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Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S
Bountiful, Utah 84010

RE: Comments on the DEIS for the National Forest System Land Management Planning
Proposed Rule, 36 C.F.R. Part 219, RIN 0596-AC94.

Dear Forest Service:

The California Attorney General, representing the California Natural Resources Agency (CNRA), and on behalf of its various departments, boards, conservancies, and commissions, appreciates the opportunity to comment on the proposed National Forest System Land Management Planning Rule being promulgated by the USDA Forest Service through publication of the Notice of Proposed Rulemaking for a new National Forest System Land Management Planning Rule (proposed rule) published in the Federal Register on February 14, 2011. This comment letter serves to address concerns both as to the substantive rules itself, and with the environmental review and legal sufficiency of that rule pursuant to the National Environmental Planning Act (NEPA) and the National Forest Management Act (NMFA).

Due to the substantial federal ownership and how intermingled federal and non-federal forest lands are in the California, the state has a very large stake in the management of National Forest System lands, and therefore a strong interest in efforts to create a new planning rule. Given our federal and state legal and regulatory mandates, state agencies should play a unique role in the planning process. The CNRA appreciates the current effort of the Forest Service and recognizes that this proposed rule demonstrates a well-intentioned attempt to move away from the commodity-driven planning rule promulgated over three decades ago, and head toward a conservation and restoration-themed management program.

Though a good start, the proposed rule contains a lack of specificity that could lead to unintended consequences. In its effort to retain flexibility and forest-level managerial discretion, the Forest Service (USFS) has omitted key provisions from the rule that would ensure reliable management practices and sustainable outcomes. As written, individual forests could take wildly varying approaches to the same management issues. Accordingly, the CNRA would like to see the rule provide greater direction for local managers and greater clarity for stakeholders, forest

beneficiaries, state and local entities alike so that inconsistent approaches do not lead to the further degradation or loss of valuable forest resources.

In an effort to assist USFS, the CNRA has broken its comments into three parts. First, the CNRA will provide general comments about the proposed rule. Second, the CNRA will identify areas in which the rule is procedurally defective or in which it fails to comport with the NEPA or the NFMA, as this letter will also serve to highlight inadequacies in the Environmental Impact Statement. Finally, the CNRA will provide specific language that could help USFS to make surgical revisions to address generalized concerns.

I. General Comments

A. Consultation and Coordination with State and Local Entities

As its greatest priority, the CNRA would like to see required communication and coordination by the individual forests with affected state and local entities earlier in the planning process. Though the proposed rule makes an attempt at engaging state, local, tribal and regional entities early on, it does not mandate this coordination or define its relevance. The CNRA believes strengthening this early coordination and consultation process will help the Forest Service resolve potential conflicts prior to formal appeal, thereby avoiding continual litigation.

Importantly, the federal government has coordinated local and state plans into its rule making process in other land-management contexts, and thus this rule should seek to be consistent with that approach, and not divergent. Specifically, the Bureau of Land Management requires its management plans to be consistent with State, local and tribal plans, which ensures that there is a partnership between agencies all tasked with promoting the health, safety, and welfare people impacted by the decision-making. This rule's approach should be no different. (See revisions to section 219.6 for specific language).

B. Best Available Science

The current rule deviates from the usual standard to rely upon and base decisions on the best available science. This standard is important and the best available science should be used, not merely considered. While discretion can lead to flexibility, it can also lead to uncertainty. Where the restoration and sustainability of one of our nation's greatest natural resources is at stake, such uncertainty is not acceptable. Forest managers and planners should be expected to use the best data and science available to them when making decisions. Additionally, deviation from this is in direct contravention with NEPA and thus creates procedural flaws that will inevitably mire any planning effort in litigation. (See Part II below for further detail).

C. Regional Level Review and Decision-Making

The rule should elevate decision-making to a statewide or Forest Service Regional level when setting standards for conservation of species and habitats, and establishing monitoring of indicator species. Currently, there is too much reliance on the assumed "good will" of local

administrators at the forest-level. Giving such broad discretion to each individual forest manager could result in inconsistent practices and inconsistent approaches across regions. Further, having a regional-level review will increase efficiency by ensuring a state does not have to make the same recommendation for multiple forests on a forest-by-forest basis. In a state the size of California, which contains 18 separate National Forests, consistent practices and approaches are significant tools.

It should be noted that the CNRA supports the creation of sub-regional (multi-forest) teams that can initiate a dialog leading to development of a process for working together to resolve differences and promote common priorities and strategies for conservation of species and habitats among various forests. In this way, the concerns and site-specific needs of local forests could be considered in a broader context during the consultation process.

D. Use of State Assessment and Planning Documents in Federal Forest Planning

The state of California continues to advocate for the explicit inclusion of Statewide Forest Assessments and Resource Strategies in the development of forest plans. The California Department of Forestry and Fire Protection submitted its Statewide Forest Assessment and Resource Strategy document as mandated by the 2008 Farm Bill and was notified that these documents were reviewed by the Forest Service and approved on behalf of the Secretary of Agriculture in August of 2010. As mandated by federal law, California's Statewide Forest Assessment and Resource Strategy documents provide important localized data on the current state of forests across all management boundaries. We strongly believe that California's Forest Assessment and Resource Strategy should be utilized by the Forest Service in its planning efforts and that future forest planning documents be consistent with it. As the proposed planning rule is drafted, there is no guarantee of such consideration or cooperation.

While the reference to state Forest Assessments under §219.6(b)(2) is an important acknowledgement, the CNRA is also concerned that, as written, the proposed rule may not recognize the unique role and contribution to planning efforts that can come from continued collaboration with state and local partners who have already undertaken planning efforts authorized by federal and/or state law and regulations that impact public safety and natural resource protection. Examples of such efforts include, but are not limited to, California's Statewide Forest Assessment and Resource Strategy, California's Strategic Fire Plan, Community Wildfire Protection Plans, other tribal forest/fire plans, the California Wildlife Action Plan, the California Climate Action Plan, California Water Plan and other local government planning documents. We would like to see the language of §219.4 strengthened to ensure that this coordination and collaboration will continue as envisioned under the 1982 rule.

E. Watershed Management

In addition to providing for too much discretion at the local forest level, the rule is also extremely vague as to watershed management. Similar to sustainability, water is a pivotal issue that should be called out more clearly and be made a more central part of the rule. As stated in the rule, one of the original purposes for establishing the Forest Service is to protect our Nation's

water sources. Water is one of many ecosystem services that healthy forests provide to downstream beneficiaries. Currently, the Forest Service, as manager of the headwater areas, does not have adequate resources to manage forests in a way that achieves ecological health. The rule should more clearly articulate the need for those who benefit from healthy forests and watersheds to contribute more to necessary stewardship activities. For example, in the state of Colorado, the Denver Water Agency has already spent \$40 million to remove sediment and debris from the water system and waterways since a 2002 wildfire. There is a significant opportunity for the Forest Service to engage in agreements with water agencies and other beneficiaries across the western United States to have them share in efforts to increase the number of acres treated for fire resiliency to avoid the enormous post-fire costs. We suggest the rule call for an effort to increase the number of these types of financial partnerships and encourage the development of more unique partnerships and agreements to secure the funds necessary to achieve the ecological goals described throughout the NFMA itself.

F. Viability Standards

The proposed rule simply does not go far enough in its efforts to ensure the continued existence of special status species throughout their entire range. To its credit, the 1982 rule called for the maintenance of viable populations of existing native and desired non-native vertebrate species throughout the entire planning area. In contrast, the proposed rule only requires that the species population be maintained somewhere within the particular forest. With respect to a large forest, or large multi-forest planning effort such as the Sierra Nevada Framework, this requirement is so broad as to be meaningless. As a result of the lack of standards for maintaining species populations, land use plans could allow the degradation of healthy populations or even the extirpation of some species in parts of a forest. In addition, the language of the proposed rule vaguely requires "maintenance or restoration" of healthy and resilient ecosystems, which would leave to the responsible official's discretion whether to restore a species in a given area when it is possible and desirable, or whether to simply "maintain" the status quo.

As to species conservation, the proposed rule includes vague requirements for forest plans to contribute to the recovery of species listed as threatened and endangered and to conserve species that are candidates for listing, but leaves completely within the responsible official's discretion how to "maintain viable populations of species of conservation concern within the plan area." Yet, the responsible official need only maintain the viability of the species to the extent of the "inherent capability" of the forest, an undefined term that would allow the Forest Service to decide that no further effort is required to protect the species. Similarly, determining what fits the definition of a "species of conservation concern" is left entirely to the discretion of the responsible official. There is scant guidance as to how the official should go about making this determination, or what the process should be for doing so.

G. Ecological, economic and social concerns must be considered in an integrated fashion

Many of CNRA's departments have missions that require the support and improvement of the environmental, economic and social well-being of state resource areas. We support the USFS in including sustainability as a primary goal as this is critical for the rural communities that

surround these public lands. The USFS makes the point it has more direct influence on ecological sustainability and less on social and economic, which seems to be the case. However, the distinction the rule is attempting to make on how the USFS will address the differences between the ecological and social and economic sustainability is confusing and needs clarification. Understanding how efforts to achieve forest ecological health will affect communities sharing watersheds with the USFS is critical in guiding agency decisions. The State of California is finding through its support to community-based forestry collaboratives that the more the three are considered in a comprehensive and integrated fashion, the better a community and the local forest unit can build trust, find common ground and move forward in implementing projects that can show benefits for all aspects of sustainability. Social, environmental and economic considerations are not competing values; rather they are truly interdependent and all play an important role in effectively implementing landscape scale restoration.

CNRA supports a Planning Rule that takes into account both socio-economic values, including recreational values, and ecological values of the forests, as well as providing and allowing for collaborative working relationships with state, local, and federal agencies and the public in support of sustained recreation and resource protection opportunities. It would therefore like to see clarification as to the connectivity of recreational activities and ecosystem functions from National Forest System lands to adjacent outdoor recreation and natural resource areas; multiple-uses that balance recreation opportunity with ecological sustainability; a "transparent" streamlined and efficient planning framework that supports coordination with state agencies and other land managers.

H. New plan development or plan revision

Under the 1982 planning rule, only standards are legally enforceable. The creation of a new planning rule may be the appropriate time for the agency to consider providing additional emphasis and/or weight to both goals and desired future conditions as laid out in this section. These pro-active plan components could be important tools for the agency to use in developing and defending management decisions by looking at the long term trend of the forest and undertaking actions that may result in short-term impacts but are important in achieving the goals or desired future conditions stated in the forest plan.

I. Monitoring

Adequate monitoring is absolutely necessary to support the adaptive management framework chosen in the proposed rule. There needs to be a long-term commitment that will improve our understanding of the status and trends in resources that go well beyond individual forest boundaries. Periodic reporting and sharing of monitoring data in a standardized fashion is important. We suggest that a well recognized framework such as the Montreal Protocols be used for reporting on forest conditions and be incorporated into the planning rule as a guide for local managers. It is essential that the monitoring framework included in the proposed rule be sensibly designed so that the monitoring program can reliably executed when the USFS and other public agencies are facing challenging budget constraints. The President's fiscal year (FY) 2012 budget

proposal presents an uncertain future for funding for the Forest Inventory and Analysis (FIA) program, which acts as the nation's forest census. At the funding levels proposed in the President's budget, California could be impacted by longer cycles between inventories and potential cessation of higher resolution remote sensing projects. With these potential reductions in mind, we believe it is important to continue forward with "all-lands" monitoring efforts (as envisioned under the proposed rules course lens approach) to make sure we can build upon our current knowledge of all forest ecosystems, regardless of ownership.

J. Stewardship Contracting

Given the challenge of adequate funding, it is important to take advantage of outside monitoring efforts being conducted by other government and non-governmental parties. With this in mind, we believe that the language of §219.12(c)(5) should be strengthened to require the responsible official to look to outside research and monitoring efforts. Collaboration is an important part of continuing to improve the efficient and effective use of limited monitoring resources.

Similarly, the rule does not mention stewardship contracts which could be executed to leverage existing programs, funds, or expertise. Importantly, the USFS has the authority to use stewardship contracts and award on a best value basis, allowing the government to consider local benefit as a factor, thereby supporting the economic and social well-being of the surrounding communities. These contracts provide a unique opportunity for the agency, communities, contractors and other stakeholders to work collaboratively to develop well-designed projects, increase public satisfaction, draw upon the knowledge in the contractor community and help create sustained economic opportunities for local business and workers. Furthermore, it allows local contractors to focus up to 10 years on achieving the desired ecological end results on a particular landscape. This is a critical tool currently available that supports the broader definition of sustainability and therefore should be mentioned in the rule and encouraged to be used more broadly.

K. Pre-Decisional Administrative Review Process

The CNRA supports the use of the pre-decisional administrative review process for land management plan proposals as set forth in the proposed rule. We are hopeful that this review process would lead to more collaborative decisions, a method of confirming that national forest plans are consistent with plans required by federal and state statutes and accompanying regulations as well as ultimately save litigation costs and allow the agency to more efficiently implement management on the ground.

L. Notice Periods

The CNRA believes all notice periods for objecting, including those in sections §219.52 and §219.56, should be increased from 30 to 90 days. This would give state agencies and departments dealing with staffing and budget issues, as well as interested stakeholders, adequate time to participate in the pre-determination review process.

II. Non-compliance with NEPA and NMFA

We believe that the Draft Environment Impact Statement (DEIS), as currently written, does not comply with NEPA as it does not adequately set out the environmental impacts of the proposed rule, nor does it sufficiently discuss mitigation for these impacts. Under NEPA, decisions undertaken by federal agencies must be based on a complete analysis of potential environmental impacts, so that those decisions are fully informed and well-considered. *See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 558 (1978). The EIS must: “set forth sufficient information for the general public to make an informed evaluation . . . and for the decision maker to consider fully the relevant environmental factors and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action.” *Sierra Club v. United States Army Corps of Engineers*, 701 F.2d 1011, 1029, n.18 (2d Cir. 1983).

Public involvement and scrutiny are essential to implementing NEPA. The purpose of an EIS is to permit those who do not participate in its preparation to understand and consider meaningfully the reasoning, premises, and data that the decision makers relied upon, and to permit a reasoned choice among different courses of action. *See Friends of the River v. FERC*, 720 F.2d 93, 120 (D.C. Cir. 1983); see also 40 C.F.R. §1500.1(b), (c). NEPA mandates that an EIS contain a reasonably thorough discussion of the significant aspects of the probable consequences of an action. *Oregon Natural Resources Council v. Lowe*, 109 F.3d 521, 526 (9th Cir. 1997). As to the proposed action, an EIS must disclose the environmental impacts, a reasonable range of alternatives, and the means to mitigate the adverse environmental impacts. 42 U.S.C. § 4332(2); 40 C.F.R. §§ 1508.11, 1502.16(h). An EIS fails to meet NEPA’s requirements if the information and analysis it contains is “too vague, too general and too conclusory.” *Silva v. Lynn*, 482 F.2d 1282, 1285 (1st Cir. 1973). Further, an EIS must contain accurate and high-quality scientific analysis. 40 C.F.R. § 1500.1(b). We believe that the DEIS for the Forest Planning Rule does not meet these requirements of NEPA, as set out in detail below.

In addition, we believe that the proposed rule does not satisfy the requirements of NFMA. Pursuant to NFMA, the Forest Service must determine whether the land uses proposed in a forest plan are of the “best” use, as compared to all the other possible uses for the same lands, including protection of biological and aesthetic resources and other recreational uses. NFMA requires a full discussion of the balancing of the competing demands upon national forests. *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1511 (9th Cir. 1992). As currently constructed, we do not believe that the proposed rule provides sufficient guidance for land managers to carry out this balancing of uses.

A. The Forest Service’s DEIS is inadequate as a NEPA planning document because it lacks the necessary analysis of impacts of the proposed rule on the quality of the environment.

While the DEIS acknowledges the challenges and uncertainty created by climate change and evolving science, and outlines several ways to structure management actions to adapt to changing conditions, it fails to explain the consequences of the approach the agency has chosen

to take, as required by NEPA. The DEIS deemphasizes the environmental effects of the implementation of the rule (see DEIS, pp. 49-55). This failure of analysis has been repeatedly rejected by the Court in the three *Citizens for Better Forestry* decisions that reviewed previous Planning Rule attempts by the Forest Service.

Although the DEIS identifies the principle of “adaptive management” as an “on-going science-based process” to respond to changing conditions, the proposed rule creates no requirements that best-available science actually be used in this process. Instead, it gives local forest officials almost unfettered discretion -- they are free to determine what constitutes “best available scientific information,” and are not required to actually apply the best science as long as they give it an unspecified amount of “consideration.” This creates the opportunity of forest managers to disregard scientific evidence when making land use decisions in forest plans. In addition, the rule provides no direction for forest managers with respect to how to take climate change into consideration. Under NEPA, the Forest Service is required to address and fully analyze the impacts that could result from decision-making that allows the best science to be disregarded.

In addition, in its ecosystem recovery section, the DEIS does not fully discuss the direct, indirect, or cumulative impacts causing degradation to ecosystems, nor does it have much discussion of the mitigation measures that could reduce or eliminate the impacts. Under NEPA, much more analysis is required of stressors that lead to degradation of the forests, and what types of mitigation may be applied to address these impacts.

The DEIS also fails to adequately analyze the impacts of the proposed rule regarding water resources on federal land. The DEIS acknowledges that forested land provides the highest quality water, and outlines some areas of concern with regards to water quality, but does not provide in-depth analysis of either potential water quality impacts or measures that can be taken to mitigate the harm. Similarly, the DEIS only briefly mentions the potential water quality threats from roads and “non-point sources,” but fails to provide a detailed discussion of ways to mitigate the harm or prevent degradation. It does not address the long-standing controversy over roadless inventories, the possibility that new roads will be created in plan areas under the discretion provided to forest managers, or the impacts potentially associated with new roads. The CNRA believes where roads are placed in national forests directly impacts the condition of the watershed.

Finally, while the DEIS acknowledges that the “Forest Service and NFS lands are major contributors to threatened and endangered species recovery plans and actions,” it does little more than note the difficulties of planning in a dynamic ecosystem. This is inadequate under NEPA.

B. The proposed rule fails to provide sufficient guidance to direct forest-by-forest planning under NFMA.

The proposed rule fails under NFMA to provide the meaningful, enforceable principles necessary to guide later, more focused planning in each forest. Specifically, it improperly delegates to local forest managers the creation of standards NFMA requires to ensure appropriate

uses are balanced. 16 U.S.C. §§ 1604(g)(3); *Ohio Forestry Assn. v. Sierra Club* 523 U.S. 726, 729-30 (1998). This delegation exceeds the authority of such officials and violates the Administrative Procedures Act as it relates to NFMA because it allows for an unfettered discretion by forest managers with little or no clarity for stakeholders. With respect to numerous important forestry management principles, the proposed rule abandons the setting of standards that sufficiently protect the natural and recreational resources of the forest in favor of allowing decision-makers to exercise discretion with very little or no guidance. This approach provides no assurances to the public that important forest values will be preserved, and makes it impossible for the public to hold the Forest Service accountable for the decisions that are made at the local level.

As an example, while the proposed rule declares that there is to be no harvesting of trees on lands unsuitable for timber production, several significant exceptions undermine this prohibition, without adequate standards as to when the exceptions should apply. In addition, the proposed rule requires that plans consider various factors when creating size limitations on timber cutting, but such limitations may be exceeded, simply by giving 60 days' notice to the Regional Forester. There are no standards to govern how those exceptions will be granted. (See section F of Part I of this comment letter for additional discussion of the potential problems caused by giving broad discretion to land managers without sufficient standards.)

III. Suggested Amendments Section-by-Section

CNRA makes the following suggestions about revising the Planning Rule:

§219.3 Role of science in planning

CNRA's proposed revision is intended to strengthen the USFS's obligation to use best available science in the planning process:

"The responsible official shall use the best available scientific information throughout the planning process identified in this subpart. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to a particular decision or action. The responsible official shall document this consideration in every assessment report (Sec. 219.6), plan decision document (Sec. 219.14), and monitoring evaluation report (Sec. 219.12). Such documentation must:

(a) Identify sources of data, peer reviewed articles, scientific assessments, or other scientific information relevant to the issues being considered;

(b) Describe how the social, economic, and ecological sciences were identified and appropriately interpreted and applied; and

(c) For the plan decision document, describe how scientific information was determined to be the most accurate, reliable, and relevant information available and how scientific findings or conclusions informed or were used to develop plan components and other content in the plan.”

§219.4 Requirements for public participation

As was mentioned earlier, the CNRA is concerned that the role of the state of California, as well as tribal and local governments, may be weakened under the proposed rule language included at §219.4(b)(1) pertaining to “[c]oordination with other public planning efforts.” Section §219.7(a) of the 1982 planning rule states that “[t]he responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.”

However, §219.4(b)(1) of the proposed rule states that “[t]he responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal Agencies, and State and local governments, **to the extent practicable and appropriate.**” (emphasis added).

The inclusion of the final clause provides an ambiguous caveat to the requirement to coordinate with other governmental and tribal efforts. The need for coordination and consistency with government/tribal entities with public health and safety mandates is crucial. Federal forest and fire management actions guided by forest plans and cooperative fire management agreements (e.g. the California Master Cooperative Wildland Fire Management and the Stafford Act Response Agreement) directly affect fire risk to adjacent lands, downstream impacts of a wildfire-flood sequence, and the production and transport of smoke from managed fire or a wildfire -- particularly on Californians residing in non-attainment areas designated under the Federal Clean Air Act. Therefore we believe that the obligation that forest plans be consistent with state, tribal and local government plans and cooperative agreements should be strengthened rather than weakened (as currently proposed in the draft planning rule).

Accordingly, the CNRA proposes the following revisions to the language of §219.4(b)(1):

“The responsible official shall engage the public—including Tribes and Alaska Native Corporations, other Federal agencies, State and local governments, individuals, and public and private organizations or entities— early and throughout the planning process as required by this part, and no later than 60 days after the first scoping notice or other public notice identifying a new or renewed planning process is issued.” .

§219.6 Assessments

The State of California continues to advocate for the explicit inclusion of Statewide Forest Assessments and Resource Strategies in the development of forest plans. This state plan is a

living “all-lands” assessment that will be updated periodically and is uniquely situated to inform the USFS planning process. Under §219.6(b)(2) considering the content of the required assessment under the proposed rule language, the responsible official is required to “[i]dentify and consider relevant information contained in governmental or non-governmental assessments” The proposed rule continues stating that “[s]uch documents **may** include State forest assessments and strategies” (emphasis added).

While the CNRA is encouraged by the reference to the Statewide Forest Assessments and Resource Strategies included in the proposed rule, we believe that the draft planning rule must be strengthened to ensure that all USFS Forest Plans be found consistent with the findings and priorities contained in the Statewide Forest Assessment and Resource Strategy documents.

The CNRA therefore suggests the following addition to §219.6:

“the responsible official is required to identify and consider relevant information contained in governmental or non-governmental assessments, plans, and policies such documents shall include, but not be limited to, State forest assessments and strategies.”

“Additionally, the responsible official shall ensure that all management plans and any amendments or revisions to them are consistent with officially approved or adopted resources related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as such guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to forest management plans.”

§219.8 Sustainability

The CNRA would like the USFS to ensure that forest plans take proactive management actions to restore degraded ecosystems and prohibit forest plans from choosing to simply “maintain” degraded ecosystem conditions. Further, forest plans should, as was mentioned, take a firm stance in the protection of water supplies consistent with statutory obligations. The current draft does not fully reflect NFMA’s strong requirement that plan regulations ensure against irreversible or serious degradation of water quantity, quality, and availability (16 U.S.C. 1604(g)(3)(E)). Finally, consistent with the research on fisheries and aquatic biology, the CNRA suggests a presumptive default buffer of 100 feet on riparian areas while allowing for science-based variation at both the plan and project level.

The CRNA would like to see the following changes to §219.8:

“Within Forest Service authority and consistent with the inherent capability of the plan area, the plan must provide for social, economic, and ecological sustainability, as follows:

(a) *Ecological sustainability.* (1) *Ecosystem plan components.* The

plan must include plan components to maintain, and where degraded, restore, the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area, taking into account:

- (i) Landscape-scale integration of terrestrial and aquatic ecosystems;
- (ii) Potential system drivers, stressors, and disturbance regimes, including likely climate change; how they might affect ecosystem and watershed health and resilience; and the ability of those systems on the unit to adapt to change;
- (iii) Air quality; and
- (iv) Wildland fire and opportunities to restore fire adapted ecosystems.

(2) *Ecosystem elements*. The plan must include plan components to maintain, protect, and where degraded restore:

- (i) Aquatic elements, such as lakes, streams, wetlands, stream banks, and shorelines;
- (ii) Terrestrial elements, such as forest stands, grasslands, meadows, and other habitat types;
- (iii) Rare aquatic and terrestrial plant and animal communities, consistent with Sec. 219.9;
- (iv) Public water supplies, sole source aquifers, source water protection areas, groundwater, and other bodies of water (including guidance to prevent detrimental changes in quantity, quality, and availability, including temperature changes, blockages of water courses, and deposits of sediments); and
- (v) Soils and soil productivity (including guidance to prevent irreversible soil damage, erosion, and sedimentation).

(3) *Riparian areas*. The plan must include plan components to maintain, protect, or if degraded restore riparian areas. Plans must establish a default width for riparian areas around all lakes, perennial and intermittent streams, and wetlands, within which management must promote aquatic objectives. The default will presumptively be 100 feet from the greater of the 100 year high water line or channel migration zone, for all lakes, perennial or intermittent streams, and wetlands, but may vary based on best available science, and local ecologic or geomorphic factors or the type of waterbody. The default width will apply unless the actual riparian area for a waterbody or a site has been delineated based on best available scientific information.

(b) *Social and economic sustainability*. The plan must include plan components to guide the unit's contribution to social and economic

sustainability, taking into account:

- (1) Social, cultural, and economic conditions relevant to the area influenced by the plan and the distinctive roles and contributions of the unit within the broader landscape;
- (2) Sustainable recreational opportunities and uses;
- (3) Multiple uses, including ecosystem services, that contribute to local, regional, and national economies in a sustainable manner; and
- (4) Cultural and historic resources and uses.”

§ 219.9 Diversity of plant and animal communities.

CNRA believes that the following language should be added to §219.9:

“Within Forest Service authority and consistent with the inherent capability of the plan area, the plan must include plan components to maintain the diversity of plant and animal communities, as follows:

(a) *Ecosystem Diversity*. The plan must include plan components to maintain, and where degraded to restore, the structure, function, composition, and connectivity of healthy and resilient terrestrial and aquatic ecosystems and watersheds in the plan area, consistent with Sec. 219.8(a), to maintain the diversity of native species. (b) *Species Conservation*. The plan components must provide for the maintenance or restoration of ecological conditions in the plan area to:

- (1) Contribute to the recovery of threatened and endangered species;
- (2) Conserve candidate species; and
- (3) Maintain viable populations of species of conservation concern within the plan area. Where it is beyond the authority of the Forest Service or the inherent capability of the plan area to do so, the plan components must provide for the maintenance or restoration of ecological conditions to contribute, to the extent the Forest Service and the area can, to maintaining a viable population of a species within its range. When developing such plan components, the responsible official shall coordinate to the extent practicable with other Federal, State, tribal, and private land managers having management authority over lands where the population exists.

(c) *Diversity of tree and other plant species*. The plan must include plan components to preserve, where appropriate, and to the degree practicable, the diversity of native tree and other native plant species similar to that existing in the plan area, as required by NFMA (16 U.S.C. 1604(g)(3)(B)).”

§ 219.12 Monitoring

We request that the following changes be made to §219.12:

“(a) (5) Each unit monitoring program must contain one or more monitoring questions or indicators addressing each of the following:

- (i) The status of select watershed conditions;
- (ii) The status of select ecological conditions;
- (iii) The status of focal species and species of conservation concern whose status is not otherwise determined through focal species monitoring; [...]”

§ 219.19 Definitions.

CNRA believes that these additional definitions would greatly enhance the efficacy of the Planning Rule:

“Candidate species. Species proposed or found warranted to be listed by the responsible federal agency as threatened or endangered.”

[...]

“Connectivity. Pertaining to the extent to which conditions exist or should be provided between separate national forest or grassland areas to ensure habitat for breeding, feeding, or movement of wildlife and fish within their home range or migration areas or corridors.”

[...]

“Species of conservation concern. Species other than federally listed threatened or endangered species or candidate species, for which there is substantial evidence demonstrating significant concern about its capability to persist over the long-term in the plan area, including but not limited to species listed by state departments or agencies with adjacent or joint jurisdiction.”

[...]

“Viable population. A population of a species that continues to persist over the long term across its range with sufficient abundance, reproduction, and survival to be resilient and adaptable to stressors and likely future environments.”

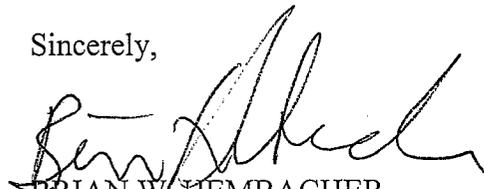
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Conclusion

The State of California appreciates the efforts of the planning rule team at the USFS to develop a rule that will offer a sound framework to implement on-the-ground management and address the pressing threats to forest lands in California and across the country. Again, thank you for the

opportunity to provide comment and to suggest improvements on the proposed rule. We look forward to continuing to work with the USFS to ensure that all forests are managed to serve the economic and social values of Californians and to ensure the vital health and sustainability of our forests.

Sincerely,



BRIAN W. HEMBACHER
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General



Secretary for Natural Resources