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September 20, 2024

Thomas J. Vilsack, Secretary of Agriculture
1400 Independence Ave. SW
Washington, DC 20250

Submitted electronically via: CARA

RE: Land Management Plan Direction for Old-Growth Forest Conditions Across the National Forest System

Dear Secretary of Agriculture Vilsack,

On behalf of Shoshone Conservation District (District), representing concerned citizens and users of National Forest Land in Northwest Wyoming, please accept the following comments on the National Old-Growth Plan Amendment (NOGA) and associated Draft Environmental Impact Statement (DEIS). Our comments respond to the notice of availability, EIS No. 20240110, from the United States Department of Agriculture (USDA), Forest Service.

It is our understanding that the intent of the NOGA is to amend all land management plans for units of the National Forest System (NFS), include consistent direction to conserve and steward existing old-growth forests, recruit future old-growth forest conditions, and monitor their condition across planning areas of NFS.

Interest Justification

Following the devastating American Dust Bowl of the 1930s, all U.S. state governors signed into law an act giving states a directive and guide to create conservation districts, and listed powers and responsibilities of such conservation districts. By July 1, 1945, all 48 states had passed district-enabling acts. Conservation districts across the nation have continued developing long-term goals focused on locally led, voluntary conservation and providing leadership in communities.

The Wyoming State Legislature passed an enabling act in March of 1941 establishing conservation districts in Wyoming. The Shoshone Conservation District was formed in 1945, and covers the northern half of Big Horn County, Wyoming. The law clearly states that conservation districts are legal governmental subdivisions of the state of Wyoming (Wyo. Stat. §§ 11-16-102(a)(v), 11-16-113(c)). Conservation districts are authorized (Wyo. Stat. §§ 11-16-101 et. seq.) to implement soil, water, and natural resource conservation projects and programs, including but not limited to, promoting the wise use of Wyoming's natural resources, preserving and enhancing wildlife habitat, protecting the tax base, and promoting the health, safety, and general welfare of the citizens of this state through a responsible conservation ethic. Wyoming Law provides authority for the development of conservation district land use or resource plans. Each conservation district also has authority to develop long term strategic plans and watershed plans (Wyo. Stat. §§ 11-16-103(b), 11-16-122(b)(v)(xvi)(xvii)).

Shoshone Conservation District provides local leadership for the long-term protections and improvement of natural resources. The District focuses on natural resource issues and solutions specific to the communities it represents while contributing to the economic stability of the communities it represents. We consistently work in partnership with landowners to protect the quality of Wyoming soil and water, enhance wildlife habitat, and promote wise use of all other natural resources, including National Forests in Wyoming (*Shoshone Cons. District Land Use Management & Resource Conservation Plan 2023*).

Conservation District and Forest Service Partnerships in Wyoming

Shoshone Conservation District maintains an active partnership with the Bighorn National Forest, part of which lies within the District's boundaries. Shoshone Conservation District currently sits on the Bighorn National Forest Steering Committee. Since 2005, the District representatives have actively participated in yearly meetings and field tours and provide valuable input in developing and implementing Forest plans. Relationships have been fostered through decades of working together on forest land management planning efforts. The work accomplished by this partnership is commendable and has proven to be a positive way to represent public interests on National Forest lands.

Active stewardship projects and partnership projects must not be hindered or stalled by NOGA. Active stewardship must continue to have any chance at all to address the major threats identified in the "Mature and Old-Growth Forests: Analysis of Threats on Lands Managed by the Forest Service and Bureau of Land Management report" – mortality from wildfire being the largest threat to old-growth conditions within the forests, followed by insects and diseases, and insect infestations.

Concerns and Anticipated Impacts

1. The Bighorn Forest is also impacted by the amount of roadless area it contains. These designations prevent implementation of any wildfire mitigation work to occur on large swaths of land causing unintended ecological, economic, and public health and safety consequences for the Forest, counties, communities, public, and wildlife. The Forest does not need another set of restrictions and obstacles to overcome when trying to do proactive co-stewardship projects with intended multiple-use benefits.
2. For the Bighorn National Forest, the priority is implementing fuels projects. Getting projects on-the-ground is difficult with the lack of time and financial resources. Capacity continues to be a huge problem and adding the NOGA will only exacerbate the problem. Staff and budget resources will be focused on meeting the deadlines of creating an Adaptive Strategy for Old-Growth management that will not result in expanding the ability to conduct proactive stewardship toward achieving ecological integrity of the entire Forests in Wyoming. We anticipate that it will place more restrictions on our current flexible and adaptive management approaches instead of increasing the local Forest leadership's management capacity.
3. The top-down approach in which NOGA is being implemented disregards the knowledge and experience of local Forest Service personnel and other conservation leaders. Years spent working in our local Forest has given local employees the expertise required to create and implement Forest plans. A "one-size-fits-all" amendment will create components in the Forest plan which will not only hurt our Forest but also cannot be feasibly implemented. Each Forest will develop its own Adaptive Strategy regarding NOGA, but the components required to be in each Adaptive Strategy negate flexibility local Forest leaders currently have in providing tailored management to the local Forest.
4. The timeline in creating NOGA has not allowed adequate time to for the USFS to receive input from the public, cooperating agencies, and local Forest personnel. This input is extremely valuable and required by law according to the National Environmental Policy Act (NEPA). This concern is shared by local Forest Service employees and was expressed at a recent Forest Service Steering Committee meeting.

Process, NEPA, and 2012 National Forest System Land Management Planning Rule

1. The District is basing its justification of the National Environmental Policy Act (NEPA) non-compliance on the pre-July 1, 2024, Council on Environmental Quality (CEQ) NEPA implementing regulations from 40 CFR Parts 1500-1508 (CEQ NEPA Regs July 2023). The NOGA DEIS was released on June 21, 2024, prior to the new CEQ July 1, 2024, implementing regulations effective date.
2. The District is basing its justification of the National Environmental Policy Act (NEPA) non-compliance on the pre-July 1, 2024, Council on Environmental Quality (CEQ) NEPA implementing regulations from 40 CFR Parts 1500-1508 (CEQ NEPA Regs July 2023). The NOGA DEIS was released on June 21, 2024, prior to the new CEQ July 1, 2024, implementing regulations effective date.

The District has been an active cooperating agency in NOGA development to the extent allowed by the Forest Service. Cooperating Agency agreements with the Forest Service for the NOGA were only offered hesitantly immediately prior to the DEIS release for public comment. The Forest Service held three informational meetings with Cooperating Agencies the month prior to the DEIS release. Forest Service actions do not begin to meet the intent of 40 CFR § 1501.8:

(a) The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any Federal agency with jurisdiction by law shall be a cooperating agency. In addition, upon request of the lead agency, any other Federal agency with special expertise with respect to any environmental issue may be a cooperating agency. A State, Tribal, or local agency of similar qualifications may become a cooperating agency by agreement with the lead agency.

The District shares the point previously made by Wyoming Association of Conservation Districts in a letter to Secretary Vilsack (Enclosure),

“The Service has informed us that the diminishment of the Cooperating Agency process is a direct result of a timeline you have mandated that places constraints on their ability to follow the requirements of NEPA. In fact, they have even gone so far as to state that they are following the ‘spirit’ of NEPA because they are unable to follow the law given these time constraints.”

The Forest Service has not met the intent nor the letter of the law for cooperation with Wyoming Conservation Districts under NEPA. From the December 20, 2023 Notice of intent to prepare an environmental impact statement to provide land management plan direction for old-growth forest conditions across the USFS, which inadvertently or intentionally excluded “local governments” from the list of entities it sought participation from as cooperating agencies, the Forest Service has rushed through the NOGA process and disregarded the cooperation that the law requires from the time the project was initiated until after the NOGA DEIS was released. When working with our national partners, we expect to respectively participate as co-developers to accomplish the items identified in 40 CFR § 1501.7(h)(4).

Cooperating agencies were not allowed to actively engage in any meaningful cooperation, development of setting milestones, issues identification, developing alternatives, or any of the usual proposal development or environmental analysis steps. Typically, cooperating agencies are partners in these processes to achieve the most successful outcome and reducing the risk of litigation by looking at the project through a local implementation lens. Cooperating agencies were given the exact same information as any member of the public and information was given at the exact same time.

Cooperation has improved significantly since the release of the NOGA. Shoshone Conservation District would like to thank the Forest Service for expanding the opportunities for meaningful engagement with the cooperating agencies throughout the summer. We are appreciative of the

small group sessions, office hours with Kathleen, and expanded dialog during the biweekly Cooperating Agency meetings. We have come a long way together in building relationships and have a better understanding of the issues and constraints placed on the planning process. The Association contends that if Cooperating Agencies could have been actively engaged earlier in the process to express implementation hurdles, local nuances, and community impacts, some of the inconsistencies, major points of concern, and litigation risk would have been reduced prior to the release of the NOGA DEIS.

3. Each of the Wyoming Conservation Districts has a natural resource management plan that identifies land use policies. The 2012 NFS Planning Rule codified that the responsible official shall review these policies and the review shall be displayed in the EIS for the plan.

“36 CFR 219.4 (b) Coordination with other public planning efforts.

(2) For plan development or revision, the responsible official shall review the planning and land use policies of federally recognized Indian Tribes (43 U.S.C. 1712(b)), Alaska Native Corporations, other Federal agencies, and State and local governments, where relevant to the plan area. The results of this review shall be displayed in the environmental impact statement (EIS) for the plan (40 CFR 1502.16(c), 1506.2).”

Shoshone Conservation District does not believe that by stating in Section 1.11.6, *“The Forest Service has requested that each Cooperating Agency provide applicable planning documents or policies related to forest management and any information regarding specific areas of conflict between their plan or policy and the proposed National Old Growth Amendment, and suggestions to address those conflicts.”* meets the intent or letter of the law. Shoshone Conservation District requests this required process occur and that we are given the opportunity to review the findings of the review prior to the release of the Final EIS for the NOGA.

Conclusion

In accordance with the concerns expressed above, Shoshone Conservation District supports Alternative 1 – the No Action Alternative – because it is the only current alternative that will allow for current proactive stewardship projects to continue being implemented without interruption. Alternative 2 – the Preferred Alternative – would expend large amounts of Forest Service and Cooperating Agency resources for the sole purpose of planning and meetings. It would distract from proactive stewardship and limit efforts to address the Wildfire Crisis Strategy.

Thank you for the opportunity to comment on this NOGA DEIS. The District plans to work cooperatively with the Forest Service in the future to create a durable solution to managing old-growth forests. The District continues to be committed to successful natural resource management. Wyoming Forests are an integral part of our communities. Local communities are connected to the Forests through the ecosystem services, economic benefit they provide, and the many recreation opportunities that provide our citizens with an enhanced quality of life.

We look forward to future cooperation.

Sincerely,

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