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First name: Jonathan

Last name: Haber

Organization:

Title:

Comments: (I have also attached as a separate document to show the italics and proper formatting.)

TO: Lolo National Forest Supervisor

FR: Jonathan Haber

DT: March 30, 2024

RE: Revised forest plan proposed action - sustained yield limit

I would like to identify the following issue for you to address during development of the revised forest plan: there is no discussion in the scoping letter or Proposed Action of how the planning process and revised forest plan will comply with these timber planning requirements of NFMA (I've italicized important terms throughout):

"The Secretary shall assure that such plans ... (2) determine forest management systems, harvest levels, and procedures" in light of "the availability of lands and their suitability for resource management." (§6(e), 16 USC §1608).

"The Secretary of Agriculture shall limit the sale of timber from each National Forest to a quantity equal to or less than a quantity that can be removed from such forest annually in perpetuity on a sustained-yield basis: Provided, That, in order to meet overall multiple-use objectives, the Secretary may establish an allowable sale quantity for any decade which departs from the projected long-term average sale quantity that would otherwise be established: Provided further, That any such planned departure must be consistent with the multiple-use management objectives of the land management plan. Plans for variations in the allowable sale quantity must be made with public participation as required by section 6(d) of this Act." (§13a, 16 USC §1611)

NFMA incorporated the principles of sustained yield of timber to prevent over-harvesting in the initial periods of the forest plan. It states that harvest levels must be determined by identifying the land that would be used for timber production (suitable acres) and the timber volume that would be yielded over time (including any reductions to accommodate other multiple uses), and projecting the maximum harvest that could be achieved per decade over time without declining between any two decades (in perpetuity). Because the parameters determining timber volume (suitable acreage and competing uses) would change for each forest plan alternative, the sustained yield limit would also be different.

The Proposed Action incorrectly interprets this requirement, and suggests an approach to planning that would obscure rather than disclose the effects on timber volume over time, and would frustrate the proper comparison of the effects of alternatives in the EIS. Here is the specific language from the Proposed Action.

Standard FW-TIM-STD 07:

"The quantity of timber that may be sold per decade from lands both suitable and not suitable for timber production shall not exceed the sustained yield limit of 270,000 CCF (~144 MMBF) per year in the proclaimed LNF ..."

(It's worth noting that the this proposed SYL is a 35% increase over the ASQ in the current forest plan, and a 250% increase over the 2020 sales volume reported in the most recent monitoring report.)

Definition of "sustained yield limit:"

"the amount of timber, meeting applicable utilization standards, "which can be removed from [a] forest annually in perpetuity on a sustained-yield basis" are addressed in the National Forest Management Act at section 11, 16 United States Code 1611, 36 Code of Federal Regulations 219.11(d)(6). It is the volume that could be produced in perpetuity on lands that may be suitable for timber production. Calculation of the limit includes volume from lands that may be deemed not suitable for timber production after further analysis during the planning process. The calculation of the sustained yield limit is not limited by land management plan desired condition, other plan components, or the planning unit's fiscal capability and organizational capacity."

While this definition alludes to the actual wording of NFMA (quoted above), it does not comply with that wording. The potential volume that "could be" removed is not the same as the projected volume which "can be" removed; the latter reflects harvest levels based on lands that are suitable for timber production and considerations of other multiple-uses. The proposed plan language also prevents the proper determination and disclosure of harvest levels that would depart from the non-declining flow requirement of NFMA. The specific requirements of NFMA violated using this approach would be the following:

- 1.The sustained yield limit must be based only on lands suitable for timber production, and not include other lands that may be suitable.
- 2.The sustained yield limit must be based on the multiple-use management imposed by the plan components for each alternative in order to account for the "the availability of lands and their suitability for resource management."
- 3.Harvest levels from lands suitable for timber production must be estimated over a long enough time period to demonstrate that they do not decline in perpetuity.
- 4.The land base used to compare actual harvest levels to the sustained yield limit, and ensure that they stay below it, must be the same land base that is used to calculate the limit.
- 5.If the planned harvest schedule from suitable lands declines in a future decade, that must be disclosed in the draft EIS for public comments.
- 6.Timber harvest from lands not suitable for timber production must not be included in this analysis (but must be addressed separately).

In addition to violating NFMA, the language in the Proposed Action would violate agency policy regarding timber volume scheduling in the Forest Service Timber Resource Planning Handbook. FSH 2409.13, Chapter 30, has not been updated since 1992, and it contains the original agency policy definitions, properly based on the NFMA language described above.

The Proposed Action also includes newly defined "harvest levels" that are intended as realistic projections of harvest. The "projected wood sale quantity" (PWSQ) and "projected timber sale quantity" (PTSQ) are projections of actual timber volume that, "is expected to be sold during the plan period from expected harvests for any purpose (except salvage harvest or sanitation harvest) on all lands in the plan area." The Proposed Action includes these projections as forest plan objectives. This approach blurs the historic distinction between suitable and unsuitable lands in contributing to meeting timber objectives or targets, and would make it likely that future targets for timber volume will be based in part on lands that are being managed for uses that are not compatible with timber production. This will increase pressure to harvest timber from those lands, and increase the importance to this planning process of accurate estimates of how much timber volume can reasonably be expected from them.

Therefore, please include a proper determination of the sustained yield limit for each alternative in the DEIS.

Discussion of the amount and effects of timber harvest for each alternative in the DEIS should be based on this limit, while taking into account any variation of expected harvest levels from the sustained yield limit on lands suitable for timber production, and any additional timber harvest expected from lands that are not suited for timber production. The assumptions behind future timber yields from lands not suited for timber production must be clearly disclosed.

If timber harvest levels are calculated differently for action alternatives than for the no-action alternative, that must also be thoroughly explained, including the rationale. Radical departures from past agency policies must include full public participation.

I have added background information below that would support legal arguments. (It also references the Planning Handbook language that the Lolo apparently based its proposed action on, which is invalid for the same reasons).

## BACKGROUND

Wilkinson and Anderson ("Land and Resource Planning in the National Forests," Oregon Law Review, Vol 64, No. 2, 1985) are considered a contemporary credible source of information on the history of forest planning, the development of NFMA and issuance of the 1982 planning regulations. They describe the policy prior to NFMA as determining future timber volume harvested based on 1) land that is considered suitable for timber production and 2) the amount of volume that can be expected from those lands in light of competing multiple uses. The total volume removed per decade was then limited based on a well-accepted concepts of sustained yield and non-declining even flow of timber harvest volume.

Lands suitable for timber production

With regard to which lands contribute to timber volume that is subject to the sustained-yield requirement, Wilkinson and Anderson state (emphasis added):

"The Forest Service has always placed a ceiling on each national forest's annual timber sales from the suitable land base to insure a perpetual yield of timber." (p. 122)

This link between lands suitable for timber production and a sustained yield ceiling is not specifically made in NFMA (perhaps because there was no perceived need to), but it was perpetuated in the 1982 planning regulations. Those regulations defined an upper limit to timber volume in terms of an "allowable sale quantity" (ASQ):

"The quantity of timber that may be sold from the area of suitable land covered by the forest plan for a time period specified by the plan." (1982 Regulations, §219.3)

The 2012 Planning Rule repeats the NFMA statutory language in 36 CFR §219.11(d)(6). It then requires the Forest Service to "include in the Forest Service Directive System procedures for estimating the quantity that can be removed annually in perpetuity on a sustained-yield basis ..."

However, in these Directives, the Forest Service defines the new upper limits on timber sales (the sustained yield limit, or SYL) as follows:

"The Responsible Official shall determine the sustained yield limit as the amount of timber that could be produced on all lands that may be suitable for timber production, assuming all of these lands were managed to produce timber without considering other multiple uses or fiscal or organizational capability. Assume the application of a management system (even-aged or uneven-aged) that is generally appropriate for the forest types and identify

the potential flow of timber that could be reasonably planned and scheduled for these lands.

"Because the land that may be suitable for timber production does not vary by alternatives considered in the environmental impact statement for plan development or revision; the sustained yield limit calculation is a single constant for the applicable national forest. Because the sustained yield limit represents the potential of volume that could be harvested in perpetuity, it does not vary by decade or any other time period." (§64.31)

Lands that 'may be suitable' for timber production are defined as those that are physically suitable based on criteria long-used by the Forest Service, and not legally withdrawn from timber production. The highlighted terms indicate that the Forest Service now views the phrase 'can be removed' as based only on these factors, and not on anything that a forest plan says. By establishing a ceiling based partly on lands that cannot be used for timber production, the agency indicates that it now believes that the sustained yield limit, and therefore harvest levels, do not need to be based on "suitability for resource management." (Note: NFMA allows timber to be harvested from lands not suited for timber production for "salvage sales or sales necessitated to protect other multiple-use values." This unscheduled volume is not subject to these volume scheduling requirements of NFMA.)

The result will be an expansion of the acreage from which the maximum potential timber volume would be calculated. The sustained yield limit for revised forest plans could be much higher than the sustained yield capacity in existing plans, and therefore effectively not a "limit" at all.

#### Projected timber yields

Wilkinson and Anderson also describe the way the Forest Service has addressed reductions in timber volume resulting from considering other multiple-uses. A need to reflect these constraints in the limits on timber removed was evolving in single-resource timber management plans prior to the passage of NFMA:

"The most important factor resulting in reduced allowable cuts under revised timber management plans is the reduction in land base available for full timber yields due to multiple use and environmental constraints which are being reflected primarily through classifications of land into categories." (Footnote 638, quoting another source)

"Timber management plans only considered land to be unavailable if it had been officially withdrawn from timber production. Since the multiple-use zones remained officially available, timber planners had no grounds for classifying the zone as noncommercial land. Therefore, prior to the 1970s the timber management plans assumed that commercial land within restrictive multiple-use zones would produce as much timber as any other commercial land." (Footnote 641)

"Since it was usually necessary that at least some trees remain uncut in order to protect those (non-timber) values, timber sales within the zones would normally yield less timber than anticipated by the timber management plans." (p. 221)

It follows that NFMA intended to fix this problem by requiring "one integrated plan" for each National Forest System unit, and requiring that "harvesting levels" be determined in light of all multiple uses (Section 6(f) and 6(e), respectively). According to Wilkinson and Anderson, the "ceiling on each national forest's annual timber sales from the suitable land base" is called the "harvest level, the annual allowable cut, or the allowable sale quantity (ASQ)" (p. 122). The goal of the NFMA language on volume limits was apparently to bring the limit on timber sale volume down to be in line with what was actually feasible and sustainable in a multiple-use environment. This limit would clearly vary depending on the forest plan management alternative selected.

1982 planning regulations implemented this goal. They defined "long-term sustained-yield capacity" (LTSYC) as:

"The highest uniform wood yield from lands being managed for timber production that may be sustained under a

specified management intensity consistent with multiple use objectives."

The approach in the Directives for the 2012 planning rule does not do this. The new sustained yield limit is calculated "without considering other multiple uses or fiscal or organizational capability." Again, the result would be a maximum potential timber volume that is much greater than under current plans, and will not limit harvest flow over time.

#### Timber volume limits

The approach in the Directives also leads to a misinterpretation of NFMA's restrictions on "departures" from non-declining even flow of timber (NDEF) in Section 13. NDEF requires the volume in each decade to be at least equal to the volume in the preceding decade. According to Wilkinson and Anderson, "the NFMA requires the Forest Service to follow NDEF policy, with some exceptions" (p. 125). There are few, if any, forest plans that have invoked the exception and adopted a declining schedule for timber volume since that is known to be controversial. NFMA specifies public disclosure requirements prior to their use.

The purpose of including limits on timber volume in NFMA was to maintain a perpetual sustained yield of timber by avoiding over-harvesting in the near term. It codified a policy adopted by the Forest Service prior to NFMA that was intended to deter rapid liquidation of existing old-growth. NFMA imposes these limits in two steps: the long-term sustained-yield calculation determines what a forest plan may establish as an upper limit to the amount of timber sold, and then that limit is included in the plan and applied to the volume actually sold on a decadal basis.

In the 1982 planning regulations, the 'allowable sale quantity' for a decade of the plan was based on a 'sale schedule' that could not be greater than the long-term sustained yield capacity (see definitions of 'sale schedule' and 'base sale schedule' in §219.3). They discuss a 'timber sale resource schedule' in §219.16, which includes exceptions, or departures from the (non-departure) base sale schedule. Departures are declines in harvest levels.

The 2012 Planning Rule did not include requirements for timber volume schedules. The NFMA term of art "allowable sale quantity" (used in §13) is not used in the Directives. Whereas the 1982 regulations defined a departure schedule in terms of NFMA's non-declining flow requirement, the planning Directives for the 2012 Planning Rule instead state that a departure is where a decade's timber volume (from all lands) exceeds the sustained yield limit (Planning Handbook §64.33).

The result of these new interpretations is a substantially different scheme for controlling the volume of timber harvested from a national forest than the one that was adopted in NFMA. Instead of using the sustainable capacity of lands managed for timber production in a forest plan as a ceiling on current levels from those lands, the Forest Service will now expand the land base from which timber volume may be planned, and create an artificially high ceiling for timber harvest levels from those lands. While projects must still be consistent with forest plan components, this is a recipe for maximum discretion for where and when to harvest timber, and there is no assurance that actual harvest levels could be maintained over time. There is no longer any sustained-yield reason to avoid scheduling large volumes for timber harvest in the near term, or acknowledging what NFMA defines as a "departure" by disclosing that timber volume is projected to decline in the future.

#### Timber planning regulations

The current federal regulations for the "Disposal of national forest timber according to management plans," found at 36 CFR §221.3, also include language based on NFMA related to sustained yield. The new approach under the 2012 Planning Rule Directives is also inconsistent with these regulations:

(a) Management plans for national forest timber resources shall be prepared and revised, as needed, for working circles or other practicable units of national forest. Such plans shall:

(1) Be designed to aid in providing a continuous supply of national forest timber for the use and necessities of the citizens of the United States.

(2) Be based on the principle of sustained yield, with due consideration to the condition of the area and the timber stands covered by the plan.

(3) Provide, so far as feasible, an even flow of national forest timber in order to facilitate the stabilization of communities and of opportunities for employment.

(4) Provide for coordination of timber production and harvesting with other uses of national forest land in accordance with the principles of multiple use management.

(5) Establish the allowable cutting rate which is the maximum amount of timber which may be cut from the national forest lands within the unit by years or other periods.

(6) Be approved by the Chief, Forest Service, unless authority for such approval shall be delegated to subordinates by the Chief.