

STEWARDS OF THE SEQUOIA

Division of CTUC non profit 501c3
PO Box 267
Lake Isabella, CA 93240

May 16, 2011

Forest Service Planning DEIS
C/O Bear West Company
132 E 500 S
Bountiful, UT 84010

Re: Comment on Proposed National Forest Planning Rule on DEIS 36 CFR Part 219

Dear Forest Service Planner,

Please consider the following comments in preparing the National Forest Planning Rule EIS and include these comments in the record.

Stewards of the Sequoia hope our comments will help the Forest Service as they seek to reduce the complexity and simplify the burdensome forest planning process. Stewards of the Sequoia is the largest on the ground volunteer organization in the Sequoia National Forest. Our award winning Trail Appreciation volunteer program has been recognized for the many environmental and community benefits our program has provided by the Forest Service, legislators and community groups. We are experts at making things simple, finding solutions and doing more with less. We have been intimately involved in numerous forest and other agency planning processes and have a good understanding of the problems with the planning process.

Along with Stewards of the Sequoia other local organizations endorse these comments and have signed this comment letter.

We find the greatest problem facing timely planning and implementation of needed management, projects or uses are:

1. Analysis paralysis which is an endless costly planning loop caused by undefined, onerous or conflicting forest planning requirements.
2. Needless litigation caused by overly numerous planning requirements, which provide fertile fields for litigants based on often meaningless procedural errors.
3. The overemphasis of Preservation above Multiple Use.

We all feel the most important factor in simplifying the Planning Rule and reducing litigation or analysis paralysis, is to eliminate all vague or ambiguous terms in the Planning Rule. At the same time it is important to ensure the Planning Rule does not stray from the authority under the National Forest Management Act of 1976 (NFMA) and the Multiple Use Sustained Yield Act of 1960 (MUSYA).

We have three main issues regarding the Forest Planning Rule:

1. **The environment** and the ability for the Forest Service to be able to actively manage Forest Service lands as needed in order to promote forest health and be good stewards of the Forest Service land as authorized under NFMA & MUSYA without burdensome legal or bureaucratic processes.
2. **The economy** and the ability for our National Forests to provide timber, recreation, tourism and jobs as authorized under NFMA & MUSYA without burdensome legal or bureaucratic processes.
3. **The public**, where the National Forest provides abundant public access for dispersed recreation in all forms to allow people to reconnect with nature and recharge as authorized under NFMA & MUSYA without burdensome legal or bureaucratic processes.

We are concerned that the current draft of the Forest Planning Rule will harm the environment, the economy and the public due to adding new restrictive considerations and criteria to the planning process. This will require additional workload instead of reducing the burden and will cause analysis paralysis and needless litigation instead of simplifying the planning process and encouraging needed management.

We feel there are ample and numerous environmental requirements already in place which can adequately protect our forest resources without those which have been newly created in the DEIS Forest Planning Rule.

We find the Forest Service lacks the statutory authority granted under the NFMA or MUSYA for the new restrictive considerations and criteria in the proposed rule and therefore these considerations have no place in the Forest Planning Rule. We describe some issues in more detail in this comment letter. The Proposed Rule has failed to meet the requirements of the Forest Planning Rule as set forth in the overview (section 2) of the proposed rule.

Lastly, a wise person in the Forest Service stated the Forest Service never has the funding needed to implement any of the projects it needs to accomplish, yet somehow these projects get done. Funding should not be a determining factor for projects. We find truth in that statement and are concerned the new requirement for economic sustainability in the Planning Rule will hamstring the Forest Service, due to a perceived lack of funding or lack of guaranteed funding. After all who can predict what the future holds. Requiring the Forest Service to guarantee future conditions and funding under the guise of being sustainable is unreasonable.

In order to fulfill the above and address comments provided in this letter, we find Alternative C as identified in the Planning Rule DEIS is best where the Forest Rule would be: *“(C) the minimum to meet the National Forest Management Act (NFMA) and purpose and need”*

Thank you for this opportunity to be involved and of assistance to the Forest Service in the revision of the Forest Planning Rule.

Sincerely,

Chris Horgan, Executive Director
Stewards of the Sequoia
PO Box 267
Lake Isabella, CA 93240

Ed Waldheim, President
California Trail Users Coalition
3550 Foothill Blvd
Glendale, CA 91214 1828

Ron Schiller, Chairman
High Desert Multiple Use Coalition
PO Box 1167
Ridgecrest, CA 93556

Jim McWhorter, Board
Southern Sierra Fat Tire Association
2001 Columbus Ave Suite B
Bakersfield, CA 93305

Cheryl Borthick, President
Kernville Chamber of Commerce
PO Box 397
Kernville, CA 93230

Jack Patterson, President
Kern Off Highway Vehicle Association
381 Owl Rd
Bakersfield, CA 93308

Jon Aichele, Land Use Chairman
Bakersfield Trailblazers
3810 Phaffle Dr
Bakersfield, CA 93309

"Since being founded in 2004, Stewards of the Sequoia continues to be the largest on-the-ground organization of volunteers in the Sequoia National Forest. Our crews have maintained over 1,300 miles of trails and have planted hundreds of trees in reforestation projects. We represent in excess of 2000 members whose activities include camping, hunting, fishing, hiking, mountain biking, motorized recreation, boating, windsurfing, rock climbing and horse riding"

Promoting Responsible Recreation & Environmental Stewardship

Table of Contents

Planning Rule Will Constrain Actions, Projects and Activities	6
Public Participation Will Be Denied	6
DEIS Does Not Meet Goal To Be Clear, Efficient Or Effective	6
Section 219.8 Sustainability Issues	7
Sustainable Recreation Cannot Be Defined	7
Overarching Objective	8
Eight Principles Not Based On Authorized Standards, Violates NEPA	8
Substantive Principles for a New Rule	9
Process Principles for a New Rule	9
Congressional Concerns Not Addressed	10
Planning Rule Goes Beyond Authority	11
New Criteria Not Authorized Under NFMA	12
Recreation Not An Aspect of Sustainability	13
Public Demands Recreation As Important Aspect Of Planning	13
Recreation Should Not Be Qualified	14
Decision Document Must State What Plan Components Are Designed To Do	14
Cost Benefit Analysis Shows Agency Bias	15
Alternative C Most Cost Effective And Meets MUSYA & NFMA	16
Climate Change Has Been Occurring Since The Beginning Of Time	16
Stressors And Landscape Scale Planning Not Authorized	17
Landscape Wide 1982 Planning Was Unattainable-Let Us Not Make The Same Mistakes Again	17
Landscape Scale Planning Will Increase Complexity Of Planning	18
Monitoring Requirements Are Onerous	18
MUSYA Does Not Elevate Preservation Above Multiple Use	18
Protection In Order To Provide For Uses, Not Exclusive Protection	19
Planning Requirements Not As Authorized Under NFMA	19
DEIS Seeks Compliance To Vague Terms Then Allows Limitations	20
Planning Rule Should Be Science Based	20
NEPA Compliant Proposed Draft	20
Section 219.6 Assessments Issues	21
Minimum Plan Assessment Goes Beyond Authority	22
Rapid And Timely Plans Cannot be Achieved Under Proposed Plan	22

May Not Be Able To Maintain-Let Alone Protect Or Restore	23
Protection of Water As It Relates To Sustainable Yield.....	23
No Basis For New Requirement For Width Of Riparian Areas	24
Section 219.8 (b) Sustainability Is Not Definable Or Predictable	24
We Already Have ESA Requirements	25
NFMA Requires Does Not “Require” Diversity.....	25
1) Do The Impossible	26
2) Creation Of New Species of Conservation Concern Category.....	26
3) Stick To Things We Know About.....	27
4) The Agency Wants To Meet The Intent Of The NFMA	28
Do Not Include Lands Or Aspects Where Agency Has No Control	28
Administrative Changes Should Not Be Expanded.....	28
Cost Factor Must Include Monitoring, Assessments and Scope.....	29
Waive Wilderness Identification If Prior Study Has Been Done	30
Environmental Justice Beyond the Authority	30
Typo In Planning Rule Web Link In DEIS Constrains Public Comments	30
Stakeholders, Organizations and Partners Need to be Included	30

Continued on Next Page

Planning Rule Will Constrain Actions, Projects and Activities

An overall concern is due to the many zealous, broad, ill defined planning requirements proposed in the National Planning Rule, is that many uses on our National Forest Lands will be needlessly restricted. The National Planning Rule will do this without specific public involvement in each local plan due to the National Planning Rule already having put overall broad and ill defined restrictions in place. For example **the National Planning Rule requirements for stressors, climate change, sustainability etc. will constrain actions, projects and activities in local forest plans. Our concern is confirmed in the DEIS.**

“(2) A plan does not authorize projects or activities or commit the Forest Service to take action. However, a plan may constrain the Agency from authorizing or carrying out actions, and projects and activities must be consistent with the plan (§ 219.15).”
(Planning DEIS § 219.2 Levels of planning Page 8515)

We provide numerous comments in this letter to help avoid that problem. Primarily the Planning Rule must be simplified.

Public Participation Will Be Denied

The Planning Rule provides for public participation (§ 219.4 Requirements for public participation), however the many requirements, as noted above, will not allow the public to participate on those issues or concerns on the local Forest Level.

In other words **the Planning Rule, through numerous overarching requirements, will deny the required public participation on many issues and preclude consideration of many activities on the local level.**

Again the solution is to simplify the Planning Rule, so that all issues can have full public participation at the local level.

DEIS Does Not Meet Goal To Be Clear, Efficient Or Effective

The DEIS appears to have gone to great lengths to complicate many issues, yet the DEIS has clearly stated the legal requirements:

The new Planning Rule must be clear, efficient, effective, and within the Agency’s capability to implement on all NFS units. (Planning Rule DEIS Page 8480 Overview)

We find that the proposed Planning Rule is anything but clear, efficient or effective, due to the many examples we have provided in this comment letter. We find that due to the many vague requirements and qualifications, as well as new onerous monitoring and new requirements in the proposed Planning Rule, it will also fail to meet the requirement of being capable of being implemented on NFS units.

The DEIS goes on to state the legal requirements:

It must meet requirements under the National Forest Management Act (NFMA), as well as allow the Agency to meet its obligations under the Multiple-Use Sustained-Yield Act (MUSYA), the Endangered Species Act, and the Wilderness Act, as well as other legal requirements. (Planning Rule DEIS Page 8480 Overview)

However we find the NFMA & MUSYA obligations have not been met as noted in this comment letter.

Due mostly to the use of vague terms and new onerous requirements we find that planning under the proposed Planning Rule will be mired in analysis paralysis and legal contention. Yet this is contrary to the very valid intent noted in the DEIS below:

With stability in planning regulations, national land management planning can regain momentum, and units would be able to complete timely revisions that guide sustainable management of NFS lands. (Planning Rule DEIS Page 8480 Overview)

Here is an example of what the EIS should do in order to regain momentum and complete planning in a timely manner as intended. Instead of increasing the scope of planning and monitoring, the EIS should use clear statements which refer to existing legal obligations and requirements, as the DEIS has in the following statement:

“Plans would also guide the management of timber harvest, as required by the NFMA.”
(Planning Rule DEIS Page 8481 Overview)

The EIS should do the same for other land uses and should eliminate: broader statements, ambiguous statements, ambiguous terms and ambiguous requirements in order to be clear, efficient, effective and complete planning in a timely manner.

Section 219.8 Sustainability Issues

The DEIS boldly states:

“Sustainability is the fundamental principle that will guide land management planning.” (DEIS Page 8490 Section 219.8)

It would perhaps be better for the DEIS to base the fundamental principle on something definable, within reach and that will not open the door to more litigation.

However not only has DEIS been unable to define sustainability, but it goes on to provide a number of reasons why it cannot provide sustainability.

“The proposed requirements of this section are limited to what can be accomplished within the Agency’s authority and the capability of the unit. This limitation arises from the fact that some influences on sustainability are outside the Agency’s control, for example, climate change, extreme disturbance events, and urbanization on lands outside of or adjacent to NFS lands. Given those constraints, the Agency realizes it cannot guarantee sustainability.”
(DEIS Page 8490 Section 219.8)

Surely the “fundamental principle” of forest planning should not be one which the agency has so little control over.

Sustainable Recreation Cannot Be Defined

The DEIS attempts to define **Sustainable** Recreation as being “Ecologically, Economically and Socially **Sustainable**”. However a definition by its very nature must define the term by using other words. Yet this definition has used the same word-Sustainable to define itself. That is not a definition, but a restatement and illustrates that “sustainable” is such a vague ephemeral term that the DEIS has been unable to define it.

“The proposed rule defines sustainable recreation as, “The set of recreational opportunities, uses and access that, individually and combined, are ecologically, economically, and socially sustainable, allowing the responsible official to offer recreation opportunities now and into the future. Recreational opportunities can include non-motorized, motorized, developed, and dispersed recreation on land, water, and air.”
(Planning Rule DEIS Page 8496 Section Recreation & Page 8525 Section 219.19 Definitions)

The term sustainable and sustainability should be removed from the Planning Rule as it refers to recreation, because it is has not been defined and is too vague to be used as a valid Planning Rule requirement or tool.

Overarching Objective

“The overarching objective of this proposed rule is to move all NFS units toward social, economic, and ecological sustainability.” (Planning Rule DEIS Page 8483 Section By Section Explanation)

“Plan components would be required to provide for sustainable recreation on land, water and in the air.” (DEIS Section By Section Explanation Page 8483 & Summary)

It appears extremely difficult if not impossible to define “**sustainability**”. Some would say that doing nothing and neglecting our public lands is the only way to be ecologically sustainable, others would say that active management and stewardship are the best methods to promote sustainable ecological forests. Some would say that dispersing use and total access is the best way to provide economic and social sustainability, others claim access must be heavily restricted and concentrated in order to be sustainable.

Making the “*overarching objective*” of the rule to provide something that is hard to define like “sustainability” is a recipe for increased litigation and complexity, contrary to the purpose of simplifying the rule. It will also hinder the agency in their requirement to “*develop a Planning Rule developed under the principles of the Multiple Use Sustained Yield Act of 1960.*”

The DEIS indicates that the 2000 Planning Rule “***made sustainability the foundation for NFS management***” however the DEIS also points out that the 2000 rule was found to be “***too costly, complex and burdensome***”. The ambiguity of “sustainability” was no doubt a factor in those problems and should be removed from the new Planning Rule in order to streamline the process, not to mention there being no authority under the NFMA to require “sustainability”.

It appears the Forest Service is attempting to place additional environmental considerations on recreation by adding the requirement of being “**sustainable**” in front of recreation, perhaps in order to appease the extreme environmental groups who seem to have been heavily involved in the drafting of the Planning Rule.

Perhaps Forest Service should add the qualifier of "reasonable" in front of the many other extreme environmental requirements currently included in the Planning Rule.

Eight Principles Not Based On Authorized Standards, Violates NEPA

The DEIS states:

“The December 2009 NOI for the proposed Planning Rule therefore asked for public feedback on a set of eight principles that could be used to guide future land management planning.” (Planning Rule DEIS Page 8482 What the Agency Heard)

However the eight principles which the Forest Service provided to the public were not based on the standards for Forest Planning as authorized in the 1976 NFMA. The Forest Service failed to include Recreation as one of the principles, even though the NFMA states **recreation is of**

particular importance in forest planning. The eight principles seemed better suited to a nature preserve, rather than our multiple use lands and these principles include NO economic, social or recreation considerations.

The Forest Service did include numerous principles such as Climate Change, Sustainability and “All Lands” approach, which are beyond the authority granted under the NFMA. Instead of the Notice of Intent asking the public to help draft the proposed action, the Forest Service has been predecisional by providing eight principles upon which the public was allowed to comment thereby artificially limiting the scope of comments and predetermining the outcome in violation of NEPA.

Below are the eight principles which the Forest Service provided for the public to comment upon. The principles which contain terms which are not authorized under the 1976 NFMA have been highlighted. It appears that only two of the principles are compliant with the 1976 NFMA :

Substantive Principles for a New Rule

- 1. Land management plans could address the need for **restoration** and **conservation** to enhance the resilience of **ecosystems** to a variety of threats*
- 2. Plans could proactively address **climate change** through monitoring, mitigation and adaptation, and could allow flexibility to adapt to changing conditions and incorporate new information*
- 3. Land management plans could emphasize **maintenance and restoration of watershed health**, and could protect and enhance America’s water resources.*
- 4. Plans could provide for the **diversity of species and wildlife habitat**.*
- 5. Plans could foster **sustainable NFS lands** and their contribution to vibrant rural economies.*

Process Principles for a New Rule

- 1. Land management planning could involve effective and pro-active collaboration with the public*
- 2. Plans could incorporate an “**alllands**” approach by considering the relationship between NFS lands and neighboring lands*
- 3. Plans could be based on the latest planning science and principles to achieve the best decisions possible.*

Continued on Next Page

Congressional Concerns Not Addressed

On November 18, 2010 forty three members of Congress submitted a letter to the Forest Service (shown in part below), outlining a number of concerns regarding vague, ambiguous and indefinable terms in the Planning Draft Rule.

However, we have concerns that the Draft Recreation Approach (DRA) posted online includes terms we think are vague and ambiguous, which could lead to reduced recreational opportunities on USFS lands. For example, the DRA specifies recreation must be “(environmentally and fiscally) sustainable.” These are broad concepts that can be difficult to define. Because stakeholders may be unable to agree on definitions, this could hamper individual forest supervisors’ ability to develop land management plans that include robust and diverse access and recreation provisions. Other terms, such as “ecosystem services” and “stressors,” throughout the other concept drafts are also not adequately defined, which could overwhelm local land managers with the need to do exhaustive research, making the already lengthy and complicated planning process more complex and time consuming—and this impacts not just recreation proposals. These inadequately defined terms could lead to endless litigation of the Rule itself or individual USFS land management plans. In essence, we could have analysis paralysis that denies the public access and the ability to recreate in their national forests.

The Forest Service has partially responded to one of the Congressman’s concerns by removing “environmentally and fiscally” from recreation, **however economic sustainability has been inserted into the draft as a requirement for recreation.** Then the DEIS includes “economically” as part of the definition for so called sustainable recreation, so “fiscally” is actually still a requirement for recreation, albeit by another name now-“economically”.

The proposed rule defines sustainable recreation as, “The set of recreational opportunities, uses and access that, individually and combined, are ecologically, economically, and socially sustainable, (Planning Rule DEIS Page 8496 Section Recreation)

The terms “sustainable”, as well as “stressors” and “ecosystem services” have not been removed from the proposed Planning Rule. Two of these terms “sustainability” and “ecosystem services” are at least defined in the DEIS under the definition Section 219.19, however the definitions are extremely broad and open to interpretation, which will lead to needless litigation.

In order to promote clarity and implementation we would hope that terms like these, which the agency has chosen as the foundation and principles of the Planning Rule, would be well defined and not open to interpretation.

The term “stressor” and “economic sustainability” are not defined in the DEIS.

All terms, especially principles, should be well defined and not open to interpretation. Any term which is unclear or undefined such as “stressor” & “economic sustainability” should be removed from the EIS based on the Congressman’s very valid concerns.

In their letter the Congressman (below) also point out the importance of recreation, as well as the numerous laws which already address environmental issues. In order to comply with the

need to simplify planning, the Planning Rule need not address these issues again.

It is important to note the Multiple-Use Sustained Yield Act of 1960 and the National Forest Management Act both require that USFS manage lands for a variety of purposes, with “outdoor recreation” listed first. Through enactment of these bills, Congress clearly recognized the importance of access and recreation in our national forests. Since then, Congress has passed

other laws, including the National Environmental Policy Act and the Endangered Species Act, which require USFS land managers to take into account the environmental impacts of how national forests are managed. These laws already address many of the issues proposed in the draft concepts in a comprehensive fashion.

The Congressman wrapped up with some very sensible comments, which we find the Planning Rule has not embodied.

As USFS develops the Rule, we believe it should be simple, unambiguous, and allow individual national forest officials the flexibility to manage these lands based on local needs and input. We also believe that any rule proposal must either eliminate or clearly define vague terms that could lead to endless litigation and interpretation. Finally, we encourage USFS to ensure any national planning rule that is proposed allows for robust and diverse public access to and recreation on our national forests so current and future generations can enjoy their public lands.

Planning Rule Goes Beyond Authority

The New Forest Planning Rule is being created under the National Forest Management Act (NFMA). Nowhere in the 1976 NFMA is there a requirement that the “new Planning Rule must” respond to any of the following preservation criteria without consideration of sustained yield:

“The new Planning Rule must be responsive to the challenges of climate change; the need for forest restoration and conservation, watershed protection, and wildlife conservation; and the need for the sustainable provision of benefits, services, resources, and uses of NFS lands, including ecosystem services and sustainable recreation.”
(Planning Rule DEIS Page 1 Overview)

The 1976 NFMA is primarily about providing sustained timber yield and associated forest health with a secondary consideration of recreation.

Climate Change is not included in any way in the 1976 NFMA and conservation is included only as it relates to sustained timber yields.

The above statement should be replaced in the EIS with the below statements directly from the NFMA.

Here is what the 1976 NFMA does require:

“in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish” and “protection of forest resources, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish”:

"(1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use, Sustained-Yield Act of 1960, and in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and timber, watershed, wildlife and fish, and wilderness; and

"(A) insure consideration of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resources, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish;

Yet the DEIS has not only added a new category (ecosystem services), but also has inserted it ahead of all other authorized categories:

§ 219.10 Multiple uses.

In meeting the requirements of §§ 219.8 and 219.9, and within Forest Service authority, the capability of the plan area and the fiscal capability of the unit, the plan must provide for multiple uses, including ecosystem services, outdoor recreation, range, timber, watershed, wildlife and fish, as follows: (DEIS Page 8519 Section 219.10 Multiple Uses)

The term ecosystem services should be removed from the Planning Rule as it is not authorized.

New Criteria Not Authorized Under NFMA

The DEIS has attempted to broaden the scope of Forest Planning beyond what the authorizing legislation provides. The DEIS frequently uses new criteria as a requirement in future planning. For example the DEIS requires that Recreation, Uses and Access be “Ecologically, Economically and Socially Sustainable”.

The proposed rule defines sustainable recreation as “the set of recreational opportunities, uses and access that, individually and combined, are ecologically, economically, and socially sustainable, allowing the responsible official to offer recreation opportunities now and into the future. (DEIS Page 8496)

Yet the authorizing NFMA legislation does not contain the word “sustainable” at all. What the NFMA does state quite specifically is that the economy and the environment be given CONSIDERATION, which is reasonable. The DEIS should do the same.

"(A) insure consideration of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resources, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish;" (NFMA)

Likewise the words “Stressor” and “Ecosystem Services” are not contained in the NFMA and are not authorized.

The Congressional Findings in the NFMA clearly states that supply of renewable resources is the primary concern and mentions “sustained yield”, not “sustainable”

"(3) to serve the national interest, the renewable resource program must be based on a comprehensive assessment of present and anticipated uses, demand for, and supply of renewable resources from the Nation's public and private forests and rangelands, through analysis of environmental and economic impacts, coordination of multiple use and sustained

yield opportunities as provided in the Multiple-Use, Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528-531), and public participation in the development of the program;" (NFMA)

Only those actions authorized under the NFMA & MUSYA should be included in the Planning Rule

Recreation Not An Aspect of Sustainability

Below the DEIS clearly states that the agency (Forest Service) has defined sustainability.

"The Agency has defined sustainability as having three aspects since 1999: Ecological, economic, and social. Instead of adding a new aspect to sustainability, the Agency proposes that the Planning Rule require responsible officials to take into account cultural conditions when developing plan components for social and economic sustainability."
(Planning Rule DEIS Page 8492 Section Sustainability)

However Recreation is not included as part of the definition. The DEIS also states above that the Forest Service will not be adding a new aspect to sustainability.

*Yet the Forest Service has in the same DEIS document added Recreation as an aspect of sustainability. **The DEIS is correct, new aspects of sustainability should not be added; therefore Recreation should not be an aspect of sustainability in the Planning Rule.***

Public Demands Recreation As Important Aspect Of Planning

The DEIS states the New Forest Planning Rule must be responsive to the need for "sustainable recreation".

The 1976 National Forest Management Act (NFMA) provides the authority and specific direction that the Forest Rule must "**in particular include coordination for recreation**" and also "**to provide for recreation**".

The 1976 NFMA does not mention the term *sustainable* at all with regards to recreation or anything else. The word *sustainable* does not appear in the NFMA.

Since the authority for the Forest Planning Rule is based on the NFMA, there is no basis to add terms to the Forest Planning Rule such as "*sustainable*" which may confuse, broaden or narrow the intent beyond the scope of authority provided under the NFMA

The DEIS states' regarding the Notice of Intent:

"The notice resulted in a broad discussion of what should be in a proposed rule and led to a robust dialogue with the public over the course of the national, tribal, regional, and Web-based public meetings. This discussion has allowed the Agency to craft a proposed rule that more fully responds to public comments and concerns."
(Planning Rule DEIS Page 8482 What the Agency Heard)

It would perhaps be more accurate to state the public overwhelmingly objected to the Forest Service predecisional action of coming up with eight principles without public

involvement upon which the entire Planning Rule is based, and as a result the Forest Service added Recreation as the ninth Draft Concept.

Recreation Should Not Be Qualified

The DEIS correctly states below that the public brought up “**additional themes**” which the Forest Service had failed to include such as **recreation**. However the public did not add the ambiguous qualifier of “**sustainable**” to recreation. This is something the Forest Service has done without public support and without basis from the NFMA.

*“Additional themes that arose during public participation included the importance of public involvement and working with Tribes, the importance of working with State and local governments and other Federal agencies in land management planning; **the importance of providing for sustainable recreation**; the importance of creating a rule that meets the multiple use mandate of MUSYA; and the need for an efficient plan amendment and revision process that can keep pace with changing conditions.”*
(Planning Rule DEIS Page 8483 What the Agency Heard)

While we support responsible recreation and environmental stewardship, we feel there are already more than enough regulations which recreation must meet. We find that adding an ambiguous overarching prerequisite such as “sustainable” to recreation will hinder the ability of the forest service to provide multiple use recreation as required under the NFMA.

The term recreation should stand alone. Qualifiers such as “sustainable” should not be used with recreation.

Decision Document Must State What Plan Components Are Designed To Do

The DEIS has included many requirements to be included in each Planning Decision Document which the DEIS states “*would help provide a clearer understanding of the approval, the reasons for approving the plan, plan revision, or plan amendment and its immediate consequences in a way that is clear to all participants in the planning process.*”

The DEIS REQUIRES the following to be part of each Forest Plan Decision Document:

1. *describe the rationale for approval of a plan*
2. *explanation of how plan components meet plan requirements for sustainability and diversity set forth in §§ 219.8 and 219.9*
3. *describe how the plan applies to approved projects and activities (§ 219.15(a)),*
4. *how the best available scientific information was taken into account and applied (§ 219.3).*
5. *must contain research station director concurrence on experimental forests and ranges (§ 219.2(b)(4)) to ensure proper coordination between the Research and NFS branches for the management of these areas*
6. *The effective date of approval (§ 219.17) would also be required to clarify the exact date the plan action takes effect.*

(DEIS Page 8501 Decision Document)

We have already argued regarding the lack of authority to include requirements based on vague terms, such as sustainability and diversity contained in item #2 above. *Surprisingly however the*

DEIS does not require the Decision Document to state what the plan components are supposed to do. Instead it allows the official to state it or not.

“This explanation would allow the responsible official to say what the plan components are designed to do given the limits of Forest Service authority and the capability of the plan area.”
(DEIS Page 8501 Decision Document)

Surely what the plan is supposed to do is the primary purpose of the plan and should be required. This concern is at the root of the problem with the proposed Rule. The Planning Rule appears to be more about implementing numerous bureaucratic restrictions, than about the purpose of planning, to get things done on the ground.

We are glad to see the caveat provided acknowledging the limits of Forest Service authority and capability of the planning area, and we would urge the whole Planning Rule be written with those limitations at the core of the Rule, instead of being merely caveats.

Cost Benefit Analysis Shows Agency Bias

We feel the Cost Analysis document under the section for the Proposed Rule Alternative A,C,D and E incorrectly states that, public meetings “revealed growing concern about a variety of risks and stressors.”

“The numerous public meetings, forums, and roundtable discussions, convened as a result of this rule-making effort, revealed growing concern about a variety of risks and stressors (e.g., climate change; insects and disease; recreation, timber, and shifts in other local demands and national market trends; population growth, demographic shifts, and concerns about water supply and other ecosystem support services).” (Cost Benefit Analysis Jan 2011 USDA Page 5 & others)

People representing numerous organizations at numerous Planning Rule public meetings held early last year noted a severe lack of people interested in talking about risks or stressors or most of the other issues listed above. In fact the facilitators kept urging people to join tables about these various predetermined issues and few if any would, with one exception Recreation, and so tables for Recreation were created and the others were mostly empty.

As far as we know those meetings were the first opportunity the public was given to be actively involved in the Planning Rule effort. Yet the Forest Service had predetermined the issues, and even after these meetings showing severe lack of public interest, continues to claim the public revealed growing concerns on these non starter issues.

The Cost Analysis then goes on to find that this “growing public concern”, which we have shown may not even exist, justifies vastly increasing planning scope to landscape level and increasing management constraints:

“Addressing these types of risks and contingencies requires a larger landscape perspective, information from a broader spectrum of sources and users, and a framework that can facilitate adaptation to new information about risks and stressors. The new procedural requirements in Alternative A are designed to recognize these needs and increase Agency as well as unit capacity for adapting management plans to new and evolving information about risks, stressors, contingencies, and management constraints, as described in the section above. Although substantial changes in total planning costs over a 15-year period are not projected under the proposed rule, it is anticipated that management units will have greater capacity to establish plans that are perceived as being efficient and legitimate frameworks for managing resources in a manner that meets public demand in a sustainable and acceptable fashion (i.e., satisfies the

goals of the Multiple-Use Sustained-Yield Act [MUSYA] and the National Forest Management Act [NFMA].” (Cost Benefit Analysis Jan 2011 USDA Page 5)

As you see above the DEIS document concludes that all their proposed risks, stressors, landscape wide planning and management constraints, somehow satisfy the goals of the MUSYA and NFMA. However those acts do not provide authority for any of these things.

This indicates a bias and predecisional error on the part of the Forest Service, which can only be remedied by simplifying the Planning Rule as we have proposed.

The basic content of the above quotes from the Cost Benefit are also included in the DEIS although in a less detailed and enlightening way.

Alternative C Most Cost Effective And Meets MUSYA & NFMA

As noted in the Cost Benefit Analysis Alternative C is the most cost effective and for the many reasons provided in this comment letter may be the only Alternative, besides the No Action, that does not exceed the authority granted under the MUSYA & NFMA.

“Under Alternative C, a majority of the prescriptive requirements designed to enhance collection of new information, assimilation and evaluation of new information for determining need for change, and response to need for change during plan revision or amendment under Alternative A would be eliminated. Agency costs are substantially lower as a consequence of these changes.”

(Cost Benefit Analysis Jan 2011 USDA Page 9)

Climate Change Has Been Occurring Since The Beginning Of Time

The DEIS states:

*“The proposed rule includes requirements for plan content. In the face of changing environmental conditions such as **climate change**, plans would include plan components to **maintain or restore** ecosystem and watershed health and resilience; **protect** key ecosystem elements, including water resources on the unit; and provide for plant and animal diversity. In doing so, responsible officials would take into account the various **stressors** or impacts, **including climate change**, that could affect the presence and function of ecological resources on the unit.”* (DEIS Summary)

Climate Change is a naturally occurring process. The earth’s climate has been changing since the beginning of time. It is not feasible for the Planning Rule to consider climate change as a specific issue, nor is there authority provided under NFMA to do so.

Requirements regarding Climate Change must be removed from the Planning Rule.

Likewise the 1982 National Forest Planning Rule, which was created based on the authorization of the 1976 National Forest Management Act, does not support the inclusion of new ambiguous terms such as stressors, climate change or sustainability in the new Planning Rule. The 1982 Planning Rule does not mention any of these terms.

Stressors And Landscape Scale Planning Not Authorized

The DEIS states:

Throughout implementation of the cycle, the Forest Service would:

- (1) Assess conditions, **stressors**, and opportunities on the NFS unit within the context of the **broader landscape** and identify any need for changes to a plan;*
- (2) Develop, Revise, or Amend land management plans based on the need for change in the plan; and*
- (3) Monitor to detect changes on the unit and across the **broader landscape**, to test assumptions underlying management decisions, and to measure the effectiveness of management activity in achieving desired outcomes.*

(Planning Rule DEIS Page 8481 Overview)

“Stressors” is a vague term and the DEIS has failed to define it. Since “stressors” can be virtually anything, the use of the term will likely lead to endless planning and increased litigation.

While the 1976 NFMA does provide authority to assess conditions, it does not mention the term “stressor” or for that matter “landscape-scale” among others. **There should not be any terms which are not authorized in the NFMA or MUSYA. The use of authorized terms should only be in the context authorized under those Acts.**

The DEIS also states that “the New Planning Rule must be clear, efficient and effective” but using terms like “stressors” which are ambiguous will lead to analysis paralysis, as well as litigation, both of which are contrary to the basic requirements of the Forest Planning Rule of clarity, efficiency and effectiveness.

Landscape Wide 1982 Planning Was Unattainable-Let Us Not Make The Same Mistakes Again

The DEIS acknowledges the forest service has found prior standards “unattainable” due to the very same All Lands, Stressor and Climate Change requirements that it is seeking to impose in the new Planning Rule today. **The Forest Service should learn from the past mistakes and seek to simplify the Planning Rule and reduce requirements in order to make them attainable.**

*The 1982 Planning Rule required the Forest Service to manage habitat to ‘‘maintain viable populations of native and desired non-native vertebrate species in the planning area’’ (47 FR 43048; September 30, 1982, section 219.19). **The 1982 viability standard at times proved to be unattainable because of factors outside the control of the Agency. Some factors outside the control of the Agency include: (1) Species ranging on and off NFS lands; (2) activities outside the plan area (e.g., increasing fragmentation of habitat, nonand point source pollution) often impact species and their habitats, both on and off NFS lands; (3) failure of the species to occupy suitable habitat; and (4) climate change and related stressors, which could impact many species and may make it impossible to maintain current ecological conditions.***

(DEIS Page 8494 Section 219.9 Diversity of Plant and Animal Communities)

Landscape Scale Planning Will Increase Complexity Of Planning

The DEIS has expanded Forest Planning to consider “landscape scale”

*“The planning process also builds an understanding of the **landscape-scale** context for unit-level management. “ (Planning Rule DEIS Page 8481 Overview)*

*“The planning process would require developing an understanding of the **landscape-scale** context for unit-level management. Assessments, in particular, are designed to create an understanding of conditions, trends, and **stressors** both **on and off** NFS lands in order to guide the development of plans to manage resources on the unit.” (DEIS Overview Page 8481)*

Landscape scale off of National Forest Service (NFS) lands will create an even larger burden on the agency than it has currently where only NFS lands are considered. The Forest Service has had problems in the past with planning that is limited to only National Forest Lands. Increasing the scope of planning to include other lands will exacerbate the planning problem. This will hinder the NFS from doing timely plans and from being able to modify plans due to changing conditions. Adding “Landscape” wide considerations will only add to the complexity of Forest Planning, contrary to the purpose of the Rule to simplify Forest Planning. Also there is no authority provided under the NFMA for Landscape Planning as the word “Landscape” is not mentioned once in the NFMA.

Monitoring Requirements Are Onerous

The two pages of Monitoring Requirements are no doubt valid in a laboratory setting (DEIS Page 8520 § 219.12 Monitoring), but they will be extremely costly and time consuming on a national forest level.

Currently National Forests have a huge backlog of unfunded maintenance. It seems likely that Forest Service funding may be shrinking in future and more will need to be done with less. This being the case, it might be prudent for the Planning Rule to “**encourage**” monitoring rather “**require**” it on so many levels. *If staff resources are consumed by monitoring then it stands to reason staff will lack the time needed to accomplish their actual purpose, which is implementing actual on the ground projects to produce a sustained yield of products and services, and manage multiple uses, including recreation.*

Additionally the onerous proposed monitoring requirements make it quite likely that forest staff will be unable to comply, opening the door to management through litigation.

MUSYA Does Not Elevate Preservation Above Multiple Use

Per the DEIS the Forest Planning Rule “*must allow the agency to meet its obligations under the Multiple Use Sustained Yield Act of 1960.*”

The MUSYA is an Act directing the national forests be managed under the principles of Multiple Use and also states that National Forests shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. It says nothing about “sustainable” or “stressors” or “climate change”. Any requirement regarding these additional ambiguous factors is not authorized under the MUSYA, and therefore is not authorized in the Planning Rule.

10. MULTIPLE-USE SUSTAINED-YIELD ACT OF 1960¹

(Public Law 86-517; Approved June 12, 1960)

AN ACT To authorize and direct that the national forests be managed under principles of multiple use and to produce a sustained yield of products and services, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That [16 U.S.C. 528] it is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of this Act are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in the Act of June 4, 1897 (16 U.S.C. 475). Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests. Nothing herein shall be construed so as to affect the use of administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests.

Protection In Order To Provide For Uses, Not Exclusive Protection

In the 1976 NFMA Congress had qualified the protection of resources in order to **provide for** recreation, timber, watershed, wildlife and fish.

Congress did not authorize the **exclusive protection** of watershed, wildlife and fish under the 1976 NFMA from which the New Planning Rule takes its authority:

"(A) insure consideration of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and **protection of forest resources, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish;** (NFMA of 1976)

However the DEIS has gone to extremes of protection which will discourage uses, contrary to the NFMA. This must be remedied in the EIS.

Planning Requirements Not As Authorized Under NFMA

Here is the order of the considerations and their "**particular**" importance from the NFMA

"(1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use, Sustained-Yield Act of 1960, **and in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and timber, watershed, wildlife and fish, and wilderness;** and (NFMA)

Yet the order has been changed and new items added to the Congressional 1976 NFMA (above) in the New Planning Rule DEIS (below):

"Plans would also include plan components to contribute to social and economic sustainability, thereby supporting vibrant communities and rural job opportunities. Planning would consider the full suite of multiple uses of a plan area, including watershed, wildlife and fish, outdoor recreation, grazing, timber, energy, minerals, wilderness, ecosystem services, and other relevant resources, uses and values."
(DEIS Overview Page 8481)

The order of importance and items listed in the EIS must be consistent with the NFMA.

DEIS Seeks Compliance To Vague Terms Then Allows Limitations

The DEIS states:

(2) An explanation of how the plan components **meet the sustainability requirements** of § 219.8 and the **diversity requirements** of § 219.9, taking into account the **limits of Forest Service authority** and the capability of the plan area;

(Planning Rule DEIS Page 8521 Section § 219.14 Decision documents and planning records)

As noted previously “Sustainability” has not been defined in the DEIS. Normally it would be reasonable to provide limitations as appropriate for planning requirements, however in this case it illustrates the problem of using a vague term like sustainable or sustainability. After all if the requirement for sustainability is vague, then the limitations must also be vague.

Considering sustainability is proposed as a primary requirement or cornerstone to every segment of planning, then planning will be based on vacillating or arbitrary grounds. We support limitations, however we point out this dilemma of *vaguely limiting a vague term* in order to illustrate the need to remove this requirement of “sustainability” from the proposed Planning Rule. Perhaps the Planning Rule should consider sustainability-once defined, rather than require it.

Planning Rule Should Be Science Based

*“The proposed rule would **require** that the **best available scientific information** be taken into account and documented.”* (Planning Rule DEIS Page 8481 Overview)

For example there should be a wealth of science available including 34 years of annual reports and studies which Congress Required the Department of Agriculture to perform each year since 1976 under the 1976 NFMA. Yet those reports have not been cited to justify or help determine the direction of the New National Forest Planning Rule.

NEPA Compliant Proposed Draft

We welcome the ability to work as stakeholders with the Forest Service to develop new plan amendments, as perhaps intended in the DEIS. However the following statement appears to violate NEPA as the Forest Service must involve the public and consider many options prior to approving a plan, plan amendment or plan revision. Presumably what was meant was to work with stakeholders, individuals and groups to develop a proposal. The below should be changed by adding the words shown in RED so as to comply with NEPA. Also the term stakeholders should be added so we may be included in this process.

*“Finally, the proposed rule would create a pre-decisional administrative review process to provide **stakeholders**, individuals and groups with an opportunity to resolve issues before the approval of a **proposed draft plan**, plan, plan amendment, or plan revision.”*
(Planning Rule DEIS Page 8481 Overview)

Section 219.6 Assessments Issues

The following from the National Forest Management Act of 1976 provides **specific authority for “assessment”** of National Forest lands:

(c) The Secretary shall report in the 1979 and subsequent Assessments on:

"(1) the additional fiber potential in the National Forest System including, but not restricted to, forest mortality, growth, salvage potential, potential increased forest products sales, economic constraints, alternate markets, contract considerations, and other multiple use considerations;

"(2) the potential for increased utilization of forest and wood product wastes in the National Forest Systems and on other lands, and of urban wood wastes and wood product recycling, including recommendations to the Congress for actions which would lead to increased utilization of material now being wasted both in the forests and in manufactured products; and

"(3) the milling and other wood fiber product fabrication facilities and their location in the United States, noting the public and private forested areas that supply such facilities, assessing the degree of utilization into product form of harvested trees by such facilities, and setting forth the technology appropriate to the facilities to improve utilization either individually or in aggregate units of harvest trees and to reduce wasted wood fibers. The Secretary shall set forth a program to encourage the adoption by these facilities of these technologies for improving wood fiber utilization.

"(d) In developing the reports required under subsection (c) of this section, the Secretary shall provide opportunity for public involvement and consult with other interested governmental departments and agencies." (16 U.S.C. 1601)

*"(3) to serve the national interest, the renewable resource program must be based on a comprehensive **assessment** of present and anticipated uses, demand for, and supply of renewable resources from the Nation's public and private forests and rangelands, through analysis of environmental and economic impacts, coordination of multiple use and sustained yield opportunities as provided in the Multiple-Use, Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528-531), and public participation in the development of the program; (NFMA)*

It is clear from the above that Congress has granted authority to the Forest Service for assessments focused on forest timber productivity, not climate change or landscape wide planning or ecological sustainability etc.

The EIS should refrain from implementing assessments beyond those described in the NFMA.

The DEIS calls for “**comprehensive**” assessments.

*“The scope and scale of an assessment could be **comprehensive**, such as those for a revision, or they could be narrow, such as those for an amendment focused on one issue.” (DEIS Page 8487 Section 219.6)*

Merely stating “comprehensive” without further definition is beyond the scope of assessments, causing unnecessary additional workload, leading to analysis paralysis and litigation. The scope of assessments are clearly defined in the authorizing NFMA & MUSYA.

The EIS assessment section must remain within the scope as stated in the NFMA below:

*"(3) to serve the national interest, the renewable resource program must be based on a **comprehensive assessment** of present and anticipated uses, demand for, and supply of renewable resources from the Nation's public and private forests and rangelands, through analysis of environmental and economic impacts, coordination of multiple use and sustained yield opportunities as provided in the Multiple-Use, Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528-531), and public participation in the development of the program; (NFMA Page 1)*

The DEIS then goes on to state that "assessments" will be used in relation to "broader landscapes". However these broader landscapes are also beyond the scope of assessments as authorized under the NFMA

*"Responsible officials would use **assessments** to determine the unique roles and contributions of the unit within the context of the **broader landscape** as well as the need to change the plan." (DEIS Page 8487 Section 219.6)*

This also brings to light that "landscape wide" beyond the boundaries of lands managed by the Forest Service is not authorized under the NFMA or MUSYA.

Landscape wide planning beyond Forest Service Lands must be removed from the EIS in order to comply with the NFMA.

Minimum Plan Assessment Goes Beyond Authority

The DEIS calls at a minimum for plan assessments to meet numerous requirements only one of which- timber, is based on the NFMA:

*"At a minimum, the content of assessments for revisions and new plans would provide information to support development of plan components that meet the substantive requirements of other rule provisions such as **sustainability** (§ 219.8), **diversity** (§ 219.9), **multiple uses** (§ 219.10), and the timber requirements based on the NFMA (§ 219.11)."*

*"In order that planners have sufficient information to meet the requirements set out in sections 219.8 through 219.11, assessments would include information on existing conditions, trends, and stressors, both on and off the unit, which might impact resources or **ecological, social, or economic sustainability**." (DEIS Page 8488 Section 219.6)*

The above goes beyond the authority. The EIS must comply only with regulations as specifically authorized under the NFMA & MUSYA

Rapid And Timely Plans Cannot be Achieved Under Proposed Plan

The DEIS states that assessments are expected to be "**conducted rapidly in order to respond to changing conditions**".

*"An assessment is expected to use existing information and be **conducted rapidly** in order to respond to changing conditions." (DEIS Page 8488 Section 219.6)*

That is an admirable goal which cannot hope to be met when the Planning Rule requires undefined comprehensive assessments further complicated by undefined stressors in vast landscape wide areas.

In order to meet the expectations of rapid responses the Forest Planning Rule must be simplified and based purely on the authority granted under the NFMA & MUSYA.

Likewise for Planning Revisions the DEIS reasonably seeks to have **officials reach timely decisions**. This will not be possible until the above changes have been made to the EIS.

*“The environmental analysis should be focused and the **responsible official should reach a decision in a timely manner.**”*

(DEIS Section 219.7 Plan Development or Plan Revision-Page 8488)

And again the DEIS tells us of the desire to make changes rapidly.

“it is important to have processes where changes can be made rapidly.”

(DEIS Page 8488 Section 219.7)

This current DEIS fails to meet this important aspect without the changes we have recommended.

As though the DEIS had not already made the requirements for assessments so onerous and overreaching, it further states that officials may seek even more information. This leaves the door open for litigants to claim the Forest Service has not done all it should for each plan.

“However, nothing in this section would restrict the responsible official from gathering new information to address the issues or questions for the assessment.”

(DEIS Page 8488 Section 219.6)

This open ended option may need to be eliminated in favor of being able to complete just the assessment phase of planning. For example the litigant will claim the Forest Service should have gotten more information.

If this more information option was removed, there is no reason to believe that officials would not still be able to include additional new information if needed, however it would no longer be a possible angle for litigation of each plan.

May Not Be Able To Maintain-Let Alone Protect Or Restore

The DEIS requires plans to be developed to **“maintain, protect or restore”** ecosystems including aquatic and terrestrial area, including lakes, streams, wetlands, forest stands, meadows and other habitats:

*“Paragraph (a)(2) would **require** that the responsible official develop plan components **to maintain, protect, or restore** certain ecosystem elements. The first two elements would require the responsible official to develop plan components for aquatic and terrestrial areas, including lakes, streams, wetlands, forest stands, meadows, and other habitat types.”* (DEIS Page 8491 Section 219.8)

It would be extremely ambitious and costly to attempt to merely maintain all of these nationwide on our forest lands. It can be seen in historical records that many natural areas over time have declined without the interaction of man. How can we require that we maintain them in the face of ever evolving nature which has no stasis? We cannot stop the never ending changes in nature, but this plan requirement would make at a legal minimum to maintain them.

There is no basis to require this under the NFMA or MUSYA. We should seek to be the best stewards that we can be without any requirements beyond those in NFMA & MUSYA.

Protection of Water As It Relates To Sustainable Yield

The Draft claims that the NFMA and MUSYA are about protection of water

“MUSYA, and the NFMA all discuss the protection of water and/or watersheds.”

(DEIS Page 8491 Water)

However the draft neglects to mention this water protection is only in relation to sustained forest timber yield. These Acts do not authorize the protection of water above other uses or elevating water protection in the way the draft has done, as shown below:

“The proposed rule would highlight the importance of maintaining, protecting, or restoring riparian areas and the values such areas provide by requiring that plans include plan components to guide management with riparian areas. The proposed rule also requires that plans establish a default width within which those plan components apply. The width of such zones is usually measured from the edge of the water, extending outward to the adjacent upland areas, and it could be a standard width for all riparian areas or it could vary based on the type of waterbody.” (DEIS Page 8491 Water)

Yet the above proposed maintaining, protecting and restoring Planning Rule riparian requirements are already addressed in forest regulations and other laws. Keep the Planning Rule simple and let the existing laws and regulations be used to guide plans.

These riparian planning requirements and all others which are dealt with in law or regulation should be removed from the Planning Rule.

No Basis For New Requirement For Width Of Riparian Areas

There is no basis in the authorizing legislation for the Forest Service to create a new riparian width requirement (shown in the above except). This would require the creation of arbitrary riparian widths, which would needlessly add to the complexity of planning and restrictions.

This requirement should be removed from the Planning Rule.

Section 219.8 (b) Sustainability Is Not Definable Or Predictable

The DEIS seems to draw the basis for sustainability from the fact that this concept was provided by the Forest Service as a topic for discussion and somehow that provides the basis for inclusion as a requirement in the Planning Rule.

Social and Economic Sustainability

“During the public participation process to develop this proposed rule, there was a divergence of opinion on whether ecological sustainability should take precedence over social and economic sustainability or if the ecological system, the social system, and the economic system are of equal importance. The proposed rule considers the ecological, social, and economic systems as interdependent systems, which cannot be ranked in order of importance. However, there is an important difference in the wording between the ecological and the social/economic sustainability requirements. The requirements for ecological sustainability would require responsible officials to provide plan components to maintain or restore elements of ecological sustainability. The requirements for social sustainability would require plan components to guide the unit’s contribution to social and economic sustainability.” (DEIS Page 8492 Social & Economic Sustainability)

It is not possible to define what will be sustainable in future, so making sustainability a requirement will lead to endless litigation and lengthen the planning process, contrary to the intent of the Planning Rule.

“Section 219.8(b) of the proposed rule would require plans to include plan components to guide the unit’s contribution to social and economic sustainability. In developing these plan components, the responsible official would be required to take into account through the collaborative planning process and the results of the assessment the social, cultural, and economic conditions relevant to the area influenced by the plan; the distinctive roles and contributions of the unit within the broader landscape; sustainable recreational opportunities and uses; multiple uses, including ecosystem services, that contribute to local, regional, and national economies in a sustainable manner; and cultural and historic resources and uses.” (DEIS Page 8492 Social & Economic Sustainability)

The requirement for “sustainability” should be removed from the EIS and replaced with a “consideration” of environmental and economic factors as authorized under the NFMA & MYUSA.

We Already Have ESA Requirements

The Planning Rule DEIS clearly states the current legal authorized requirements under the ESA *Under the ESA, the Forest Service is to carry out “programs and activities for the conservation of endangered species and threatened species” (16 U.S.C. 1536 (a)(1)) and “insure that any action authorized, funded or carried out by [it] is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [designated critical habitat]” (16 U.S.C. 1635 (a)(2)).* (DEIS Page 8493 Endangered Species)

Yet the draft Planning Rule has gone beyond these authorized ESA legal standards by adding new expanded requirements to Forest Planning without authorization. Even to the extent of providing what this very DEIS has stated may be “impossible to maintain” let alone restore or recover.

Climate change and related stressors could affect many species and may make it impossible to maintain current ecological conditions.

(DEIS Page 8494 Providing Diversity & 8492 Section 219,9 Providing Diversity of Plant & Animals)

While it may be a laudable goal to do these unauthorized things, the Planning Rule should not “require” them and is not authorized to do so. The Forest Service has limited funding and cannot afford to require local staff plan for and then implement what may be impossible. The Forest Service must focus their efforts on reasonable goals and limit litigation in order to be able to implement on the ground projects.

NFMA Requires Does Not “Require” Diversity

The term “diversity” appears only twice in the NFMA (below) and is specific to “provide” for diversity in order to meet multiple use objectives, and where appropriate and to the degree practicable, take steps to preserve the diversity of tree species.

“(B) provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to

preserve the diversity of tree species similar to that existing in the region controlled by the plan;” (NFMA Page 5 & DEIS Page 8484 Providing Diversity)

The DEIS acknowledges that authority is granted under the NFMA and the DEIS seeks to follow the above NFMA authority:

*Section 219.9 Diversity of Plant and Animal Communities The Agency is committed to the goals of the Endangered Species Act (ESA) and the NFMA. This section of the proposed rule demonstrates agency commitment to meeting the NFMA requirement to provide for diversity of plant and animal communities based on the capability of the plan area.
(DEIS Page 8492 Section 219.9 Diversity of Plant and Animal Communities)*

As outlined below the DEIS then goes far beyond the scope as authorized under NFMA to “provide for diversity”. Instead the DEIS makes numerous “requirements” some of which are outlined below. These requirements must be carefully considered to ensure they are not only authorized-but also attainable, because if they are not met or cannot be met there will be litigation, wasted resources and failed planning:

1) Do The Impossible

The DEIS has twice stated it may be impossible to merely maintain conditions let alone restore them.

Climate change and related stressors could affect many species and may make it impossible to maintain current ecological conditions.

(DEIS Page 8494 Providing Diversity & 8492 Section 219,9 Providing Diversity of Plant & Animals)

The EIS should not require what may be impossible as it does below:

The first species conservation requirement in this section of the proposed rule is to maintain or restore ecological conditions to contribute to the recovery of T&E species.

The second species conservation requirement proposed in this section of the proposed rule is to maintain or restore ecological conditions to conserve candidate species.

The proposed rule would require plan components to preserve diversity of native tree and other plant species.

The proposed rule’s requirement for species of conservation concern would be to maintain or restore ecological conditions to maintain viable populations of species of conservation concern within the plan area, within the Agency’s authority and consistent with the inherent capability of the plan area.

(DEIS Page 8492-84933 Section 219.9 Diversity of Plant and Animal Communities)

2) Creation Of New Species of Conservation Concern Category

The DEIS has created many new requirements including a new category of “**Species of Conservation Concern**”, as if protection of threatened and endangered species and all the laws regarding them were not enough.

The final species conservation requirement in this section of the proposed rule addresses the needs of species of conservation concern. A species of conservation concern is a species that is not threatened, endangered, or a candidate species, but is one for which the responsible official has determined there is evidence demonstrating significant concern about its capability to persist over the long term in the plan area.

(DEIS Page 8493 Section 219.9 Diversity of Plant and Animal Communities)

Then the DEIS goes on to state that protection of these newly categorized species may contradict the protection of endangered or threatened species. Can we get any more tangled in our own web? Certainly any perceived or actual contradiction would create litigation and should be avoided in the Planning Rule.

The proposed rule would represent a higher level of protection for candidate species than currently exists in the planning process while still recognizing that candidate species may not have viable populations. Protection requirements for candidate species may at times contradict the protection requirements of other species or other management objectives.

(DEIS Page 8493 Section 219.9 Diversity of Plant and Animal Communities)

We must consider that the Endangered Species program has been extremely costly and those immense efforts have yet to remove one valid endangered species from the list of endangered.

The Forest Service lacks the authority to create a new category of species or to designate species onto any list. That authority is granted to other agencies.

The expansion of requirements in the Planning Rule beyond the authority of the ESA & NFMA and the creation of a new class of species and the ability for forest staff to designate them must be removed from the EIS.

3) Stick To Things We Know About

Additionally, it is important to note that the proposed rule is not limited to “vertebrate” species as required under the 1982 provisions. The proposed rule would include native plants and native invertebrates (fungi, aquatic invertebrates, insects, plants, and others) for which the Agency currently has very minimal biological information on their life histories, status, abundance, and distribution. However, maintaining or restoring ecosystem diversity within the plan area is the best opportunity to conserve these little-known species. (DEIS Page 8494 Section 219.9 Diversity of Plant and Animal Communities)

While perhaps a laudable goal, there is no basis to expand the requirements beyond the 1982 provisions, and certainly no basis to make requirements for something the forest service admits knowing little about. Let us consider these species as we learn more about them and leave the requirement out of it. After all the forest service appears to have had significant problems complying with the existing requirements, ***more should not be added.***

4) The Agency Wants To Meet The Intent Of The NFMA

Surprisingly the Agency states their belief that their new requirements have somehow meet the intent of the NFMA, however as outlined above they have gone far beyond the intent and the agency should change the EIS in order to comply with the actual authorization and intent of the NFMA.

The Agency believes that the proposed rule requirements to provide for the diversity of plant and animal communities are practical and meet the intent of the NFMA.

(DEIS Page 8494 Section 219.9 Diversity of Plant and Animal Communities)

Do Not Include Lands Or Aspects Where Agency Has No Control

Another example of the overreaching nature and imprudent expansion of Planning Rule is to 'collectively' require the inclusion of lands or stressors over which the "agency has no control."

*The Agency proposes that its role is to provide ecological conditions in the plan area that would contribute to recovering these species across their ranges, which in many cases includes lands outside NFS boundaries where **the Agency has no control.***

***Collectively these requirements** are intended to have the responsible official work beyond the planning unit boundary to collaborate and cooperate with other landowners and land managers in working toward an all-lands approach to ecosystem and species diversity and conservation. (DEIS Page 8494 Section 219.9 Diversity of Plant and Animal Communities)*

*Other **stressors**, such as invasive species, insects, disease, catastrophic wildfire, floods, droughts, and changes in precipitation, among others, will also affect species and habitat in ways that **the Agency cannot completely control or mitigate for.***

(DEIS Page 8494 Providing For Diversity)

Administrative Changes Should Not Be Expanded

The DEIS discusses administrative planning changes which is normally reserved for clerical errors, mapping errors or meeting statutory or regulatory changes. The DEIS proposes that Wilderness Additions would be handled Administratively and without public input, while the DEIS states that new Wilderness Areas would require full public involvement and would not be done Administratively.

*A requirement that would allow no discretion in management would call for simply an administrative change, as there would be no decision for the responsible official to make, and no reason for public input. **For example, an addition of lands to an existing wilderness boundary would call for simply extending the wilderness plan components to the newly included lands, as there would be no reason to manage those lands differently from the rest of the wilderness. In contrast, designation of an entirely new wilderness would require a plan amendment to ensure appropriate public involvement in the development of plan components for the new wilderness area.***

(DEIS Page 8500 Administrative Changes)

We feel that in both Wilderness additions, as well as new Wilderness, full public involvement under a plan amendment should be required, as the addition of Wilderness

lands will change the character and area of the Wilderness, which in turn may warrant a change in the management of those lands and surrounding lands.

For example, the additional Wilderness area may cause the Recreation Opportunity Spectrum, Management Objectives and other factors of the remaining non Wilderness Lands in the unit to become out of balance when those multiple use lands are switched to non management and exclusive use under Wilderness. Besides, since New Wilderness Areas are not appropriate under Administrative Changes, then changes to existing Wilderness should not be Administrative.

By law changes incurred by Wilderness Designation must involve areas greater than 5000 acres. Clearly changes to acreage this large will have considerable effect and cannot be considered Administrative by any standard.

Likewise the DEIS proposes changes to Monitoring areas, as well as identification of watersheds and the units distinctive roles, among other things; all be handled Administratively. **These components would almost certainly effect how the unit is managed and are therefore NOT Administrative. Instead they should be handled with a Plan Amendment.**

Other content in the plan that could be altered with an administrative change, as identified in § 219.7(e), includes the monitoring plan, the identification of watersheds that are a priority for maintenance or restoration, the unit's distinctive roles and contributions, and information about proposed or possible actions that may occur on the unit during the life of the plan. The plan may also include additional items such as other content in the plan, including management approaches or strategies; partnership opportunities and coordination activities; or criteria for priority areas or activities to achieve objectives of the plan. (DEIS Page 8500 Administrative Changes)

Cost Factor Must Include Monitoring, Assessments and Scope

While we have argued in this comment letter that costs should not be a driving factor in determining how recreation lands are managed, the DEIS has proposed that cost will be a determining factor. For example the DEIS requires recreation to be “economically sustainable”.

The proposed rule defines sustainable recreation as, “The set of recreational opportunities, uses and access that, individually and combined, are ecologically, economically, and socially sustainable, (Planning Rule DEIS Page 8496 Section Recreation)

Should this proposed DEIS cost point of view prevail with regards to recreation, then the proposed Monitoring, Assessments and other things as proposed, which will no doubt incur large cost burdens as well as lost revenues, should be held to the proposed economic sustainability standard to determine the scope that can be afforded.

Also should the DEIS cost point prevail in the rule with regards to recreation, then changes to Wilderness Lands, Monitoring, Assessments and all other things proposed should also be done under Plan Amendments, rather than Administrative changes.

Waive Wilderness Identification If Prior Study Has Been Done

The Planning Rule proposes that every Forest Plan or revision is required to “*identify*” areas for Wilderness recommendation.

§§ 219.8 through 219.11.

(iv) Identify potential wilderness areas and consider whether to recommend any such areas for wilderness designation. (DEIS § 219.7 New plan development or plan revision Page 8517)

This would mean areas which have already been studied and found unsuitable for Wilderness would have to be reviewed again during the above identification process at further expense. However we notice that the DEIS has included language regarding Scenic Rivers that addresses this concern. It would prudent if the above Wilderness statement was modified just as the following statement from the proposed Planning Rule to include the highlighted section.

(v) Identify the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System, unless a systematic inventory has been previously completed and documented and there are no changed circumstances that warrant additional review.

(DEIS § 219.7 New plan development or plan revision Page 8517)

Environmental Justice Beyond the Authority

The Forest Service is working under the specific authority of the National Forest Management Act of 1976 and the Multiple Use Sustained Yield Act of 1960, which provide specific environmental and multiple use requirements. “**Environmental justice**” is not one of the requirements and goes beyond the authority the Forest Service has been granted by Congress. It is also a vague term and will be contrary to stated purpose of simplifying the Planning Rule. “**Environmental justice**” is not mentioned in either Act and the term should be removed from the EIS.

*“The Agency recognizes the need to engage a full range of interests and individuals in the planning process and the responsibility to promote **environmental justice**.”
(Planning Rule DEIS Page 8486 Section 219.4 Requirements for Public Participation)*

Typo In Planning Rule Web Link In DEIS Constrains Public Comments

There is a typo in the link provided in the DEIS. Of course this means that it would be difficult for the public to read the planning rule and comment substantively. This error has constrained public involvement.

“This analysis is posted on the World Wide Web at: <http://www.fs.usda/planningrule>, along with other documents associated with this proposed rule.”

The correct link is <http://www.fs.usda.gov/planningrule>

Stakeholders, Organizations and Partners Need to be Included

Since the Forest Service has singled out **Tribes, governments, scientists and other individuals**, they should add **stakeholders, organizations and partners** to the list of those whom the Forest Service will be required to encourage to participate in future proposals, amendments and plans.

*Section 219.4 Requirements for Public Participation
Participation Opportunities*

*“The proposed rule specifically would require the responsible official to encourage participation by the **public, Tribes, governments, scientists, and other individuals** by sharing knowledge, ideas, and resources. It is also expected that the responsible official would rely on proactive, contemporary tools, such as the Internet, to encourage widespread participation.”* (Planning Rule DEIS Page 8486 Section 219.4 Requirements for Public Participation)

Likewise **stakeholders, organizations and partners** should be added anywhere in the EIS where other entities have been singled out for involvement, for example in the below

“the responsible official would work with other government agencies, Tribes, and the public to use the information gathered in the assessment phase to shape a proposed action that would respond to the need for change.” (DEIS Page 8487 Section 219.5)