
September 20, 2024

Randy Moore
Chief
United States Forest Service
201 14th ST SW
Washington, D.C. 20250-1124

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

Re: Comments on the U.S. Forest Service Draft Environmental Impact Statement – Land Management Plan Direction for Old Growth Forest Conditions Across National Forest System

Dear Chief Moore,

The National Rural Electric Cooperative Association (“NRECA”) respectfully submits these comments in response to the U.S. Forest Service (“USFS” or “the Service”) Draft Environmental Impact Statement (“DEIS” or “Amendment”) Regarding Land Management Plan Direction for Old Growth Forest Conditions Across the National Forest System.¹

NRECA is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. America’s electric cooperatives are owned by the people that they serve and comprise a unique sector of the electric industry. From growing exurban regions to remote farming communities, electric cooperatives power 1 in 8 Americans and serve as engines of economic development for 42 million Americans across 56 percent of the nation’s landscape.

Electric cooperatives operate at cost and without a profit incentive. NRECA’s member cooperatives include 63 generation and transmission (“G&T”) cooperatives and 832 distribution cooperatives. The G&Ts generate and transmit power to distribution cooperatives that provide it to the end of line co-op consumer-members. Collectively, cooperative G&Ts generate and transmit power to nearly 80 percent of the distribution cooperatives in the nation. The remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service.

The nature of electric cooperatives’ service territories, and their local, member-driven structure empowers them to play a vital role in transforming communities, innovating to meet tomorrow’s energy demands, and

¹ 89 Fed. Reg. 52040 (June 21, 2024).

being good stewards of the environments in which they operate. As such, electric cooperatives have a vested interest in protecting the land, water, species, and air in the communities that they serve.

Indeed, the remote nature of cooperative service territory means that cooperatives have more special use authorizations across our nation's public lands than many other electric utilities. Electric cooperatives have long worked closely with the U.S. Forest Service ("USFS") to be good stewards of our public lands in and around their rights-of-way, while ensuring the reliability and affordability of the electric system.

Electric cooperatives utilize USFS-managed lands to deliver a reliable and affordable supply of electricity to rural communities across the nation, many of which are persistent poverty counties. These communities depend upon our nation's public lands for their livelihoods, and they rely upon a well-organized, predictable forest planning process to understand and, importantly, to weigh-in on the management of lands that belong to the American people, and upon which so much of our success as a nation depends.

This EIS process will apply to the entire National Forest System, guiding amendment processes for over 120 national Forest Land Management Plans ("LMPs" or "forest plans") in every USFS region. These national forests include electricity infrastructure and rights-of-way ("ROW") that are critical to electric reliability throughout the entire nation. This new management direction will necessarily impact operations and the reliability of the electric grid throughout the country. It is important that the USFS recognizes the magnitude of this rulemaking and its potential impacts on all Americans, who depend upon a stable, reliable, and affordable supply of electricity to power their daily lives.

The USFS must utilize this EIS and forest plan amendment process to improve, rather than further hinder electricity generation, transmission, and distribution operations. NRECA encourages the USFS to thoroughly evaluate potential impacts on electricity operations, reliability, and affordability and to mitigate and minimize negative impacts on utility special use authorization holders. NRECA further reminds USFS about its Multiple Use and Sustained Yield ("MUSY") mandate, that requires the Service to manage our national forests for multiple uses. Rather than prohibit or restrict uses of our forests, this Amendment should ultimately allow for enhanced, sustainable, well-organized use of our public lands and forests.

In addition to the comments contained in this letter, NRECA also incorporates by reference comments that NRECA filed with the USFS on May 8, 2023 regarding special use authorizations and strict liability.² That letter, reflective of our many meetings and interactions with USFS over recent months and years, provides further insight about NRECA's continuing, urgent concerns regarding wildfire, vegetation management, grid hardening and expansion, and maintenance operations in our national forests. It is paramount that USFS resolve those existing concerns related to permitting and approval delays, inconsistent implementation of guidelines, and confusion between the regions.

² Letter from Megan A. Olmstead, Regulatory Affairs Director, NRECA to Reginal Woodruff, Acting Asst. Dir., U.S. Forest Serv. (May 8, 2023).

NRECA COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

Management Shift from Multiple Use and Sustained Yield

NRECA has long partnered with the U.S. Department of Agriculture (“USDA”) and USFS in promoting economic development and higher standards of living in our rural communities; and in fostering the good stewardship of our natural resources and public lands. Among forest stakeholders, electric cooperatives, perhaps more than most, understand at a very real, tangible level, the importance of forest health. As ROW holders subject to strict liability for wildfires on national forest lands, we are impacted by the health of the forests at large and are necessarily concerned that ever-increasing wildfire risk will make it increasingly difficult to obtain insurance and access to capital in many regions; to expand and harden the grid to accommodate growing demand for electricity service and supplies; and to continue affordably and reliably serving rural America.

The condition of the forests in which we operate directly affects our members’ ability to safely, affordably, and reliably deliver electricity to 56% of the nation’s landmass. Cooperatives inspect their lines regularly and conduct ongoing vegetation management and grid hardening work. They bear witness to the detrimental effects of invasive insects, unmanaged undergrowth, and decreased presence of diverse, resilient tree species.³ However, unlike many other stakeholders, cooperatives are often subject to liability for adverse events arising from those poor conditions beyond our rights-of-way, including wildfires.

As USFS itself notes, escalating risk of severe wildfire events is no longer just a western concern, but is a nationwide threat, largely due to declining forest health conditions.⁴ We have long partnered with USFS to reduce barriers to cooperative wildfire mitigation along our rights-of-way, including the need for expedited approvals for vegetation management and grid hardening projects, felled timber removal, and limitations on strict liability. We share USFS’s desire for healthy, resilient forests that can enable us to operate safely and reliably, while reducing risk.

This Amendment however, and USFS’s preferred alternative, No. 2, may not achieve the goal of healthier, more organized forests. Instead, this Amendment signals a fundamental policy shift away from MUSY which has for decades guided the management and use of national forest lands by empowering *use* of forests by multiple stakeholders, and instead focuses on conservation and *non-use* of our forest lands. NRECA is deeply concerned about the magnitude of this rulemaking and how this fundamental shift in management priorities will impact electric reliability and our projects going forward. Indeed, the DEIS states that “every Forest Service project of activity must be consistent with” the Amendment, while failing to mention whether this Amendment is consistent with MUSY.⁵

This is particularly concerning since two of the three action alternatives may *decrease* forest health and increase wildfire risk. USFS’s preferred alternative, No. 2; and the most restrictive alternative, No. 3, both place restrictions on vegetation management of old growth and mature areas, including prohibitions on timber-related stewardship. While Alternative No. 2 allows more flexibility in vegetation management operations,

³ See e.g. p. 72

⁴ DEIS at p. 72.

⁵ DEIS at p.7.

neither allow for a diverse array of management options. USFS acknowledges this may be counter to its goals in its summary to the DEIS, stating that “lack of large mill logging may hinder restoration and other vegetation management activities to improve ecological conditions in or near old growth areas, creating some uncertainty whether the lack of capacity for large log milling may exacerbate ecological risk.”⁶ If this is the case, USFS should not have selected Alternative No. 2 as its preferred alternative, as it may exacerbate, rather than improve, bad forest health conditions.

While NRECA is not specifically weighing-in on timber production issues, we recognize the importance of effective and diverse vegetation management options, including timber production, hazardous fuels reduction via proactive burns, and underbrush thinning/removal to forest health and wildfire risk reduction. We are concerned that Alternative No. 2 and Alternative No. 3’s restrictions on timber production and vegetation management operations could detrimentally affect the health of the forests in which we operate, and in which we can be held liable for wildfires and other adverse events. Alternative No. 3, in particular, allows for little vegetation management and, as USFS recognizes, could severely decrease forest health across all regions.⁷ NRECA strongly opposes Alternative 3.

Understanding that NRECA ultimately opposes this Amendment and forest plan amendment process, of the available action alternatives, NRECA favors alternative No. 4, which allows for timber production in old growth areas and indeed grants the most flexibility to both USFS and stakeholders to manage the forest for optimum health.

NRECA ultimately urges USFS to be mindful when finalizing the EIS, of its legal obligation to manage our national forests under the mandate of multiple use and sustained yield. If it must move forward with this process, we encourage USFS to select Alternative No. 4, which best enables existing major and principal uses, such as utility rights-of-way, to continue unhindered.⁸

Impact on Existing Cooperative Special Use Authorizations

USFS mentions throughout the DEIS that current special use authorizations would not be affected since the alternatives “allow for reasonable actions that would ensure the safety and reliability of operations or activities.”⁹ USFS then sets forth specific scenarios and qualifiers in which cooperatives would be allowed to conduct vegetation management in old growth and mature areas, while leaving most details related to utility operations out of the document entirely. This may cause unintended confusion for both the utility operator and USFS personnel charged with granting special use authorizations.

⁶ DEIS at p. S-14.

⁷ See DEIS pp. 74, 99 (vegetation management important to forest health and necessary to achieve objectives). See also e.g. DEIS at pp. S-10, 105-107 (Alt. No. 3 would increase hazardous vegetation).

⁸ 16 U.S.C. § 1604(e); 16 U.S.C. § 528; 86 Pub. L. 517; 74 Stat. 215 (1960). See also *West Virginia v. Env’tl Protection Agency*, 142 S. Ct. 2587 (2022) (Under the Major Questions Doctrine, Congress does not delegate to executive agencies issues of major political or economic significance).

⁹ See DEIS at pp. S-13, 103-04, 119, 121-22.

For example, Alternatives No. 2 and 3 would allow for the “cutting or removal of trees [. . .] when two qualifiers occur: 1) when said action is incidental to the implementation of a management activity not otherwise prohibited by the plan[. . .] and 2) the area – as defined by an ecologically appropriate scale—continues to meet the definition and associated criteria for old-growth forest after the incidental tree cutting or removal.”¹⁰ It then states that transmission lines are an example for “which incidental tree cutting or removing [could be] determined to be necessary or appropriate.”¹¹ Alternatives No. 2 and 3 also would allow for “removal of trees at risk of falling and causing injury to the public or damage to infrastructure such as [. . .] powerlines” in order to protect public health and safety.¹²

The lack of clarity presented by this language will lead to unnecessary confusion both on the part of utility operators and USFS personnel. It is still unclear as to whether USFS will impose new vegetation management restriction on existing special use authorization holders, including limitations on methods used to reduce hazardous fuels, including trimming and herbicide application.

Though we strongly oppose unnecessary new vegetation management restrictions, should USFS choose to proceed in this manner, NRECA requests detailed information about exactly what activities will be restricted, and why; as well as specifics about what mitigation or proactive management requirements will be placed upon our members. USFS should provide thorough analysis about how such restrictions and requirements will impact public safety, wildfire risk, affordability of electricity, and reliability of electricity service in each region.

Further, NRECA is concerned about how this Amendment and subsequent forest plan amendments will affect ROW access. Many cooperatives already find it challenging to obtain permission to access their ROWs for inspections, maintenance, and vegetation management activities and are concerned that these amendment processes will further limit access points and roadways. Under no circumstance should USFS limit a utility’s access to its ROW to conduct necessary maintenance, operations, and grid hardening work. These activities are critical to the cooperative mission to serve a safe, reliable and affordable power supply to end-of-line consumer-members.

Given existing delays and inconsistent implementation of authorizations to conduct both routine and emergency vegetation management activities, NRECA is concerned that this Amendment will lead to further confusion and delay at the regional levels. It is critically important that USFS specifically identify utility special use authorizations, and related operations and maintenance, including vegetation management, grid hardening processes, and right-of-way access roads as being exempt from prohibitions on vegetation management in old growth and mature areas.

Further, NRECA is concerned about additional delays that this Amendment will impose on our operational approvals. For example, under the preferred alternative, No. 2, in order to conduct regular vegetation management activities in old growth areas, the USFS would require a management-level determination that

¹⁰ DEIS at p. 103-04.

¹¹ *Id.*

¹² DEIS at p. 104.

“incidental tree-cutting or removal are necessary [. . .] includes the rationale in a decision document or supporting documentation.”¹³

As the USFS is well-aware, cooperatives already face time-consuming delays when seeking approval for routine and emergency vegetation management and grid hardening operations. NRECA has repeatedly requested in multiple meetings, comment letters, and within its role on the Electricity Subsector Coordinating Council that USFS utilize its existing authorities to expedite approval processes for critical, wildfire risk-reducing vegetation management and grid hardening work. Rather than use this Amendment as an opportunity to help stakeholders reduce wildfire risk by expediting approvals, USFS has added more bureaucracy to routine operations. NRECA once again requests that USFS include in this Amendment expedited approval processes for vegetation management and grid hardening operations within existing rights-of-way.

Each forthcoming LMP also should empower regional foresters to expedite utility vegetation management, grid hardening, and right-of-way access approvals; and allow for utilities to remove felled timber from in and around their rights-of-way without a timber sales agreement or onerous disposal requirements.

As USFS itself notes multiple times throughout the DEIS, wildfire is a leading threat to old growth and mature forest areas. The risk of wildfire is escalating across the nation and wildfire mitigation activities are more critical than ever. USFS, however, has delayed countless cooperative efforts to harden the grid and reduce wildfire risk, including frequently requiring full National Environmental Policy Act studies to replace wooden poles with metal poles and to underground lines.

USFS should be using this Amendment to expedite grid hardening processes, but instead, it is taking some of the most effective wildfire mitigation activities off the table completely. NRECA is opposed to all of the alternatives’ prohibition on ground disturbing activities.¹⁴ Line undergrounding, in some geographic areas, is an effective wildfire mitigation tactic and also can help facilitate the reliable delivery of broadband and electricity to rural communities. NRECA encourages USFS to reconsider its outright prohibition on ground disturbances in old growth areas, and to allow for electricity and telecommunications line undergrounding in existing and future rights-of-way moving forward.

Impact on Future Special Use Authorizations

While NRECA appreciates USFS’s stated intent to limit the impact of this Amendment on existing cooperative special use authorizations, we oppose the limitations placed upon future special use authorizations in Alternatives 2 and 3. The DEIS states, “new special use authorizations [. . .] would require consideration for compliance with the old growth amendment. If approved [. . .] the responsible official may decide to forego the activities altogether, which could have consequences for lands special uses.”¹⁵

¹³ DEIS at p. 31.

¹⁴ DEIS at p. 119.

¹⁵ *Id.*

The increasing electrification of our daily lives is creating unprecedented electricity demand. Prohibiting new special use authorizations across old growth areas in nearly every national forest unless they are “consistent” with old growth conservation purposes not only exceeds USFS’s authority under the doctrine of MUSY, but it will constrain cooperatives’ ability to meet growing electric demand, incorporate new and renewable sources of energy into the grid, and to ensure continued electric reliability across 56% of our nation’s landmass, including areas in and around our nation’s forests.

We urge USFS to rethink the limitations it has placed on new utility special use authorizations in old growth areas, and to include specificity and flexibility for new utility special uses in old growth areas in the Final EIS and every forthcoming forest plan amendment.

USFS’s Abbreviated EIS and Stakeholder Engagement Process

A well-organized forest plan amendment process with ample opportunity for stakeholder input is critical for understanding the real-world impacts of all potential plan amendment alternatives; and for ultimately creating a forest plan that balances forest health and stakeholder needs. NRECA is concerned about the abbreviated timeline utilized in this EIS process, and about the consequences that undertaking over 120 significant, foundational forest plan amendments will have on not only our members’ operations throughout the nation, but on the resources of USFS itself.

As USFS itself recognized in the DEIS, the rushed nature of this process has resulted in fewer opportunities for meaningful stakeholder engagement, and more negative public attitudes about USFS land management planning.¹⁶ And yet, USFS rushed this EIS process anyway via an abbreviated scoping period, and a short, 90-day comment period. The Final EIS is expected to be published by the end of the year, mere weeks after the public comment period closes, leaving little time for USFS to thoroughly review the high volume of comments from impacted stakeholders that it no doubt will receive.¹⁷ Given the national scale of this EIS and its fundamental policy shift away from MUSY to conservation, a longer EIS process is required to allow for meaningful stakeholder engagement, and more informed agency decision-making.

As USFS prospectively contemplates the wholesale amendment of over 120 LMPs in the near term, NRECA requests that each forest plan amendment process is treated not with urgency, but with an eye toward transparency, ample opportunity for public engagement, and thorough review of all comments and factors before finalizing any amendments. It should take as much time as is necessary to ensure that the resulting plan amendments are thorough, and that the public has had the opportunity to carefully review and participate. NRECA requests that USFS provide detailed information in the Final EIS about when it will initiate each forest plan amendment process so that cooperatives can prepare to engage with the Service in a timely fashion in their regions.

¹⁶ DEIS at p. 116. (“[A] national-level amendment will have consequences for the public attitudes about forest land management planning” and “[O]pportunities for local involvement may be reduced relative to typical amendment processes.”)

¹⁷ 88 Fed. Reg. 88042.

Ample public meeting opportunities, with convenient locations throughout each USFS region and online, should be held in the coming months as USFS develops its internal guidance regarding this Amendment, and as it begins the forest plan amendment process across the nation. And far more than 90 days will be required for public comment on each proposed amended forest plan. NRECA encourages USFS to take a deliberate, unhasty, thorough approach in this matter, to ensure that the resulting management of our nation's forests is effective and workable for all stakeholders.

Our members are experts in management and health of vegetation in their respective service territories. As such, NRECA is encouraged by USFS's indication that it will create regional adaptive management plans for each LMP process. NRECA requests clarification about what the adaptive management plans will entail, and which stakeholders will be allowed to participate in this process. NRECA urges USFS to include cooperatives in these collaborative processes and to utilize cooperative expertise about each respective forest to inform USFS forest management plan amendments.

Impact on USFS Staffing and Delays

NRECA is deeply concerned about how amending over 120 forest plans in the near term, with a two-year deadline for completion of local adaptive management plans; and the revision of every plan before 2040 will impact USFS's already strained staff and timeliness of permitting and approval processes. Even one forest plan amendment process can be time-consuming and work intensive for the Service and stakeholders alike. Over 120 forest plan amendments will no-doubt require the full attention of countless USFS employees.

Improved USFS staffing and more timely responses and approvals is a top concern for NRECA members across the nation. Delayed USFS processing and approvals for special use authorizations, vegetation management, grid enhancement, expansion, and hardening projects, and other activities on USFS rights-of-way has already impacted reliability by delaying the delivery of electricity and broadband service to some parts of rural America and can increase project costs and safety concerns. Please advise NRECA about how USFS intends to fund, time, and staff these significant amendment processes, while improving existing delays and arduous approval processes in all regions.

USFS Must Conduct Regulatory Flexibility and Statement of Energy Effects Analyses

Rural electric cooperatives are not-for-profit entities. They often have constrained financial resources and operate on limited margins, even as they provide reliable and affordable electric service to 56% of our nation's landmass and serve more public lands and persistent poverty counties than any other type of electric utility.

Because of cooperatives' unique business model and service territories, any increases in operating, expansion, or compliance costs across national forests must ultimately be shouldered by the member consumer via increased rates that many electric cooperative member consumers may struggle to afford. Even modest changes to how ROWs are operated or permitted have the potential to increase electricity rates, or to jeopardize project

financing in some member service territories. This may chill investment in grid hardening and expansion that is necessary to accommodate new sources of energy and increased electrification.

To account for these serious impacts, USFS should complete a thorough Regulatory Flexibility Act analysis, and a Statement of Energy Effects for this EIS, and for each subsequent forest plan amendment.¹⁸ These analyses ensure that the government and stakeholders understand and consider the effects on electricity availability, affordability, and reliability. USFS should work to minimize such impacts in this EIS process.

CONCLUSION

NRECA urges the USFS to withdraw this EIS, and instead focus its efforts on improving staff levels; clarity of communication and implementation of laws and regulations across regions; and expediting approvals for routine, wildfire-risk reducing activities like utility vegetation management, grid hardening, and emergency hazard tree removals.

Should USFS then wish to implement a new, nation-wide directive that shifts the very foundation of its management focus from the long-held Doctrine of Multiple Use and Sustained Yield, it should do so via a thorough, deliberately paced EIS process which allows for ample stakeholder involvement, clear definitions, and full inclusion and consideration of feedback from those who live and work in our forest communities.

If USFS chooses to move forward with this ill-advised policy, NRECA encourages it to select the least restrictive alternative, No. 4, which would allow for the greatest amount of flexibility in USFS management and wildfire-mitigation efforts, and for stakeholder uses of lands.

Should USFS select its preferred alternative, No. 2, it should ensure that guidance it develops to direct the implementation of this EIS across the nation includes specific exceptions for utility operations; and processes by which regions can expedite our members' vegetation management, right-of-way access road development, and grid hardening project approvals. NRECA strongly opposes Alternative 3, which, as USFS notes, would result in deleterious effects on land health and allows for the least flexibility in both USFS management and in stakeholder uses of old growth areas.

At this time of high wildfire risk and increased electrification of our daily lives, NRECA urges USFS to refrain from adding unnecessary complexity, cost, and mandates on electricity infrastructure that may chill investment and grid hardening processes. Reliable and affordable electric service is a foundation for rural economic prosperity and development across the nation. Any increased costs or liabilities in the production and distribution of electricity, or any further challenges in vegetation management, grid hardening, or maintenance operations resulting from this Amendment, and the resulting forest plan amendments could impact rates, decrease safety, and have far reaching effects throughout entire communities and regions.

¹⁸ Regulatory Flexibility Act, Pub. L. 96-354; 94 Stat. 1164 (1980); Exec. Order No. 13211 (2001). *See also* Exec Order No. 12866 at §§ 3(e) and 3(f) (1993).

USFS should utilize this process and the resulting forest plan amendment process to ensure that potential impacts on electric reliability, affordability, and safety are addressed and the Final EIS and forthcoming LMPs minimize those impacts in clear, concise detail. USFS must ensure that it balances its aim of conserving “old growth” forest areas, with the many uses of our forests, including electricity transmission and distribution, that are necessary to sustain healthy, thriving communities and, ultimately our nation’s success.

NRECA appreciates the opportunity to inform the USFS about our concerns regarding this DEIS and forest plan amendment process. We welcome the opportunity to discuss our comments and to continue working with you and your team. Please contact Megan Olmstead via email at Megan.Olmstead@nreca.coop if you have any questions regarding these comments.

Respectfully,

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