November 10, 2023

Mark Chandler
U.S. Forest Service
Director, Lands, Minerals, and Geology Management Staff
201 14th Street SW
Washington, DC 20250–1124

Re: Request for Extension of Comment Period 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

Submitted via regulations.gov and email to Mark Chandler, mark.chandler@usda.gov

On behalf of the Center for Biological Diversity, Partnership for Policy Integrity, CURE, Better Path Coalition, Food and Water Watch, and the additional undersigned 135 organizations and our collective millions of members and supporters nationwide, we ask that you extend the comment period for the above-mentioned rule by 60 days, with a new end date of March 2, 2024.

The U.S. Forest Service (“USFS”) is providing 60 days, ending on January 2, 2024, for the public to respond to its proposal to “amend its special use regulations, which prohibit authorizing exclusive and perpetual use and occupancy of National Forest System lands, to provide an exemption for carbon capture and storage.” 88 Fed. Reg. 75530 (Nov. 3, 2023) (“Proposed Rule”). But 60 days—particularly given that those days fall across several federal and major holidays—is simply not enough time for the public to digest and respond to a rule change that could change National Forests around the country forever. The public, particularly communities that stand to be most directly impacted by carbon capture and storage (“CCS”) projects and CO₂ pipelines and injection on USFS lands, cannot be expected to meaningfully consider and comment on the Proposed Rule given the time of year and tight timeline. USFS must give additional time and make significant efforts to reach rural communities and Indigenous leaders, who are most likely to be impacted and who have more difficulty getting questions answered in order to provide informed comments.

An extension of the comment period on the Proposed Rule is therefore warranted given: (1) the comment period falls squarely across several federal and major holidays; (2) the
novelty of CCS at scale and the fact that no other federal agency has changed its regulations to allow CO₂ injection on federal lands; (3) the risks CCS and CO₂ pipelines and injection pose to public safety, health, and the environment; (4) the tremendous public interest in this topic and the diversity of potentially impacted communities; and (5) the need to fully inform and consult with Tribes.

Thank you for your consideration of this matter. We ask that you respond to this request as quickly as possible.

(1) **The comment period spans several federal and major holidays**

The proposed comment period spans arguably the busiest time of year for holidays, both religious and secular, including Thanksgiving, Chanukah, Christmas, Kwanzaa, and New Year’s. Within the comment period are four federal holidays. Moreover, the due date for comments, January 2, is the first workday of the new year. A comment period falling within this holiday season effectively reduces the amount of time given to the public to consider the rule change and submit comments. Given that the Proposed Rule could affect National Forests nationwide, and that CCS is a completely new issue for most Americans, the Forest Service must extend the public comment by at least 60 days.

(2) **The novelty of CCS at scale and the first-ever regulatory change to allow CO₂ injection on federal lands**

While CCS and CO₂ injection have existed for decades, many members of the public have never encountered a federal action that enables CCS before, particularly on federal lands. Communities that live near national forests and grasslands are familiar with uses of these lands that are categorically different than what USFS is now proposing to allow.

In 2022, the Bureau of Land Management (“BLM”) issued an Instructional Memorandum (“IM”) addressing CCS rights-of-way on federal lands.¹ Notably, because the BLM’s IM was not a regulatory change, but merely guidance, the public did not have a chance to weigh in. In other words, the Forest Service’s Proposed rule is the first ever regulation-level change to allow CO₂ injection on federal lands.

Sixty days is not enough time for the public to comment on a Proposed Rule that could forever change National Forests nationwide. The Forest Service must not diminish the profound implications of its proposed regulation change. While we recognize that the Proposed Rule alters the initial screening criteria for special use permits, and specific project proposals must still meet other screening criteria and the applicable land management plan (see 88 Fed. Reg. 75531), this does not make the Proposed Rule any less significant. In effect, the Proposed Rule changes the fundamental fact that National Forests, which throughout their history have not been available for CO₂ injection and storage, nor for any permanent use permit, would be open for this perpetual and exclusive use—and all of the infrastructure that comes along with it.

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It is therefore imperative that the public be given adequate time to educate themselves on what CCS entails—including its risks to public safety, health, and the environment—and then consider how the Proposed Rule could impact them and the country’s National Forests for the foreseeable future. This education and consideration cannot be completed in 60 days at the end of the year and over holidays.

(3) The risks to public safety, health, and the environment posed by CCS

CCS projects threaten the local environment and public health of communities in areas where CCS is deployed and where CO₂ pipelines and injection wells are located. The capture, compression, transportation, injection, and storage of carbon dioxide pose significant environmental, health, and safety risks that are not adequately assessed or addressed under existing regulations.²

CO₂ pipelines, which would presumably be used to transport CO₂ to, and inject it under, National Forests, present significant public safety concerns. CO₂ gas is “odorless, colorless, doesn’t burn, is heavier than air, and is an asphyxiant and intoxicant,” which makes releases potentially deadly—as well as difficult to observe and avoid.³ Anyone recreating in, or otherwise using, a National Forest has a legitimate reason to be concerned about the impacts a leak could have on their health and safety. Further, CO₂ can lead to violent pipeline ruptures due to its volatile nature (particularly in the presence of water), leading to an “unzipping” of a pipeline over long distances.⁴ Once compressed CO₂ leaks, its physical properties allow it to travel miles at lethal concentrations displacing oxygen and settling in low spots, increasing the affected area and impact on public health.⁵ Oxygen displacement can immobilize gasoline or diesel powered equipment utilized by first responders, rendering it useless by stopping fuel combustion, and cause disorientation, confusion, unconsciousness and death for humans and animals.⁶ In 2020, residents of rural Satartia, Mississippi experienced a CO₂ pipeline rupture that sickened dozens of people.⁷ 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.⁸ Months later, residents continued to suffer from mental fogginess, lung dysfunction, chronic fatigue, and stomach disorders.⁹

³ PST Report at 8.
⁴ Id. at 6.
⁵ Id. at 9.
⁶ Id.
⁷ Dan Zegart, Gassing Satartia: Carbon Dioxide Pipeline Linked to Mass Poisoning (Aug. 26, 2021), Huffington Post, https://www.huffpost.com/entry/gassing-satartia-mississippi-co2-pipeline_n_60ddea9fe4b0ddef8b0ddc8f.
⁸ Id.
⁹ Id.
For those living near National Forests where CO₂ injection could occur, those who enjoy recreating in National Forests, people who hunt, gather, and fish on these lands, and anyone living along the route of a CO₂ pipeline, these risks are real and highly concerning. The public must be given time to consider those risks and weigh in on the Proposed Rule accordingly.

When issuing its proposed CCS guidance, the White House Council for Environmental Quality (“CEQ”) acknowledged that CCS “understandably raises concerns about public health and environmental impacts, as well as questions about who stands to benefit from the deployment of these systems.” CEQ went on to note that, “[r]esponsible CCS projects should engage communities and Tribes . . .; protect communities from pollution; and incorporate environmental justice and equity considerations, especially in communities that are already exposed to multiple pollution sources.” CEQ also recommended a number of actions for federal agencies to take in order to “facilitate . . . meaningful public engagement” and “prioritize the development and application of environmental justice best practices” for CCS projects.

The Forest Service must engage communities and Tribes and facilitate meaningful public engagement. Doing so includes providing the public—and particularly communities that will be most directly impacted by CCS deployment, CO₂ pipelines, and injection wells—with adequate time to share their concerns and perspectives with the Forest Service.

(4) The public has shown significant public interest in CCS and opposition to CO₂ injection in National Forests

There is significant public interest in CCS and concerns about the Forest Service’s Proposed Rule. This extension request alone is signed by 140 organizations ranging in size, issue focus, and geographic focus. Over 20,200 people signed a petition circulated in advance of the Proposed Rule urging the Forest Service to halt its proposed regulatory change. A retired, 34-year veteran of the Forest Service authored an op-ed entitled, “Don’t Offer Up Our National Forests for Industrial Carbon Waste Dumping.” And nationally recognized climate expert Bill McKibben alerted his newsletter audience about the Proposed Rule.

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10 87 Fed. Reg. 8808, 8810-11 (February 16, 2022). We note, though, that CEQ has yet to finalize this guidance, even after groups submitted comments to strengthen the provisions regarding community and Tribal consultation and environmental justice.

11 Id. at 8811.

12 Id.


More generally, there are widespread concerns about CCS due to its failure as a climate solution and risks to public safety, health, and the environment. For example, a January 2021 shared position statement adopted by the 1,500 member-organizations of Climate Action Network (“CAN”) International warned that CCS “risks distracting from the need to take concerted action across multiple sectors in the near-term to dramatically reduce emissions.”\(^\text{16}\)

These are but a few examples of the groundswell of public interest in CCS and CO\(_2\) injection in National Forests. In addition, as evidenced this summer when more than 528,000 people submitted comments urging the Forest Service to protect mature and old-growth forests, there is overwhelming public support for protecting national forests as a natural climate solution. The Forest Service must acknowledge this widespread attention to these issues and extend the comment period beyond the holiday season.

\textit{(5) The Forest Service’s duty to inform and consult with Tribes}

The Forest Service “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.” 88 Fed. Reg. 75531. Sixty days is not sufficient for the agency to fulfill its consultation duty. The Forest Service must fully inform Tribal communities and elders and educate key communities \textit{well in advance} of the deadline for commenting, thereby necessitating an extension of the deadline to March 2, 2024.

\textbf{CONCLUSION}

We appreciate your consideration of our request, and we urge you to act quickly to extend the deadline by an additional 60 days to ensure the public has a full and fair opportunity to comment on these important issues. Please contact Victoria Bogdan Tejeda, Staff Attorney at the Center for Biological Diversity (vbogdantejeda@biologicaldiversity.org), if you have any questions regarding this request.

Respectfully submitted,

1000 Grandmothers for Future Generations
198 Methods
350 Bay Area Action
350 Chicago
350 Contra Costa Action
350 Massachusetts
350 Rutland County
350 Vermont
7 Directions of Service

ACORN (Addison County Re-localization Network)
Animals Are Sentient Beings, Inc.
Applegate Siskiyou Alliance
Ashby Conservation Commission
Athens County's Future Action Network,
ACFAN
Benicians for a Safe and Healthy Community

Better Path Coalition
Between the Waters
Biofuelwatch
Black Hills Sierra Group, South Dakota
Blue Mountains Biodiversity Project
Bold Alliance
Cascadia Climate Action Now
Center for Biological Diversity
Center for Integrative Health Care, LLC
Center for International Environmental Law
Center on Race, Poverty & the Environment
Chattooga Conservancy
Clean Black Lake Alliance
Climate Action California
Climate Code Blue
Climate Communications Coalition
Climate Investigations Center
Climate Reality Project: Susquehanna Valley PA Chapter
Communities for a Better Environment
Community Energy reSource
Concerned Health Professionals of Pennsylvania
CURE
Dogwood Alliance
Don't Gas the Meadowlands Coalition
Don't Waste Arizona
Earth Ethics, Inc.
Earth Matters
Eco-Justice Collaborative
Ecological Health Network
Endangered Species Coalition
Environmental Law & Policy Center
Environmental Protection Information Center
Extinction Rebellion Vermont
Food & Water Watch
Forces for Nature
Forest Keeper

Forest Service Employees for Environmental Ethics
Forests Forever
Friends of the Earth
Gallatin Wildlife Association
Grassroots Environmental Education
Great Plains Action Society
Greater Boston Physicians for Social Responsibility
Green Amendments For The Generations
GreenLatinos
Greenpeace USA
Heartwood
Honor the Earth
Indiana Forest Alliance
Institute for Agriculture and Trade Policy
Institute for Policy Studies Climate Policy Program
John Muir Project
Kentucky Heartwood
Kettle Range Conservation Group
Klamath Forest Alliance
Lebanon Pipeline Awareness
Locust Point Community Garden
Long Beach Alliance for Clean Energy
Los Padres ForestWatch
Massachusetts Forest Watch
Milwaukee Riverkeeper
Minnesota Center for Environmental Advocacy
Move Past Plastic (MPP)
NEPA Green Coalition
New Mexico Wild
North American Climate, Conservation and Environment (NACCE)
Northeastern Minnesotans for Wilderness
Nuclear Information and Resource Service
Ohio River Valley Institute
Old-Growth Forest Network
Partnership for Policy Integrity
Physicians for Social Responsibility, Colorado
Physicians for Social Responsibility, Iowa
Physicians for Social Responsibility, San Francisco Bay
Physicians for Social Responsibility, Texas
Pipeline Awareness Network for the Northeast
Prairie Protection
Preserve Giles County
Property Rights and Pipeline Center
Protect Our Woods
Public Goods Institute
Putnam Progressives
RAFT
Resist the Pipeline
Resource Renewal Institute
Responsible Decarbonization Alliance
Rise Up WV
Room To Maneuver
Santa Cruz Climate Action Network
Save Our Streams, PA
Save Public Forests
Schuylkill Pipeline Awareness
Science and Environmental Health Network
Seneca Lake Guardian
Sequoia ForestKeeper
Seventh Generation
SF Baykeeper
Shawnee Natural Area Guardians
Sierra Club
Standing Trees
StopNED
Sunflower Alliance
Susquehanna Valley, PA The Climate Reality Project
Sustainable CSRA
Sustainable Upton
Tamarack Water Alliance
Tennessee Heartwood
Terra Advocati
The Climate Reality Project, Western New York Chapter
The Quantum Institute
The Revolving Door Project
The Rewilding Institute
Tufts University
Unitarian Universalists for a Just Economic Community
United Plant Savers
Virginia Citizens Consumer Council
WaterLegacy
Waterspirit
We Advocate Thorough Environmental Review
Wendell State Forest Alliance
Western Environmental Law Center
Western Organization of Resource Councils
WildEarth Guardians
Women's Earth and Climate Action Network
Yaak Valley Forest Council