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Director, Ecosystem Management Coordination  
201 14th Street SW, Mailstop 1108  
Washington, DC 20250–1124

***RE: Salt River Valley Water Users’ Association and Salt River Project Agricultural Improvement and Power District’s Comments on the draft Environmental Impact Statement No. 20240110.***

Dear Secretary Vilsack:

The Salt River Valley Water User’s Association (“Association”) and the Salt River Project Agricultural Improvement and Power District (“District”; collectively “SRP”) appreciate the opportunity to provide comments on the Draft Environmental Impact Statement (“DEIS”) Land Management Plan Direction for Old-Growth Forest Conditions Across the National Forest System (No. 20240110) (the “Amendment”).

## **I. BACKGROUND**

SRP is the Phoenix Metropolitan area’s largest raw water provider and one of the nation’s largest community-based not-for-profit public power utilities. It consists of two entities: the Association and the District. The Association was formed in 1903 by a group of local farmers within the Salt River Valley (“Valley”) as a means to contract with the U.S. Bureau of Reclamation (“Reclamation”) for the construction of and repayment of the costs incurred in building and acquiring the works of the Salt River Federal Reclamation Project (“Federal Reclamation Project”). In 1917, Reclamation turned over the care, operation, and maintenance of the Federal Reclamation Project to the Association. The United States continues to hold title to all Federal Reclamation Project facilities and maintains a supervisory role and regulatory authority over those facilities. The District is an agricultural improvement district organized in 1937 for the purpose, in part, of providing financial support for the Association. The District and the Association continue to collectively and collaboratively operate the Federal Reclamation Project. This enduring partnership balances the economic risks of the Project and ensures the Valley’s success by providing a reliable and sustainable water and power supply.

**a. Water**

Five National Forests cover portions of the 13,000-square-mile Salt and Verde River watersheds and the 70-square-mile East Clear Creek watershed (“SRP Watershed”): Apache-Sitgreaves, Tonto, Coconino, Prescott, and Kaibab. The early farmers and settlers of the Salt River Project realized the connection between a healthy watershed and a healthy water supply. In 1897 under the President McKinley administration, Congress enacted the Organic Act or the Forest Management Act (“Act”). The Act stated that “No public forest reservation shall be established, except to improve and protect the forest within the reservation...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.” That same year the Arizona Territorial Legislature requested Congress reserve unclaimed timber lands within the watersheds above the Salt River Valley to protect the water flows.

In 1898, President McKinley signed a proclamation which eventually developed into the Apache-Sitgreaves National Forest, and in 1905 created the Tonto National Forest to set aside lands primarily for the protection of the watershed supplying the Federal Reclamation Project.<sup>1</sup> Likewise, the Kaibab, Coconino, and Prescott National Forests were established for timber and to protect water flows.<sup>2</sup> The water generated in these forests serves a population of approximately two million people and delivers approximately 750,000 acre-feet of water annually to municipalities, agricultural users, urban irrigation water users, and a wide variety of contractual water users including Native American communities and irrigation districts.

The watershed-to-water-supply relationship is even more vital today, particularly as river systems throughout the western United States continue to experience an increasing frequency of drought and impacts to water supplies. Reclamation recently finalized additional measures to reduce near-term Colorado River water use to address shortage conditions,<sup>3</sup> with long-term operational guidelines expected in the next few years. The increased occurrence of catastrophic wildfires has had and continues to have negative impacts on downstream, interrelated water supplies; particularly during periods of drought, water users cannot afford to lose additional water supplies to poor water quality or turbidity caused by wildfire. Municipalities across central Arizona are poised to have their Colorado River supplies reduced significantly under existing shortage agreements,<sup>4</sup> and those sources could be reduced further still in a future operational paradigm. Given the likelihood of continued Colorado River supply constraints, water from the SRP Watershed will become an even more critical component of existing water right holders’ supply.

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<sup>1</sup> Theodore Roosevelt, Proclamation 598—Establishment of the Tonto Forest Reserve, Arizona Online by Gerhard Peters and John T. Woolley, The American Presidency Project <https://www.presidency.ucsb.edu/node/206526>

<sup>2</sup> See 30 Stat. 1771 (May 10, 1898) (Prescott National Forest); 35 Stat. 2196 (July 2, 1908) (Kaibab and Coconino National Forests); E.O. No. 908 (July 2, 1908) (Verde Portion of Prescott National Forest).

<sup>3</sup> U.S. Bureau of Reclamation, , [Supplement to the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead Record of Decision](#) (May 6, 2024).

<sup>4</sup> See U.S. Bureau of Reclamation, [Exhibit 1 to the Lower Basin Drought Contingency Plan Agreement](#), Lower Basin Drought Contingency Operations (“LBOps”), Table 1.

### **b. Forest Health**

Because of the drought and wildfire risks, supporting proactive forest management to reduce high-severity wildfires and improve water flows of these reserved forests has become a cornerstone of SRP. The SRP Healthy Forest Initiative™ and Resilient Water and Forest Initiative (“the Initiatives”) actively seek partnerships with state, local, federal, non-profit and private entities to decrease wildfire risk and severity by removing hazardous fuels and by restoring the forest to a more fire-adapted and resilient structure. The Initiatives are made possible by a unique partnership between SRP and the Arizona Department of Forestry and Fire Management and the U.S. Forest Service (“Forest Service”) utilizing a Master Good Neighbor Authority agreement and several memoranda of understanding between the parties. This partnership structure has proven successful in its ability to leverage the resources and funding of private entities, like SRP, to assist the Forest Service in increasing the pace and scale of forest restoration efforts. SRP and our partners have assisted the Forest Service in completing 5 forest thinning projects, totaling 2,221 acres, and are committed to thinning an additional 91,000 acres across the Salt River, Verde River, and East Clear Creek watersheds over the next 10 years.

### **c. Power**

In addition to delivering water to the Phoenix metro area, SRP is committed to delivering reliable, affordable, and sustainable power to the customers in its service territory. Recognizing the importance of decarbonization to sustainability, SRP set a goal to reduce its 2005 carbon emissions by 82% by 2035. To achieve this goal, SRP is investing in renewable energy development, which must either be located near existing infrastructure or must be accompanied by transmission lines. These transmission lines often cross through National Forest System lands. Renewable resources are being located near these existing transmission lines, leading to the need to expand the transmission right-of-way (“ROWS”) or obtain new ROWs across National Forest System lands. This Amendment causes SRP some concern regarding its future ability to bring additional renewable energy to SRP’s service area to support decarbonization goals.

SRP cares about forest health and old-growth management and climate resiliency and encourages balancing old-growth planning with the needs of the citizens who rely on the water supply generated by the national forests or decarbonization efforts. SRP appreciates the limitations placed on the Amendment, but SRP urges the Forest Service to select Alternative 1 as the preferred alternative. Recognizing that the Forest Service may ultimately still select Alternative 2, SRP provides comments on the specific plan components. Finally, SRP believes the Forest Service has access to data to allow disclosure of impacts to the forest products industry at the National Forest level. These points are elaborated herein.

## **II. LIMITATIONS ON APPLICATION OF AMENDMENT TO OLD GROWTH AND MATURE FORESTS**

SRP appreciates the Forest Service included statements that are intended to provide flexibility in where and how the Amendment is applied. Specifically, SRP supports the recognition that all old-growth does not need to stay old-growth and all mature forest does not need to be managed as old-growth.

**a. Allowance for Modification of Old-Growth Areas**

SRP supports the recognition that all areas meeting the definition of old-growth may not permanently remain old-growth. As described above, SRP proactively supports or implements vegetation management across national forests to reduce wildfire risk, maintain ROWs, and improve municipal water supplies. These vegetation management projects may occur within areas that meet the definition of old-growth or areas that may achieve old-growth objectives. SRP is pleased that the Forest Service recognizes that some vegetation management may cause areas to no longer meet the definition of old-growth.<sup>5</sup> SRP suggest that the allowances for old-growth removal as stated in Standards 2.b and 2.c allow greater flexibility. Without additional flexibility, there is a significant risk a multitude of projects will delayed due to time needed to obtain a forest plan amendment or simply face abandonment. Our concerns are further explained in Section IV(b).

**b. Limited Mature Forests Inclusion**

SRP appreciates that the Forest Service does not intend to manage all mature forests as future old-growth. The DEIS recognizes that “[n]ot all mature forest occurs in areas that will persist as mature forest or that can sustain succession towards old-growth forest.”<sup>6</sup> Further, the Amendment notes that past management – such as fire suppression, previous vegetation management and/or reforestation – and natural succession or regeneration may have created mature forest or species distribution/composition that does not support desired ecological functions and conditions and recognizes the requirement to manage for multiple-uses.<sup>7</sup>

Growth of an inordinate number of mature forests in Arizona which has led to increased wildfire size and severity. This trend precipitated the creation of the Four Forest Restoration Initiative (“4FRI”), a collaborative effort between the Apache-Sitgreaves, Coconino, Kaibab, and Tonto National Forests.<sup>8</sup> 4FRI seeks to implement an ambitious restoration program to improve and sustain watershed health, improve wildlife habitat, conserve biodiversity, protect old-growth, reduce the risk of uncharacteristic wildland fire, promote the reintroduction of natural fire, and restore natural forest structure and function so that forests are more resilient to climate change. SRP request recognition and inclusion of this initiative in the final EIS.

**III. ALTERNATIVE 1 (NO ACTION) SHOULD BE THE PREFERRED ALTERNATIVE**

SRP requests the Forest Service select Alternative 1 (No Action) as the preferred alternative in the final EIS and record of decision because the 2023 planning regulations create a consistent framework and the Forest Service predicts old-growth will increase without the Amendment. If an action alternative must be selected, SRP encourages the Forest Service to select

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<sup>5</sup> DEIS at 17.

<sup>6</sup> *Id.*

<sup>7</sup> DEIS at 14.

<sup>8</sup> See U.S. Dept. of Ag., Forest Service, Forest Restoration Initiative Overview (last accessed Sept. 11, 2024) <https://www.fs.usda.gov/4fri>.

Alternative 4 because it provides for a larger toolbox to address old-growth management and minimizes effects on collaboratives and the forest product industry. Because Alternative 3 is more restrictive in regard to forest management, SRP believes Alternative 3 should not be selected ensuring the aforementioned initiatives can continue to proceed. In addition, SRP believes that Alternative 3 may delay achievement of the Forest Service’s Wildfire Crisis Strategy.<sup>9</sup>

**a. The 2012 Planning Rule Already Provides Consistent Management**

The 2012 planning rule provides for consistent planning components across the National Forest System and accounts for local and regional issues; therefore, adequate nationwide consistency for old-growth management exists.<sup>10</sup> “The No Action Alternative provides a baseline comparison for how old-growth forest direction in land management plans would change.<sup>11</sup> Under Alternative 1, current land management plan (“LMP”) content would continue to guide management of old-growth areas. No changes would be made to old-growth related plan components unless done so at the unit-level during plan revision or through programmatic or project-specific plan amendments.<sup>12</sup> Alternative 1 was not selected as the preferred alternative based upon the assumption a plan-by-plan revision or amendment approach leads to an inconsistent framework for managing old-growth areas across the National Forest System.”<sup>13</sup>

SRP believes that Alternative 1 provides the requisite consistent framework. The 2012 planning rule provides for consistent planning components in consideration of forest-specific conditions across the National Forest System.<sup>14</sup> In the preamble to the 2012 planning rule, the Forest Service noted that some commenters “felt the rule should have specific requirements for old-growth and large, intact blocks of forest....” In response, the Forest Service noted that the requirements of § 219.9(a)(2)(iii) “provide for key characteristics associated with terrestrial and aquatic ecosystem types and rare aquatic and terrestrial plant and animal communities, which may include old-growth stands, meadows, snags, or other characteristics.”<sup>15</sup> The agency said that “(m)ore specific requirements were not included in the final rule, because these issues are best identified and determined at the forest or grassland level, reflecting ecosystems and plant and animal communities on the unit.”<sup>16</sup>

The individual LMPs are designed to be flexible to meet local and regional environmental, social, and economic needs and concerns. The designation of an old-growth area is very much a local and regional issue. This focus on local and regional environmental, social, and economic needs and concerns could not be more evident than when Forest Service tried to implement Old-growth and Mature Tree definitions in 2023 that contained unique definitions of old-growth and

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<sup>9</sup> [U.S. Dept. of Ag., Forest Service, Wildfire Crisis Landscape Investments \(January 2023\).](#)

<sup>10</sup> 36 C.F.R. 219.7(e).

<sup>11</sup> DEIS at 14.

<sup>12</sup> *Id.* at 14.

<sup>13</sup> *Id.* at 17.

<sup>14</sup> 36 C.F.R. 219.7(e).

<sup>15</sup> 77 Fed. Reg. 21,162, 21,218 (Apr. 8, 2012).

<sup>16</sup> *Id.* at 21,218-19 (emphasis added).

mature forest for each region.<sup>17</sup> Alternative 1 provides a consistent framework of plan components that considers local and regional planning efforts and should be the preferred alternative.

### **b. Old-Growth is Increasing Without the Amendment**

Further, the FIA plot projections predict old-growth will increase over the next five years under current LMPs despite increasing disturbances.<sup>18</sup> “Analysis of FIA plot projections developed as part of the RPA Assessment projects old-growth forest extent to increase over the next five decades despite increasing disturbances, with a slowing rate of increase over each decade.”<sup>19</sup> This indicates that the current frameworks and actions exist and are working today to protect old-growth and diminishes the need for additional management direction.

### **c. SRP Supports Alternative 4 so Long as It is Applied Prospectively**

SRP agrees that the Amendment must be in alignment with and support the Wildfire Crisis Strategy. In addition, SRP supports “that management actions are permitted – and encouraged – for the reduction of hazardous fuels 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.”<sup>20</sup> Alternative 4 provides “greater flexibility for management actions in old-growth forests, which can include actions needed to achieve hazardous fuel reduction and other wildfire risk management objectives in areas that meet the definition and associated criteria for old-growth forests.”<sup>21</sup>

As stated by another forest permittee almost thirty years ago “. . .retroactive application [of the forest plan amendment] would result in overwhelming resistance to future plan amendments by potentially affected parties.”<sup>22</sup> Similarly, SRP requests that the Forest Service use its discretion to state the Amendment applies prospectively in in the record of decision.<sup>23</sup> In the National Forest Management Act (“NFMA”), Congress authorized the Secretary to “develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System.”<sup>24</sup> Under NFMA:

Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans. Those resource plans and permits, contracts, and other such instruments currently in existence shall be revised as soon as practicable to be made consistent with such plans. When land management plans are revised, resource plans and permits, contracts, and other instruments, when necessary, shall be

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<sup>17</sup> U.S Dept. of Ag., *Mature and Old-growth Forests: Definition, Identification, and Initial Inventory on Lands Managed by the Forest Service and Bureau of Land Management*, 38-65 (April 2024).

<sup>18</sup> DEIS at 76.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 16.

<sup>21</sup> *Id.*

<sup>22</sup> *Forest Guardians v. Thomas*, 967 F. Supp. 1536, 1560 (D. Ariz. 1997).

<sup>23</sup> *Id.*

<sup>24</sup> *See* 16 U.S.C. § 1604(a).

revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights.<sup>25</sup>

Congress granted the Secretary discretion in amending existing forest plans, including the discretion to determine how those amendments will be implemented. This argument is premised upon section 1604(f)(4), which requires that LMP's developed in accordance with section 1604 shall:

be amended in any manner whatsoever after final adoption after public notice, and, if such amendment would result in a significant change in such plan, in accordance with the provisions of subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section.<sup>26</sup>

The language of section 1604(f)(4) permits the Secretary to amend existing forest plans “in any manner whatsoever.”<sup>27</sup> Legislative history indicates that this provision was “needed to make it clear that the government is not taking any private rights or other interest as part of [its] action in compliance with this section.”<sup>28</sup> The planning regulations reflect this statutorily enshrined discretion: “[e]very decision document approving a plan, plan amendment, or plan revision must state whether *authorizations of occupancy and use made before the decision document may proceed unchanged.*”<sup>29</sup> Courts have upheld the Forest Service’s use of this discretion and public policy favors prospective application of the amendments.<sup>30</sup> Applying old-growth forest standards and guidelines to previously approved National Environmental Policy Act decision documents will slow implementation of approved activities and stakeholder-approved forest restoration activities.

#### IV. **SUGGESTED REVISIONS TO PLAN COMPONENTS OF CONCERN**

Recognizing the possibility the Forest Service will proceed with Alternative 2, SRP suggests a number of clarifications and edits to various plan components. SRP offers edits to objections, standards, guidelines, management approaches, and plan monitoring. While SRP suggests edits to Alternative 2 plan components, SRP continues to support the selection of Alternative 1 as the preferred alternative.

##### **a. Objectives**

Incorporation of reasonably foreseeable budgets should be added to several objective for consistency with the 2012 planning regulations. Consideration of reasonably foreseeable budgets will help recognize the availability of staff to implement these objectives across 122 LMPs. An

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<sup>25</sup> See 16 U.S.C. § 1604(a).

<sup>26</sup> [16 U.S.C. § 1604\(f\)\(4\)](#).

<sup>27</sup> [16 U.S.C. § 1604\(f\)\(4\)](#).

<sup>28</sup> [S.Rep. No. 94-893, at 47-48 \(1976\)](#).

<sup>29</sup> 36 C.F.R. 219.15(a) (emphasis added).

<sup>30</sup> *Forest Guardians v. Dombek*, 131 F.3d 1309, 1313 (9th Cir. 1997); *Forest Guardians v. Thomas*, 967 F. Supp. 1536, 1560-61 (D. Ariz. 1997) (holding public policy favors not applying the amendment retroactively because the amendment would impact over 8,000 authorizations).

objective is a concise, measurable, and time-specific statement of a desired rate of progress toward a desired condition or conditions.<sup>31</sup> *Objectives should be based on reasonably foreseeable budgets.*<sup>32</sup> Objective 1 (NOGA-FW-OBJ-01) provides “[w]ithin 2 years of the old-growth amendment record of decision, ... create or adopt an Adaptive Strategy for Old-Growth Forest Conservation [“(Strategy”)] based on geographically relevant data and information for the purpose of furthering old-growth forest desired conditions.”<sup>33</sup> Similarly, Objective 2 (NOGA-FW-OBJ-02) requires that the forest unit integrate priorities identified in the Strategy into the unit’s outyear program of work and initiate at least three proactive stewardship projects/activities in the planning area to contribute to the achievement of old-growth forest desired conditions within one year after Strategy development.<sup>34</sup> Objective 3 (NOGA-FW-OBJ-03) requires that the forest unit initiates at least one co-stewardship project with an interested Tribe within two years of Strategy completion.<sup>35</sup> Finally, Objective 4 (NOGA-FW-OBJ-04) requires the forest to show a measurable, increasing trend towards appropriate amounts, representativeness, redundancy, and connectivity of old-growth forest that are resilient and adaptable to stressors and likely future environments within ten years of Strategy completion.

For consistency 36 C.F.R. 219.7(e)(1)(ii), SRP suggests the following edits to account for reasonably foreseeable budgets and staff resources and the purpose of land management planning. For Objective 1, SRP requests the Forest Service increase the 2-year limit to 4 years or add a qualifier to the 2-year limit such as “if staffing resources and funding resources are available.” Objective 1 is a large undertaking for 122 National Forests some of which may be experiencing insufficient staffing, limited resources and increased expenses due to wildlife.<sup>36</sup>

SRP suggests the Forest Service should revise Objective 2 to state “... at least three proactive stewardship projects/activities *if it is within inherent capability of the plan area, and the fiscal capability of the unit.*” This addition would align Objective 2 with 36 C.F.R. 219.1(g).

Objective 3 should be revised to recognize that co-stewardship projects with Tribes may not be available during the provided timeframe. SRP suggests the following revision “[w]ithin two years of completing the Adaptive Strategy for Old-Growth Forest Conservation Strategy, *create* at least one co-stewardship project with interested Tribes for the purpose of proactive stewardship.”

Finally, as for Objective 4, SRP suggests inclusion of a deadline based on the science from the specific forest. Planning regulation 36 C.F.R. 219.1(c) calls for a “science-based” deadline.

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<sup>31</sup> 36 C.F.R. 219.7(e)(1)(ii).

<sup>32</sup> *Id.* (emphasis added).

<sup>33</sup> DEIS at 26.

<sup>34</sup> *Id.* at 27.

<sup>35</sup> *Id.*

<sup>36</sup> Forest Service Chief Randy Moore has repeatedly told Congress that current funding levels are insufficient to meet current management needs on the National Forest System. At a hearing before the House Natural Resources Committee on June 4, 2024, Chief Moore said, “[i]f you doubled our budget right now...we would certainly make that work, but it wouldn't be enough to do everything that's being asked.” House Natural Resources Committee, Budget Oversight Hearing on the Forest Service’s FY 2025 Budget Request, June 4, 2024. <https://www.youtube.com/watch?v=IVN1PB5nkpU&t=1s>.



The 122 National Forests each have different vegetation growth rates and a blanket requirement to show measurable progress across such a diversity of biomes should account for these differences. A deadline that is not developed based upon the local ecology will result in successes and failures due in large part to ecological conditions, not unit management. The Forest Service should allow each unit to determine the number of years to measure progress based upon the inherent capability of their plan area or revise Objective 4 to be a management approach.

## **b. Standards**

SRP believes the standards' focus on proactive stewardship should be calibrated to minimize plan amendments. A standard is a mandatory constraint on project and activity decision-making, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.<sup>37</sup> Standard 2a (NOGA-FW-STD-02a) states that in areas of old-growth, vegetation management may only be for the purpose of proactive stewardship.<sup>38</sup> Under the Amendment, "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).<sup>39</sup> Proactive stewardship means 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.<sup>40</sup> Standard 2a describes twelve elements of old-growth and states projects will need to address one or more of these elements.<sup>41</sup> Standard 2b (NOGA-FW-STD-02b) clarifies that removal of old-growth can occur so long as it is incidental to the management activity and the area continues to satisfy the definition for old-growth after removal.<sup>42</sup> Standard 2c (NOGA-FW-STD-02c) lists activities that allow for deviation from Standards 1 and 2.

The Amendment should incorporate deviations for protection of critical infrastructure, vegetation management for transmission ROWs, and new transmission ROWs. While the Amendment does not affect current special use permits ("SUPs"), it will affect SUP renewals, new vegetation management plans, and new applications for transmission ROWs.<sup>43</sup> "In instances where projects cannot be mitigated, a project level forest plan may be necessary. In some cases, the deciding official may choose not to pursue project-level plan amendments and forego the project, with potential consequences for ... economic benefits."<sup>44</sup> SRP requests that the Forest Service clarify that Standard 2c(ii) includes transmission ROW vegetation management. Additionally, SRP believes the Forest Service should consider including a statement that energy resources in Standard 2c(iii) mean all energy infrastructure including generation, transmission, distribution, and other related assets including roads for clarity.

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<sup>37</sup> 36 C.F.R 219.7(e)(1)(iii).

<sup>38</sup> DEIS at 29-30.

<sup>39</sup> *Id.* at 29.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 30.

<sup>43</sup> *Id.* at 122.

<sup>44</sup> *Id.* at 122.

### c. Guidelines

SRP requests additional clarification regarding implementation of Guideline 3. A guideline is a constraint on project and activity decision-making that allows for departure from its terms, so long as the purpose of the guideline is met.<sup>45</sup> Guidelines are established to help achieve or maintain a desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.<sup>46</sup> Guideline 3 (NOGA-FW-GDL-03) states “[t]o preserve the cultural and historical value of old trees occurring outside of old-growth forests, vegetation management projects should retain and promote the conservation and survivability of old trees that are rare when compared to nearby forested conditions that are of a noticeable younger age class or unique in their ability to persist in the current or future environment, and are not detracting from desired species composition or ecological processes.”<sup>47</sup> SRP suggests the Forest Service add to the intent statement examples of instances where old trees could be removed, such as when they present a safety or public health hazard or conflict with other governing law such as those for ROW management.

### d. Management Approaches

SRP suggest that the Forest Service look at ways to alleviate a perceived conflict between the Amendment and the Forest Service Handbook as the management approaches appear to create a “to do” list. Management approaches are optional plan content.<sup>48</sup> Per the Forest Service Handbook, management approaches describe the principal strategies and program priorities the Responsible Official intends to employ to carry out projects and activities developed under the plan.<sup>49</sup> The management approaches can convey a sense of priority and focus among objectives and the likely management emphasis.<sup>50</sup> Management approaches should relate to desired conditions and may indicate the future course or direction of change, recognizing budget trends, program demands, and accomplishments.<sup>51</sup> Management approaches may discuss potential processes such as analysis, assessment, inventory, project planning, or monitoring.<sup>52</sup> Optional content, such as management approaches, must not include, or appear to include, a “to do” list of tasks or actions.<sup>53</sup>

Management Approach 1.a (NOGA-FW-MA-01a) directs the National Forests to “[d]evelop and adhere to an Adaptive Strategy for Old-Growth Forest Conservation to accomplish” a list of actions including ground-truthing the accuracy of applied old-growth forest definitions.<sup>54</sup>

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<sup>45</sup> 36 C.F.R. 219.7(e)(1)(iv).

<sup>46</sup> *Id.*

<sup>47</sup> DEIS at 34.

<sup>48</sup> 36 C.F.R. 219.7(f)(2).

<sup>49</sup> U.S. Forest Serv., FSH 1909.12 – Land Management Planning Handbook Chapter 20 – Land Management Plan, 52 (2015).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 51.

<sup>54</sup> DEIS at 21.

SRP suggests Management Approach 1.a be revised to conform to the Forest Service Handbook prohibition on “to do” lists or be redrafted as a different plan component.

Management Approach 1.b (NOGA-FW-MA-01b) calls for the National Forests to “[i]dentify areas that have the inherent capability to sustain future old-growth forest (i.e. areas of likely climate or fire refugia) over time and prioritize them for proactive stewardship...[t]o enhance landscape and patch connectivity where old-growth patches are isolated.”<sup>55</sup> The Forest Service should revise the management approach to incorporate language from the clarification statement indicating that not all acres are intended to be managed to trend towards old-growth forest.<sup>56</sup> The suggested revision to NOGA-FW-MA-01b(v) follows:

To recruit and promote the development of future old-growth forests where current conditions in those areas are trending towards old-growth forest and have the inherent capability to sustain future old-growth, taking into consideration likely future environments.

Without the suggested revision or one of the Forest Service’s own, this Management Approach runs the risk of being applied as a blanket “to do” list across the National Forest and used to deter projects such as transmission, forest thinning projects, and other ROW maintenance activities.

#### **e. Plan Monitoring**

SRP requests several edits to ensure the plan monitoring components are consistent with the 2012 planning rule and to provide additional clarity. The 2012 planning rule requires that “[t]he 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.*”<sup>57</sup> Plan Monitoring 1 (NOGA-FW-PM-01) states “[w]ithin two years, include the areas identified and prioritized for the retention and promotion of old-growth forests in the Adaptive Strategy for Old-Growth Forest Conservation in the biennial monitoring report or the broader scale monitoring strategy to be updated as conditions change.”<sup>58</sup> SRP suggests the qualifier “[w]ithin two years, *dependent on the fiscal capability of the unit,...*” This addition would facilitate alignment of Plan Monitoring 1 with the requirements in 36 C.F.R. 219.1(g).

Plan Monitoring 2 (NOGA-FW-PM-02) calls for the report on old-growth to include, among other things, “updates on measurable changes in unit-level old-growth forest when new national inventory information is available.”<sup>59</sup> SRP suggests that the “What Changed” statement include updates regarding uncontrollable forces like wildfire, insect, and disease outbreaks, or litigation that prevented appropriate management actions, not only old-growth forest conditions.

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<sup>55</sup> *Id.* at 23.

<sup>56</sup> *Id.* at 23.

<sup>57</sup> 36 C.F.R. 219.1(g).

<sup>58</sup> DEIS at 35.

<sup>59</sup> *Id.* at 36.

**V. INCLUDE ADDITIONAL DATA TO FURTHER DISCLOSE EFFECTS TO THE TIMBER INDUSTRY**

The Forest Service should use its access to timber data to improve the adequacy of the Amendment’s description of effects on the timber industry. The National Environmental Policy Act (“NEPA”) requires agencies to consider all reasonably foreseeable effects of the proposed action.<sup>60</sup> Further, “[g]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.”<sup>61</sup> In *WildEarth Guardians v. Bernhardt*, the magistrate judge found that the Office of Surface Mining (“OSM”) failed to take a hard look at the indirect impacts of non-greenhouse gas emissions by failing to discuss the actual effects of non-greenhouse gas emissions and failing to consider both the local and national impacts of burning coal.<sup>62</sup> The magistrate judge determined OSM provided a quantified “tally” of the anticipated pollution emissions from burning coal.<sup>63</sup> This tally was insufficient to describe the actual effects of that additional pollution on human and environmental health.<sup>64</sup> The Montana district court agreed with the magistrate judge’s conclusion.<sup>65</sup> The court found this broad description inadequate given the information available to the agency.<sup>66</sup>

Like in *WildEarth Guardians*, the Forest Service access to timber data, organized by National Forest and can use this data to inform the public of effect to the timber industry at the National Forest scale. In the DEIS, the Forest Service states timber industry is unlikely to be impacted by the amendment, although regional impacts may occur.<sup>67</sup> The description of effects to the timber industry discusses nationwide effects and Alaska.<sup>68</sup> Further, the Draft Social, Economic and Cultural Impacts Analysis Report do not describe how the Amendment will impact each forest.<sup>69</sup> Rather, the DEIS looks at the effects at a national and regional scale (mainly focused on Alaska) but to improve communication of the effects to the general public by forest should be disclosed since data is available. A more detailed description of the effects to the timber industry will allow the public to discern how, for instance, the Amendment impacts the Tonto National Forest in comparison to the Chattahoochee-Oconee National Forest.

**VI. CONCLUSION**

SRP reiterates its support for management of our nation’s forests in the face of climate change, however, the Forest Service should be cautious in promulgating the Amendment.

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<sup>60</sup> *Presidio Golf Club v. National Park Serv.*, 155 F.3d 11153, 1163 (9th Cir. 1998).

<sup>61</sup> *Conservation Cong. v. Finely*, 774 F.3d 611, 621 (9th Cir. 2014).

<sup>62</sup> *WildEarth Guardians v. Bernhardt*, No. CV 17-80-BLG-SPW, 2021 WL 363955, \*7 (D. Mont. Feb. 3, 2021).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> DEIS at S-14.

<sup>68</sup> *Id.* at 106, 117, 120, 121.

<sup>69</sup> U.S. Dept. of Ag., Draft Social, Economic and Cultural Report (June 2024).

Recognizing that old-growth is currently increasing, SRP believes the No Action Alternative should be the preferred alternative. Ultimately, if the Forest Service must select an alternative, SRP urges the selection of Alternative 4 as the preferred alternative, but only applied prospectively because it provides for a larger toolbox to address old-growth management. We look forward to continuing to work with the Forest Service to ensure that National Forest System lands remain healthy and fulfill their purpose for generations to come. Please feel free to contact me should you have any questions regarding our comments at [Elvy.Barton@srpnet.com](mailto:Elvy.Barton@srpnet.com).

Sincerely,

A handwritten signature in black ink that reads "Elvy Barton". The signature is written in a cursive, flowing style with a long horizontal tail stroke extending to the right.

Elvy Barton  
Water and Forest Sustainability Senior Manager