS should reinstate standards that protect the national forests from excessive and destructive logging, by following Congress' specific instructions that the Forest Service, through the NFMA, develop regulations that limit the size of clearcuts, protect streams from impacts associated with logging, ensure prompt reforestation, and restrict the annual rate of cutting.

We thank you for the opportunity to comment on this proposal.

Sincerely,

Marv Hoyt  
Idaho Director  
GYC

Lisa McGee  
National Forests & Parks Program Director  
Wyoming Outdoor Council

**Planningruleno**

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**From:** Hugh Irwin [hugh@safc.org]  
**Sent:** Tuesday, June 05, 2007 7:47 PM  
**To:** Planningruleno  
**Subject:** Planning Rule NOI Comments

Please accept the attached letter on behalf of the Southern Appalachian Forest Coalition (and its member groups) as comment on the Notice of Intent to Prepare an Environmental Impact Statement on new NFMA Regulations.

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June 5, 2007

Planning Rule NOI Comments  
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Re: Comments on Notice of Intent to Prepare an Environmental Impact Statement  
on new NFMA Regulations, 72 *Fed. Reg.* 26,775 (May 11, 2007)

Dear Forest Service:

Please accept this letter on behalf of the Southern Appalachian Forest Coalition (and its member groups) as comment on the Notice of Intent to Prepare an Environmental Impact Statement on new NFMA Regulations.

The **Southern Appalachian Forest Coalition (SAFC)** is an alliance of 22 grassroots, local, regional, and national conservation organizations working to protect the public lands and natural heritage of the Southern Appalachian region. SAFC represents more than 50,000 citizens in the region.

We are very skeptical of the efforts to prepare an EIS for the new NFMA Regulations. This process is much too abbreviated, has only a passing nod to public process, and is attempting to retrofit regulations that are fundamentally flawed as demonstrated by their recent court suspension. The Forest Service should take this opportunity to genuinely involve the public in revising NFMA Regs. The 2005 Regs have many flaws that we have addressed in previous comments, and the 1982 Regs themselves were far superior to the

2005 Regs in complying with the NFMA Act and NEPA as well as in giving the public a legitimate voice in the management of their lands. Forest Service staff and the public know how planning is conducted under the 1982 Regs. In most ways these regulations worked, especially when FS staff were given incentives to actually comply with the regulations. The 2005 Regs fundamentally change this structure. Besides minimizing the public voice in planning and attempting to make forest planning meaningless by making it a broad vision that has no standards, these new Regs are a black box. No one knows how they will operate. The FS should go back to the basics of the 1982 Regs.

I participated in the Forest Service Viability Workshop in 2003 that brought together over 100 interested people, including members of the Committee of Scientists, to discuss the issue of viability on the National Forests under the new National Forest Management Act regulations. This type of effort was a positive initiative that should have been followed. There was a great potential for areas of consensus coming out of this meeting. Instead the input from this meeting was apparently ignored.

The 2005 Regs are extremely problematic from the standpoint of the NFMA Act and NEPA. Instead of dressing them in an EIS that will never fit correctly, the Forest Service should return to groundwork that has been laid in the past, including the many aspects of the 1982 Regs that worked well, the work of the Committee of Scientists, and the potential for consensus in the Viability Workshop.

Sincerely,

A handwritten signature in cursive script that reads "Hugh Irwin".

Hugh Irwin

Program Director/Conservation Planner

**Planningrulenoi**

**From:** Beth Richman [beth\_richman@hotmail.com]  
**Sent:** Tuesday, June 05, 2007 6:47 PM  
**To:** rulenoi@fscomments.org  
**Subject:** Forests

Received: from barracuda.jsanet.com ([10.10.250.5]) by exchfel.jsanet.com with Microsoft SMTPSVC (6.0.3790.3959); Tue, 5 Jun 2007 18:47:04 -0700 X-ASG-Debug-ID: 1181094422-08af00450000-WummUy X-Barracuda-URL: http://barracuda:8000/cgi-bin/mark.cgi X-Barracuda-Connect: bay0-omc2-s27.bay0.hotmail.com[65.54.246.163] X-Barracuda-Start-Time: 1181094422 Received: from bay0-omc2-s27.bay0.hotmail.com (bay0-omc2-s27.bay0.hotmail.com [65.54.246.163]) by barracuda.jsanet.com (Spam Firewall) with ESMTP id EB63647072 for ; Tue, 5 Jun 2007 18:47:03 -0700 (PDT) Received: from hotmail.com ([65.54.174.28]) by bay0-omc2-s27.bay0.hotmail.com with Microsoft SMTPSVC(6.0.3790.2668); Tue, 5 Jun 2007 18:46:58 -0700 Received: from mail pickup service by hotmail.com with Microsoft SMTPSVC; Tue, 5 Jun 2007 18:46:58 -0700 Message-ID: Received: from 65.54.174.200 by by103fd.bay103.hotmail.msn.com with HTTP; Wed, 06 Jun 2007 01:46:55 GMT X-Originating-IP: [63.105.65.6] X-Originating-Email: [beth\_richman@hotmail.com] X-Sender: beth\_richman@hotmail.com From: "Beth Richman" To: rulenoi@fscomments.org Bcc: X-ASG-Orig-Subj: Forests Subject: Forests Date: Tue, 05 Jun 2007 19:46:55 -0600 Mime-Version: 1.0 Content-Type: text/html; format=flowed X-OriginalArrivalTime: 06 Jun 2007 01:46:58.0319 (UTC) FILETIME=[91BEC1F0:01C7A7DC] X-Barracuda-Bayes: INNOCENT GLOBAL 0.5000 1.0000 0.0100 X-Barracuda-Virus-Scanned: by Barracuda Spam Firewall at jsanet.com X-Barracuda-Spam-Score: 0.01 X-Barracuda-Spam-Status: No, SCORE=0.01 using global scores of TAG\_LEVEL=2.0 QUARANTINE\_LEVEL=2.0 KILL\_LEVEL=5.0 tests=HTML\_MESSAGE, MIME\_HTML\_ONLY X-Barracuda-Spam-Report: Code version 3.1, rules version 3.1.19083 Rule breakdown below pts rule name description ---- 0.00 HTML\_MESSAGE BODY: HTML included in message 0.00 MIME\_HTML\_ONLY BODY: Message only has text/html MIME parts Return-Path: beth\_richman@hotmail.com

Re: Planning Rule NOI comment

I regularly visit National Forest land and find it unconscionable that these precious treasures of relatively wild & healthy ecosystems are vulnerable to degradation from oil & gas extraction, logging, etc. *Please* ensure planning regulations with potent, enforceable provisions to protect the National Forests! Specific standards and prescriptions are needed to nourish wildlife, soil/water/air quality and visitor experiences free from noise, toxicity, and scarring of the landscape.

Thank you, Beth Richman, PO Box 912, Crestone, CO 81131

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**Planningrulenoi**

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**From:** peg reagan [info@conservationleaders.org]  
**Sent:** Thursday, June 07, 2007 9:49 AM  
**To:** Planningrulenoi  
**Subject:** Planning Rule NOI Comments

Planning Rule NOI Comments  
PO Box 162969  
Sacramento, CA 95816-2969  
Fax: (916) 456-6724  
planningrulenoi@fscomments.org

Dear Forest Service:

Please accept these scoping comments for the preparation of the environmental impact statement to analyze and disclose potential environmental consequences associated with the National Forest System land management planning rule.

As a former county commissioner who works with county commissioners across the country, I recognize the importance of incorporating the wishes of the public in the management of federal forest lands.

The public looks to the National Forest Management Act to ensure that the Forest Service will maintain viable wildlife populations and properly manage our national forests for future generations. The 2005 forest planning regulations undermine wildlife, clean water, and other environmental protections. The regulations reduced requirements for environmental review, weakened wildlife protections, and limited public participation in the development of management plans for individual forests. A critical component of past forest planning regulations is the requirement of mandatory resource protection standards for all forest plans. The EIS needs to analyze the direct and indirect effects of eliminating resource protection standards from forest plans and the impacts of eliminating wildlife viability and monitoring requirements.

In the development of the forest planning EIS, I urge that the Forest Service reconsider the exemption of forest management plans, revisions or amendments from environmental review and meaningful public input under the National Environmental Policy Act (NEPA). Without the NEPA process, the public is not given adequate information to evaluate the environmental consequences of forest plans and disregards the best available science in favor of commercial interests. Eliminating the need for forest managers to assess potentially harmful impacts on water, wildlife, recreational use, old growth and roadless areas, will make it easier for timber, oil, gas, mining and motorized recreation corporations to access national forests. Such a proposal would create a system that benefits the few at the expense of Americans who own our national forests and cherish them as a legacy for future generations. The EIS should fully analyze impacts of exempting forest plans from NEPA and consider alternatives that require full NEPA analysis and public participation.

The Forest Service should also take into account the breadth of new scientific and socio-economic information. The Forest Service should fully analyze other alternatives to the 2005 planning rule that include strong standards to protect forests, waters and wildlife, and evaluate the adoption of some or all of the 1982 and 2000 regulations. Alternatives should also include requirements for the agency to develop plans to address impacts of climate change.

Since this is the first time the public has the opportunity to participate in an EIS process for the new forest planning regulations, the Forest Service needs to modify NEPA deadlines in order to allow time to thoughtfully consider public comments throughout the NEPA process.

Thank you for the opportunity to comment.

peg reagan  
po box 46

wedderburn, OR 97491

PLR47

## Planningrulenoi

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**From:** Bonnie Sonder [bsonder@comcast.net]  
**Sent:** Thursday, June 07, 2007 4:48 AM  
**To:** Planningrulenoi  
**Subject:** Protect national forests now and forever.

Once again, the Bush administration has turned over protection of OUR forests across the country into the hands of people who have worked for the corporations that profit from destroying forests by cutting down trees, hunters who kill for trophies and perverse "fun", and mining companies that destroy habitat, bring great destruction and pollution. It is a deeply moral issue and this all contributes to global warming. Stop it now!

First and foremost the thirty-day comment period and lack of public meetings on the proposal does not do justice to an issue as important to myself and the American public as the future management of our National Forest lands and the wildlife, recreational, and water quality values they hold. Given the broad disapproval of the 2005 rule, and the failure of the Forest Service and the current administration to protect wildlife habitat, clean water, and the recreational values of National Forest lands over the past six years, the public should be given every opportunity to provide comment on this proposal, rather than be intentionally shut out of the process.

1. The Forest Service should extend the comment period to 90 days.
2. The 1982 Rule, with all of its protections for wildlife should be an alternative in the EIS.
3. Any rule adopted should require that all Forest Plans be developed with a requirement for full National Environmental Policy Act disclosure and analysis.
4. All alternatives for the final rule should include measurable and enforceable "standards".
5. All alternatives, including the selected alternative, for the final rule must include the requirement to maintain "viable populations" of native fish and wildlife species on forest service managed lands.
6. The selected alternative for this proposal should include a requirement that all project level decisions "be consistent with the best available science".
7. The selected alternative should reinstate standards that protect the national forests from excessive and destructive logging, by following Congress' specific instructions that the Forest Service, through the National Forest Management Act, develop regulations that limit the size of clearcuts, protect streams from impacts associated with logging, ensure prompt reforestation, and restrict the annual rate of cutting.

Bonnie Sonder  
 President  
 Hot Productions, Ltd.  
 354 Baird Road  
 Merion Station, PA 19066  
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[www.tvadsagain.com](http://www.tvadsagain.com)

**Planningrulenoi**

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**From:** Andrew J Blair [ablair344@bresnan.net]  
**Sent:** Thursday, June 07, 2007 8:24 AM  
**To:** Planningrulenoi  
**Subject:** Re: Change in Forest Planning Rules

Dear Forest Service,  
I am writing to you on the topic of proposed revisions to the Forest Plan Revision process.

First of all I will state that I approve of the Federal District Court's decision to reject the Bush Administration's 2005 revised rules. I believe that those rule revisions have resulted in the cut back on requirements for environmental reviews and safeguards for wildlife, and limited public participation in the development of management plans for individual forests.

As a resident of the state of Wyoming, I have been watching from the sidelines as the Bridger-Teton and Shoshone National Forests go through the Forest Plan Revision process. I admit that I have been impressed by how the Forest Service employees, especially Bryan Armel, have worked hard to remain objective and create a good plan. However, I agree with many other concerned American citizens that the public has largely been excluded from this process and that the lack of implementing NEPA with respect to the development of these plans increases the likelihood that the final plan will cater to the desires of special interest groups as opposed to the integrity of the forest ecosystem itself. For instance, in the absence of public meetings, the majority of people in Fremont County, my county of residence, are represented on the Government Cooperator's Board by a member of our county commission who has long ties to the logging industry.

I urge the Forest Service to reinstitute public meetings as part of something as important as the Forest Plan Revision process. I urge the Forest Service to provide the public with a list of alternatives that take into account a broad spectrum of potential options and identify their potential environmental impacts. As you know, these lands belong to all Americans and are not the sole property of this administration or a particular special interest group. It is my understanding that the Multiple Use Sustained Yield Act of 1960 and the National Environmental Policy Act of 1969 were passed by Congress in order to ensure this would be the case. It appears that the goal of this administration has been to abrogate the Forest Service's responsibility to these acts of Congress by utilizing the categorical exclusion clause as a loop hole to drive the Forest Planning process through.

Thank you for your time.

Andy Blair  
344 Amoretti St  
Lander, WY 82520  
307-332-7102

## Planningrulenoi

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**From:** Ernest Reed [lec@wildvirginia.org]  
**Sent:** Wednesday, June 06, 2007 5:56 PM  
**To:** Planningrulenoi  
**Subject:** Planning Rule NOI Comments

Planning Rule NOI Comments  
 PO Box 162969  
 Sacramento, CA 95816-2969  
 Fax: (916) 456-6724  
 planningrulenoi@fscomments.org

Dear Forest Service:

Please accept these scoping comments for the preparation of the environmental impact statement to analyze and disclose potential environmental consequences associated with the National Forest System land management planning rule.

I have been involved with forest planning on the George Washington National Forest and was at the time of Judge Hamilton's ruling. I brought up the fact that the current regulations were violations of NFMA and NEPA and asked what they planned to do when there was a positive ruling on this case. Supervisor Hyzer shrugged her shoulders. Today they still don't know what they are going to do.

We continue to look to the National Forest Management Act to ensure that the Forest Service will maintain viable wildlife populations and properly manage our national forests for future generations. The 2005 forest planning regulations undermine wildlife, clean water, and other environmental protections. The regulations reduced requirements for environmental review, weakened wildlife protections, and limited public participation in the development of management plans for individual forests. A critical component of past forest planning regulations is the requirement of mandatory resource protection standards for all forest plans. The EIS needs to analyze the direct and indirect effects of eliminating resource protection standards from forest plans and the impacts of eliminating wildlife viability and monitoring requirements.

In the development of the forest planning EIS, the Forest Service should in no way exempt forest management plans, revisions or amendments from environmental review and meaningful public input under the National Environmental Policy Act (NEPA). Without the NEPA process, the public is not given adequate information to evaluate the environmental consequences of forest plans and disregards the best available science in favor of commercial interests. Eliminating the need for forest managers to assess potentially harmful impacts on water, wildlife, recreational use, old growth and roadless areas, will make it easier for timber, oil, gas, mining and motorized recreation corporations to access national forests. Such a proposal would create a system that benefits the few at the expense of Americans who own our national forests and cherish them as a legacy for future generations. The EIS should fully analyze impacts of exempting forest plans from NEPA and consider alternatives that require full NEPA analysis and public participation.

The Forest Service should also take into account the breadth of new scientific and socio-economic information. The Forest Service should fully analyze other alternatives to the 2005 planning rule that include strong standards to protect forests, waters and wildlife, and evaluate the adoption of some or all of the 1982 and 2000 regulations. Alternatives should also include requirements for the agency to develop plans to address impacts of climate change.

Since this is the first time the public has the opportunity to participate in an EIS process for the new forest planning regulations, the Forest Service needs to modify NEPA deadlines in order to allow time to thoughtfully consider public comments throughout the NEPA process.

Thank you for the opportunity to comment,

Ernest Reed

PLR 50

610 Farish Street  
Charlottesville, VA 22902