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**Region 5 and Region 6; California, Oregon, and Washington; Forest  
Plan Amendment for Planning and Management of Northwest  
Forests Within the Range of the Northern Spotted Owl**

Federal Register / Vol. 88, No. 241

Monday, December 18, 2023 / Notices

**Comment Submission Date:**

February 1, 2023

**Submitted To:**

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## 1.0 INTRODUCTION

The 1994 Northwest Forest Plan was formed out of controversy. It was an effort to stop harvesting of old growth timber; achieved by employing the Endangered Species Act to prevent further logging in old growth forests to preserve the Northern Spotted Owl. It was believed to be in decline due to destroying its old growth habitat. At the time the logging and resource community believed their industry was targeted. More recently there is an admission within the current Bioregional report that one of these factors in NSO decline is the barred owl, an invasive species in the BioA area, which has expanded its range in the past 25 years and become a more significant threat to northern spotted owls. Perhaps that is the contributing factor all along. The question now is since they are related cousins: is this a natural evolutionary process or is the barred owl considered invasive because it is changing the paradigm for the listing of NSO<sup>1</sup>?

The more central question is what was and is happening regarding forest land planning and management. Evidence shows that at the time the war of the woods came to a head the fundamental issue was over harvest. During that time loggers in our area were quick to admit that the rate of harvest was beyond adequate replacement required by the principles of Multiple Use and Sustained Yield. But the effort was to stop logging for the owl rather than address the issue of overharvest. This effectively began to dismantle the forest products industry to what we see today and the associated problem of the lack of forest workers who can commercial thin, harvest timber and engage in forest regeneration and restoration.

It is observed that the NWFP was conceived in a manner that is outside of administrative action. This means the NWFP changed federal management by giving priority to ecological sustainability; the team was directed to plan for social and economic values after meeting ecological objectives.<sup>2</sup> This direction turns MUSY on its head by subjugating access to the principles uses to ecosystem or ecological function. MUSY and the FLPMA do not set this ecological function as a condition to access but as a condition to maintain a sustainable yield of renewable resources. Overharvest for example is defined by what is a sustainable yield; it cannot exceed the restocking rate necessary to replace what is taken while also maintaining ecological function. Forest land planning requires a definition of sustainable yield of renewable resources in unit forest plans.

The failure to accurately define the issue in forest management has led to a violation of the principle of *pari materia*.<sup>3</sup> The consequence is the use of the ESA to set aside late successional forests for the NSO. This limited human management which contributed to limiting USFS responsibilities. The lack of thinning and reduction of fuel load has contributed to the eastside catastrophic wildfires. The USFS is responsible to reduce wild fire risk. Another factor discovered in watershed planning, the USFS was also unable to manage forests for water quantity and quality.

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<sup>1</sup> It is interesting that the natural habitat for western barred owls is the same as for the spotted owl. If so, how can it be an invasive species? *Peterson Field Guide, Western Birds*

<sup>2</sup> Synthesis of Science to inform Land management in NW Forests Vol. 1 p.4

<sup>3</sup> The principle suggests that statutes dealing with the same subject matter or having a common purpose should be interpreted together as a whole. When there are multiple laws that address a similar issue or fall within the same category, courts may interpret them in a way that harmonizes their provisions and ensures consistency. The use of *pari materia* is part of the broader principles of statutory construction applied by courts to interpret legislation in a manner that aligns with the legislative intent and promotes coherence in the legal system.

On the east side of the cascades the most productive management of forest for water management is in the late successional reserves.<sup>4</sup> When the wildfires swept through the consequence was impermeable soils and vegetation loss. When rains came and snow melt run off occurred, extensive erosion and reduction of water retention in forests and soils occurred which degraded stream water quality and quantity.

The 1994 NWFP and proposed amendments functions outside of statutory law noted in the various Acts relating to land management. As in everything there are some good ideas, but the effort faces statutory challenge.

## 1.1 SITUATION APPRAISAL

On December 18, 2023 the United States Department of Agriculture, USFS issued a notice of intent to prepare an environmental Impact statement regarding Region 5 and Region 6; California, Oregon, and Washington; Forest Plan Amendment for Planning and Management of Northwest Forests Within the Range of the Northern Spotted Owl. The plan amendment will apply to those Forest Service units, or parts thereof with land management plans amended to 1994 by the 1994 Northwest Forest Plan or with land management plans developed later to include provisions of the NWFP.

The 1994 Northwest Forest Plan is a product of the long-standing conflict between timber harvesting and environmental concerns. The conflict became a full-blown economic crisis just before President Bill Clinton took office in 1991, when Federal Judge William Dwyer issued an injunction that shut down logging in the Northwest's old-growth forests, throwing between 60,000 and 100,000 people out of work for the purpose of protecting the endangered northern spotted owl. The reason: the logging was destroying critically important owl habitat and threatening the marbled murrelet, several runs of salmon and other forest species<sup>5</sup>.

The unique nature of the NWFP origins involved the intervention of the President and the assembly of Forest Ecosystem Management Assessment Team (FEMAT). President Clinton established the FEMAT after completion of the "Forest Summit," which was held in Oregon in the spring of 1993 to help break the federal-forest gridlock in the Pacific Northwest. The president directed the FEMAT to develop management strategies for the federal forests within the range of the Northern Spotted Owl that would (1) consider human and economic dimensions of the problem; (2) protect the long-term health of forests, wildlife, and waterways; (3) be scientifically sound, ecologically credible, and legally responsible; (4) produce a predictable and sustainable level of timber sales and nontimber resources that would not degrade the environment; and (5) emphasize collaboration among the federal agencies responsible for management of these lands (FEMAT 1993)<sup>6</sup>.

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<sup>4</sup> Forest management practices such as thinning and controlled burns are often implemented to reduce the risk of wildfires, improve forest health, and promote water retention. By thinning dense vegetation, these practices may potentially enhance water infiltration into the soil and reduce runoff, contributing to improved water retention.

<sup>5</sup> [Will the Northwest Forest Plan come undone? — High Country News — Know the West \(hcn.org\)](#)

<sup>6</sup> [\\*Thomas Franklin Gordon Johnson NW Forest Plan Review CB 2006 Origins.pdf](#) p. 280

The outcome of this effort was a Regional Plan, the 1994 NWFP, adopted through a Record of Decision which adopted Alternative 9 of the Final SEIS entitled "Standards and Guidelines for Management of Habitat for Late-Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl", April 13<sup>th</sup> 1994<sup>7</sup>. As a result, the primary management goal for federal lands in the region shifted from providing a sustained yield of timber to conserving biodiversity with an emphasis on endangered species<sup>8</sup>.

The origin of the NWFP presents certain questions because in the American system of government, all authority possessed by Federal administrative agencies is delegated by Congress through statutory acts. Statutes form the core mandates undergirding agency action, and for purposes of legal hierarchy, statutes supersede administrative rules, regulations, memoranda, executive orders, policy, and guidance. All major Federal actions are to be adequately justified through the demonstration of need and science, having a clear purpose, with the onus and demonstration-of-need burden being upon the agency.

The Land Use Planning section under Title II of the Federal Land Policy and Management Act of 1976 (FLPMA) Sec. 202 - Land Use Planning, as well as the Forest and Rangeland Renewable Resources Planning Act of 1974 (FRRPA), requires a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences consistent with the principles of multiple-use and sustained-yield as provided for in other applicable law.<sup>9</sup> The Secretary of Interior and Agriculture is to the maximum extent to which federal law permits coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located.<sup>10</sup>

The land use planning policies in FLPMA as well as the FRRPA provides for a bottom-up administration through development of land use plans, called Resource Management Plans (RMPs) which serve as a 15- 20-year policy document with internal provisions for implementing, maintaining, evaluating, and changing the plan, most of which is carried out at the local field office level under direction and concurrence with the state or regional director.

The determinations under relevant Statutes, Land Use Regulations and Forest Service Planning Procedures for revising or amending land use plans should originate from the local field office level pursuant to land use plan evaluations and other applicable monitoring required either by the individual plans themselves, or policy and regulations governing the agency. In deciding whether changes in decisions or the supporting NEPA analyses are warranted and therefore the determination whether to amend or revise an RMP based on new proposals, or circumstances, is contingent on new information at the unit level that provides for interpretations not known or considered at the time existing decisions were made that could significantly affect ongoing actions.

The purpose of the current plan amendment is to meet its original intent of the 1994 NWFP to conserve mature and old growth ecosystem and habitat for the NSO and other listed species. Within the context of this purpose are the needed necessities to restore and conserve mature and

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<sup>7</sup> [NWFP-ROD-1994 \(1\).pdf](#)

<sup>8</sup> [\\*Thomas Franklin Gordon Johnson NW Forest Plan Review CB 2006 Origins.pdf](#) p. 279

<sup>9</sup> 43 U.S.C. 1712(c)(1)(2); 16 U.S.C. Sec. 1604(b) Criteria

<sup>10</sup> 16 USC 1604(a) Development, maintenance, and revision by Secretary as part of program; coordination

old growth forest conditions and biodiversity for listed species, mitigate for climate change, include Native Tribes through their input of indigenous knowledge and co-stewardship of public lands, wildfire mitigation and address timber production for affected communities because the NWFP did not achieve its time production goals. The underlying fundamental problem is the reversed priority from statutory land planning rules for public lands for multiple use and sustained yield of the principle uses, to ecosystem management centered around 5 management objectives: Ecological Integrity, Fire and Fuels, Sustainable Timber, Habitat Management and Sustainable Recreation.

## 1.2 BACKGROUND AND APPROACH

The USFS began transitioning land use planning to ecosystem management principles compared to the original planning goals of inventorying and assessment for the purposes of Multiple Uses and Sustain Yield. The management goals were achieved in the context of conservation of ecological function to enable support for sustained yield of the resources necessary to support the livelihoods of the American People. This change is evident in the 2012 Rule.

Currently the USFS is implementing its focus on ecosystem management:

- On Tuesday November 28<sup>th</sup>, 2023<sup>11</sup> the USFS initiated a policy change to amend the USFS 1900 Chapter 1940, Inventory, monitoring and assessment with USFS 2000-chapter 2040 monitoring rule. The 2040 rule changes the standards-based approach in 1940 to an approach based on accurate, reliable, and relevant science and Indigenous Knowledge. Monitoring is to occur on an ecosystem scale to facilitate adaptive management during plan implementation. Indigenous Knowledge is intended to include Tribes in public land planning and management.
- On Monday December 18, 2023<sup>12</sup> notice was given of intent to amend the 1994 Northwest Forest Plan within the range of the Northern Spotted owl in regions 5 & 6. The purpose of the proposed action is to amend the NWFP to establish new or modify existing plan components for 17 affected national forests to better enable the agency to meet the original intent of the NWFP to conserve mature and old-growth ecosystems and habitat for the NSO and other species<sup>13</sup>.
- On December 20, 2023<sup>14</sup> the USFS proposed to amend all land management plans for units of the National Forest System (128 plans) to include consistent direction to conserve and steward existing and recruit future old growth forest conditions and to monitor their conditions across planning areas of the National Forest system.

The central issue with the intent to conserve and enhance old growth forests was summarized succinctly by the statement: *the Agriculture Department said it will direct national forests across*

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<sup>11</sup> [Federal Register 83073 Vol. 88, No. 227 Tuesday, November 28, 2023](#) Forest Service Manual 2000 National Forest Resource Management; Chapter 2040 National Forest System Monitoring

<sup>12</sup> [Federal Register / Vol. 88, No. 241 / Monday, December 18, 2023 / Notices](#) Region 5 and Region 6; California, Oregon, and Washington; Forest Plan Amendment for Planning and Management of Northwest Forests Within the Range of the Northern Spotted Owl.

<sup>13</sup> [Federal Register 87393.pdf](#) Purpose p.87395

<sup>14</sup> [Federal Register / Vol. 88, No. 243 / Wednesday, December 20, 2023 / Notices](#) Land Management Plan Direction for Old-Growth Forest Conditions Across the National Forest System

*the country to adopt an “adaptive strategy” to protect old-growth forests, which would include new restrictions on timber harvesting and other policies to encourage the evolution of mature forests into old-growth characteristics.*<sup>15</sup>

### 1.3 SUMMARY OF ISSUES

The issues in the current plan amendment

- The 1994 Northwest Forest Plan (NWFP) is a regional plan created as an outside administrative action<sup>16</sup>, and was used to amend the land management unit plans of national forests in the range of the northern spotted owl<sup>17</sup>.
- In contrast, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies<sup>18</sup>. Regional planning reverses unit planning by subjugating unit plans to a regional plan.
- While engaged in unit level planning the development and maintenance of land management plans for use on units of the National Forest System, the Secretary shall use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences<sup>19</sup>.
- The agency must consider specific wording within the existing plans including provisions for flexibility to show that whatever new circumstances or information warrants changing the plan or if they can be addressed under the current framework.
- Before proceeding with the planning initiative to amend forest-wide management plans each individual field office region must facilitate and make available to the commenting public and affected governments land use plan evaluations or assessments and demonstrate the need to amend the plan at the unit level.<sup>20</sup>
- This action is one element of a group of concerted actions by USDA to implement a whole of government climate policy agenda via executive order<sup>21</sup> implicating the *major questions* and *non-delegation* doctrine.<sup>22</sup>

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<sup>15</sup> E&E News Greenwire Biden admin eyes carbon capture boost from old growth forests, 12/19/23 [Biden admin eyes carbon capture boost from old-growth forests - E&E News by POLITICO \(eenews.net\)](#)

<sup>16</sup> [Northwest Forest Plan - \(usda.gov\)](#)

<sup>17</sup> [Region 6 - Planning \(usda.gov\)](#)

<sup>18</sup> 16 USC 1604 § 6 (a)

<sup>19</sup> Ibid. (b)

<sup>20</sup> FSM 1900 - PLANNING CHAPTER 1920 - LAND MANAGEMENT PLANNING

<sup>21</sup> CFR 1508.1(q)(3) Major Federal actions tend to fall within one of the following categories: (iii) Adoption of 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**. (emphasis ours)

<sup>22</sup> See, e.g., I. Wurman, Nondelegation at the Founding, 130 Yale L. J. 1490, 1493–1494 (2021); D. Candeb, Preference and Administrative Law, 72 Admin. L. Rev. 607, 614–628 (2020); P. Hamburger, Delegation or Divesting?, 115 Nw. L. Rev. Online 88, 91–110 (2020); M. McConnell, The President Who Would Not Be King 326–335 (2020); A. Gordon, Nondelegation, 12 N. Y. U. J. L. & Liberty 718, 719 (2019); R. Cass, Delegation Reconsidered: A Delegation Doctrine for the Modern Administrative State, 40 Harv. J. L. & Pub. Pol’y 147, 155–161 (2017); G. Lawson & G. Seidman, “A Great Power of Attorney:” Understanding the Fiduciary Constitution 104–129 (2017); P. Hamburger, Is Administrative Law Unlawful? 377–402 (2014); L. Alexander & S.



- This planning initiative should be canceled pending the development of land use plan evaluations which are required before any plan revisions or major plan amendments are performed.
- It has not been established that conserving, protecting and enhancing old growth will improve ecosystem resilience, mitigate wildfire threat and sequester more carbon over the land use planning, inventorying and assessment and associated management of forests for the primary purpose of providing an even flow of timber<sup>23</sup>.
- Managing for and enhancing old growth and preserving it for sequestered carbon storage changes the purpose and goals of USFS land use planning and diminishes access to the principal resources necessary for the welfare of the American people<sup>24</sup>.
- The use of Indigenous Knowledge (Tribal Ecological Knowledge) (IK) in federal administrative decision making is illegitimately being embedded in the administrative policymaking of US Forest Service through JSO 3403, the Biden Administration's Tribal Homelands Initiative and a Memorandum of Uniform Standards for Tribal Consultation.
- Tribal co-stewardship along with Indigenous Knowledge confuses the principle of government-to-government coordination with Tribes regarding maintaining US fiduciary responsibilities with the Tribes. Co-stewardship is more an opportunity to extend tribal interests into management of public lands, waters, and wildlife outside of these fiduciary responsibilities.

#### **1.4 REQUIREMENTS FOR MEANINGFUL INTERGOVERNMENTAL PARTICIPATION IN PLANNING**

States and counties have not been consulted with at the unit level. The origin of the 1994 NWFP occurred through a regional collaboration of the responsible federal agencies<sup>25</sup>. Planning is done on a landscape scale, the interstate habitat of the NSO<sup>26</sup>. No scoping meetings have been held at a unit level. And therefore, the USDA Forest Service is acting in an arbitrary and capricious manner that poses significant harm to the public process and coordination requirements.

One of the purposes of scoping is to establish alternatives to proposed agency action. It is impossible to establish alternatives representative of good management and localized conditions through a single top-down EIS applied at the regional level. In order to satisfy basic federalism principles as well as Congressional intent, alternatives must be established at the unit level with full consultation and coordination with directly affected local governments.<sup>27</sup> This requires an

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Prakash, Reports of the Nondelegation Doctrine's Death are Greatly Exaggerated, 70 U. Chi. L. Rev. 1297, 1298–1299 (2003); G. Lawson, Delegation and Original Meaning, 88 Va. L. Rev. 327, 335–343 (2002); D. Schoenbrod, The Delegation Doctrine: Could the Court Give It Substance? 83 Mich. L. Rev. 1223, 1252–1255, 1260–1261 (1985); see generally P. Wallison & J. Yoo, The Administrative State Before the Supreme Court: Perspectives on the Nondelegation Doctrine (2022).

<sup>23</sup> 16 USC 1600 Forest and Rangeland Renewable Planning Act; 36 CFR § 221.3 TIMBER MANAGEMENT PLANNING “Provide, so far as feasible, an even flow of national forest timber in order to facilitate the stabilization of communities and of opportunities for employment.”

<sup>24</sup> Title 16 Chapter 36 Forest and Rangeland Renewable resources Planning § 1600 Congressional findings (2) (3) (4) (6)

<sup>25</sup> [2328 B RIEgional Levell Mgt MOU signed & dated 11April2011.pdf](#)

<sup>26</sup> [Region 5 & 6Bioregional assessment.pdf](#) p. 3 Introduction

<sup>27</sup> 16 USC § 1604(a) National Forest System land and resource management plans “. . .the Secretary shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.”

impacts analysis to be developed at the unit level. Every forest service unit has unique characteristics, varying management frameworks, differing jurisdictional authorities and adjacent owners of property employed in different economic pursuits. It is only through forest management planning at the unit level that these elements can be adequately assessed and inform decision making. Planning at the unit level is also necessary for the responsible official to ensure inherent capabilities within the unit context:

**36 CFR § 219.1(g)** *“The responsible official shall ensure that the planning process, plan components, and other plan content are within Forest Service authority, the inherent capability of the plan area, and the fiscal capability of the unit.”*

Many forest communities have already been economically hamstrung by limiting or entirely shutting off access and utilization of timber sources for the wood products industry. This has been done in spite of the language in the organic forest service act, which is echoed in the Code of Federal Regulations,

**36 CFR § 221.3 TIMBER MANAGEMENT PLANNING** *“Provide, so far as feasible, an even flow of national forest timber in order to facilitate the stabilization of communities and of opportunities for employment.”*

## **1.5 FOREST SERVICE LEVELS OF PLANNING**

According to 36 CFR § 219.2 Forest service planning occurs at different organizational levels and geographic scales. Planning occurs at three levels – national strategic planning, NFS unit planning, and project or activity planning. This again shows that individual forest unit planning is the process which leads to plan amendments. The Chief of Forest Service can develop a Forest Service strategic plan for national planning which is required to be integrated with the Forest and Rangeland Renewable Resources Planning Act.

**36 CFR § 219.2(a) National strategic planning.** *“The Chief of the Forest Service is responsible for national planning, such as preparation of the Forest Service strategic plan required under the Government Performance and Results Modernization Act of 2010 (5 U.S.C. 306; 31 U.S.C. 1115–1125; 31 U.S.C. 9703–9704), which is **integrated with the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the NFMA.** The strategic plan establishes goals, objectives, performance measures, and strategies for management of the NFS, as well as the other Forest Service mission areas: Research and Development, State and Private Forestry, and International Programs.”*

But Land use management plans are to be accomplished through the National Forest System Unit Planning in order to fully account for localized conditions, uses, and characteristics,

**36 CFR § 219.2(b) National Forest System unit planning (1)** *“NFS unit planning results in the development, amendment, or revision of a land management plan. A **land management plan provides a framework for integrated resource management and for guiding project and activity decision making on a national forest, grassland, prairie, or other administrative unit.** A plan reflects the **unit's expected distinctive roles and contributions to the local area, region, and Nation, and the roles for which the plan area***



*is best suited, considering the Agency's mission, the unit's unique capabilities, and the resources and management of other lands in the vicinity. . .”*

In order to keep public participation commensurate with the scope of the proposed amendments, they must be performed at the local unit level.<sup>28</sup> The forest service handbook identifies two general objectives of land management planning,

**FSH 1920.2 – General objectives of land management planning are to:**

1. Develop a fully integrated plan for management of the land and resources of the plan area.
2. Display short and long-term management intent to the public, Federal, State, Tribal, and local governments, and other users.

**1.6 REQUIRED ASSURANCES AND PROVISIONS FOR FOREST MANAGEMENT PLANS**

**16 USC Sec. 1604(e) Required assurances**

*“In developing, maintaining, and revising plans for units of the National Forest System pursuant to this section, the Secretary shall assure that such plans - (1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528-531)”*

**16 USC Sec. 1604(f) Required provisions**

Plans developed in accordance with this section shall -

- (1) form **one integrated plan for each unit of the National Forest System**, incorporating in one document or one set of documents, available to the public at convenient locations, all of the features required by this section;
- (2) be embodied in appropriate written material, including maps and other descriptive documents, reflecting proposed and possible actions, including the planned timber sale program and the proportion of probable methods of timber harvest within the unit necessary to fulfill the plan;
- (3) be prepared by an interdisciplinary team. Each team shall prepare its plan based on inventories of the applicable resources of the forest;

Uniform central planning in the NFS is inconsistent with the bottom-up statutory priorities intended to incorporate an interdisciplinary approach. FS units differ in what permitted activities occur (grazing, mining, timber, etc.), unique geographical features, agencies and local governmental bodies, and climate. These unique localized conditions and authorities can only be

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<sup>28</sup> FSH 1909.12 - LAND MANAGEMENT PLANNING HANDBOOK CHAPTER 20 – LAND MANAGEMENT PLAN 21.3 Plan Amendment - *“Whether an amendment is proposed in response to changing conditions or in relation to a specific project, the Responsible Official should keep the scope and scale of the process, including public participation, commensurate with the scope of the plan amendment”* (CFR 219.13(b)(2)).

substantively apprised and involved at the local level. USFS must tell the public who is on the interdisciplinary team for the proposed amendments, what data sources are being used, and demonstrate that the FLPMA, FRRPA, and PRIA inventory priorities and directives were followed in developing the old growth inventories.<sup>29</sup> The fact that the inventory was developed pursuant to [Executive Order](#) signifies that the Congress has not directed such inventory priorities.<sup>30</sup>

## 1.6 MAGOR QUESTIONS DOCTRINE: DELEGATION/NONDELEGATION DOCTRINE; THE INTELLIGIBLE PRINCIPLE

There is a need to adequately assess the implications of such policy changes in conjunction with a group of concerted efforts<sup>31</sup> within USDA, DOI, and other departments which pose vast transformative impacts on the economy and policy of the nation and the Pacific Regions 5 & 6. As a result, this current amendment process should be tabled. Though the President has authority to issue executive orders, he is prevented by nature of his office from legislating to agencies responsibilities that extend beyond their Congressionally delegated authority.<sup>32</sup> These concerted efforts are shaping biodiversity conservation policy, claiming national and global benefits, without adequately analyzing the fact that the costs of biodiversity conservation are most often locally concentrated posing significant impacts on regional economies. Because of the disproportionate impacts of this rule on western states and their political sub-divisions, serious federalism concerns are raised and must be addressed. The priority of this concern is clearly indicated:

### ArtI.S1.5.2 Origin of the Intelligible Principle Standard Article I, Section 1:

*As the primary means to enforce the nondelegation doctrine, the Supreme Court has required that Congress lays out an “intelligible principle” to govern and guide its delegee.<sup>1</sup> The “intelligible principle” standard requires that Congress delineate a legal framework to constrain the authority of the delegee, such as an administrative agency.<sup>2</sup> The principle was explicitly set forth in the 1928 case, *J. W. Hampton, Jr. & Co. v. United States*, in which the Supreme Court upheld Congress’s delegation of authority to the President to set tariff rates that would equalize production costs in the United States and competing countries.<sup>3</sup> The Court’s opinion, written by Chief Justice Taft, emphasized that Congress was restrained only according to “common sense and the inherent necessities” of governmental cooperation in seeking the assistance of another branch.<sup>4</sup> The Court explained that Congress could delegate discretion to other entities to “secure the exact effect” of legislation if it provides an “intelligible principle” to which*

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<sup>29</sup> On April 21, 2023, the Forest Service published a report on the definitions, identification and initial inventory of mature and old-growth forests. [Mature and Old-Growth Forests: Definition, Identification, and Initial Inventory on Lands Managed by the Forest Service and Bureau of Land Management](#)

<sup>30</sup> “. . . But an agency’s attempt to deploy an old statute focused on one problem to solve a new and different problem may also be a warning sign that it is acting without clear congressional authority. See ante, at 18 . . . When an agency claims to have found a previously “unheralded power,” its assertion generally warrants “a measure of skepticism.” *Utility Air, 573 U. S.*, at 324.” *West Virginia v. Environmental Protection Agency*, 597 U.S. \_\_\_\_ (2022)

<sup>31</sup> CFR 1508.1(q)(3) Major Federal actions tend to fall within one of the following categories: (iii) Adoption of 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**. (emphasis ours)

<sup>32</sup> “There is no undefined residuum of power,” said President William Howard Taft, “which the president can exercise because it seems to him to be in the public interest . . . His jurisdiction must be justified or vindicated by the affirmative constitutional or statutory provisions, or it does not exist.” - William Howard Taft. *Our Chief Magistrate and His Powers* 138-45 (1916). Quoted and cited in James L. Hirszen, *Government by Decree* 7 (1999).

*the President or other entity must conform.<sup>5</sup> The Court further noted: “Such legislative action is not a forbidden delegation of legislative power” if “nothing involving the expediency or just operation of such legislation was left to [delegee’s] determination.”<sup>6</sup> The Court concluded that, with respect to the tariff law at issue in the case, the President acted only as “the mere agent of the law-making department” because the President was guided by an “intelligible principle” laid out by Congress.<sup>7</sup> Hence, the “intelligible principle” standard, as imposed by the Supreme Court, seeks to ensure that Congress has laid down the “boundaries” and limits of Congress’s delegations.<sup>8</sup><sup>33</sup>*

## 2.0 APPLICATION OF AUTHORITIES

### 2.1 HIERARCHY OF CONGRESSIONAL AUTHORITIES, SUBORDINATION OF STATUTES

For the executive branch of the federal government, the delegated authority hierarchy begins with the U.S. Constitution. Congress delegates limited authority to executive branch agencies through statutory mandates. Agencies then promulgate regulations which include public notice and comment periods intended to facilitate coordination and cooperation with state and county governments.

Agency actions must be consistent with congressionally delegated purposes and priorities. Agency policy manuals, guidance documents, directives and memoranda function largely at the local level of agency practices and their authority must be traceable to congressional mandates or the U.S. Constitution.

For the past three decades, administrative policy and regulations that implement non-delegated policy have been embedded in agency culture and practice. Some of these directives cannot be traced to controlling authorities, raising legitimacy and compliance questions. In the case of the 1994 Northwest Forest Plan and associated proposed amendments a new direction was heralded that replaced priority over management of natural resource lands for the principal uses and sustained yield with ecosystem management.

#### 2.1.1 Consistency of the 1994 NWFP and amendments with the Organic Forest Service Act and effect of Joint Secretarial Order 3403

In the Organic Forest Service Act at 16 USC § 475 Congress clearly stated the purpose for National Forests was **limited** to:

- i. Improving the forests within their boundaries;
- ii. Protecting the forests within their boundaries;
- iii. For the purposes of securing favorable conditions of water flows; and
- iv. To furnish a continuous supply of timber for the use and necessities of the citizens of the United States.

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<sup>33</sup> [Origin of the Intelligible Principle Standard | U.S. Constitution Annotated | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

*“...No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of said section, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.”<sup>34</sup>*

It is the express intent of Congress that the units of the National Forest system be managed so as not to affect **productive** utilization, access for exploration and extraction of the higher value mineral estate, or impairment of opportunities for domestic livestock grazing on Taylor Grazing Act, Chiefly Valuable for Grazing Districts (CVG Districts) situated throughout the National Forest System.

16 USC § 475 applies both delegation and non-delegation doctrine prescriptive mandates. Congress delegated authority to USFS to accomplish four purposes but denied authority to incorporate lands containing higher value mineral resources or that would be managed for agricultural purposes.

The presence of the higher value natural resource assets within the National Forest System requires the Secretary of Agriculture to prioritize forest management and planning to ensure productive access for mineral and agricultural values, as assessed by the inventory and monitoring process.

The administrative pathway for the proposed introduction of Indigenous Knowledge and Tribal Co-Stewardship originate with Joint Secretarial Order (JSO) 3403 by the Secretaries of the Interior and Agriculture, through the Biden Administration’s *Tribal Homelands Initiative* to a Memorandum of Uniform Standards for Tribal Consultation.<sup>35</sup> The ideology and policies being propagated in the *Tribal Homelands Initiative* are also codified in policy directives from the Department of Justice<sup>36</sup> and Progress Reports by the Department of Agriculture.<sup>37</sup>

The policies mandated by JSO 3403 redirect forest planning, management, and local forest unit policy toward wholesale transitioning of federal lands, waters, and inholdings to Native American Tribal ownership.<sup>38</sup>

JSO 3403 and associated directives illegitimately implement a forest management policy culture throughout US Forest Service that cannot be traced to statute, and which directly conflicts with longstanding congressional mandates to the Departments of the Interior and

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<sup>34</sup> [16 USC § 475](#)

<sup>35</sup> [FR Vol. 87, No. 232. Memorandum for Heads of Executive Departments and Agencies, Uniform Standards for Tribal Consultation. November 30, 2022.](#)

<sup>36</sup> [Policy Statement. Tribal Consultation. U.S. Department of Justice, Office of Tribal Justice. 0300.01. Merrick B. Garland. November 30, 2022.](#)

<sup>37</sup> [First Annual Report of Tribal Co-Stewardship. Implementation of Joint Secretarial Order 3403 on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters. United States Department of Agriculture. November 22, 2022.](#)

<sup>38</sup> [Order No. 3403 Joint Secretarial Order on Fulfilling the Tribal Trust Responsibility in the Stewardship of Federal Lands and Waters. Deb Haaland and Thomas J. Vilsack Signators. November 15, 2021.](#)

Agriculture that govern public land and forest management, monitoring, and natural resource planning.

### 2.1.2 Multiple Use and Sustained Yield Act of 1960

#### **Definition of Multiple Use and Sustained Yield, 16 USC § 531**

As used in sections 528 to 531 of this title the following terms shall have the following meanings:

*(a) “Multiple use” means: The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.”*

*(b) “Sustained yield of the several products and services” means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.”*

#### ***Development and administration of renewable surface resources for multiple use and sustained yield. 16 USC § 528.***

In the Multiple Use and Sustained Yield Act of 1960, Congress expanded and elaborated upon the organic 1898 statute, and both laws continue to form the mission and purpose behind the existence of the US Forest Service as a civil service agency.

MUSYA established a **productive hierarchy** for resource management that concentrates on natural resource productivity and utilization as opposed to sequestration. Conservation occurs within and is a byproduct of productive, multiple land use principles. Consequently, forest monitoring, management, and inventory programs are to reflect values that prioritize first productive and multiple use.

*“It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of sections 528 to 531 of this title are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in section 475 of this title. Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest*

*lands or to affect the use or administration of Federal lands not within national forests.”*

***Cooperation for purposes of development and administration with State and local government agencies and others - 16 USC § 530.***

In MUSYA, the Congress prioritized cooperation with State and county governments during forest inventorying, planning, and natural resource management.

*“In the effectuation of sections 528 to 531 of this title the Secretary of Agriculture is authorized to cooperate with interested State and local governmental agencies and others in the development and management of the national forests.”*

While local US Forest Service offices may consider 16 USC § 530 to be optional, the unambiguous, corpus juris body of federal statutes are unambiguous in requiring bottom-up, Federalistic coordination between US Forest Service and county governments during forest planning and management.<sup>39</sup>

Federalistic statutory mandates that require US Forest Service to cooperate [coordinate] with county governments during forest planning and management are found in the Taylor Grazing Act of 1934, the Rangeland Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, the Federal Land Policy Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

### 2.1.3 Forest and Rangeland Renewable Resources Planning Act of 1974

The forest planning process is to be informed through a comprehensive, science-based interdisciplinary process The forest planning process is to be informed through a comprehensive, science-based, interdisciplinary process of data collection, inventory assessment, and technical monitoring that supports multiple use objectives for the individual forest unit and the National Forest system as a whole.

The detailed statutory assessment, analysis and inventorying of the forest, range, and grassland resources managed by US Forest Service at 16 USC § 1601 supports the Renewable Resource Program in 16 USC § 1602 and the National Forest System Resources Planning statutes in 16 USC § 1604:

*In recognition of the vital importance of America’s renewable resources of the forest, range, and other associated lands to the Nation’s social and economic well-being, and the necessity for a long term perspective in planning and undertaking related national renewable resource programs administered by the Forest Service, the Secretary of Agriculture shall prepare a **Renewable Resource Assessment**...[that] shall include....*

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<sup>39</sup> “Consequently, the most fundamental purpose of our federalist structure is to protect individual liberty.” Id. at 181-82 (citing Federalist No. 51; *Coleman v. Thompson*, 501 U.S. 722, 759 (1991) (Blackmun, J. dissenting); Gregory, 501 U.S. at 458); *NFIB et. al. v. Sebelius* 567 U.S. 519 (2012) “The independent power of the States also serves as a check on the power of the Federal Government: ‘By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.’”



*(1) an analysis of present and anticipated uses, demand for, and supply of the renewable resources, with consideration of the international resource situation, and an emphasis of pertinent supply and demand and price relationship trends;*

*(2). an inventory, based on information developed by the Forest Service and other Federal agencies, of present and potential renewable resources, and an evaluation of opportunities for improving their yield of tangible and intangible goods and services, together with estimates of investment costs and direct and indirect returns to the Federal Government; ...*

*(4). A discussion of important policy considerations, laws, regulations, and other factors expected to influence and affect significantly the use, ownership, and management of forest, range, and other associated lands ...*<sup>40</sup>

and,

*“As part of the Assessment, the Secretary shall develop and maintain on a continuing basis a comprehensive and appropriately detailed inventory of all National Forest System lands and renewable resources. This inventory shall be kept current so as to reflect the changes in conditions and identify new and emerging resources and values.”*<sup>41</sup>

and,

*“As part of the Program provided for by section 1602 if this title, the Secretary shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State, and local governments and other Federal agencies.”*<sup>42</sup>

and,

*The Secretary shall provide for public participation in the development, review, and revision of land management plans including, but not limited to, making the plans or revisions available to the public at convenient locations in the vicinity of the affected unit for a period of at least three months before final adoption, during which period the Secretary shall publicize and hold public meetings or comparable processes at locations that foster public participation in the review of such plans or revisions.”*<sup>43</sup>

The Renewable Resource Assessment (RRA) statute requires the Secretary of the Department of Agriculture to prepare a comprehensive, quantitative, supply and demand assessment of national and international renewable resource trends once every ten years. The RRA is intended to inform the forest and natural resource planning process so regional

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<sup>40</sup> [16 USC § 1601\(a\). NFMA § 3.](#)

<sup>41</sup> [16 USC § 1603. NFMA § 5.](#)

<sup>42</sup> [16 USC § 1604 \(a\). NFMA § 6.](#)

<sup>43</sup> [16 USC § 1604 \(d\)\(1\). NFMA § 6.](#)

or local forest units are able to achieve productive use of the Nation's renewable timber and non-renewable natural resources. The use of the term "*shall*" in 16 USC § 1604 means that these congressional mandates are non-discretionary on the part of the Secretary and Chief of US Forest Service.

It is important to note that at 16 USC § 1604 (a) The Secretary of Agriculture and Chief of US Forest Service are required to engage in meaningful, government-to-government consultation with State and county governments. This requirement was intentionally distinguished from the public participation requirements at 16 USC § 1604(d)(1) because public citizens, environmental groups, non-profit organizations, and public/private partnerships do not possess any government authority that would require the Secretary to consult on a government-to-government basis.

Maintaining this inventory on a continuing basis requires the operation of a robust ongoing monitoring system that fully informs the inventory and assessment processes. This monitoring system already exists and is tailored to the needs of the purposes of the FRRRPA. The proposed establishment of a "new direction" monitoring system and a priority focus on ecosystem management fails to guarantee that the current FRRRPA monitoring system will remain in place and continue to receive the resources necessary for its ongoing implementation and maintenance.

***National Forest System land and resource management plans - 16 USC § 1604.***

This is a non-discretionary mandate for the Secretary to coordinate the Forest Service plans with those of State ***and*** local governments, not just other Federal agencies. Coordination is a formal government-to-government relationship featuring meaningful participation for the non-Federal parties.

To effectuate this the Secretary must notify all interested local governments and provide meaningful opportunities to coordinate the forest planning process with the land use plans of interested county governments. The underlying Congressional intent is for the resulting Federal, State, and local government plans to be consistent with one another.

2.1.4 National Forest Management Act

The policy of Congress National Forests be managed to maintain forest cover and species, stocking rate and stand conditions designed to secure the maximum benefits of multiple use and sustained yield while not producing substantial and permanent impairment of the productivity of the land and maintain reforestation practices and thinning in line with adequate replacement of harvested stock.

The National Forest Management Act amends The Forest and Rangeland Renewable Resources Planning Act of 1974 with particular attention to the following points:

*"(3) to serve the national interest, the renewable resource program must be based on a comprehensive assessment of present and anticipated uses, demand for, and supply of renewable resources from the Nation's public and private forests and rangelands, through analysis of environmental and economic impacts, coordination*

*of multiple use and sustained yield opportunities as provided in the Multiple-Use, Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528-531), and public participation in the development of the program<sup>44</sup>;*

*"(d)(1) It is the policy of the Congress that all forested lands in the National Forest System shall be maintained in appropriate forest cover with species of trees, degree of stocking, rate of growth, and conditions of stand designed to secure the maximum benefits of multiple use sustained yield management in accordance with land management plans.*

*All national forest lands treated from year to year shall be examined after the first and third growing seasons and certified by the Secretary in the report provided for under this subsection as to stocking rate, growth rate in relation to potential and other pertinent measures. Any lands not certified as satisfactory shall be returned to the backlog and scheduled for prompt treatment. The level and types of treatment shall be those which secure the most effective mix of multiple use benefits.<sup>45</sup>*

Specific guidelines are noted in Sections 6 (g) (3) (C) (D)

*"(C) insure research on and (based on continuous monitoring and assessment in the field evaluation of the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land; "(D) permit increases in harvest levels based on intensified management practices, such as reforestation, thinning, and tree improvement if (i) such practices justify increasing the harvests in accordance with the Multiple-Use, Sustained-Yield Act of 1960, and (ii) such harvest levels are decreased at the end of each planning period if such practices cannot be successfully implemented or funds are not received to permit such practices to continue substantially as planned;*

#### 2.1.5 Federal Land Planning Management Act

Congress specifically states that FLPMA is statutory policy that can only be amended by Congress. Congressional policy indicates that public lands be managed on the basis of the principles of multiple use and sustained yield. Maintenance of public lands is through an interdisciplinary approach that supports the principles of multiple use and sustained yield in a manner that will protect the quality and ecological function of the natural environment. Ecosystem management is not a Congressional management goal. The principles of conservation are the means to manage public lands in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber and fiber.

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<sup>44</sup> National Forest Management Act of 1976 § 2 (3)

<sup>45</sup> *Ibid.* § 4 (d)(1)

*Sec. 102. [43 U.S.C. 1701] (a) The Congress declares that it is the policy of the United States that—*

*(4) the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;*

*(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;*

*(8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;*

*(12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands; and*

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

*(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;*

*(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;*

*(3) give priority to the designation and protection of areas of critical environmental concern<sup>46</sup>.*

#### 2.1.6 Endangered Species Act

The ESA gives the Secretary discretion when designating critical habitat. It requires that the Secretary not only considers the status and impact on the listed species but must consider economic impacts as well as other relevant impacts produced by the designation.

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<sup>46</sup>.43 U.S.C. 1712 Sec. 202 (c) (1-3)

*(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.<sup>47</sup>*

## **2.2 CONCLUDING STATEMENTS FROM THE NOTED AUTHORITIES**

Congressional policy is to manage federal lands for the purpose of providing access to the principle uses through multiple use and sustained yield. Congress has not promulgated the concepts of biodiversity or ecosystem management as the primary consideration for forest and grassland management being put forth by executive orders such 14008 and 13990 to create nature-based assets for the purpose of carbon sequestration and a return to pre-settlement or pristine conditions. Instead, sound ecological function and diversity of tree and plant species and fish and wildlife are to be preserved through stewardship and conservation while also providing for multiple use and sustained yield of the principle uses. Land use planning also recognizes that certain land areas are not suitable for all uses and through Congressionally approved Areas of Critical Environmental Concern uses can be withdrawn. Within the Endangered Species Act the Secretary has discretion when designating critical habitat. The Secretary must consider economic and any relevant impacts in specifying a particular area for critical habitat which includes use of scientific and commercial information to identify other pathways that also can contribute to survival of the species.

## **3.0 FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **I. The 1994 Forest Plan fails to address the necessity for a productive and enjoyable harmony between man and his environment.**

It is noted in the National Environmental Policy Act:

*Sec. 2 [42 USC CFR# 4321]. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.*

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<sup>47</sup> ESA § 4 (b) (B) (2)

During the war of the woods over the harvest of old growth it was clear that the ESA was used as a club to destroy the wood products industry. This issue is still evident as one of the noted reasons for an amendment, the failure to meet sustainable harvest goals. Forest stewardship and timber investment are not mutually exclusive. It is now recognized that the lack of active forest management is a significant contributor to the increased wildfire risk.

*“the Forest Service tries to mitigate the risk of catastrophic wildfire by actively managing the landscape and the fuels upon it. By increasing the spacing between trees and bushes and removing dead and fallen vegetation, we can create a better chance for healthy trees and plants to withstand a wildfire”<sup>48</sup>.*

This active management is associated with managing forests designated as suitable for timber production. The need for active management was noted in EO 13855. It is a significant tool which is necessary to fulfill preservation of our forests:

*The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests which may have been set aside or which may be hereafter set aside under the provisions of the Act of March 3,<sup>49</sup>*

The tension between access and planning for multiple use and sustained yield and preservation of ecological function is well noted above. Focusing on Biodiversity and ecosystem management as the primary purpose encroaches on the Congressional mandate to provide resources from our public lands. It also removes the necessary tension to facilitate better management practices. This tension is recognized in the various Acts and Authorities such as, sustainable timber harvest must make the restocking and restoration rate equal to the stock removed from harvest considering the rate of regrowth. The Secretary must ensure that timber harvest rate is sustainable and must make adjustments when monitoring identifies factors affecting growth.

"Sec. 13. Limitations on Timber Removal.--(a) The Secretary of Agriculture shall limit the sale of timber from each national forest to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained-yield basis<sup>50</sup>

## **II. Regional Planning is not statutorily permitted, land use planning must occur at the unit level**

**36 CFR § 219.2** notes the levels of planning:

§ 219.2 Levels of planning and responsible officials.

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<sup>48</sup> [Making Forests Stronger through Active Management | USDA](#)

<sup>49</sup> 16 U.S.C. 551

<sup>50</sup> National Forest Management Act Of 1976



Forest Service planning occurs at different organizational levels and geographic scales. Planning occurs at three levels—national strategic planning, NFS unit planning, and [project](#) or activity planning.

**(a) *National strategic planning.*** The Chief of the Forest Service is responsible for national planning, such as preparation of the Forest Service strategic plan required under the Government Performance and Results Modernization Act of 2010 ([5 U.S.C. 306](#); [31 U.S.C. 1115–1125](#); [31 U.S.C. 9703–9704](#)), which is integrated with the requirements of the [Forest and Rangeland Renewable Resources Planning Act of 1974](#), as amended by the NFMA. The strategic plan establishes goals, objectives, performance measures, and strategies for management of the NFS, as well as the other Forest Service mission areas: Research and Development, State and Private Forestry, and International Programs.

**(b) *National Forest System unit planning.***

**(1)** NFS unit planning results in the development, amendment, or revision of a land management plan. A land management plan provides a framework for integrated resource management and for guiding project and activity decision making on a national forest, grassland, prairie, or other administrative unit. A plan reflects the unit's expected distinctive roles and contributions to the local area, region, and Nation, and the roles for which the plan area is best suited, considering the Agency's mission, the unit's unique capabilities, and the resources and management of other lands in the vicinity. Through the adaptive planning cycle set forth in this subpart, a plan can be changed to reflect new information and changing conditions.

**(2)** A plan does not authorize projects or activities or commit the Forest Service to take action. A plan may constrain the Agency from authorizing or carrying out projects and activities, or the manner in which they may occur. Projects and activities must be consistent with the plan ([§ 219.15](#)). A plan does not regulate uses by the public, but a [project](#) or activity decision that regulates a use by the public under [36 CFR Part 261](#), Subpart B, may be made contemporaneously with the approval of a plan, plan amendment, or plan revision. Plans should not repeat laws, regulations, or program management policies, practices, and procedures that are in the Forest Service Directive System.

**(3)** The supervisor of the national forest, grassland, prairie, or other comparable administrative unit is the [responsible official](#) for development and approval of a plan, plan amendment, or plan revision for lands under the responsibility of the supervisor, unless a regional forester; the Chief; the Under Secretary, Natural Resources and Environment; or the Secretary acts as the [responsible official](#). Two or more [responsible officials](#) may undertake joint planning over lands under their respective jurisdictions.

**(4)** A plan for a unit that contains an experimental area may not be approved without the concurrence of the appropriate research station director with respect to the direction applicable to that area, and a plan amendment applicable to an experimental area may not be approved without the concurrence of the appropriate research station director.

(5) The Chief is responsible for leadership and direction for carrying out the NFS land management planning program under this part. The Chief shall:

(i) Establish planning procedures for this part in the Forest Service Directive System in Forest Service Manual 1920—Land Management Planning and in Forest Service Handbook 1909.12—Land Management Planning Handbook.

(ii) Establish and administer a national oversight process for accountability and consistency of NFS land management planning under this part.

(iii) Establish procedures in the Forest Service Directive System for obtaining inventory data on the various renewable resources, and soil and water.

(c) *Project and activity planning.* The supervisor or district ranger is the responsible official for project and activity decisions, unless a higher-level official acts as the responsible official. Requirements for project or activity planning are established in the Forest Service Directive System. Except as provided in the plan consistency requirements in [§ 219.15](#), none of the requirements of this part apply to projects or activities.

### III. Forest stand management for marketable timber supports mature growth forests

Stand management of forests are to be managed to standards to insure that, prior to harvest, stands of trees throughout the National Forest System shall generally have reached the culmination of mean annual increment of growth (calculated on the basis of cubic measurement or other methods of calculation at the discretion of the Secretary)<sup>51</sup>

Two values determine the calculation of the culmination of the mean annual increment of growth: the current annual increment and the mean annual increment of growth. Over time the current annual increment of growth climaxes and the current annual increment of growth declines. The mean annual increment of growth continues much longer. At the point the mean annual increment of growth intersects the current annual increment of growth is when harvest is proposed. At this point the proposed tree harvest is mature where tree age is past its optimal growth and is in decline.

Existing regulation already prioritizes management of tree stands under multiple use and sustained yield for the mature growth forest sought for the NSO. The Plan amendment suggests management actions to promote mature growth forests is similar to achieving the required tree age for marketable timber. The central issue regarding NSO habitat may be the assessed claim of over harvest of old growth without the required restocking to replace trees harvested and ensuring trees reach the required maturity before harvest. Defining the sustained yield within these parameters will maintain a long-standing portion of the forests of concern in mature old growth while permitting harvest of marketable timber. As noted

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<sup>51</sup> CHAPTER 36—FOREST AND RANGELAND RENEWABLE RESOURCES PLANNING § 1604 (m) & National Forest Management Act of 1976 § 6 (l) (1)

in present assessment, the problem of NSO decline is the barred owl which shares the same habitat requirements<sup>52</sup>.

**IV. There is no statutory requirement to manage for preservation of old growth forest for the purpose of habitat preservation, carbon sequestration or wildfire mitigation.**

As noted in 43 U.S.C. 1712 Sec. 202 (c) (1-3) the primary purpose in public land management is to provide access to the principle uses under multiple use and sustain yield. Ideal tree harvest occurs in mature growth forests. Preservation for old growth is not seen as an issue for habitat preservation because tree harvest is to occur at the culmination of mean annual increment of growth. Beyond this point tree growth continues to decline and can degrade to replacement conditions where trees are subject to disease, insects and wildfires. Regarding the NSO it has not been demonstrated that the principles of sustained yield producing multistage growth patterns with the harvest goal of mature trees is detrimental to its existence. Managing for old growth harvest will ensure forest complexity as well as habitat variation necessary for species such as NSO. The problem is more competition with the barred owl and hybridization.

The preservation of old growth as a carbon sink and storage is questionable. Carbon dioxide is a tree and plant fertilizer that increases rate of growth towards maturity. This is effective in forests where trees are young or have not reached maximum annual increment growth. Mature and old growth trees while utilizing carbon dioxide uptake do not store it leaving a static state as a carbon sink. The primary condition for increasing and storing carbon dioxide is to promote forest regeneration and harvest of mature growth trees where the harvested timber is utilized in products that remain in use for long periods of time<sup>53</sup>. The 2020 Resource Planning Act assessment notes carbon sequestering in the context of a dynamic growing forest. The projections for carbon storage will decrease due to the fact that forests maturation will outpace disturbance and timber harvest. The projected decrease in younger forests suggests much of the forested landscape will shift to an older age cohort where forest ecosystem C growth (stock change) will be less than current (2020) estimates<sup>54</sup>.

The resilience of old growth to wildfire is more a result of human management to reduce fuel load and enhance tree spacing to promote mature growth forest as noted in the Region 5 & 6, 1994 NWFP amendment. Native Americans significantly impacted the ecosystems they occupied by cultivating plants, harvesting plants and trees, hunting wildlife, and promoting conditions beneficial to a range of needs, often through the use of fire (Boyd, 1999; Yazzie, 2007; Abrams et al., 2022). These among other factors make it difficult to define old growth forests particularly when considering the concept of ecological integrity.

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<sup>52</sup> [Spotted Owl and Barred Owl - Redwood National and State Parks \(U.S. National Park Service\) \(nps.gov\)](#)

<sup>53</sup> Atmospheric carbon dioxide enrichment (eCO<sub>2</sub>) can enhance plant carbon uptake and growth<sup>1:2:3:4:5</sup>, thereby providing an important negative feedback to climate change by slowing the rate of increase of the atmospheric CO<sub>2</sub> concentration<sup>6</sup>. Although evidence gathered from young aggrading forests has generally indicated a strong CO<sub>2</sub> fertilization effect on biomass growth<sup>3:4:5</sup>, it is unclear whether mature forests respond to eCO<sub>2</sub> in a similar way. In mature trees and forest stands<sup>7:8:9:10</sup>, photosynthetic uptake has been found to increase under eCO<sub>2</sub> without any apparent accompanying growth response, leaving the fate of additional carbon fixed under eCO<sub>2</sub> unclear<sup>4:5:7:8:9:10:11</sup> [The fate of carbon in a mature forest under carbon dioxide enrichment | Nature](#)

<sup>54</sup> 2020 Resources Planning Act Assessment, conclusion p.6-36

The index of ecological integrity (IEI) is a measure of relative intactness (i.e., freedom from adverse human modifications and disturbance) and resiliency to environmental change (i.e., capacity to recover from or adapt to changing environmental conditions driven by human land use and climate change)<sup>55</sup>. Historically Tribes managed and modified forest landscapes to benefit their needs and the current understanding to mitigate for wildfire as well as for timber harvest involves human management. Consequently, we don't have an accurate knowledge of the natural and historic composition of an ecosystem. But we can determine ecological function which is in line with statutory law.

**V. The use of Indigenous Knowledge for forest planning and policymaking is subjective, derogates federal information standards, and has no authoritative basis in controlling statutes or the US Constitution:**

- a. The use of Indigenous Knowledge (Tribal Ecological Knowledge) (IK) in federal administrative decision making is illegitimately being embedded in the administrative policymaking of US Forest Service through JSO 3403, the Biden Administration's *Tribal Homelands Initiative* and a *Memorandum of Uniform Standards for Tribal Consultation*.
- b. Top-down policies directing the incorporation of IK in agency practices include directives by Executive Order 14072, Memoranda by the Office of Management and Budget (OMB) and policies from the Office of Science and Technology Policy (OSTP) and Council on Environmental Quality (CEQ).

**VI. The definition of "indigenous knowledge" is redundant, was rejected by Congress through a joint CRA resolution, and derogates federal information standards under the Data Quality Act (DQA):**

- a. The USFS proposed Chapter 2040 National Forest Monitoring Policy defines "*Indigenous Knowledge*" (IK) information as:

*"Indigenous Knowledge (IK) is a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment."*
- b. On February 7, 2017, through H.J. Resolution 44, the 115<sup>th</sup> United States Congress rejected a substantively similar definition of "*Traditional Ecological Knowledge*" (TEK) in the Bureau of Land Management's Planning 2.0 Rule.<sup>56</sup>
- c. Once a major federal rulemaking has been rejected by joint action, the Congressional Review Act **prohibits adoption of a substantially similar or new rule:**

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<sup>55</sup> [Index of Ecological Integrity — Landscape Partnership](#)

<sup>56</sup> FR Vol. 81, No. 37. Thursday, February 25, 2016. Page 9689.

*“A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.”<sup>57</sup>*

- a. The Proposed 2040 NFMP definition of *Indigenous Knowledge (IK)* and the rejected definition of *Traditional Ecological Knowledge* in H.J. Resolution 44 are substantively identical in policy scope and intent. The Data Quality Act (DQA)<sup>58,59</sup> requires information disseminated by federal agencies to meet four standards: *Quality, Utility, Objectivity, and Integrity*. In adopting the DQA, the Congress specifically requires information used for federal decision-making and actions to meet specific and minimum standards:

*“The more important the information, the higher the quality standards to which it should be held, for example, in those situations involving influential scientific or statistical information.”<sup>60</sup>*

- i. *The “Objectivity” component of DQA requires information used for resource planning to identify all sources of information, and standards for models, data, financial information or information in statistical contexts are to be documented “so the public can assess for itself whether there may be some reason to question the objectivity of the sources.”*
- ii. *The “Reproducibility” component of DQA requires that information used for RMPs be “capable of being substantially reproduced subject to an acceptable degree of imprecision.”*
- iii. *The “Utility” component of DQA refers to the usefulness of the information for its intended users, including the public. In disseminating information under the “Usefulness” requirement, Federal agencies “need to consider the uses of the information not only from the perspective of the agency, but also from the perspective of the public.”*

- b. The proposed US Forest Service Chapter 2040 *Indigenous Knowledge* definition of tribal “*observations, oral and written*

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<sup>57</sup> 5 USC § 801 (b)(2).

<sup>58</sup> Section 515(a) U.S. Treasury and General Government Appropriations Act. Pub. L. 106-554.

<sup>59</sup> H.R. 5658; 66 FR 49718 September 28, 2001.

<sup>60</sup> 66 FR at 49718.

*knowledge, innovations, practices, and beliefs,” obtained through “interaction and experience with the environment...” and “social, cultural, and spiritual systems” is subjective, falling well short of the FLPMA scientific standard which calls for US Forest Service to: “use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences.”<sup>61</sup>*

- c. Because oral traditions are typically not published nor readily available to the average American, *Indigenous Knowledge* cannot reasonably be accessed during the forest planning or inventory processes to facilitate public or peer review. Tribal observations are not easily verified, and the public will be disenfranchised by inclusion of *Indigenous Knowledge* as a policy standard in the Proposed 2040 NFMP and application in the 1994 NWFP amendment.
- d. IK fails to meet the federal “objectivity” and “reproducibility” standards of the Data Quality Act.

## **VII. Tribal Co-Stewardship expands the government-to-government relationship of Tribes Beyond the fiduciary responsibility of the Federal Government**

Co-Stewardship refers to collaborative or cooperative arrangements between Bureaus and Tribes and Native Hawaiian Organizations related to shared interests in managing, conserving, and preserving Federal lands and waters. Collaborative and cooperative arrangements can take a wide variety of forms. These may include, for example, sharing technical expertise; combining the capabilities of Bureaus and Tribes and Native Hawaiian Organizations to improve resource management and advance the responsibilities and interests of each; making Tribal knowledge, experience, and perspectives integral to the public's experience of Federal lands; cooperative agreements; and annual funding agreements under the Tribal Self-Governance Act (25 U.S.C. § 5361 et seq.) where applicable<sup>62</sup>.

The purposes of Joint Secretarial order 3403 clearly explains how Tribal involvement beyond Coordination between two sovereigns is extended to federal land use planning. The following Principles of implementation from JO 3404 highlight the expanded Tribal involvement within land management beyond government-to-government coordination:

- Based upon these relationships, Indian Tribes and Native Hawaiian organizations can engage directly with the Departments to address matters of mutual interests in the management of Federal lands.
- The Departments will collaborate with Indian Tribes to ensure that Tribal governments play an integral role in decision making related to the management of

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<sup>61</sup> 43 USC § 1712(c)(2). (Pub. L. 94-579, title II, § 202(c)(2), Oct. 21, 1976, 90 Stat. 2748.)

<sup>62</sup> Current Land, Water, and Wildlife Authorities That Can Support Tribal Stewardship and co-stewardship, Final Report. Department of the Interior Office of the Solicitor. November 2022 § II Terminology



Federal lands and waters through consultation, capacity building and other means consistent with applicable authority.

- The Departments will engage affected Indian Tribes in meaningful consultation at the earliest phases of planning and decision-making relating to the management of Federal lands to ensure that Tribes can shape the direction of management. This will include agencies giving due consideration to tribal recommendations on public lands management.
- For landscape or watershed scale restoration and conservation planning, the Departments will to the maximum extent practicable, incorporate Tribal Forest land, agriculture and/or range land management plans into Federal land management planning efforts.
- The Departments will collaborate with Indian Tribes to educate affected communities regarding the role Tribal governments play in the stewardship of federal public lands, waters and wildlife, and will work to develop appropriate institutional structures to implement agreements related to co-stewardship.

The central issue in creating tribal co-stewardship is stated by the Interior Department Issue Guidance:

*The Department is committed to ensuring that decisions relating to co-stewardship will continue to advance safeguards for traditional subsistence, cultural practices, trust interests and treaty rights for Tribes<sup>63</sup>*

The purpose of co-stewardship becomes one of extending Tribal traditional subsistence and cultural practices into the management of public lands. As illustrated by the Alaskan state government and Congress's attempt to provide for subsistence living of Alaskan native Americans, the extension of this concept into the lower 48 states is reserved for Congressional decision<sup>64</sup> not a new policy development by the Interior Department<sup>65</sup>. Introducing a priority for subsistence living for public land management explains the need for ecosystem management which effectively begins to subjugate the rest of the Non-Tribal American citizens to subsistence access to resources.

The inclusion of co-stewardship is a change in the recognized Native American Policy held by the Services:

*This updated Native American policy (policy) provides a framework for government-to-government relationships, which furthers the United States' and the Department of the Interior's trust responsibility to federally recognized tribes to protect, conserve, and use tribal reserved, treaty guaranteed, or statutorily identified resources<sup>66</sup>.*

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<sup>63</sup> [Interior Department Issues Guidance to Strengthen Tribal Co-Stewardship of Public Lands and Waters | U.S. Department of the Interior \(doi.gov\)](#)

<sup>64</sup> Handbook of Federal Indian Law by Felix S. Cohen Chapter 5 The scope of federal power over Indian Affairs Section 1

<sup>65</sup> [Alaska Native Subsistence: A Matter of Cultural Survival | Cultural Survival](#)

<sup>66</sup> [The Service's Native American Policy | U.S. Fish & Wildlife Service \(fws.gov\)](#)

The reason for government-to-government coordination is that Tribes are considered sovereign governments and are to be included on that level in relationship to tribal plans and the effect federal plans have on tribal lands over which the Tribes retain self-determination. Including co-stewardship in the Department of Interior and USFS land management policies conflicts with the priority to manage federal lands under Multiple Use and Sustained Yield, and changes the coordination procedure with Tribal governments as noted in the Federal Land Planning Management Act:

*In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands<sup>67</sup>.*

#### **VIII. Coordination between Federal agencies and the Tribes in land use planning must be consistent with Federal Fiduciary Responsibilities And sphere of Tribal sovereignty**

Coordination between the Federal Government and state, local governments, the public and Tribes depends on the context of the action, planning on federal lands or the regulation considered and how and who it affects. Forest Service planning occurs on national strategic planning, NFS unit planning, and project or activity planning levels<sup>68</sup>. The Secretary shall allow for public involvement by including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment and participate in the formulation of plans and programs relating to the management of the public lands<sup>69</sup>. The Secretary is required to the extent practical, keep apprised of State, local, and tribal land use plans; to give consideration to those State, local, and tribal plans that are affected by land use plans for public lands; assist in resolving inconsistencies between Federal and Nonfederal Government plans.<sup>70</sup>

It is important to notice in the coordination process there are two levels, Government to Government coordination and public hearings. In the Government-to-Government coordination state, local and tribal governments are involved but tribal involvement doesn't occur in the public process. The reason is that Tribes are considered sovereign governments and are to be included on that level in relationship to tribal plans and the effect federal plans have on tribal lands over which the Tribes retain self-determination<sup>71</sup>. The concept of Tribal sovereignty is based on the early Republic assessment the Tribes are to be

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<sup>67</sup> 43 USC 1712 § 202 (c) (9)

<sup>68</sup> Title 36 Chapter II Parat 219 Subpart A § 219.2

<sup>69</sup> USC 1712 (f)

<sup>70</sup> USC 1712 (c) (9)

<sup>71</sup>Handbook of Federal Indian Law by Felix S. Cohen Chapter 7 Sections 1 and 2

recognized as distinct, independent political communities. A fact substantiated by Worcester v. Georgia and two other cases form the Marshall doctrine of Tribal Sovereignty.

However, there is another aspect to Tribal relations within the United States and that is the power of Congress over Tribal affairs. While national sovereignty is derived from the powers delegated by the states, the Constitution forms the basis of federal control over Tribal affairs.<sup>72</sup> The Constitution gives the president of the United State the power to enter into treaties provided there is a 2/3 vote of the Senate. Congress through legislation can modify treaties and provisions in various statutes and regulations. These statutes and regulations also confer on the Secretary of the Interior or the Commissioner of Indian Affairs power to make rules and regulations<sup>73</sup>. While the federal government has sought to support Tribal self-governance as expression of Tribal sovereignty the numerous treaty provisions establish their status as dependent nations.

These factors contribute to understanding the hierarchy of Authorities involved in Land use Planning and establishment of policy within USFS. The creation of the Constitution and the delegations of powers by the states to the federal government with the statement that whatever powers not delegate by the Constitution or not prohibited by it or the States are reserved to the states respectively or to the people<sup>74</sup>. Thus, the standing in order of priority in authority becomes the federal, state, and local governments and the public (the people). Tribes are not included in public comment periods because they like the federal government are sovereign nations and must relate on a government-to-government basis. For this reason, tribes do not have authority over state governments or personal rights guaranteed by the Constitution. State and Tribal government relationships are possible on a cooperative government to government relationships.

The monitoring directive, Forest Service Manual 2000 – National Forest Resource Management Chapter 2040 – National Forest System Monitoring<sup>75</sup> indicate a new process in tribal consultation where the minimum 120-day Tribal consultation absent of local government, was initiated for the proposed directive on September 16, 2022<sup>76</sup>. A second aspect is the use of Indigenous Knowledge in land management. Associated with this priority to ensure Tribal involvement and communication, the Indigenous Knowledge component enables the expression of Tribal interests and priorities on public lands managed by the USFS and BLM.

It is important to note that coordination with federally recognized Indian Tribes Departments shall recognize the unique and distinctive political and constitutionally based relationship that exists between the United States and each Indian tribe, and shall view tribal governments as sovereign entities with authority and responsibility for the health and welfare of ecosystems on Indian lands. Whenever the agencies, bureaus, and offices of the Departments are aware that their actions planned under the Act may impact tribal trust

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<sup>72</sup> Ibid; Chapter 5 The Scope of federal power over Indian Affairs Section 1

<sup>73</sup> Ibid; Chapter 5 Section 7 p.101

<sup>74</sup> US Constitution Amendment X

<sup>75</sup> [Proposed FSM 2040 NFS Monitoring Directive \(1\).pdf](#)

<sup>76</sup> [US Forest Service NEPA Projects Home \(usda.gov\)](#)

resources, the exercise of tribal rights, or Indian lands, they shall consult with, and seek the participation of, the affected Indian tribes to the maximum extent practicable<sup>77</sup>.

*The term "tribal trust resources" means those natural resources, either on or off Indian lands, retained by, or reserved by or for Indian tribes through treaties, statutes, judicial decisions, and executive orders, which are protected by a fiduciary obligation on the part of the United States.*

*The term "tribal rights" means those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and which give rise to legally enforceable remedies*

*The term "Indian lands" means any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation<sup>78</sup>*

Department coordination with Tribes concerns those topics and issues that affect those areas of Tribal Sovereignty such as trust resources, tribal rights and Indian lands. Because they are a dependent sovereign Tribes have no sovereign jurisdiction over public lands. Various regulatory statutes note this distinction where the National Forest Management Act of 1976 notes in exercising his authorities under this Act and other laws applicable to the Forest Service, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs<sup>79</sup>. As noted, FLPMA only includes Tribal interest in reference to tribal lands and land use plans.

It is significant that the US Supreme Court regarding treaties has stated that treaties may not alter the Constitution or authorizes acts that the Constitution expressly prohibits<sup>80</sup>. Further the Court while not invalidating a treaty has held that courts may not give treaties domestic effect in a way that interferes with individual rights guaranteed in the Constitution<sup>81</sup>.

The inclusion of Indigenous Knowledge coupled with co-stewardship with the federal government Departments are additions to Tribal fiduciary and trust rights. The purpose of Tribal co-stewardship is to extend Tribal engagement outside of the treaty and trust rights recognized by Congress based on the subjective criteria of Tribal interests. Departments are required to collaborated with Tribal governments to ensure that Tribal governments

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<sup>77</sup> ORDER NO. 3206; June 1977 American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act § 5 Responsibilities Principle 1

<sup>78</sup> Ibid: Definitions B, C, D

<sup>79</sup> 16 U.S.C. 1600 National Forest Management Act 1976 § 14 Public Participation and Advisory Boards.

<sup>80</sup> Doe v. Braden, 57 US (16 How.) 635, 657 (1885)

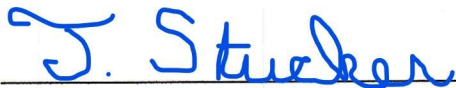
<sup>81</sup> Boos, 484 US at 324, 334

play an integral role in decision making related to the management of Federal lands and waters through consultation, capacity building, and other means consistent with applicable authority.<sup>82</sup>

The Department of the Interior is seeking Co stewardship with Tribes on public lands and water to identify opportunities to consolidate Tribal homelands and empower Tribal stewardship of resources. There will be an acquisition of public lands into trust on behalf of the Tribes in the name of preservation of Tribal sovereignty, self-determination and preservation of cultural, and social economic wellbeing of Tribes to right the wrongs of the past<sup>83</sup>. The Department recognizes that it is the policy of the United States to restore Tribal homelands to Tribal ownership and to promote Tribal stewardship and self-government.<sup>84</sup> This effort fails to understand that public lands were set aside as reservations for the welfare of the American people<sup>85</sup>.

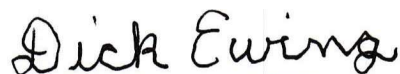
As dependent sovereigns whose treaty and trust rights originate with Congress, Executive Orders and policies derived through administrative action cannot extend these provisions to Tribes. Such concepts must be presented to Congress and accepted or rejected through their review process<sup>86</sup> in the context of Congress' responsibility to oversee treaty and other agreements with Sovereign nations.

Comments on 1994 NWFP amendment are submitted by the Okanogan County Farm Bureau,



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Trinity Stucker, President



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Dick Ewing, Policy Chair

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<sup>82</sup> Order No. 3403 Joint Secretarial Order on Fulfilling the Tribal Trust Responsibility in the Stewardship of Federal Lands and Waters § 3, Principles of Implementation

<sup>83</sup> First Annual Report on Tribal Co-Stewardship, November 2022, Consolidating Tribal Homelands, p.11

<sup>84</sup> Order No. 3403 Joint Secretarial Order on Fulfilling the Tribal Trust Responsibility in the Stewardship of Federal Lands and Waters § 6, Principles of Implementation

<sup>85</sup> Executive Order 6964, TGA and Executive Order 6910

<sup>86</sup> Title 5 USC Ch. 8 § 801 (a) (1) (A) Congressional review