

Congress of the United States
Washington, DC 20515

January 17, 2024

The Honorable Thomas J. Vilsack
Secretary
U.S. Department of Agriculture
201 14th Street SW 201
Washington, DC 20250–1124

Mr. Randy Moore
Chief
U.S. Forest Service
201 14th Street SW 201
Washington, DC 20250–1124

Re: Comment on the U.S. Forest Service’s Proposed Rule, “Land Uses; Special Uses; Carbon Capture and Storage Exemption,” 88 Federal Register 75530 (Nov. 3, 2023), RIN 0596–AD55; FS-2023-0014-0001

Dear Secretary Vilsack and Chief Moore:

We write to express our grave concerns regarding the Proposed Rule¹ by the U.S. Forest Service, which would enable the agency to allow carbon capture and storage (CCS) projects in national forests and grasslands. This proposed action would authorize and remove a current prohibition against “exclusive and perpetual use and occupancy for carbon capture and storage on NFS [National Forest System] lands,” which sets a dangerous precedent. Not only would this be the first time such waste disposal is permitted in our national forests, but the safety and environmental concerns associated with this practice are irrefutable.

For the reasons enumerated below, the Forest Service should halt its rulemaking process and withdraw the Proposed Rule in its entirety.

The Proposed Rule works against the historic mission of the U.S. Forest Service. CO₂ injection infrastructure will cause long-term damage to the forests and grasslands that the Forest Service is mandated to protect. CO₂ waste injection would require building miles of pipelines, access roads, and electric transmission lines, as well as compressor stations, well pads, and injection wells. Protecting national forests, particularly Mature and Old Growth stands, is one of the most effective and immediately available methods of carbon removal. The resulting devastation of forest and grassland ecosystems from CO₂ injection would undermine or obliterate invaluable natural carbon sinks.

The Proposed Rule goes against decades of U.S. Forest Service decisions. Commitments made by Congress, the Executive Branch broadly, and the Forest Service specifically deny the grant of perpetual and exclusive use of Forest Service lands to any industry.² The Forest Service

¹ *Land Uses; Special Uses; Carbon Capture and Storage Exemption*, 88 Federal Register 75530 (available at <https://www.federalregister.gov/documents/2023/11/03/2023-24341/land-uses-special-uses-carbon-capture-and-storage-exemption>).

² DEPARTMENT OF AGRICULTURE, Forest Service, 36 CFR Part 251, RIN 0596–AB35, Special Uses, 63 Fed. Reg. 65,950, 65,954 (Nov. 30, 1998), <https://www.govinfo.gov/content/pkg/FR-1998-11-30/pdf/98-31564.pdf> (emphasis added) (“utility companies seeking rights-of-way across NFS lands” cannot receive a special exemption from the prohibition on permanent and exclusive uses).

has stated: “To grant such use would, in effect, grant fee title to Federal land to an authorization holder. Longstanding Congressional and Executive Branch policy dictates that authorizations to use NFS lands cannot grant a permit holder an exclusive or perpetual right of occupancy in lands owned by the public...” The language of this requirement remains unchanged in the final rule and appears in paragraph (e)(1)(iv).³

That rule and policy, as articulated by the Forest Service in 1998, have since been further entrenched in agency decision-making, assuring that national forests and grasslands remain public lands accessible to a wide variety of people and industries. The Forest Service appears to be reversing its longstanding policy without explanation or legal authority.

The Proposed Rule violates Indigenous rights. The Proposed Rule notice states that “the Forest Service has determined that this proposed rule could have substantial direct effects on one or more Tribes and is subject to Tribal consultation per E.O. 13175 and Forest Service Handbook 1509.13.”⁴ Because of the nationwide scope of this rule, the U.S. Forest Service itself has recognized that many Tribal Nations are potentially impacted. Thus, the Forest Service is obliged to consult fully with all recognized Tribes. However, consultation does not negate the “substantial direct effects” the Proposed Rule would have on “one or more Tribes.”

Tribal Nations, Alaskan Natives, and Indigenous communities frequently rely upon resources located in national forests and grasslands. Articulated and implied usufructuary rights are an important aspect of these communities’ continued use of public lands. Such rights are enshrined in laws that bind the agency’s actions. Over the past few years, the Forest Service has been promoting the co-management of public lands with Tribal Nations,⁵ substantially expanding upon efforts to ensure that tribal expertise is honored.⁶ The Proposed Rule would dramatically change this relationship by allowing private companies to apply to permanently sever Indigenous peoples’ relationship to their land. Thus, the proposed action is questionable on its face and certainly should not be taken without a much longer period of comments and consultation than the 60-day period now circumscribing the promulgation of this rule.

The Proposed Rule will perpetuate environmental injustices. The notice states: “The Forest Service has determined that the proposed rule is not expected to result in disproportionately high and adverse impacts on minority or low-income populations or the exclusion of minority and low-income populations from meaningful involvement in decision making.”⁷ In fact, the opposite is true. The information available to the agency, including materials produced by environmental justice experts working with the White House and the Council on Environmental Quality, contradicts the notice’s conclusion. Given that the Proposed Rule will support existing and new carbon capture and transport projects, which are typically in or near low-income, Black, Brown, Indigenous, and other historically overburdened communities, it will perpetuate environmental injustices to those communities.

³ *Id.* at 65,955 (emphasis added).

⁴ 88 Fed. Reg. 75530.

⁵ See, e.g., <https://www.fs.usda.gov/news/releases/new-agreements-advance-tribal-co-stewardship> (last visited Dec. 11, 2023).

⁶ For an earlier example of such efforts, see https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5309366.pdf (last visited Dec. 11, 2023).

⁷ 88 Fed. Reg. 75531.

The Proposed Rule does not acknowledge that CO₂ pipelines and injection pose grave threats to public health and safety. The CCS processes of transport, injection, and storage pose significant health, safety, and environmental risks inadequately assessed or addressed under existing regulations.⁸ CO₂ pipelines, which would presumably be the means of transporting CO₂ to injection sites in national forests, present significant public safety concerns. CO₂ gas emitting from a rupture or leak is an odorless, invisible asphyxiant and intoxicant, which makes its release potentially deadly. CO₂ transport can result in violent pipeline ruptures, leading to an “unzipping” of a pipeline over long distances. Once compressed CO₂ leaks, its physical properties allow it to travel miles at lethal concentrations, displacing oxygen and immobilizing the gasoline or diesel-powered vehicles of first responders. The CO₂ plume can cause disorientation, confusion, unconsciousness, and death for humans and animals. In 2020, residents of rural Satartia, Mississippi, experienced a CO₂ pipeline rupture that sickened dozens of people. The rupture resulted in more than 300 residents being evacuated and 46 hospitalized, with victims found gasping for breath, nauseated, foaming at the mouth, and rendered unconscious.

The Proposed Rule opens the door for harm from the entire process of CCS, not just storage. The Forest Service is proposing to amend its current regulations “to provide an exemption for carbon capture and storage.”⁹ This broad language implies that *all* stages of the CCS process could be permitted on Forest System lands—capture, transport, and storage—each of which is concerning in its own right. No other industry enjoys a permanent right to occupy and use public lands, not even housing built to benefit community members and Forest Service staff.¹⁰ These industries have large facilities for CO₂ capture, CO₂ pipeline infrastructure, land clearing for associated roads and rights-of-way, and wells for CO₂ injection. Allowing this would convert national forests and grasslands into industrial development lands, forever ending the sustainable uses and living ecosystems currently part of the agency’s core mission and work.

The Proposed Rule is counterproductive. Any atmospheric benefits from the mechanical-chemical capture of CO₂ and subsequent injection beneath our national forests would be counterbalanced by numerous development-associated actions including, the sum of carbon emissions from tree felling and harvesting; the soil compaction and erosion and removal of topsoil; the industrial fabrication and transport of pipes, fittings, and materials for well pads; the engines of earth-moving and heavy construction machinery; and the loss of current and future forest growth and the lost carbon sink potential from vast swathes of trees cut down that would otherwise have been sequestering carbon.

Finally, the Proposed Rule has significant public opposition. In response to a Notice of Proposed Rulemaking, over 20,200 people signed a petition urging the Forest Service to halt its proposed regulatory change. Upon publication of the Proposed Rule, 140 organizations representing a wide variety of geographies and interests asked the Forest Service to extend the comment period. For the reasons listed above, we call on the U.S. Forest Service to halt its rulemaking process and ultimately withdraw its Proposed Rule in its entirety.

Sincerely,

⁸ See, e.g., Pipeline Safety Trust, “CO₂ Pipelines: Dangerous and Under-regulated” (March 2022, <https://pstrust.org/carbon-dioxide-pipelines-dangerous-and-under-regulated/> [hereinafter “PST Report”]).

⁹ 88 Fed. Reg. 75530 (emphasis added).

¹⁰ See <https://www.cpr.org/2023/09/27/dillon-affordable-housing-development-us-forest-service/> (last visited Dec. 11, 2023).



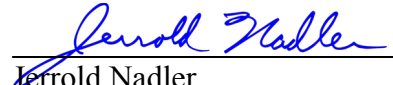
Jared Huffman
Member of Congress



Raúl M. Grijalva
Member of Congress



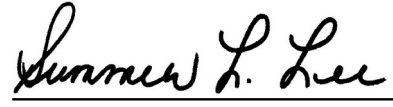
Alexandria Ocasio-Cortez
Member of Congress



Jerrold Nadler
Member of Congress



Eleanor Holmes Norton
Member of Congress



Summer Lee
Member of Congress



Barbara Lee
Member of Congress



Adriano Espaillat
Member of Congress