



## Forest Carbon Coalition

Advancing nature's climate solutions

August 12<sup>th</sup>, 2019

*Sent by regular and electronic mail*

NEPA Services Group, c/o Amy Baker  
USDA Forest Service  
125 State Street, Suite 1705  
Salt Lake City, UT 84138  
[Nepa-procedures-revisions@fs.fed.us](mailto:Nepa-procedures-revisions@fs.fed.us)

RE: Comments on *Proposed Rule, National Environmental Policy Act (NEPA) Compliance*  
(84 Fed. Reg. 27,544, June 13, 2019)

Dear Ms. Baker;

The Forest Carbon Coalition (FCC) is a network of scientific, conservation, and environmental justice allies working together to protect US forests from harmful logging practices that exacerbate the climate crisis and to restore one of the world's most vital carbon sinks to its natural capacity. We submit the following comments on the proposed revisions to the Forest Service's National Environmental Policy Act (NEPA) procedures at 36 CFR § 220 et seq. as published in the Federal Register Thursday, June 13<sup>th</sup>, 2019.<sup>1</sup>

Our chief concerns include the following:

- The proposal to weaken the Forest Service's NEPA procedures will accelerate the implementation of projects that result in higher atmospheric concentrations of CO<sub>2</sub> and undermine the resiliency of national forestlands to climate change.
- The Forest Service has not explained how the proposed NEPA rules will affect the agency's obligations and behavior related to more climate-protective procedures adopted under the Water Resources Development Act.
- The proposal to retain, expand, and implement new categorical exclusions for logging, roadbuilding, and oil and gas development projects is inappropriate and unjustified because these are categories of projects that normally result in significant

---

<sup>1</sup> Federal Register Vol. 84, No. 114 at 27544-27599. Hereafter "Proposed rules."

individual and cumulative damage to the human environment, including climate change and loss of climate resiliency.

- The Forest Service has failed to comply with Executive Order 12866 by excluding several significant cost factors from its analysis of economic effects of the proposed rules.
- The proposed rules would lock in outdated and scientifically flawed standards and guidelines contained in land and resource management plans that have yet to be revised in accordance with the 2012 planning rule.
- The proposed categorical exclusion for expired special use permits would grandfather in obsolete right of way and log-haul permits that are facilitating the devastation of forests on non-federal lands.
- From a climate impacts perspective, the vast majority of the agency's previous NEPA analyses are deficient and so the proposed "determination of NEPA adequacy" provision is unjustified and undermines NEPA's intent to reflect best available information currently available.
- The proposed provisions permitting combinations of multiple categorical exclusions for similar actions in a given landscape violates NEPA's prohibition on segmentation.
- A full NEPA analysis of the proposed rule is required, insofar as the Forest Service has already determined that the proposed rule will hasten the pace and scale of ground disturbing activities.

Details of these concerns are set forth below.

### **1. The scientific mandate: federal public lands should be managed as forest carbon reserves and the Forest Service should help accelerate the adoption of climate smart practices on state and private lands.**

Climate change presents an existential threat to humanity.<sup>2</sup> Recently, members of Congress have introduced a resolution establishing a climate emergency for the US that "demands a national, social, industrial, and economic mobilization of the resources and labor of the United States at a massive scale to halt, reverse, mitigate, and prepare for the consequences of the climate emergency and to restore the climate for future generations."<sup>3</sup> As the world's largest producer and consumer of wood products and as a nation endowed with forestlands capable of capturing and storing more carbon per acre than any terrestrial ecosystem on Earth the US has a unique role to play. In particular, climate crisis requires that the Forest Service and other federal and state agencies that regulate forest management must do their part to help this nation achieve climate stability by:

---

<sup>2</sup> See, for example, Spratt, D., and I.T. Dunlop. 2019. [Existential climate-related security risk: a scenario approach](#); and United Nations. 2018. [Climate change: an 'existential threat' to humanity, UN chief warns global summit](#).

<sup>3</sup> House Concurrent Resolution 52, 116<sup>th</sup> Congress, 1<sup>st</sup> Session. Accessible online at: <https://www.congress.gov/116/bills/hconres52/BILLS-116hconres52ih.xml>.

- a) Protecting public forestlands throughout the US as forest carbon reserves. This means phasing out commercial resource extraction activities that deplete forest carbon stocks, generate greenhouse gas emissions, reduce carbon sequestration capacity, and make the landscape more vulnerable to climate change. This also means engaging in science-based restoration of damaged lands and managing all forestlands to replenish depleted forest carbon stocks to their natural levels. These two actions – reforestation and natural forest management – have been identified as the most important actions society can take to diminish the climate crisis.<sup>4</sup>
- b) Facilitating the replacement of industrial forest practices on state and private lands with climate smart alternatives. The Forest Service has a major role to play in leveraging climate smart practices on non-federal lands through the various grants, technical assistance, subsidies and permitting the agency engages in that now facilitate harmful practices on these lands.
- c) Ensuring that all projects authorized by federal and state agencies on US forestlands meet a strict climate test to ensure that they (1) lead to a reduction in atmospheric greenhouse-gas concentrations; (2) increase carbon sequestration capacity; (3) rebuild forest carbon stocks, and (4) improve the ability of US forestlands to withstand predicted increases in drought, wildfires, storms, floods, harmful algae blooms, and outbreaks of insects and disease. This means folding climate impacts directly and prominently into NEPA procedures and applying these procedures, through environmental assessments or environmental impact statements, to all actions that may have significant individual or cumulative impacts, including actions previously considered to not warrant such analysis.

Against this backdrop of what is needed to enroll US forestlands more directly into global aspirations to mitigate and adapt to climate change, the proposed NEPA procedures will take US forestland management in the opposite direction. In particular:

**2. The proposed weakening of Forest Service NEPA procedures will accelerate the implementation of projects that are contributing significantly to harmful climate change and undermining the resiliency of national forestlands to climate change.**

The Forest Service has determined that the proposed NEPA rules will increase “the pace and scale of work accomplished on the ground.”<sup>5</sup> Unfortunately, this means an acceleration of logging, roadbuilding and extraction of oil and gas – activities that are not only driving climate change but making national forestlands more susceptible to climate change.

---

<sup>4</sup> Bastin, J-F, and others. 2019. [The global tree restoration potential](#); Moomaw, W.R., S.A. Masino, and E.L. Faison. 2019. [Intact forests in the United States: proforestation mitigates climate change and serves the greatest good](#); and Mackey, B. 2014. [Counting trees, carbon, and climate change](#).

<sup>5</sup> Proposed rule at FR 27544.

All logging projects, regardless of how they are characterized, result in substantial carbon dioxide emissions through the decay of wood products and logging slash, the energy used in transportation and manufacturing, and the emissions associated with fertilizers and pesticide applications. In Oregon, two independent analyses found average annual emissions associated with logging and wood products to exceed 34 million metric tons CO<sub>2</sub>-e per year (MMT CO<sub>2</sub>-e/yr), which is about 8.5 tons CO<sub>2</sub> for every thousand board feet (mbf) logged.<sup>6</sup> These emissions exceed those of all other sectors, including transportation-related combustion of fossil fuels. In North Carolina, a recent analysis by Center for Sustainable Economy found that logging-related emissions average about 2.34 tons CO<sub>2</sub> for every ton of CO<sub>2</sub> removed from the forest, over 44 MMT CO<sub>2</sub>-e per year total.<sup>7</sup> Logging and wood products is the third most carbon-intensive in this state. These analyses underscore the imperative of accounting for logging-related carbon emissions in NEPA analysis.

Logging projects that replace native forests with timber plantations also amplify the deleterious effects of climate change. They do so by increasing the risks of wildfires, reducing dry season water supplies, and exacerbating vulnerability to insects and disease.<sup>8</sup> All roadbuilding projects increase the rate of erosion and landslides caused by intense storm events that are becoming more abundant with climate change and create increasingly hotter, drier microclimates through fragmentation of interior forests.<sup>9</sup> All oil and gas exploration activities generate methane and carbon dioxide emissions, both directly and subsequently once wells are fully developed.<sup>10</sup> In addition, each of these activities reduces the carbon

---

<sup>6</sup> See, e.g. Law, B.E., Hudiburg, T.W., Berner, L.T., Kenbt, J.J., Buotte, P.C., Harmon, M.E., 2018. Land use strategies to mitigate climate change in carbon dense temperate forests; Oregon Global Warming Commission. 2018. [Forest carbon accounting project report](#); Krankina, O.N., et al. 2012. [Carbon balance on federal forest lands of Western Oregon and Washington: The impact of the Northwest Forest Plan](#); and Talberth, J., 2017. Oregon Forest Carbon Policy: Scientific and technical brief to guide legislative intervention. Portland, OR: Center for Sustainable Economy. Available online at: <https://sustainable-economy.org/wp-content/uploads/2017/12/Oregon-Forest-Carbon-Policy-Technical-Brief-1.pdf>.

<sup>7</sup> Talberth, J., Davis, S., Olson, L., 2019. Climate Impacts of Industrial Forest Practices in North Carolina: Synthesis of best available science and implications for forest carbon policy. Asheville, NC: Dogwood Alliance and Center for Sustainable Economy.

<sup>8</sup> See, e.g. Perry, T. D., Jones, J.A., 2016. Summer streamflow deficits from regenerating Douglas-fir forest in the Pacific Northwest, USA. *Ecohydrology*. 1-13; Stone, C., Hudak, A., Morgan, P., 2008. Forest harvest can increase subsequent forest fire severity. In *Proceedings of the Second International Symposium on Fire Economics, Planning and Policy: A Global View*. Armando González-Cabán, ed. Riverside, CA: USDA Forest Service, Pacific Southwest Research Station; Bradley, C., C.T. Hanson, and D.A. DellaSala. 2016. [Does increased forest protection correspond to higher fire severity in frequent-fire forests of the western United States?](#); and Zald, H.S.J., and C.J. Dunn. 2018. [Severe fire weather and intensive forest management increase fire severity in a multi-ownership landscape](#).

<sup>9</sup> USGCRP, 2018: [Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II](#) [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA; and Ibisch, P.L., et al. 2016. [A global map of roadless areas and their conservation status](#).

<sup>10</sup> Fleischman, L. 2018. [EPA data shows greenhouse gas emissions from oil and gas increase](#).

sequestration capacity of national forestlands by removing trees that were once capturing and storing carbon on the land.

The extreme risks posed by the climate crisis demands that the pace and scale of such activities be reduced, yet the proposed NEPA rules will do the opposite. In particular, retained, expanded, and proposed new categorical exclusions at § 220.5 d(11), e(3), e(6), e(8), e(11), e(12), e(13), e(14), e(17), e(24) and e(26) will ensure that these harmful activities will proceed without:

- Quantification of emissions or other climate impacts.
- Climate change safeguards that could be identified and adopted as mitigation measures if they were analyzed with environmental assessments (EAs) or environmental impact statements (EISs).
- The benefit of review by non-agency experts.

### **3. The proposed NEPA rules conflict with the Forest Service's obligations under the Water Resources Development Act of 2007 (WRDA).**

The agency should not implement the proposed rule until it declares and demonstrates that doing so will not diminish its compliance with its obligations under the Water Resource Development Act of 2007 (WRDA). Specifically, the proposed rule must not compromise the agency's obligation to allow logging only after it has clearly demonstrated that the public benefits will exceed the costs. This and other, related obligations come from WRDA's Principles, Requirements and Guidelines for Water and Land Related Resources Implementation Studies (PR&G). These obligations exist independent of the agency's existing NEPA requirements and, hence, should not be diminished or undermined by the proposed NEPA rule. They include obligations to:

1. Maximize public benefits derived from the affected resources, with appropriate consideration of costs.
2. Evaluate the economic and ecological impacts of logging and other land-management actions that would directly or indirectly affect water quality or water quantity.
3. Account fully for impacts on ecosystem services, including the services provided by carbon stored in the forest.
4. Collaborate fully with all interest groups.

The discussion below highlights how the proposed NEPA rule conflicts with the Forest Service's obligations under the PR&G.

- a) WRDA establishes for the Forest Service an obligation to maximize net public benefits from its actions affecting the resources it manages.

In January 2017, the Department of Agriculture [acknowledged](#) its commitment to comply with the documents collectively known as the *Principles, Requirements and Guidelines for Water and Land Related Resources Implementation Studies* (PR&G).<sup>11</sup> This commitment applies to a broad range of actions by the U.S. Forest Service (USFS)—including ecosystem restoration or land management activities on national forests and grasslands—that by purpose, either directly or indirectly, affect water quality or water quantity. The PR&G were developed under the [Water Resources Development Act of 2007 \(WRDA\)](#), not NEPA. Hence, the proposed rule would not alter its PR&G obligations. The overlap between the PR&G and existing NEPA requirements is sufficiently extensive that the PR&G will leave the agency obligated, under WRDA, to conduct analyses and collaborate with interest groups even after the proposed rule erases its obligations under NEPA. The Forest Service’s PR&G obligations require the Forest Service to strive to maximize public benefits from its actions, with appropriate consideration of costs. As it works to achieve this objective, it must:

- Apply an ecosystem-services approach for evaluating benefits and costs.
- Utilize the best available science, data, analytical techniques, procedures, models, and tools in hydrology, engineering, economics, biology, ecology, risk and uncertainty, and other fields to the extent that sufficient funding is available.
- Consider both monetary and non-monetary effects, as well as those that can be quantified and those that cannot.
- Give preference to actions that will yield sustainable jobs, incomes, etc. relative to those that will have a greater emphasis on non-sustainable impacts. To assess impacts on economic development, the agency must consider both those directly initiated by project expenditures and those that materialize indirectly, as when amenities associated with the resources affect the locational decisions and behaviors of households and businesses.
- Consider, in a clear and understandable manner, the risks and uncertainties associated with climate change.
- Formulate and evaluate a range of reasonable alternative plans, strategies, or actions.
- Transparently and fully document the basis for the agency’s decision.
- Collaborate fully with other affected federal agencies and with Tribal, regional, state, local, and non-governmental entities, as well as with community groups, academia, and private land owners (stakeholders) to realize more comprehensive problem resolution and better-informed decision making.

The PR&G allows the Forest Service to declare some activities, especially those limited in scope and cost to the Treasury, to be exempt from its obligation to conduct a full-scale analysis before deciding to implement them. Such an exemption, however, does not erase

---

<sup>11</sup> U.S. Department of Agriculture. 2017. [Departmental Regulation: Conducting Analyses Under the Principles, Requirements, and Guidelines for Water and Land Related Resources Implementation Studies and Federal Water Resource Investments](#). DR 9500-013. January 5, 2017; Council on Environmental Quality. 2013. [Principles and Requirements for Federal Investments in Water Resources](#); 2014. [Interagency Guidelines](#).

the agency's general obligation to employ the PR&G framework for evaluating its actions that affect water resources and its specific obligation to strive to maximize the public benefits from these actions.

The Forest Service has not declared and demonstrated that the proposed rule will not interfere with its commitment to satisfy its PR&G obligations. Nor has it detailed the procedures and controls it will use ensure that such interference will not materialize. It has not provided credible assurance that, with the expedited decision-making process described in the proposed rule, it will strive to maximize public benefits from new commercial logging, thinning, and other projects.

The proposed rule makes no mention of the agency's PR&G obligations. It does not discuss the extent to which its current requirements under NEPA overlap with those of the PR&G and, hence, it fails to describe where and how the proposed relaxation of its NEPA requirements should have no or little effect on its behavior.

Rather than describe its obligations that will remain after implementing the proposed rule, and its commitment to implement the proposed rule in a manner that will maximize public benefits from commercial logging and other projects, the Forest Service has indicated that it was motivated to develop the proposed rule to alleviate strains on the agency's staff and resources or to accomplish other objectives other than maximizing public benefits.<sup>12</sup>

For example, it explains it would use the proposed rule to expedite, without detailed environmental analysis, "commercial timber harvest in combination with stream restoration in a 4,200-acre area."<sup>13</sup> Its stated purpose for this project, "to improve forest health and watershed conditions," does not mention maximization of public benefits. Indeed, the Forest Service makes no indication that the agency is concerned about whether or not the benefits of this project—or any other logging projects—will outweigh the costs, or that it will even attempt to maximize the public benefits of its actions.

The Forest Service also has indicated that, rather than fully collaborate and receive input from others fully, as required by the PR&G, it will curtail its collaborative efforts. And, unless it finds "new" information or circumstances, it intends to apply the analysis of a past logging project to justify initiating a new one, even if the old analysis failed to fully consider all the information and circumstances that were relevant at that time. In other words, the agency indicates it will not evaluate the adequacy of an analysis of a previous logging project that it uses to justify a new project. Specifically, it will not look to see if the earlier analysis determined that the previous logging project would maximize public benefits. Instead, the agency raises the possibility that it will merely determine that there exists a document containing an analysis for the previous logging project and then use the document to declare

---

<sup>12</sup> U.S. Forest Service. 2019. [Proposed National Environmental Policy Act Rule](#).

<sup>13</sup> U.S. Forest Service. 2019. [Proposed National Environmental Policy Act Rule](#).

that it need not do more to develop a full understanding of the environmental and social impacts of the new logging project.

Thus, the proposed rule raises the likelihood that the agency will seek to initiate new logging projects that look like old ones, even if the old ones did not maximize public benefits, and even if the old project did more harm than good. In short, it invites bias and abuse, with the agency using a bad old logging project to justify a bad new one.

The Forest Service should not implement the proposed rule until it fully and clearly explains:

1. How the proposed rule will or will not alter its behavior regarding activities subject to its PR&G obligations.
2. Its commitment to fully satisfy its PR&G obligations following implementation of the proposed rule.
3. The procedures and controls it will use to ensure compliance with its PR&G obligations.
4. The procedures and information it will use to demonstrate that actions taken under the proposed rule satisfied its obligation to strive to maximize public benefits, with appropriate consideration of costs.

The next two sections of these comments provide further detail regarding the Forest Service's climate-related obligations under the PR&G that may be put at risk by the proposed NEPA rules.

- b) The PR&G requires the Forest Service to evaluate climate-related impacts, costs, and risks that accompany and result from commercial logging and other extractive activities

The Forest Service has expressed its intent to use the proposed rule to facilitate commercial logging, thinning, and similar projects. The proposal contains a serious flaw. This flaw materializes from the agency's failure to demonstrate that it can and will keep up with rapidly evolving climate science and fully account for the climate-related impacts, costs, and risks that will result from commercial logging and other activities. As a consequence, there is a high likelihood that, if it implements the proposed rule, the agency will exhibit a persistent bias that undervalues the climate-related costs resulting from logging. In other words, it will log too much, with the benefits from the logging outweighed by the climate-related costs and risks.

The best science available today documents the economic harm resulting from commercial logging's contributions to the climate crisis. Recent research shows, for example, that commercial logging generates high levels of CO<sub>2</sub> emissions—34 million metric tons per year in Oregon, more than the state's emissions from the combustion of fossil fuels.<sup>14</sup> The agency has yet to incorporate these findings—and the scientific methods and data underlying them—

---

<sup>14</sup> Law et al., 2018, note 6.



into its analyses of the environmental and social impacts of commercial logging projects on lands it manages. Hence, it lacks credible analyses of previous logging projects that it can use, under the proposed rule, to provide the basis for approving a new commercial logging project in a manner that would satisfy the PR&G agency's obligations, listed above. Indeed, it lacks credible analyses it can use within the boundaries of the expedited decision-making procedures under the proposed rule. If it didn't use the best available data and methods to measure the CO<sub>2</sub> emissions that resulted from a previous logging project, it can't credibly declare that it can use the past analysis of that project to measure the emissions of future logging projects or to account for the resulting climate-related economic costs and risks.

The Forest Service has no legitimate excuse for not measuring the emissions, costs, and risks of logging projects. It need only look to the Bureau of Land Management (BLM) for an example of how to calculate both logging-related CO<sub>2</sub> emissions and the economic costs therefrom.<sup>15</sup> The BLM developed data showing that, for an increase in logging on its lands, the climate-related costs from the associated CO<sub>2</sub> emissions would exceed the value of the logs by more than 4-to-1.<sup>16</sup> The BLM's data also showed that the climate-costs would exceed \$25,000 per acre logged. To calculate the social (public) costs from the logging-related emissions, the BLM assumed the damage from near-term emissions would be about \$40 per metric ton. This assumption comes from the efforts of a federal Interagency Working Group and represents the best science available in 2015.<sup>17</sup>

The best available science today, however, shows that the economic damage resulting from near-term CO<sub>2</sub> emissions is about \$417 per metric ton.<sup>18</sup> Applying this figure to the BLM's data indicates that the climate-related costs from logging-related CO<sub>2</sub> emissions would exceed the value of the logs from BLM's lands by more than 40-to-1. The researchers, who published this finding in 2018, also noted the risk that the value could be \$800 per ton. This risk indicates that the climate-related damage resulting from logging on BLM's lands plausibly could be 80 times the value of the logs produced. Thus, these numbers indicate that logging on BLM's lands and, hence, on similar national forest lands, will result in climate costs and risks of more than \$250,000-\$500,000 per acre logged.

In reality, the actual damage undoubtedly will be higher, insofar as no assessment of the social cost of atmospheric CO<sub>2</sub> accounts for all categories of damage, including warming and acidification of the oceans, species extinctions, and the potential for catastrophic rises in sea level sooner than previously anticipated. Indeed, with astonishing frequency, new research

---

<sup>15</sup> U.S. Bureau of Land management. 2016. [Resource Management Plan and Final Environmental Impact Statement: Western Oregon](#).

<sup>16</sup> *Id.*, Vol. 3, p. 526.

<sup>17</sup> Interagency Working Group on Social Cost of Carbon, United States Government. 2015 (revised). Technical Support Document: - Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis - Under Executive Order 12866.

<sup>18</sup> Ricke, Katharine, and others. 2018. [Country-level social cost of carbon](#).

findings reveal that the climate crisis is more severe and worsening faster than previously believed. For example:

- “Carbon-saturated oceans headed toward tipping point [that] could unleash mass extinction event.”<sup>19</sup>
- “Glacial melting in Antarctica may become irreversible [and] trigger 50cm sea level rise.”<sup>20</sup>
- “[S]ince 2000, warming has already cost both the US and the EU at least \$4 trillion in lost output, and tropical countries are greater than 5% poorer than they would have been without this warming.”<sup>21</sup>
- “The health, safety and well-being of millions of people in the U.S. have already been harmed by human-caused climate change, and health risks in the future are dire without urgent action to fight climate change.”<sup>22</sup>

The biophysical conditions on the BLM’s lands in western Oregon are similar to those on national forests lands in western Oregon, Washington, and northern California. The Forest Service, however, has not incorporated the BLM’s methods, data, and findings into its analyses of logging on national forests in this region, or in other regions. That is, the agency has not demonstrated, through its analyses and decisions of previous logging projects and its communications with the public, that it recognizes that the best available science indicates the climate-related costs that accompany logging can exceed the value of the logs produced by at least 40-to-one, and the risks exceed a ratio of 80-to-1. The agency has not acknowledged that, if left unlogged, a forest, by storing carbon, can provide ecosystem services that prevent climate-related damage of \$250,000–\$500,000 per acre. Furthermore, the Forest Service has not adapted these research findings into analyses, decisions, and communications regarding logging on lands elsewhere. Hence, the agency currently lacks any credible analysis of a previous logging project it can use, under the proposed rule, to provide a legitimate basis for approving a new logging project.

c) The proposed NEPA rule cannot undo PR&G’s obligations, which overlap with NEPA’s requirement, to make decisions using the best available climate science

---

<sup>19</sup> Conley, Julia. 2019. [Completely Terrifying: Study Warns Carbon-Saturated Oceans Headed Toward Tipping Point That Could Unleash Mass Extinction Event](#). 9 July.

<sup>20</sup> Adam Morton, Adam. 2019. [Glacial melting in Antarctica may become irreversible: Thwaites glacier is likely to thaw and trigger 50cm sea level rise, US study suggests](#). 9 July.

<sup>21</sup> Burke, Marshall, and Vincent Tanutama. 2019. [Climatic Constraints on Aggregate Economic Output](#).

<sup>22</sup> Associated press. 2019. [74 medical and public health organizations are calling climate change a 'health emergency'](#). 24 June.

The best available science also shows that planting more trees and letting existing trees grow bigger—not logging—is the best forest-management alternative for slowing the intensification of the climate crisis. Recent reports illustrate this fact:<sup>23</sup>

- “While sequestration through wood products may be significant for some nations, as a whole, there's no way that it's going to be able to make a significant dent in the total carbon emissions.”
- “[F]orest restoration is the best climate change solution available today. But we must act quickly, as new forests will take decades to mature and achieve their full potential as a source of natural carbon storage.”
- “Planting billions of trees across the world is by far the biggest and cheapest way to tackle the climate crisis.”
- “To maximize the climate benefits of forests, we must keep more forest landscapes intact, manage them more sustainably, and restore more of those landscapes which we have lost.
- “Halting the loss and degradation of natural systems and promoting their restoration have the potential to contribute over one-third of the total climate change mitigation scientists say is required by 2030.”

These results build on earlier research, a synthesis of which was published by the Forest Service and concluded:<sup>24</sup>

- “Lengthening the harvest interval or reducing the amount removed in a harvest will store more carbon in the forest. The greater the increase in harvest interval over the current level, the higher the increase in carbon storage.”
- “Avoiding deforestation [keeping forests intact] retains forest carbon and has many co-benefits and few risks. ”

The Forest Service has not revealed the factors underlying its failure to fully account for the climate-related costs and risks of logging, and the climate-related benefits of planting more trees and allowing existing trees to grow bigger. Perhaps the agency's managers don't know what the best available science says regarding the relationship between forest management and climate costs. Or, perhaps they deny the reality of the climate crisis and the facts revealed by this research, that logging of trees on the national forests can intensify the crisis, imposing severe costs and risks on the public. Statements by the president and administration officials, as well as recent actions by federal agencies, substantiate concern about the possibility that climate-crisis denial will play a role in the implementation of the

---

<sup>23</sup> Johnston, Craig and Volker Radeloff. 2019. Global mitigation potential of carbon stored in harvested wood products; Carrington, Damian. 2019. Tree planting 'has mind-blowing potential' to tackle climate crisis. 4 July; Bastin JF, Y. Finegold, C. Garcia, D. Mollicone, M. Rezende, D. Routh, C.M. Zohner, and T.W. Crowther. 2019. The global tree restoration potential. 5 July; IUCN. 2019. Forests and climate change.

<sup>24</sup> Ryan, M.G. 2010. [A synthesis of the science on forests and carbon for U.S. forests.](#)

proposed rule.<sup>25</sup> The Forest Service must declare—explicitly, clearly, and completely—the steps it will take, now and in the future, to ensure that this possibility does not materialize. If it can't make such a declaration, and enforce it, then it would be reasonable to conclude that the proposed rule is a sham, grounded in climate denial.

This discussion shows that the Forest Service should not proceed with the proposed rule unless and until it expresses its commitment to fully account for the climate-related consequences of forest management alternatives and demonstrates it has the ability to apply this accounting to each activity or project that will be subject to the rule. Specifically, it must:

1. Acknowledge that it recognizes the best available science indicates logging increases CO<sub>2</sub> emissions and, hence, intensifies the climate crisis, and the reverse is true for planting trees and letting existing trees grow bigger.
2. Demonstrate that it understands the best science available today regarding the relationship between forest management and the climate crisis, that it has the ability to remain current with the best science as it evolves, and that it intends to incorporate the best available science into its decisions regarding each logging project or other project/activity that would affect the climate crisis, positively or negatively.
3. Demonstrate that it understands how to calculate the climate-related costs and risks resulting from logging, that it intends to complete such calculations for proposed logging projects, and that it intends to incorporate climate-related costs and risks into its efforts to maximize the public benefits, with appropriate consideration of costs, derived from the national forests and grasslands.
4. Demonstrate that it recognizes that current information indicates that, in some settings, the climate-related damage resulting from logging-related CO<sub>2</sub> emissions can exceed the value of the logs produced by more than 40-to-1 and generate risks of damage with a ratio greater than 80-to-1.
5. Demonstrate that it recognizes that an unlogged forest, by storing carbon, can provide climate-related ecosystem services worth more than \$250,000-\$500,000 per acre.

Failure to take these steps would indicate that the Forest Service intends to extend the deficiencies in its past analyses of the climate-related costs and risks of logging projects.

---

<sup>25</sup> Moon, Emily. 2018. [Climate Change Does More Than 'Maybe Contribute a Little Bit': Debunking Trump's California Wildfire Claims: What research tells us about the impact of climate change, forest management, and more on California's fires](#). 19 November; Evich, Helena Bottemiller. 2019. [Agriculture Department buries studies showing dangers of climate change](#). 23 June. McCrimmon, Ryan. 2019. [Economists flee Agriculture Dept. after feeling punished under Trump](#). 7 May. Dockrill, Peter. 2019. [Report: US Officials Are Censoring Press Statements on Climate Change](#). 9 July.

Unless and until it corrects the deficiencies, any decision to use its analysis of a past logging project to grant approval for a new project would be arbitrary.

It is important to note that accurately assessing the value of the climate-related ecosystem services provided by unlogged forests should play two roles as the Forest Service complies with its obligations under the PR&G. First, it should help the agency decide if it must complete a detailed PR&G evaluation of a proposed logging project. The PR&G allow the agency to forgo such an analysis for project that involves a federal investment less than \$10 million. To measure the federal investment associated with a given logging project, the Forest Service should sum the value of all assets committed to the project. These assets include cash from the Treasury, the depreciation of buildings and equipment, and the lost ability to produce ecosystem services that otherwise would have been provided by the forest if it were left unlogged. The numbers discussed above indicate that the lost climate-related ecosystems services could have a value of more than \$250,00-\$500,000 per acre. Thus, the loss of these ecosystem services, alone, could total more than \$10 million and, hence, warrant a detailed PR&G evaluation for a logging project of just 20-40 acres.

Second, the value of the climate-related ecosystem services that would be lost because of logging should be accounted for as the Forest Service determines if the benefits of a logging project would outweigh its costs. The numbers discussed above indicate that the benefits might have to exceed \$250,000-\$500,000 per acre to justify logging.

d) The Forest Service must not use the proposed NEPA rule to weaken or avoid its obligation, under the PR&G, to use the best available science to evaluate how commercial logging and other extractive activities diminish the value of ecosystem services, including carbon storage.

The best science currently available shows that commercial logging and other activities do harm not just by generating CO<sub>2</sub> emissions that intensify the climate crisis but also by diminishing the value of many ecosystem goods and services.<sup>26</sup> It also indicates that actual and potential changes in climate can compound this effect. The Forest Service must account for these effects and interactions as it strives to maximize the public benefit from its actions.

The Forest Service has focused on the potential ecosystem benefits of commercial logging to justify using the categorical exclusion (CE) process to authorize commercial logging of forests affected by insects or disease:

The CEs covered in the proposed rule fall into three general categories: (1) those covering restoration activities.... Removing trees affected by insects or disease through

---

<sup>26</sup> DellaSala, D.A. et al. 2015. [Building on two decades of ecosystem management and biodiversity conservation in the Northwest Forest Plan, USA.](#)

commercial timber harvest in combination with stream restoration in a 4,200-acre area to improve forest health and watershed conditions is one example of a restoration project.<sup>27</sup>

The agency does not, however, account for the ecological costs that would result from the logging, or the possibility that these costs might overwhelm the benefits from logging. That is, it has not demonstrated that it analyzed the benefits and costs of the proposed logging, compared them with the benefits and costs of reasonable alternatives—including no logging—and calculated that the logging alternative would maximize public benefits, with appropriate consideration of costs. It seems unaware of the costs of logging and oblivious to the likelihood that these costs will have real, negative consequences for some families, workers, and communities.

The comments in the preceding section explain the agency's systemic inability to calculate—perhaps even to contemplate—the climate-related costs and risks of commercial logging. Hence, it is reasonable to expect that it failed to consider these climate-related costs when it concluded that potential restoration benefits would justify using the categorical exclusion (CE) process to authorize commercial logging, in general, and logging of the 4,200 acre parcel in particular.

The Forest Service also has not indicated it intends to fully incorporate into its analyses and decisions information about non-climate costs and risks, which will materialize largely through adverse impacts on numerous ecosystem goods and services. If it fails to do so, it will be reasonable to conclude that those analyses and decisions will be arbitrary, inaccurate, and contrary to satisfying to the agency's obligation to maximize public benefits.

Some officials within the agency recognize the existence of at least some of these negative ecosystem impacts. The Rogue River Siskiyou National Forest (RRSNF), for example, summarized some of the findings that indicate post-fire (salvage) logging often does more ecological harm than good:<sup>28</sup>

- “The ecological consequences of salvage...are often considered negative from the perspective of soils, hydrology, and wildlife habitat resources.... In 2015, scientists from Oregon State University and the Pacific Northwest Research Station completed a literature review concerning the Ecological Effects of Post-fire Salvage Logging in the Pacific Northwest (Reilly et al. 2015). These scientists found the ecological effects of post-fire salvage logging vary depending on the treatment, fire severity, and biological setting (Peterson et al. 2009). These scientists concluded that based on their literature review, in general, little research supports the idea that salvage logging has beneficial ecological effects on terrestrial or aquatic resources (Karr et al. 2004, Beschta et al. 2004, Lindenmayer and Noss 2006).”

---

<sup>27</sup> U.S. Forest Service. 2019. [Proposed National Environmental Policy Act Rule](#).

<sup>28</sup> Rogue River Siskiyou National Forest. 2018. [Draft Environmental Assessment, Chetco Fire Salvage Project](#).

- “All treatments have potential to disturb active bird nests [of migratory birds] during the breeding season which could cause failed reproduction or mortality of young....”
- “All proposed activities under both action alternatives could result in short-term loss of nectar and pollen [for pollinators] due to ground and vegetation disturbance (e.g. ground-based harvest, equipment operation, reforestation activities). They could also result in disturbance or mortality of individuals from equipment operation, tree felling and pile burning.”
- “Overall, the Chetco Bar Salvage Project poses a high risk of introduction and spread of invasive plants because the proposed activities are expected to disturb soil, impact some native plant species and introduce vectors for invasive seed spread.” (p. 3-142)
- “Salvage logging and other connected actions increase the risk of spreading PL. [*Phytophthora lateralis*].”
- “Salvage logging and other connected actions may increase the risk of spreading SOD [sudden oak death].”
- “While the initial increase in fine fuels after salvage may seem risky, perhaps the more important determinant of re-burn potential is the dense early successional vegetation (young trees and dense shrubs) that will dominate the project planning area for several decades.”

Additional research, presented to the RRSNF by public comments, further elucidated the costs and risks of post-fire logging:

- Post-fire logging generates logging-related CO<sub>2</sub> emissions, the economic damages from which are not offset by reductions in the severity of future fires or post-logging growth in forest carbon.<sup>29</sup>
- Trees killed by the fire decompose and release carbon to the atmosphere slowly.<sup>30</sup>
- Following a fire in a semi-arid forest in the eastern Sierra Nevada, researchers reported the salvage logging increased the loss of stored carbon by 340 percent.<sup>31</sup>
- Managing forests to maximize carbon sequestration theoretically could double the carbon in live and dead biomass in the Coast Range, west and east Cascade Range and Sierra Nevada; and triple the amount in the Klamath Mountains.<sup>32</sup>

---

<sup>29</sup> Mitchell, S.R., M.E. Harman, and K.E. O’Connell. 2009. “Forest Fuel Reduction Alters Fire Severity and Long-Term Carbon Storage in Three Pacific Northwest Ecosystems.” *Ecological Applications*.

<sup>30</sup> Campbell, J. L., Fontaine, J. B., & Donato, D. C. 2016. “Carbon Emissions from Decomposition of Fire-Killed Trees Following a Large Wildfire in Oregon, United States.” *Journal of Geophysical Research: Biogeosciences*.

<sup>31</sup> Johnson, Dale W., Mark E. Fenn, Watkins W. Miller, and Carolyn F. Hunsaker. 2009. “Fire Effects on Carbon and Nitrogen Cycling in Forests of the Sierra Nevada.” *Developments in Environmental Science*.

<sup>32</sup> Hudiburg, Tara, Beverly Law, David P. Turner, John Campbell, Dan Donato, and Maureen Duane. 2009 “Carbon Dynamics of Oregon and Northern California Forests and Potential Land-Based Carbon Storage. *Ecological Applications*.

- Post-fire logging and other aspects of intensive forest management reduce the amount of carbon stored in dead wood to 5–40 percent of levels found in undisturbed old-growth forest.<sup>33</sup>
- Big trees account for most of the carbon stored by forests, with the largest one percent of the trees holding 50 percent of the forest biomass.<sup>34</sup>

Despite knowing about these negative impacts and the science documenting them, however, the RRSNF did not use them to assess the benefits and costs of the proposed post-fire logging or, more fundamentally, to strive to maximize the public benefits from the burned area. This example raises doubts about the Forest Service’s commitment to do anything different in the future, under the proposed rule. Instead, it seems likely that it might even use this flawed analysis to justify future post-fire logging of any burned area nearby. If so, one logging project that apparently decreased Americans’ economic well-being will become the enabler for new logging with similar outcomes.

The best science currently available shows that changes in climate already have altered the impacts of logging on numerous ecosystem goods and services, often for the worse. For example:

- Changes in climate will concentrate future precipitation into a few extreme events, increasing the likelihood that commercial logging and other activities could trigger more landslides and intensify flooding.<sup>35</sup>
- Changes in temperature and precipitation intensify soil aridity in the summer in many regions, increasing the risk that commercial logging, by exposing soils to solar irradiation, will affect soil productivity.<sup>36</sup>
- High-severity fire is less likely to occur in old-growth forests, which provide critical nesting habitat for threatened northern spotted owls, than in young-growth forests. This finding suggests that the Forest Service could increase public benefits from these lands by purposefully using old-growth forests to provide fire refuges, support forest biodiversity, and diminish the extreme effects of climate change on fire regimes in the Pacific Northwest.<sup>37</sup>
- “Based on a literature survey using the Intergovernmental Panel on Climate Change Fifth Assessment Report, we identified 91 climate risks and 253 causal relationships among them and graphically drew such interconnected risks. We found that changes

---

<sup>33</sup> Lindenmeyer, David B., Philip J. Burton, and Jerry F. Franklin. 2015. *Salvage Logging and its Ecological Consequences*.

<sup>34</sup> Lutz, James A., et al. 2018. [Global importance of large-diameter trees](#).

<sup>35</sup> Marshall Shepherd, Marshall. 2019. [Why The U.S. Just Had Its Wettest 12-Month Stretch On Record](#).

<sup>36</sup> Stepinski, Tomasz. 2018. [CimateEx Interactive Map](#); McKenzie, Donald, and Jeremy S. Littel. 2017. “[Climate change and the eco-hydrology of fire: Will area burned increase in a warming western USA?](#)” *Ecological Applications*.

<sup>37</sup> Lesmeister, Damon, and others. 2019. Old-growth forest may provide valuable biodiversity refuge in areas at risk of severe fire; Summary.



in the climate system impact the natural and socioeconomic system, influencing ultimately human security, health, and well-being. This indicates that climate change can trigger a cascade of impacts across sectors. **Our findings point to the need to address the climate risk interconnections in impact and vulnerability studies.**<sup>38</sup>  
[bold emphasis added]

e) The Forest Service must not use the proposed NEPA rule to weaken or avoid its obligation, under the PR&G, to use the best available science to evaluate how commercial logging and other extractive activities will interact with actual and anticipated changes in climate.

These, and other findings, indicate that, across many dimensions, changes in climate will make the future look unlike the past. The future will have more high-intensity storms, hotter temperatures, lower stream flows in late summer, and more. These differences undermine the credibility of the agency's intent to use past analyses of a previous logging project to anticipate the costs and benefits of a future logging project. The agency asserts that, if it becomes aware of new information or circumstances, it will maybe revisit or even modify the old analysis. This approach implicitly assumes that the existence of relevant new information and circumstances will be a rare event. Far more likely, it will be a fire hose rather than a dripping faucet.

The Forest Service should not proceed with the proposed rule until it explains how it will avoid bias in its analyses and decision-making stemming from its inability to accommodate rapidly evolving research that shows changes in climate are occurring more extensively and faster than previously believed. If the agency does not get ahead of this research, it will lag ever-further behind. As a result, it will be favoring logging and other activities that maybe made sense based on yesterday's best science, but not on today's or tomorrow's.

#### **4. Retained, expanded, and proposed new categorical exclusions for logging, roadbuilding, and oil and gas development are unjustified because they are categories of projects that normally result in significant individual and cumulative damage to the human environment, including climate change and loss of climate resiliency.**

Logging, roadbuilding, and oil and gas development on national forestlands have already contributed to the cumulative buildup of atmospheric carbon dioxide, which now exceeds 414 parts per million (ppm) during the annual northern hemisphere spring peak. The present level of CO<sub>2</sub> in the atmosphere is unprecedented over the past 20 million years and is already contributing to an alarming increase in severe heat waves, droughts, intense storms and massive shifts in ecosystems. Any additional increase in this level is – *by definition* – a significant cumulative effect.

---

<sup>38</sup> Yokohata, T., and others. 2019. [Visualizing the Interconnections Among Climate Risks](#).

Because of this none of the CEs being used to increase the pace and scale of such activities can meet CEQ's criteria for their use. Those criteria require that categories of actions excluded from full NEPA analysis be actions that "will not normally result in individual or cumulative significant impacts on the quality of the human environment."<sup>39</sup> But as set forth above, all activities associated with the retained, expanded, and proposed new categorical exclusions at § 220.5 d(11), e(3), e(6), e(8), e(11), e(12), e(13), e(14), e(17), e(24) and e(26) both increase carbon dioxide emissions and reduce carbon sequestration capacity and, thus, further exacerbate climate change by increasing the upward pressure on the atmospheric CO<sub>2</sub> concentration.

Climate change is the quintessential cumulative impact - and activities implemented under the proposed rule will continue to drive it. Despite this, the Forest Service has entirely overlooked the climate-change consequences of the proposed rule. The supporting documentation for each of the CEs at issue entirely fails to consider, much less discuss, the adverse climate change consequences of expanding the pace and scale of logging, roadbuilding, and oil and gas development.<sup>40</sup>

Nor can it be expected that climate change impacts of activities implemented under the proposed rule will be considered during the project evaluation phase. To the contrary, the Trump Administration has worked consistently and comprehensively to ensure that the climate change impacts of federal programs and projects will no longer be considered during NEPA analysis. Most directly, on March 18<sup>th</sup>, 2017, President Donald Trump issued an Executive Order that withdrew the Council on Environmental Quality's (CEQ) Final Guidance to federal agencies on considering climate change in their environmental analyses under the National Environmental Policy Act (NEPA).<sup>41</sup>

This action, coupled with the Administration's public stance on climate change in general - labeling it as a hoax - and its efforts to shut down EPA and other federal agency websites that disseminate scientific information on climate change are clear signals that the significant climate change impacts of projects implemented under the retained, expanded, or new CEs contemplated by the proposed rule will continue to be ignored.

## **5. The Forest Service has failed to comply with Executive Order 12866 by excluding several significant cost factors from its analysis of economic effects of the proposed rules.**

---

<sup>39</sup> 40 CFR § 1508.4

<sup>40</sup> Supporting documentation for the proposed rules are found at: <https://www.fs.fed.us/emc/nepa/revisions/pcesupportinginfo.shtml>.

<sup>41</sup> Exec. Order No. 13,783, 82 Fed. Reg. 16,093 (Mar. 31, 2017); Withdrawal of Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews, 82 Fed. Reg. 16,576 (Apr. 5, 2017).

Executive Order 12866 was implemented in part to “restore the integrity and legitimacy of regulatory review and oversight” by ensuring that when new rules are considered federal agencies assess “all costs and benefits of available regulatory alternatives, including the alternative of not regulating.”<sup>42</sup> In assessing costs and benefits, federal agencies must include “both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider.”<sup>43</sup>

And while the Forest Service has included some language responsive to EO 12866’s requirements, the language is plainly arbitrary because it discusses only purported benefits of the proposed rule and fails entirely to identify and discuss costs. It ignores these costs even though they are predictable and quantifiable based on the Forest Service’s past experience with the types of activities that will be implemented with greater speed and scale under the proposed rules. These cost categories include:

1. An increase in federal expenditures and net costs to taxpayers. Recently, Center for Sustainable Economy and Natural Resource Economics documented that the Forest Service loses considerable amounts of money each year implementing the kinds of projects associated with the CEs at issue here. What the agency collects in revenues from its timber sale program—now cloaked in language such as ecosystem restoration, wildlife habitat improvement, or post-fire rehabilitation—does not come close to the wide range of costs the agency incurs. The net cost, or value of the logging subsidy ranges between \$500 and \$600 for every thousand board feet sold, \$1.4 billion to \$1.8 billion total per year.<sup>44</sup>
2. Natural resource damage costs. When national forest system lands are logged, a wide range of natural resource damage costs are externalized onto taxpayers. These include higher costs associated with water treatment, recovery of at-risk fish and wildlife, control of invasive species, firefighting, and loss of ecosystem services, such as pollination and carbon storage. As noted above, public climate change costs associated with logging can exceed \$500,000 per acre when high-density carbon stocks are depleted by logging.
3. An increase in litigation costs. Improper use of categorical exclusions has been one of the most often-litigated issue before the Forest Service, and one that has led to the cancelation or revision of many individual project decisions at considerable costs to the agency.<sup>45</sup> The proposed rules will almost certainly increase the pace and scale of

---

<sup>42</sup> Federal Register Vol. 58, Number 190, 10/3/1994, at 1(a).

<sup>43</sup> *Id.*

<sup>44</sup> Talberth, J., Niemi, E., Olson, L., 2019. Environmentally Harmful Subsidies in the US: Issue 1 - the Federal Timber Sale Program. Portland, OR: Center for Sustainable Economy.

<sup>45</sup> Statement of Mark Rey, Undersecretary, Natural Resources and Environment, United States Department of Agriculture Before the United States House of Representatives Committee on Agriculture, November 15<sup>th</sup>, 2005.

litigation against Forest Service projects that will be expedited by the retained, expanded, and new CEs.

**6. The proposed rules would lock in outdated and scientifically flawed standards and guidelines contained in land and resource management plans that have yet to be revised in accordance with the 2012 planning rule.**

In 2012 the Forest Service issued new rules to guide the backlog of revisions to land and resource management plans (LRMPs) for 130 national forests and grasslands. As of March 14<sup>th</sup>, 2018, the Forest Service had completed revisions to 14 LRMPs under the 2012 planning rule standards. Of the remaining LRMPs, 54 are more than fifteen years old and 85 are more than ten years old.<sup>46</sup> Ostensibly, the new planning rules reflect the best available science and represent a significant shift in the agency's mission, goals and objectives compared with the older planning rules that prioritized timber production above all else.

Nonetheless, the proposed rules authorize the Forest Service to rely on outdated standards and guidelines contained in land and resource management plans that may date back as far as 1984 in lieu of the best scientific information currently available. In particular, proposed CE § 220.5 e(26) would allow major logging projects planned under the guise of "ecosystem restoration and/or resilience activities" up to 4,200 acres in size to proceed without detailed NEPA analysis as long as they are compliant with the "applicable land management plan, including, but not limited to, the plan's goals, objectives, or desired conditions."<sup>47</sup> In other words, the Forest Service proposes to use mere compliance with outdated and scientifically flawed land and resource management plans as a standard for categorically excluding large logging projects from NEPA analysis.

For the 85 plans that are ten years and older (some dating back to 1984) and created under the old (1982) planning rule, the goals, objectives or desired conditions are woefully out of sync with the science of climate change and forest ecosystem management. As the Forest Service itself noted in promulgating the 2012 planning rule, "the 1982 rule procedures are not current with regard to science, knowledge of the environment, practices for planning and adaptive management, or social values, and are also too complex, costly, lengthy, and cumbersome."<sup>48</sup> As such, the Forest Service should modify the proposed NEPA rule to exclude mere compliance with pre-2012 land and resource management plans as a basis for categorically excluding activities enumerated by the proposed CE § 220.5 e(26).

---

<sup>46</sup> Cite...[https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd593201.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd593201.pdf)

<sup>47</sup> Proposed rules at 27557.

<sup>48</sup> Federal Register Vol. 77 No. 68, Part II at 21164. Department of Agriculture, Forest Service, National Forest System Land Management Planning; Final Rule.

## **7. The proposed categorical exclusion for expired special use permits would grandfather in obsolete right of way and log haul permits that are contributing to the devastation of forests on non-federal lands.**

As part of its transportation-management activities, the Forest Service routinely grants and administers special-use and right-of-way agreements with non-federal forestland owners who use national forest system lands to transport logs and as staging areas for logging and chemical spray operations. The number of such agreements is extensive. On November 5<sup>th</sup>, 2015, Center for Sustainable Economy submitted a Freedom of Information Act request to the Regional Forest Service office in Portland Oregon for a list of such agreements in Oregon and Washington.<sup>49</sup> In response to the FOIA, the Forest Service identified thousands of such agreements.

A significant proportion of these are used to facilitate clearcutting, road building and chemical spray operations on non-federal lands without any Forest Service terms and conditions for protecting environmental resources, including resources on national forest lands. And, because state forest practices laws contain far weaker environmental standards, the damage to water supplies, soils, and endangered fish and wildlife is far greater than it would be if logging practices were brought up to federal standards.

On August 5<sup>th</sup>, 2019, CSE submitted the first of several planned “requests for NEPA compliance” with Forest Supervisors for the Umpqua and Willamette National Forests, requesting that these forests prepare environmental assessments or a single environmental impact statement to disclose and mitigate the effects of right of way permits that will be used to clearcut nearly 3,000 acres of adjacent forestlands in 2019 with severe impacts to coldwater fish, forest cover, water supply, northern spotted owl dispersal corridors, and state-designated Conservation Opportunity Areas, as well as carbon emissions of nearly 400,000 metric tons CO<sub>2</sub> equivalent.<sup>50</sup> Because of these direct impacts as well as the cumulative damage from past logging of adjacent non-federal lands, NEPA analysis is required and will provide the Forest Service with an opportunity to condition the relevant right of way or special use permits to mitigate these impacts.

The proposed rules will eliminate this option. In particular, the proposed new CE at § 220.5 d(11) would categorically exclude “[i]ssuing a new permit to replace an expired permit for a road that continues to be used as access to non-NFS lands.” As a result, thousands of right-of-way and special use permits that are decades old, which contain no terms and conditions protecting environmental resources, and that are now being used to facilitate the clearcutting of non-federal lands, will be off-limits to NEPA analysis when they are up for

---

<sup>49</sup> FOIA Control Number FOIA control number 2016-FS-R6-00696-F.

<sup>50</sup> Talberth, J., 2019. Request for NEPA compliance – use of Willamette National Forest lands to facilitate private land logging operations; Talberth, J., 2019. Request for NEPA compliance – use of Umpqua National Forest lands to facilitate private land logging operations. Portland, OR: Center for Sustainable Economy.

reconsideration as they expire. This exclusion runs afoul of clear requirements of NEPA which clearly require consideration of offsite impacts and preparation of an EA or EIS if those impacts are likely to be significant. As stated succinctly by a 1997 CEQ memorandum:

Neither NEPA nor the Council on Environmental Quality's (CEQ) regulations implementing the procedural provisions of NEPA define agencies' obligations to analyze effects of actions by administrative boundaries. Rather, the entire body of NEPA law directs federal agencies to analyze the effects of proposed actions to the extent they are reasonably foreseeable consequences of the proposed action, regardless of where those impacts might occur. Agencies must analyze indirect effects, which are caused by the action, are later in time or farther removed in distance, but are still reasonably foreseeable, including growth-inducing effects and related effects on the ecosystem, as well as cumulative effects.<sup>51</sup>

As a remedy, the proposed NEPA rule should be revised to clarify that the categorical exclusions for special uses does not apply to right-of-way or special use permits associated with logging, roadbuilding, or spraying of chemical herbicides or pesticides on federal or non-federal lands.

**8. From a climate impacts perspective, the vast majority of previous NEPA analyses are deficient and so the proposed "determination of NEPA adequacy" provision is unjustified and undermines NEPA's intent to reflect best available information currently available.**

The proposed rule would allow the Forest Service to forgo the currently required NEPA analysis if it has previously determined—one size fits all—that a particular type of activity does not have significant adverse environmental impacts at some point in the past. In particular, proposed rules at § 220.4(i) would establish a process for a "determination of NEPA adequacy" that would suffice in lieu of NEPA analysis for a given project if the proposed action is essentially similar to a previously analyzed project or alternative in an existing EA or EIS; if there is no significant new information that would substantially change the conclusions of that previous analysis; and if the direct, indirect, and cumulative effects are within the range of what was previously considered. We have explained above that the Forest Service cannot satisfy any of these conditions for any action that could increase atmospheric greenhouse-gas concentrations. Our concern is that this would permit many new, damaging projects to move forward without any consideration of climate impacts.

The science on climate change and the climate impacts of logging, roadbuilding and oil and gas development is rapidly evolving and growing, and most of the key information has surfaced in just the last 10 years or so. As such, relying on outdated NEPA analyses that

---

<sup>51</sup> McGinty, K., 1997. Council on Environmental Quality Guidance on NEPA Analyses for Transboundary Impacts. Washington, DC: CEQ.

contain no mention of climate impacts nor mitigation measures proposed to reduce such impacts will ensure that none of this scientific information will be used in the design of thousands of projects authorized each year under the new rules. This is especially true given the Trump Administration's hardline stance against considering climate change impacts in NEPA analyses at all.

As a remedy, the Forest Service's revised NEPA procedures should disallow use of outdated NEPA documents that contain no mention or analysis of the climate change impacts of logging, roadbuilding, or oil and gas exploration and development.

### **9. Provisions permitting combinations of multiple categorical exclusions for similar actions in a given landscape violates NEPA's prohibition on segmentation.**

One of the bedrock principles of NEPA is its prohibition on segmenting similar and connected federal actions that all take place in a discrete geography into small individual decisions that each seem to have no significant environmental impacts but, when considered together, exceed the significance threshold.<sup>52</sup> Segmentation has routinely been struck down by the courts when federal agencies tried to circumvent these NEPA requirements and avoid preparation of an EIS by instead analyzing a number of smaller segments through categorical exclusions or environmental assessments.<sup>53</sup>

In 2014, the D.C. Circuit Court clarified the impermissible segmentation doctrine as such:

An agency impermissibly "segments" NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration. The Supreme Court has held that, under NEPA, "proposals for ... actions that will have cumulative or synergistic environmental impact upon a region ... pending concurrently before an agency ... must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action."<sup>54</sup> *Kleppe v. Sierra Club*, 427 U.S. 390, 410, 96 S.Ct. 2718, 49 L.Ed.2d 576 (1976).

The proposed rules at § 220.5(a) directly conflict with NEPA by institutionalizing impermissible segmentation of similar and connected actions. As explained in the preamble:

---

<sup>52</sup> 40 CFR § 1508.25(a)1. "Connected actions are closely related and therefore should be discussed in the same impact statement."

<sup>53</sup> See, e.g. *Hammond vs. Norton*, D.D.C. May 13, 2005370, F. Supp. 2d 226; *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

<sup>54</sup> *Delaware Riverkeeper Network v. F.E.R.C.*, note 48.

Where a proposed action consists of multiple activities and all of the activities that comprise the proposed action fall within one or more CEs, the responsible official may rely on multiple categories for a single proposed action.<sup>55</sup>

In other words, and in direct conflict with the impermissible segmentation doctrine, under the proposed rules the Forest Service may choose to segment a large, damaging project into various pieces that include (a) salvage logging of dead trees up to 250 acres (CE § 220.5 e(13)); (b) post fire logging of live trees up to 70 acres (CE § 220.5 e(12)); (c) logging under the guise of ecosystem resilience of up to 4,200 acres (CE § 220.5 e(26)); (d) logging under the guise of timber stand improvement of up to 20 acres (CE § 220.5 e(6)); and (e) construction of 9 miles of new or temporary roads (CE § 220.5 e(6), e(e(11), e(24) and e(26))). The agency can avoid preparation of an EIS by authorizing each of these project segments under different CEs. By giving the Forest Service the discretion to do this, the proposed NEPA rules undermine the Supreme Court's mandate on comprehensive consideration of pending proposals in a single EIS.

**10. Since the Forest Service has already determined that the proposed rules hasten the pace and scale of ground disturbing activities, NEPA analysis is required.**

The Forest Service has determined that the proposed rules will increase "the pace and scale of work accomplished on the ground."<sup>56</sup> As set forth above, much of this new work will involve logging, roadbuilding, and oil and gas development with well documented adverse environmental impacts. Moreover, the Forest Service has a fairly good idea of the types of projects that will benefit. This is because the Forest Service maintains a list of upcoming NEPA projects on each national forest and can easily review these lists to determine which of the projects in the pipeline will be expedited and/or expanded in scale by the proposed rules.<sup>57</sup>

Thus, unlike the situation presented before the Seventh Circuit in *Heartwood, Inc. et al., v. United States Forest Service* - a case cited in the preamble as the basis for excluding the proposed rules from NEPA analysis - the issue is not just new agency rules, but an increase in the pace and scale of specific projects on the ground with environmental consequences that can be quantified.<sup>58</sup>

In addition, the promulgation of the proposed rules clearly falls into CEQ's list of major federal actions that necessitate NEPA review. The CEQ defines "major Federal action" as

---

<sup>55</sup> Proposed rules at FR 27546.

<sup>56</sup> Proposed rule at FR 27544.

<sup>57</sup> See, e.g. the Schedule of Proposed Actions for the North Carolina National Forests at <https://www.fs.fed.us/sopa/forest-level.php?110811>.

<sup>58</sup> *Heartwood, Inc., et al. v. United States Forest Service, et al.* No-00-1230, In the United States Court of Appeals for the Seventh Circuit; Proposed rules at



"actions with effects that may be major and which are potentially subject to Federal control and responsibility. . . . Actions include new and continuing activities . . . new or revised agency rules, regulations, plans, policies or procedures; and legislative proposals."<sup>59</sup> Unlike *Heartwood* the new rules are not just related to clarification of agency procedures involving categorical exclusions, but the broader NEPA process itself. Because the proposed rules are, by definition, a major federal action and because they can be traceable to an increase in the pace and scale of damaging projects on the ground NEPA analysis of the proposed rules is necessary.

Submitted August 12<sup>th</sup>, 2019 by:



John Talberth, Ph.D.,  
Co-Director, Forest Carbon Coalition  
President, Center for Sustainable Economy  
P.O. Box 393  
West Linn, OR 97068  
[jtalberth@sustainable-economy.org](mailto:jtalberth@sustainable-economy.org)



Ernie Niemi  
Co-Director, Forest Carbon Coalition  
President, Natural Resource Economics  
1430 Willamette St. #553  
Eugene, OR 97401  
[ernie.niemi@nreconomics.com](mailto:ernie.niemi@nreconomics.com)

Steve Brooks  
The Clinch Coalition  
Wise, VA

George Wuerthner  
Project Coyote  
Larkspur, CA

Kimberly Baker  
Environmental Protection Information Center  
Arcata, CA

Sam Evans  
Southern Environmental Law Center  
Asheville, NC

Dominick DellaSala  
Geos Institute  
Ashland, OR

Davis Mounger  
Tennessee Heartwood  
Chattanooga, TN

Ani Kame'enui  
National Parks Conservation Association  
Washington, D.C.

Patrick Quinn  
Umpqua Watersheds  
Roseburg, OR

Greg Haller  
Pacific Rivers  
Portland, OR

Toby Thaler  
Unaffiliated  
Seattle, WA

---

<sup>59</sup> 40 C.F.R. §1508.18

Doug Heiken  
Oregon Wild  
Eugene, OR

Susan Jane Brown  
Western Environmental Law Center  
Portland, OR

David Sligh  
Wild Virginia  
Charlottesville, VA