

Data Submitted (UTC 11): 2/2/2024 5:00:00 AM

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Organization: Coalition of Arizona/New Mexico Counties for Stable Economic Growth

Title:

Comments: Dear Director, These comments are being submitted by the Arizona Counties Apache, Cochise, Gila, Graham and Navajo and the New Mexico Counties Catron, Chaves, Eddy, Hidalgo, Lea, McKinley, Otero, Roosevelt, Sierra and Socorro along with strong support from the timber, farming, livestock, mining, small business, sportsman and outfitter industries as members of the Coalition of Arizona/ New Mexico Counties (Coalition). Our representation currently exceeds 700,000 in combined county populations. The Coalition has identified the following issues to drive the scope of analysis: Procedural Issues: 1. In the Coalition's comments for the Advanced Notice of Forest Service Proposed Rule Making [Attachment A] we stated, "The Coalition is wondering why county governments are not being invited into consultation concerning the proposal to develop new planning rules." The advanced notice and this scoping notice indicate that there was ongoing consultation and coordination with Tribes. This process should have been open to state and local governments as well. It appears that all our July 18, 2023 comments on the advanced notice were completely ignored and therefore, we request incorporation of them in their entirety into these comments. 2. The Forest and Rangeland Renewable Resources Planning Act of 1974 and implementing regulations at 36 CFR [sect] 219 are primarily directed at producing land use plans forest by forest and not through a one size fits all rule by the Chief or USDA Secretary. 3. Scoping has requirements for consultation and coordination. This notice of intent is contrary to the policy statement from the 1998 BLM. National Park Service and Forest Service clarifying cooperating and joint lead agency provisions under the National Environmental Policy Act. 4. We have surveyed our member counties as to Forest Service contact to inquire of their land plans content and policies for development of mature and old growth management. Their response until receipt of this Notice of Intent was that no contact has occurred. This is contrary to the requirements in 36 CFR [sect] 219.45. Comments on the Inventory Report Data Quality Act Issues "Appropriate Use of Data" "This initial inventory report is national in scale and presents estimates of old-growth and mature forests across all lands managed by the Forest Service and BLM. In preparing this report, published scientific literature was reviewed and scientists were consulted to understand the current work in this area and to get technical assistance in providing what was needed to respond to Executive Order 14072. Some cited references (e.g., "in preparation" notations) have not yet undergone scientific peer review and are therefore subject to change." "In preparation" was noted 15 times in the report and those citations are concerning key components to the report. The Data Quality Act demands a higher standard for information disseminated by a federal agency. Citing studies that have not been subjected to peer review is not encouraged by the Office of Management and Budget. "This definition [mature and old growth (words added for comments)] and initial inventory effort does not change existing LMP management direction. It is expected that a continual adaptive management process integrating new science, local conversations, and social processes will refine old-growth and mature forest working definitions over time." "In violation of the Data Quality Act requirements the report states, "Although the working definitions used in the current national-level inventory rely on measurable ecological characteristics, the narrative frameworks leave opportunities to integrate social, cultural, and economic values; a variety of ecosystem services; local and Indigenous Knowledge; and place-based meanings into the ways land managers define, identify, and steward old-growth and mature forests into the future." Therefore, there is no basis for the information produced in the report to accurately inform the public about the science used to generate the conclusions contained nor inform the public of how mature and old growth forests will be defined and managed into the future. Suggested Issues for Analysis in the EIS 1. Mature and old growth are not mentioned in the original purposes of National Forests. The Congressional intent was for forests to be managed to, "improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States;" Every act of Congress since that enactment states that nothing in those subsequent acts shall act in derogation of the original purposes of that act. The Forest and Rangeland Renewable Resources Planning Act lays out the forest plan requirements for the harvesting of timber. and Issues requiring analysis. a. It appears that Congress and past administration directions for national forests management is to produce timber for harvesting.

The key term in 16 U.S.C. 1604 Sec. 6 (m) is, "culmination of mean annual increment of growth." This is what defines a tree as optimum for harvesting. This mature tree has reached its maximum uptake of CO₂ in contrast with younger trees in the forest with high uptake of CO₂. This would indicate a tree stand suitable for timber production as intimated by last sentences in 16 U.S.C. 1604 Sec. 6 (k). and 16 U.S.C. 1602 Sec. 3 (d).b. Carbon storage by mature and old growth forests is mentioned five times in the Federal Register notice. We find no addition to the authorizing statutes by Congress that add carbon storage to the purposes of the national forests. Two of the three mentions of climate change in 16 U.S.C. 1600 to 1614 only authorize an analysis of the potential effects and an analysis of rural and urban forestry opportunities for mitigation of carbon buildup. and an accounting of the effects of climate change on forest and rangeland conditions. Analysis and accounting are not Congressional mandates for management actions that foreclose the established purposes.

c. The conversion of trees to lumber does not diminish the stored carbon. Once that lumber is incorporated into building and other wood products it is stored for many years even centuries. It is better to harvest those trees and put them into long term use rather than let them burn or decay.d. We can find no Congressional authorization for President Biden's Executive Order 14072. After years of restrictions on the harvest of old growth forests through litigation the only results have been increased catastrophic fires, tree densities, insect and disease outbreaks, reduced water flows, degradation of water quality and post fire flooding. In our comments on the Advanced Notice we noted, "The science is in and has been for some time that aggressive thinning and harvesting are what are needed to address the threat to the national forests." and "Given the limited management actions that can be taken in those lands we are left with. It is not certain that remedial management regimes can be developed that are ecologically, economically. and politically acceptable, especially for wilderness and other natural areas. However, this study suggests we have a fairly narrow 15- to 30- year window of opportunity for doing so. Otherwise, less environmentally acceptable processes (crown fires, large insect and disease outbreaks) will not only reduce tree densities and fuel loads but also kill most of the remaining trees of presettlement origin"e. The warnings from Dr. Covington's above reports are today's realities. Those who live in and in proximity to the national forests are treated annually to dense smoke for days on end and repeated threats of evacuation and loss of homes. If the Forest Service were truly interested in reduction of toxic and greenhouse gases, they would set about getting the forests into proper functioning condition that would reduce the threat of catastrophic fire events.f. The amount of old growth forest in wilderness, roadless areas and national monuments is 61,301,196 acres. This is 67% of the old growth forests on Forest Service lands excluding Alaska. These are the forests for Dr. Covington expression of greatest concern in the above cited article and scientific paper. The reason being these lands are not accessible for management treatments. There are no roads for access during fire events and in wilderness the use of mechanized equipment is prohibited. The proposed management changes to convert the remainder our forests to mature and old growth needs to be carefully examined for the potential for catastrophic environmental and economic impacts.g. As shown in our comments for the revision of the Gila National Forest in New Mexico there is a significant decline in properly functioning condition since essentially pre-European settlement. Since there wasn't any serious study of this evolution in real time there is no meaningful explanation for the changes in forest structure other than possibly fire suppression. This is something requiring a hard look in the EIS to determine what cause the increase in tree density particularly in seedling and young tree structure dominance.2. There are numerous mentions of the use of "indigenous knowledge" in the Notice. While the Federal Land Policy and Management Act (FLPMA) requires consultation with Tribes there is no ceding of management direction over the National Forests to Tribal governments. This transfer of management authority would require Congressional authority.Issues requiring analysis.a. The Notice states, "Additional purposes of this amendment are to: Establish a clear role for Indigenous Knowledge and tribal leadership in the proactive stewardship and furtherance of old-growth forest conditions on the National Forest System lands." There is no Congressional authorization to grant authority to the Tribes for proactive stewardship and furtherance of old-growth forest conditions. If the Forest Service is going to take this path they should provide citation of their statutory and regulatory authority to do so.b. We have previously commented on the addition of management to promote mature and old growth. As part of the proposed plan components and other plan content the Notice states, that for millennia, Tribal practices have contributed to maintenance of resilient forest structure. We find no references in the Notice showing what those management practices consist of or how they were implemented. Our experience is that Tribal governments are not willing to share with the public or federal agencies their sacred

site locations or cultural practices for those lands. Implementation by Forest responsible officials of historic Tribal management practices will lead to purely subjective decisions without the underlying reasoning or authority required for disclosure to the affected public and local governments.c. We support the Goal of recognition and respect of tribal sovereignty, treaties, Indigenous Knowledge and the ethic of reciprocity and responsibility to future generations. However, we find no Congressional authorization for enabling co-stewardship, including for cultural burning, prescribed fire and other activities. We do find that there are those requirements for States and local government coordination and participation in Forest Service management actions. These authorities should not be subordinated to Tribal considerations. Tribal sovereignty does not extend to the entirety of National Forest lands.d. Under the provision for adaptive strategy there is the provision for consultation with Tribes and Alaska Native Corporations. It also includes collaboration with States, local governments, industry partners and public stakeholders. The Forest Service is obligated under the planning statutes and regulations to make the attempt to achieve consistency with State and local government plans and policies. The Forest Service is also required to coordinate their planning and project implementation with these State and local governments. We again question the subordination of State and local government to Tribal governance and management of the National Forests. The definition of Indigenous Knowledge does not include citizens or the State and local governments within a specific geographic area. The residents within and adjacent to our national forests represent true local present and historic knowledge. These include members of the Tribes and Pueblos and should be the source of information on the conditions of and management of our forest resources.

e. The adaptive strategy calls for effectively braiding place based Indigenous Knowledge and Western science into management of old growth. We do not have peer reviewed place based Indigenous Knowledge on forest management. How can this pass muster of OMB guidance on implementation of the provisions of the Data Quality Act? These provisions are to ensure and maximize the quality, objectivity, utility, and integrity of information disclosed by federal agencies to the public. We respect the Tribes' discretion to not disclose particulars of their oral histories, religious practices, customs or locations of spiritual significance. However, that discretion does not lend to meeting the requirements of the Data Quality Act.ConclusionThank you for this opportunity to provide scoping comments on the Land Management Plan Direction for Old-Growth Forest Conditions Across the National Forest System. We are dismayed that the Forest Service failed to consider our comments on the Advanced Notice of Proposed Rule Making for inclusion in the Land Plan Direction.The proposed rules go far beyond the authorizations and prescribed procedures contained in Congressionally passed legislation governing forest planning and management. This is in violation of the U.S. Supreme Court's major questions doctrine that the Executive Branch cannot interpret ambiguous legislation to effectuate changes of national consequence. Instead, Congress must, at a minimum, provide clear authorization that it intends to grant the Executive Branch such far-reaching powers.For the above described procedural, statutory and regulatory violations we respectfully request that the Forest Service to not proceed with publication of the proposed changes and preparation of an Environmental Impact State until those issues are addressed.Sincerely,

1 Attachment A, Page 1

2 40 CFR [sect] 1501.9 Scoping.

3 BLM, National Park Service and Forest Service clarifying cooperating and joint lead agency provisions under the National Environmental Policy Act.

4 36 CFR [sect] 219.4 Requirements for public participation.

5 Mature and Old-Growth Forests: Definition, Identification, and Initial Inventory on Lands Managed by the Forest Service and Bureau of Land Management, April 2023 FS-1215a, Pg. 23

6 Federal Register /Vol. 2, No. 67 /Thursday, January 3, 2002 /Notices, OFFICE OF MANAGEMENT AND BUDGET Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information

Disseminated by Federal Agencies II. Agency Responsibilities Section 515 directs agencies subject to the Paperwork Reduction Act (44 U.S.C. 3502(1)) to[mdash] 1. Issue their own information quality guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information, [Emphasis added] including statistical information, disseminated by the agency no later than one year after the date of issuance of the OMB guidelines;

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8 Mature and Old-Growth Forests: Definition, Identification, and Initial Inventory on Lands Managed by the Forest Service and Bureau of Land Management, April 2023 FS-1215a, Pg. 12

9 16 U.S. Code [sect] 475 - Purposes for which national forests may be established and administered

10 National Forest System land and resource management plans 16 U.S.C. 1604 Sec. 6 (m)

11 16 U.S.C. 1604 Sec. 6 (k) Development of land management plans

12 Ibid

13 Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S. Code 1600 note, 1600 to 1614, Renewable Resource Assessment, 16 U.S.C. 1602 Sec. 3 (d)

14 Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S. Code 1600 note, 1600 to 1614, Renewable Resource Assessment, 16 U.S.C. 1602 Sec. 3 (a)

15 Renewable Resource Program; preparation by Secretary of Agriculture and transmittal to President; purpose and development of program; time of preparation, updating and contents, 16 U.S.C. 1602 Sec. 4 (5) (f)

16 Attachment A, Page 4

17 Arizona Ecologist Puts Stamp On Forest Restoration Debate, Page 2194 27 SEPTEMBER 2002 VOL 297 SCIENCE

18 Journal of Forestry, Vol. 92, No.1, January 1994

19 Mature and Old-Growth Forests: Definition, Identification, and Initial Inventory on Lands Managed by the Forest Service and Bureau of Land Management, April 2023 FS-1215a, Table 1, Page 6

20 Table 3 Page 15 Attachment A, Journal of Forestry, Vol. 92, No.1, January 1994

21 Federal Register /Vol. 88, No. 243 /Wednesday, December 20, 2023 /Notices

22 Ibid. Page 88045

23 Ibid. Page 88046 Proposed Plan Components and Other Plan Content To Add to Each Land Management Plan

24 Ibid. Page 88047 Goal[mdash]

25 Ibid. Page 88047 1. Adaptive Strategy for Old-Growth

26 36 CFR [sect] 219.4

27 Federal Register /Vol. 88, No. 243 /Wednesday, December 20, 2023 /Notices, Page 88047 1. Adaptive Strategy for Old-Growth Forest Conservation: (a) first bullet

28 Constitution Annotated - Analysis and Interpretation of the U.S. Constitution. Art II.S1.C1.7 Major Questions Doctrine and Administrative Agencies. Library of Congress.

Attachment: Coalition Comments on Proposed Old Growth Forest Plan Amendments2.docx - is the letter text above.

The letter also includes an attachment which is their previous comments on the Climate Resilience ANPR.