Department of Energy

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In reply refer to: TFBV-SNOHOMISH

Submitted via a webform: https://cara.fs2c.usda.gov/Public//CommentInput?Project=65356

RE: Comments on the Amendments to Land Management Plans to Address Old-growth forests Across the National Forest System (NFS) and the Draft Environmental Impact Statement

The Bonneville Power Administration (BPA), U.S. Department of Energy, respectfully submits comments to the Forest Service (FS) on the proposed action (Modified Proposed Action, Alternative 2 – also the preferred action) in the Draft Environmental Impact Statement (DEIS) and the affected environmental and potential impacts associated with the proposed amendment of 122 land management plans.

BPA is a federal agency and one of four public power marketing administrations within the U.S. Department of Energy. It has over 120 special use authorizations in 23 National Forests that allow it to construct, operate and maintain transmission facilities on the NFS lands along linear rights-of-way (ROW). These authorizations were initially issued to BPA as a federal agency under various Memoranda of Understanding between our two federal agencies. All the federal holder authorizations allow BPA to manage vegetation and operate and maintain infrastructure in and adjacent to these ROW or other permit areas. For over 80 years, BPA has worked in partnership with the FS. It looks forward to working together on *Strengthening the Nation's Forests, Communities and Local Economies* as the President outlined in Executive Order 14072.

BPA and the FS are aligned on many of the objectives stated in the Old Growth DEIS, particularly those focused on reducing wildfire risk. It appreciates the FS mentions management of powerlines in the DEIS and the Draft Social, Economic and Cultural Report. It is also pleased that some draft plan components for the Land Management Plan (LMP) Amendments generally refer to public health and safety needs and infrastructure protection. BPA is also thankful there is now some express recognition of the rights of holders of pre-existing special use permits.

However, given the critical need to reliably maintain the transmission backbone of the Northwest's electrical grid, BPA asks the FS to specifically confirm BPA's understanding that the National Old-growth Amendment (NOGA) will not impact BPA's ability to prune or fell "hazard trees"[1] under the law and its existing special use authorizations. It also seeks assurance that individual responsible officials cannot, through the Adaptive Strategy for Old-Growth Forest Conservation at the Forest level, impair these statutory and regulatory provisions. The reference

[1] *See* 43 USC §1772 (Section 512), related regulations in 36 CFR Part 251, and Powerline Forest Service Regulations and Directives, FSH 2709.11, Chapter 80.

to transmission facilities in this document includes the entire system that makes them operable: transmission lines, overhead ground wires, communications equipment, fiber, beam paths, other appurtenances, substations, and 24/7/365 use of access roads. Each component plays a critical role in keeping the system reliable and maintaining reliability not only keeps the power on, but it also reduces wildfire risk. Hazard tree removal along the transmission lines or the access roads are equally as important to assure risks are properly mitigated to reduce wildfires.

BPA's Understanding of the Impact of the NOGA and Preferred Alternative

From a utility perspective, there needs to be absolute clarity on who decides whether tree removal actions can be taken in or adjacent to authorized powerline linear rights of way. BPA's special use permits allow for it to construct, operate and maintain the line, including removal of vegetation and trees. The DEIS and NOGA as currently proposed introduce a great deal of uncertainty into the process as to what maintenance can be accomplished. BPA's comments are intended to clearly articulate its concerns and contentions.

BPA asserts that the proper way to interpret how utility maintenance is conducted under the law is set forth below; it should not change under the Preferred Alternative in the DEIS and the NOGA. If the FS disagrees, BPA requests that the FS specifically and individually respond to these assertions.

1. All transmission facilities are critical infrastructure.

   This should be a given. Electricity is a key component of the fabric of modern society and transmission infrastructure is the backbone of the nation's power system, ensuring Americans across the county have 24/7 access to affordable, reliable electricity to power their homes, businesses and communities. While it is possible that some distribution lines may also be considered critical infrastructure, all transmission lines are critical to the reliable operation of the power grid.

2. All transmission line maintenance – vegetation or infrastructure - has wildfire prevention benefits.

   Congress has recognized the importance of utility maintenance for wildfire prevention and provided clear direction in the Federal Land Policy and Management Act section 512 about how the Forest Service should work with utilities to put in place procedures to allow timely maintenance and vegetation management. Congress created section 512 "to enhance electric reliability, promote public safety, and avoid fire hazards". The NOGA should not impair or impede utilities abilities to manage hazard trees as defined in the FS implementing regulations and directives for section 512. The NOGA, such as Standard 2c, should not require any additional rationale to support the fact that these transmission maintenance actions are "necessary". These actions include access road maintenance to reach the transmission line.

3. What is "reasonable" for transmission line maintenance, vegetation and infrastructure, is defined by reliability and safety regulations and the utility's maintenance strategies and compliance procedures.

Nothing in the NOGA should prevent or constrain what vegetation management actions are reasonable as it is not within the FS's authority to determine what actions are reasonable for regulating utility operations and maintenance.

4. What is "permissible" or "necessary" on NFS land is defined by 43 USC §1772 (Section 512), 36 CFR §251, FSH 2709.11, Chapter 80, the Operating Plan (OP) and a special use authorization that provides the holder with authority to operate and maintain the powerlines.

All of these laws, regulations and directives expressly:
(i) allow the owner or operator of the powerline to determine what qualifies as a "hazard tree";
(ii) allow the owner or operator of the powerline to prune or fell emergency hazard trees (regardless of tree type) without FS permission;
(iii) enable the owner or operator of the powerline to timely prune or fell non-emergency (routine) hazard trees if consistent with environmental and cultural laws; and
(iv) have a "proceed without approval" provision for the owner or operator of the powerline to prune or fell routine vegetation if the FS fails to respond to notifications in a timely manner.

5. If it is "reasonable" and "permissible" or "necessary" as defined above, then the owner or operator of the powerline can take these actions because:

a. None of the NOGA standards and guidelines apply if they would be contrary to existing law or regulation, or where they would require the FS to take actions for which it does not have authority; AND

b. these powerline maintenance actions are consistent with the intent of Standard 2b and Standard 2c (i)-(iii).

The above points are BPA's contentions and if the FS disagrees with any of them, BPA respectfully requests that the FS articulate why and what authority it uses to supports its statements.

Additionally, the FS also needs to revise Section 7.3.1 in the Draft Social, Economic and Cultural Report. We appreciate that this report appears to recognize a utility's right to manage hazard trees, however, the statement below misstates the law in several ways.

> Sec. 7.3.1: Specific to powerline authorizations, the holder is *obligated* to remove trees that might fall *within 10-feet* of powerline facilities and to *trim t*rees that might grow tall or wide enough to cause electrical *arching* of powerline conductors (wires). These measures are necessary to reduce the risk of wildfires that may be ignited by trees and powerline contacting. (p.65) {*Emphasis added*}

This appears to be a reference to 43 USC §1772(a)(1) the statutory definition of a hazard tree; however, it contains several serious errors. First, this federal law does not "obligate" removal, it "authorizes" or "allows" the owner or operator to either prune or fell the tree. Second, the 10-foot rule is only one prong of a multi-prong "hazard tree" definition, so it is misleading.[2] The FS also clarified the statutory hazard tree definition in its regulatory definitions in 36 CFR §251.51.[3] Third, the technical electrical term is "arcing" not arching.

While BPA understands errors occur in drafting documents, it does illustrate that there are consequential nuances in how things are interpreted. It demonstrates how critical it is for the FS to provide specific instructions to its Forest staff to assure utilities can timely and effectively manage transmission lines to maintain reliability and reduce wildfire risks. It is up to electric reliability organizations (e.g. NERC, WECC) and utility regulators to determine what actions utilities must take to maintain safe and reliable powerline operations and maintenances.

Given the critical nature of transmission lines today, the Forest Service needs to clarify this is how the NOGA would be administered. The utility industry needs the certainty that it can

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[2] 43 USC 1772(a)(1) Hazard tree: The term "hazard tree" means any tree or part thereof (whether located inside or outside a right-of-way) that has been designated, prior to tree failure, by a certified or licensed arborist or forester under the supervision of the Secretary concerned or the owner or operator of a transmission or distribution facility to be-
(A) dead, likely to die within the routine vegetation management cycle, or likely to fail within the routine vegetation management cycle; and
(B) if the tree or part of the tree failed, likely to-
(i) cause substantial damage or disruption to a transmission or distribution facility; or
(ii) come within 10 feet of an electric power line.

[3] "Hazard tree" —for purposes of vegetation management for a powerline facility, any tree, brush, shrub, other plant, or part thereof, hereinafter "vegetation" (whether located on NFS lands inside or outside the linear right-of-way for the powerline facility), that has been designated, prior to failure, by a certified or licensed arborist, qualified vegetation management specialist, or forester under the supervision of the owner or operator to be:
(1) Dead; likely to die or fail before the next routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; and
(2) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the minimum vegetation clearance distance as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement. 36 CFR §251.51

continue to manage and maintain its lines under current law and regulations and that the proposed NOGA LMP standards or guidelines will not impair or impede existing law.

BPA's Proposed Revisions to Standards 2a, 2b and 2c

Overview

While there is some limited improvement in the standards language (See NOGA-FW-STD-02a, 2b and 2c) in the Preferred Alternative (from the initial draft NOGA), it appears the FS maintains it has the authority to decide which trees can "reasonably" be removed, despite the terms of a special use authorization and Section 512. BPA asserts it needs to be clear the transmission owner or operator has the legal authority and discretion to identify which trees are hazard trees and once identified, remedy the threat through vegetation pruning or felling even if they are old growth trees or in an old growth designated area. Notably, the owners or operators have the expertise and regulatory responsibility (e.g. NERC, NESC) to maintain safe and reliable transmission operations. Removing the utilities' discretion to make this determination interferes with their legal responsibilities and is contrary to the Federal Land Policy and Management Act.

An example cited in the DEIS illustrates how the FS currently interprets its authority under this NOGA.

> "This *could* include the removal of trees at risk of falling and causing injury to the public or damage to infrastructure such as buildings, roads, campgrounds, or powerlines. {*emphasis added*} (DEIS, page 104).

First, this interpretation is very troublesome as it would allow FS officials to "choose" to jeopardize the power supply or unintentionally risk damage to the powerline infrastructure; this expressly conflicts with federal law that authorizes the powerline owner or operator to determine which tree is a "hazard tree" and decide whether to prune or fell the trees, especially in an emergency (without regard to the type of tree or area).[4] The regulatory definition also assures that the owner or operator can cut dead or dying trees that are "likely to cause substantial damage to the powerline facility."[5] There is no statutory authorization to deviate from Section 512; unless some other existing federal law, such as the Endangered Species Act, would prohibit pruning or felling the trees, the owner or operator of a powerline is authorized to undertake this action. BPA asserts the NOGA LMP cannot override this statutory authority or the special use authorizations express right to remove danger or hazard trees. Second, the FS also fails to recognize the routine hazard tree removal process in Section 512, specifically when the FS fails to respond within the timelines in the Operating Plan, the utility can go ahead and remove vegetation and trees.[6]

[4] 43 USC §1772(e).
[5] 36 CFR 251.51 (hazard tree definition).
[6] 43 USC §1772(f)(3)(C).

To avoid any confusion and adopt BPA's contentions detailed above, BPA respectfully asks the FS to revise the Standards as follows.

BPA Recommended Revisions to DEIS LANGUAGE AND STANDARDS, Table 1, DEIS P. 28

BPA proposes the following language changes (**bolded and in red**) to the Standards:

BPA Proposed Revisions to Standard 2 a

"NOGA-FW-STD-02a: Where conditions meet the definitions and associated criteria of old-growth forest, vegetation management may only be for the purpose of proactive stewardship. For the purposes of this standard, the term "vegetation management" includes – but is not limited to – prescribed fire, timber harvest, and other mechanical/non-mechanical treatments used to achieve specific silviculture or other management objectives (e.g. hazardous fuel reduction, wildlife habitat improvement**, prune or fell "hazard trees" as defined in 36 CFR 251.51**). For the purposes of this standard, the term "proactive stewardship" refers to vegetation management that promotes the quality, composition, structure, pattern, or ecological processes necessary for old-growth forests to be resilient and adaptable to stressors and likely future environments. Proactive stewardship in old-growth forests shall promote one or more of the following:
i. ~~**reduction**~~ **reducing** hazardous fuels **and pruning or felling hazard trees as defined in 36 CFR 251.51** to reduce the risk of loss of old-growth forests to uncharacteristic wildfire, and to facilitate the return of appropriate fire disturbance regimes and conditions;
ii. resilience to insect and disease outbreaks that would result in the loss of old-growth conditions;
iii. ecological conditions for at-risk species associated with old-growth forest, including conditions needed for the recovery of threatened and endangered species;
iv. amount, density, distribution and species composition of old trees, downed logs, and standing snags appropriate for the forest ecosystem type;
v. vertical and horizontal distribution of old-growth structures, including canopy structure and composition;
vi. patch size characteristics, percentage or proportion of forest interior, and connectivity;
vii. types, frequencies, severities, patch sizes, extent, and spatial patterns of disturbances;
viii. successional pathways and stand development;
ix. connectivity and the ability of old-growth obligate species to move through the area and cross into adjacent areas;
x. culturally significant species or values, to include key understory species;
xi. species diversity, and presence and abundance of rare or unique habitat features associated with old-growth forests;

xii. reducing wildfire ignition risks by allowing transmission line infrastructure maintenance and vegetation management in and adjacent to transmission facilities;
or
xii**i**. other key characteristics of ecological integrity associated with old-growth forests."

> *FS DEIS Commentary on Standard 2a*
> Intent: Constrain management actions to those that promote the quality, composition, structure, pattern or ecological processes necessary for old-growth forests to be resilient and adaptable to stressors and likely future environments (i.e. as influenced by climate change and in response to wildfire, insect and disease, urbanization, etc.).

Summary: BPA maintains removal of hazard trees per 36 CFR §251.51 (hereinafter utility hazard trees) is consistent with the FS's stated intent of making the forest resilient and their removal is critical to wildfire reduction. Allowing utilities to remove utility hazard trees is consistent with the goal of EO 14072 because it reduces the risk of fires associated with utility lines.

BPA Revisions to Proposed Standard 2 b (if do not adopt the proposed revisions to Standard 2a)

The cutting or removal of trees in old-growth forest for purposes other than proactive stewardship is permitted when**:** (1) incidental to the implementation of a management activity not otherwise prohibited by the plan and (2) the area – as defined at an ecologically appropriate scale – continues to meet the definition and associated criteria for old-growth forest after the incidental tree cutting or removal**~~;~~ or (3) it is necessary or appropriate to protect existing critical infrastructure**.

> *FS Commentary on Standard 2b (page 16-17 of DEIS)*
> NOGA-FW-STD-02b allows for the cutting or removal of trees in old-growth forests for the purposes other than proactive stewardship when two qualifiers occur:
> 1) when said action is *incidental* to the implementation of a management activity not otherwise prohibited by the plan, as amended, and
> 2) the area – as defined at an ecologically appropriate scale – continues to meet the definition and associated criteria for old-growth forest after the incidental tree cutting or removal.
> >Examples of such activities, consistent with the LMP as amended, could be the development of infrastructure or recreation opportunities on or through NFS lands such as pipelines, *transmission lines, roads, or ski area runs in which incidental tree cutting or removing is determined to be necessary or appropriate.*
> >Additionally, it may be necessary to have incidental cutting or removal of trees in old-growth forests in addition to proactive stewardship activities that may

already be occurring. For example, trail construction or maintenance – not associated with the proactive stewardship – may be occurring in the same area and require incidental tree cutting.
>Future activities may do so, so long as said incidental tree cutting or removal of trees in old-growth forests does not diminish the ability for said forest to continue to meet the definition and criteria of old-growth, on an ecologically appropriate scale.
continue to meet the definition and criteria of old-growth, on an ecologically appropriate scale.
>*It should be acknowledged that some of these infrastructure or multiple use activities may be large enough that they impact whether an area meets the definition and associated criteria of old-growth at the ecologically appropriate scale.*
{Emphasis added}

Summary: BPA maintains that pruning or felling of utility hazard trees should be expressly allowed to protect critical infrastructure without going through the exceptions or deviations process in Standard 2c. Transmission facilities, which power our economy, our lights and our institutions, should be treated differently than ski resorts and recreational activities. Finally, there is no definition of "incidental" or any indication pruning or felling utility hazard trees would be considered "incidental".

<u>BPA Comments on Proposed Standard 2c</u>

Overview:

BPA finds that utility hazard tree management should not be subject to the onerous and undefined process (no timelines or actual criteria) explained in Standard 2c for several reasons.
(1) Congress has already determined that utility line maintenance does "enhance electric reliability, promote public safety, and avoid fire hazards."[7] Moreover, Congress required the FS to assure owners or operators of powerlines can undertake actions that are consistent with mandatory reliability standards.[8]
(2) The FS is not trained to determine whether a transmission line is critical or evaluate the consequences of the line failing.
(3) Individualized determinations by local FS personnel as to when a utility action is necessary to maintain public health or safety is an unworkable scenario. They are not trained in electrical engineering or in grid operations and management, so there would be no way for them to make an informed determination, let alone make it in a timely fashion.

[7] 43 USC §1772(a)(3).
[8] 43 USC §1772(b)(2) and (c)(2).

BPA Proposed Revisions to FS Proposed Standard 2 c

If the FS does not adopt the proposed revisions to Standard 2a or 2b, BPA would propose modifications to Standard 2c as follows.

Deviation from Standard 2.a and 2.b may only be allowed if the responsible official determines that vegetation management actions**, utility hazard tree removal,** or incidental tree-cutting or removal are necessary for the following reasons and **except in emergencies,** includes the rationale in a decision document or supporting documentation:
i. In cases where this standard would:
(a) preclude achievement of wildfire risk management objectives within municipal watersheds or the wildland-urban interface (WUI) as defined in Section 101 of the Healthy Forest Restoration Act of 2003 (16 USC 6511) and its application by the local planning unit, or
(b) prevent protection of critical infrastructure from wildfire; (or)
ii. to protect public health and safety**, including protecting transmission facilities regulated by an electric reliability organization from utility hazard trees**; (or)
iii. to comply with other statutes or regulations, valid existing rights for mineral and energy resources, or authorizations of occupancy and use made prior to the old-growth amendment decision;

OR ALTERNATIVE REWRITE (Restated in active voice and in the positive to avoid the awkward construction to prevent protection")

A responsible official may deviate from Standard 2.a and 2.b if the responsible official determines that vegetation management actions, utility hazard tree removal, or incidental tree-cutting or removal are necessary to:
i. achieve wildfire risk management objectives within municipal watersheds or the wildland-urban interface (WUI) as defined in Section 101 of the Healthy Forest Restoration Act of 2003 (16 USC 6511) and its application by the local planning unit, or protect critical infrastructure from wildfire; or
ii. protect public health and safety, including protecting transmission facilities regulated by an electric reliability organization from utility hazard trees; (or)
iii. comply with other statutes or regulations, valid existing rights for mineral and energy resources, or authorizations of occupancy and use made prior to the old-growth amendment decision.
A responsible official shall include the rationale for the deviation in a decision document or supporting documentation, except in emergencies.

Excerpts from FS Commentary on Standard 2 c

NOGA-FW-STD-2c describes six scenarios where deviations to NOGA-FW-STD-2a and NOGA-FW-STD-2b are permitted, including:

ii. to protect public health and safety

This *could* include the removal of trees at risk of falling and causing injury to the public or damage to infrastructure such as buildings, roads, campgrounds, or powerlines.

• The *public health and safety exception would typically be applied* near roads or developments such as campgrounds or areas with concentrated use, which is only a small footprint of National Forests.

• Vegetation management and incidental tree cutting and/or removal can still occur for the reasons listed in the exceptions while still meeting old-growth objectives, meaning in these cases no exceptions would need to be invoked. {*Emphasis added*}

Summary: The deviation process as constructed does not provide the clarity or expeditated process owners or operators of powerlines need to assure utility hazard trees can be pruned or felled. If the FS does not adopt BPA's proposed revisions to Standards 2a and 2b, BPA proposes to add utility hazard tree removal as a reason for a deviation. The public health and safety scenario should apply to critical infrastructure overall, including transmission facilities, and not just the protection from wildfire referred to in the wildfire risk mitigation paragraph. Critical infrastructure protection should encompass several scenarios: (i) keeping the transmission line safe from damage so it remains reliable; (2) keeping it safe from utility hazard trees falling into the line; or (3) keeping vegetation from growing into or swinging into the line or into the utility's minimum vegetation clearance distance. Additionally, the proposed revision allows for emergency removal without the rationale and documentation process. Critical transmission infrastructure needs to be protected from all threats under the public health and safety rationale.

Conclusion

BPA appreciates the opportunity to comment on the DEIS and related documents. In summary, BPA believes the FS should retain the status quo for transmission line operations and maintenance and not adopt additional mandatory constraints in NOGA guidelines or standards that interfere with the law or its rights in its existing permits.

Proactive transmission line vegetation maintenance and infrastructure maintenance and upgrades should be considered proactive stewardship in Standard 2a to improve forest resilience. BPA submits these substantive comments for the record and looks forward to commenting on the draft record of decision.

Please note that BPA is more than willing to engage with FS staff as they proceed. I can be reached via email at jdtyler@bpa.gov or by phone at 503-230-5116. BPA would welcome the opportunity to coordinate with FS further as you complete this process.

BPA appreciates your review of these comments and looks forward to working with the Forest Service on the National Old-Growth effort.

Sincerely,

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