



Defending the Planet One Beat at a Time

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March 6, 2005

VIA ELECTRONIC & U.S. MAIL

USDA Content Analysis Team
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Dear USDA Content Analysis Team:

The members of Rock the Earth (“RtE”), a national nonprofit corporation, hereby submit comments on the Planning Rule, published January 5, 2005 in the Federal Register (70 FR 1023). It is our opinion based on current law and regulations, along with a wealth of technical data that the Forest Service (“FS”) and U.S. Department of Agriculture has, in promulgation of the Planning Rule in question, violated several mandatory statutory requirements, removing critical decisions regarding our National Forest from public review and comment, and will result in adverse impacts to both our nationally-held forests and the environment overall.

I. Rock the Earth

Rock the Earth (“RtE”) is a Colorado nonprofit corporation with a national membership of concerned citizens. Like many other Americans, RtE members regularly seek the peace, quiet, and solitude of the national forest system for recreational, artistic, naturalist, and spiritual activities, including but not limited to

hiking, camping, skiing, non-motorized water sports, photography, and meditation. Its members will be directly affected by the forthcoming Planning Rule in the Rule will allow for changes in the way that certain forests are managed without the benefit of public notice and comment, resulting in a diminution of our forests being maintained in a sustainable manner, thereby reducing visitor enjoyment.

Rock the Earth members have several grounds for concern. Among the organization's primary rationale is the fact that the National Forest System are, by definition, *our* forests -- RtE members are citizens of the United States -- and, as such, we are obliged to protect them. The National Forests are prominent among the few protected natural areas in this country that remain for the activities we as individuals enjoy. It is our collective conclusion as informed citizens, that it is our responsibility to present this case for protecting these national treasures. Several Rock the Earth members live proximately to National Forests which could be impacted by the Planning Rule, including but not limited to: Apache-Sitgreaves, Coconino, Coronado, Prescott, Tonto, Allegheny, [Arapahoe](#), [Grand Mesa](#), [Gunnison](#), Pike, [Rio Grande](#), [Roosevelt](#), [Routt](#), [San Isabel](#), [San Juan](#), [Uncompahgre](#), [White River](#), [Angeles](#), [Cleveland](#), [Eldorado](#), [Inyo](#), [Klamath](#), Lassen, [Los Padres](#), [Mendocino](#), [Modoc](#), [Plumas](#), [San Bernardino](#), [Sequoia](#), [Shasta-Trinity](#), [Sierra](#), [Six Rivers](#), [Stanislaus](#), [Tahoe](#), Finger Lakes, [Deschutes](#), [Fremont](#), [Malheur](#), [Mount Hood](#), [Ochoco](#), [Rogue River](#), [Siskiyou](#), [Siuslaw](#), [Umatilla](#), Umpqua, [Wallowa-Whitman](#), [Willamette](#), [Winema](#) and Kaibab National Forests. RtE believes that the Planning Rule is intolerable and beyond the promulgated authority of the Forest Service. Rock the Earth believes that management of the National Forests in such a manner allowed by the Planning Rule, creating new categorical exemptions without the benefit of public notice, review and comment will devastate the naturally wild environment. Therefore we find it not only our right, but also our responsibility to be concerned.

II. Our Objections

Our organization strongly opposes the January 5, 2005 Planning Rule change that would exempt forest management plans, revisions or amendments from environmental review and meaningful public input under the National Environmental Policy Act.

The proposed new rule would hide from the public adequate information to evaluate the environmental consequences of forest plans and disregard the best available science in favor of commercial and developmental interests. Eliminating the comprehensive context and need for forest managers to assess potentially harmful impacts on water, wildlife, recreational use, old growth and roadless areas, will expose forest ecosystems to devastating environmental consequences. The categorical exclusion proposed will render specific

project analyses meaningless, vastly increasing the likelihood of arbitrary and capricious decision-making. Eliminating NEPA review will severely limit public involvement and consideration of environmental values in the forest planning process. For example, people will have less access to information about the environmental impacts of the agency's proposed management plan. The Forest Service will not be required to examine alternatives to its proposed plan or to supply information about the comparative advantages of various alternatives. In addition, the Forest Service will not be required to study or disclose to the public the cumulative environmental effects of management activities across the national forest. Eliminating NEPA from the forest planning process also appears to violate specific direction in the NFMA that the regulations "insure that land management plans are prepared in accordance with [NEPA]" 16 USC 1604(g)(1).

The legislative intent behind both the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA), which taken together are designed to ensure full disclosure, public and expert involvement, reasoned decision-making, and sustainability within a multiple use paradigm, will be circumvented by the draconian proposal. National Forest lands, owned by all Americans, will become primarily subject to the dominant uses of resource extraction and commercial exploitation. Instead of NEPA, the final regulations require the Forest Service to establish an "environmental management system"(EMS) for each national forest. [219.5]. EMS is a planning and monitoring process that has been adopted by large timber companies like Weyerhaeuser Corporation to deal with environmental regulations while maximizing corporate efficiency and profits. It has never before been applied to federal forest lands, and it appears to be an entirely inappropriate substitute for NEPA to advance the public's interest in protecting the environmental integrity of the national forests.

The assault on our nation's wildlife and habitat would increase dramatically under the proposed new rules. Without environmental analysis of a forest plan or changes to a plan, the context and impacts to wildlife will not be understood or properly considered. The new regulations have already abolished the requirements to maintain viable populations of species and to monitor those populations. These trends fly in the face of other substantive, Congressionally-mandated protections such as the Endangered Species Act (ESA) and the Clean Water Act (CWA), among others. Although the Bush Administration claims to be strengthening the role of science in forest planning, in reality the final NFMA regulations give local agency officials broad discretion to reject scientific evidence and recommendations. The final regulations only require agency officials to "take into account" the best available science (219.11(a)). The preamble to the final regulations [p. 18] makes it clear that science "is only one aspect of decisionmaking" and that "competing use demands" and other factors can override scientific input. In contrast, the draft rule issued in December 2002 gave science a much more prominent role in the planning process by requiring that Forest Service decisions must "be consistent with" the best available science. In addition, by allowing for a categorical exclusion for such activities, the Forest Service is undercutting EPA's objective to implement watershed-

based reviews and permits for activities which could impact streams, a review required under section 303(d) of the CWA.

The proposal calls for environmental analysis to be done only at the project level. The Bush administration, however, has already exempted many types of logging projects from environmental review under NEPA mostly through the doublespeak of the so-called "Healthy Forest Initiative," in effect eliminating virtually all environmental review and opportunity for public comment. Adopting this new proposal effectively removes all enforceable requirements to analyze and monitor wildlife health and environmental quality, both at the forest plan and at the project level. Amazingly, the final regulations essentially ignore large parts of the law (NFMA) that they are supposed to be implementing. In an effort to protect the national forests from excessive and destructive logging, Congress specifically instructed the Forest Service through the NFMA to develop regulations that, among other things, limit the size of clearcuts, protect streams from logging, ensure prompt reforestation, and restrict the annual rate of cutting. Prior NFMA regulations complied with the statute by limiting clearcuts to 40 acres, requiring 100-foot stream buffers, and restricting the amount of timber cutting in each national forest.

However, the final regulations do none of these things. Instead, they simply state that procedures for complying with NFMA requirements will be included in the Forest Service's internal directives system (the Forest Service Manual and Handbook) (219.12(b)). One major problem with this strategy is that federal regulations have the force of law, but management direction in the Forest Service's directives system is generally not legally enforceable. The agency's directives system is also much less visible and accessible to the general public and therefore is a poor forum for engaging people's interest in important forest management issues.

Also, the final regulations completely ignore the NFMA's requirement that forest plans identify lands that are economically unsuitable for timber production (219.12(a)(2)). Consequently, forest plans will provide little if any information about the extent to which the Forest Service's plans may result in below-cost timber sales and taxpayer subsidies to the timber industry.

The final regulations also provide unlimited discretion to regional Forest Service Managers. The regulations go so far as to entirely eliminate the use of mandatory "standards" in forest plans, in favor of discretionary "guidelines." The preamble to the regulations explains that the choice of "guidelines" is meant to emphasize that agency officials have "discretion to act within the range of guidelines, as well as the latitude to depart from guidelines when circumstances warrant it" [p. 14]. In other words, local agency officials can simply ignore any and all guidelines the plans might contain to protect wildlife or water quality. Without mandatory safeguards in forest plans, agency decision-making will become more vulnerable to the influence of timber and mining companies and their political allies who favor commercial exploitation of the national forests.

Finally, the proposed rule would eliminate studying or disclosing the cumulative impact of management activities across the national forest, which is usually done at the planning stage.

Due to the overt conflicts between this categorical exclusion and Congressional mandate and direction, the proposed rule change will certainly be subject to immediate litigation, which in our opinion, will most likely result in judicial rejection of the proposal.

We therefore strongly urge you to reject the proposed forest planning regulations and to ensure that comprehensive forest planning be conducted under the broadest and most expansive regulatory directives (i.e., pursuant to the broader 1982 NFMA Planning Regulations) for both public involvement and scientific application. Our environmental regulations and public participation processes are cornerstones of public forest management, and eliminating them through the proposed rule change is contrary to the intent of Congress, devastating to the integrity of the National Forest System, and entirely unacceptable.

Thank you for your reasoned consideration of this critical issue.

Very truly yours,

Marc A. Ross
President and Executive Director
Rock the Earth