



The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

February 2, 2018

Ms. Amy Barker
United States Forest Service
Geospatial Technology & Applications Center
2222 West 2300 South
Salt Lake City, UT 84119

Dear Ms. Barker,

Following are the Wyoming Department of Agriculture (WDA) comments regarding the United States Forest Service (FS) request for comments on efforts to revise the agency's National Environmental Policy Act (NEPA) procedures.

Our comments are specific to our mission: dedication to the promotion and enhancement of Wyoming's agriculture, natural resources, and quality of life. As the proposed project could affect our industry, citizens, and natural resources it is important that you continue to inform us of proposed actions and decisions and continue to provide the opportunity to communicate pertinent issues and concerns. WDA works with the FS on a litany of projects, from fuels and vegetation management to grazing permit renewals and offers the following comments based on our experiences.

The Request for Comment in the Federal Register identified four major areas (paraphrased): 1) Process and analysis requirements that can be modified, reduced, or eliminated, 2) Approaches to landscape scale analysis that facilitate restoration of FS lands, 3) Actions that could or should be categorically excluded under NEPA, and 4) Ways the FS could expand and/or enhance coordination with other local, state, tribal, or federal agency reviews. Please see our comments regarding each below.

1) **Process and analysis requirements that can be modified, reduced, or eliminated**

a. **Use Environmental Assessments (EA) or Categorical Exclusion (CX) for grazing permit renewals**

The FS routinely completes Environmental Impact Statements (EIS) for grazing permit renewals. Traditionally, an EIS would be completed only if a Finding of No Significant Impact cannot be reached. Additionally, current practice does not appear to comply with 36 CFR 220.5 (a) which states when an EIS would normally be required.¹ We do not believe current practice complies with Council on Environmental Quality (CEQ) Policy within 40 CFR 1500.2.² We also suggest the FS give full consideration to the use of CXs for permit renewals, especially in areas where allotment are mainly comprised of non-Forest System Lands.

¹ 36 CFR 220.5 (a) *Classes of actions normally requiring environmental impact statements – (1) Class 1: Proposals to carry out or to approve aerial application of pesticides on an operational basis... (2) Class 2: Proposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area...*

² 40 CFR 1500.2 (b) *Implement procedure to make NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives.*

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b. Follow existing regulation to reduce size/length of documents and consider actual need for change before initiating NEPA analyses.

As mentioned above, we do not believe the FS is following CEQ policy, especially with regard to EISs. 40 CFR 1500.2 (b) clearly outlines the intent of EISs, as does 40 CFR 1500.4,³ 40 CFR 1502.7,⁴ Forest Service Handbook 1909.15,⁵ and 36 CFR 220.5.¹ We would also urge the FS to give more credence to 36 CFR 220.7 (a)⁶ and avoid the use of EISs unless truly needed.

We also feel the FS should more closely follow direction outlined in FSH 2209.13 when determining whether or not changes are required to grazing permits, what level of analysis is required, or when changes to management are truly needed.⁷ This again would lead us to believe the FS should give more consideration to CXs for grazing permit renewals when there is no need for change.

c. Overlapping Designations

FS NEPA documents routinely designate Forest System Lands for specific uses, or determine where specific uses will be emphasized. We have found this to be extremely prohibitive in instances where multiple designations overlap (e.g., designation for livestock forage, prairie dogs, mining, and sage-grouse overlap). This overlap often leads to conflicting documents and a “pick one or the other” scenario. The FS should consider ways in which compartmentalization of lands can be avoided and landscape-level, holistic strategies can be used to achieve goals and objectives across planning units, rather than piecemeal compilation of multiple desired outcomes; FS should emphasize desired management without restricting projects, multiple use, or sustained yield on FS acres.

Environmental impacts shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

³ 40 CFR 1500.4 – *Reducing paperwork. Agencies shall reduce excessive paperwork by: (a) Reducing the length of environmental impact statements (§1502.2(c)), by means such as setting appropriate page limits (§§1501.7(b)(1) and 1502.7); (b) Preparing analytic rather than encyclopedic environmental impact statements (§1502.2(a)); (c) Discussing only briefly issues other than significant ones (§1502.2(b)); (d) Writing environmental impact statements in plain language (§1502.8); (e) Following a clear format for environmental impact statements (§1502.10); (f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§1502.14 and 1502.15) and reducing emphasis on background material (§1502.16)... (i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§1502.4 and 1502.20); (j) Incorporating by reference (§1502.21)... [etc.]*

⁴ 40 CFR 1502.7 – *Page Limits. The text of final environmental impact statements (e.g., paragraphs (d) through (g) of §1502.10) shall normally be less than 150 pages and for proposals of unusual scope of complexity shall normally be less than 300 pages.*

⁵ FSH 1909.15, Chapter 20, part 23.1 – *Page Limits. The text of final environmental impact statements (paragraphs (d) through (g) of §1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages. (40 CFR 1502.7)*

⁶ 36 CFR 220.7 – *Environmental assessment and decision notice. (a) Environmental assessment. An environmental assessment (EA) shall be prepared for proposals as described in §220.4(a) that are not categorically excluded from documentation (§220.6) and for which the need of an EIS has not been determined (§220.5). An EA may be prepared in any format useful to facilitate planning, decisionmaking, and public disclosure as long as the requirements of paragraph (b) of this section are met. The EA may incorporate by reference information that is reasonably available to the public.*

⁷ FSH 2209.13, Chapter 90, part 92.13 – *Identification of Resource Management Needs...If desired conditions and existing conditions are the same, there is no need for change. This would also be the case if the existing condition is trending toward desired condition in an acceptable timeframe...In a rangeland grazing management context, objectives should be site-specific. Objectives should be translated into ecosystem indicators that can be monitored for the purpose of evaluating trend toward meeting desired conditions over time, and relating the measured trend to the applied management practices and the response of the site to those practices...*

d. Aerial Application of Herbicides/Pesticides

Currently, under 36 CFR 220.5, the FS is required to prepare an EIS for “aerial application of chemical pesticides on an operational basis.” As discussed in other portions of this letter, this requirement seems particularly onerous and quite unnecessary. The FS should modify the existing regulations, and any associated guidance (e.g., handbooks) to allow aerial application via either EA or CX and provide for expedited processes to combat the spread of invasive, undesirable species and promote healthy ecosystems.

e. Management versus Management out of fear of Litigation

Although we can fully respect the burden of litigation, too often we see unreasonable analyses based on fear of litigation. This fear has undoubtedly led to increased lengths of documents, extreme timelines, and more often than not, does not prevent litigation in the end. The FS should focus on writing effective NEPA documents of appropriate scope, breadth, and detail without trying to anticipate every frivolous lawsuit. From the information we have gathered, it appears most federal agencies, including the FS, have decisions remanded based on process, rather than content, which leads us to believe that an unending list of possible outcomes or “connected actions” is not what the courts are most interested in. We believe the FS must focus its efforts on concise, clear, and reasonable NEPA documents, rather than try to outguess the next litigant. We are not implying every decisionmaker needs to be a lawyer, but decisionmakers should be versed in what constitutes sound rationale for a decision. This may be even more important now when consideration is given to the Objection Process and the potential issues that can arise from unknowns within 36 CFR 218/219.

2) Approaches to landscape scale analysis that facilitate restoration of FS lands

a. Large, tiered, programmatic, or incorporated analyses

WDA supports large, landscape scale NEPA projects to address ecosystem function, vegetation, and timber conditions. Condition-based NEPA may provide one way to identify management tools to utilize at a later date to promote forest health and move towards desired conditions. We also highly suggest the FS consider utilizing more Adaptive Management (AM) in their Forest Plans and project level decisions. However, this requires FS personnel recognize AM is *not* “trial by error” which involves no hypothesis testing or criteria, nor is it “management by objectives,” which does not include structured feedback. These approaches could lead to more useful, large-scale documents that could then be tiered to or incorporated by reference to further reduce length of time to complete analyses as well as the length of documents.

b. Use of Decision Screens and Supplemental Reports

Many FS units in Wyoming use “Decision Screens” to determine which actions to take and, in theory, help the public to understand how decisions are arrived at. While the theory and intent behind these flowcharts is commendable, they have proven to be quite problematic in practice. We routinely find Decision Screens that lead to separate conclusions, which, while not entirely unreasonable, is at least confusing. If the FS continues the use of Decision Screens, they should be developed in the vein of Adaptive Management, rather than cut-and-dry decisions which do not promote flexibility in management. We highly suggest the FS consider development, or updates, of guidance surrounding the use of Decision Screens and further articulate how they fit into the overall planning process and larger, forest-level documents.

Similarly, Supplemental Reports are commonplace but often lead to issues surrounding validity of the information contained within them. Reports range from a few pages to volumes and often are more akin to theory than practical science. We do not feel the use of these reports is properly done in many instances

according to 40 CFR 1502.9.⁸ We also do not believe current practices follow FSH 1909.15 (18.1).⁹ We highly suggest the FS develop, or update and circulate, direction regarding how Supplemental Reports should be formatted, the content and context of the reports, and how they are to be used during the planning process.

c. Health Forests Initiative (HFI) and Healthy Forests Restoration Act (HFRA)

We have seen little to no use of HFI or HFRA for projects in Wyoming and since their establishment in 2002, resource conditions have changed substantially in some areas. The FS should consider reviewing HFI and HFRA, and specifically the Decision Diagram Key to identify and expand the agency's ability to more efficiently address landscape scale projects. Many portions of the Decision Diagram Key are more limiting than enabling and could actually hinder needed projects. In conjunction with a. above, we believe the FS could further utilize HFI and HFRA, especially in Wyoming.

3) Actions that could or should be categorically excluded under NEPA

a. Range Management/Livestock Grazing

We strongly believe the FS should consider using authority found under 36 CFR 220.6 – Categorical Exclusions more. This could apply to range improvements (permanent or temporary), invasive species treatments, seeding of desirable forage species, use of forage reserves or alternative pastures during unfavorable conditions (e.g., drought), and projects that utilize Range Betterment Funds.¹⁰ Many of these actions have little to no impact and, in many cases, can actually help improve management and further progress towards meeting standards, objectives or desired conditions on a given forest unit. While the ability to modify currently exists within 36 CFR 222.4, we rarely see the FS formally utilize Subpart A of 36 CFR 222 which would include 36 CFR 222.7.¹¹ We suggest the FS look for ways to emphasize cooperation in management and utilize the regulations in tandem, rather than independently. In instances where authority has not be delegated to Regional or Forest level managers, the FS should consider whether or not delegation of authority would promote a more appropriate response to local conditions and needs. In other words, the FS should keep local decision local.

b. Vegetation Treatments, Seedings, Fuels Reductions, Aerial Applications, Small Timber Projects/Sales, Forest Health Projects.

We strongly believe any project that would improve forest health, reduce risks of catastrophic wildfire, support small and local businesses, decrease invasive or undesirable species prevalence, add forage for livestock and wildlife, or improve species composition via addition of desirable species (seedings/plantings) should be categorically excluded. We have seen a recent, albeit limited, trend towards more programmatic-style analyses. While we support these approaches, we also feel preparation of an EIS to complete a project beneficial to forest health is unnecessary. We believe there is ample opportunity for the FS to address most

⁸ 40 CFR 1502.9 - (c) Agencies: (1) Shall prepare supplements to either draft or final environmental impact statements if: (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. (2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so. (3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

⁹ FSH 1909.15 (18.1) – Review and Documentation of New Information Received After Decision Has Been Made

¹⁰ 36 CFR 222.10 – Range betterment fund.

¹¹ 36 CFR 222.7 – Cooperation in management. (a) Cooperation with local livestock associations—(1) Authority. The Chief, Forest Service, is authorized to recognize, cooperate with, and assist local livestock associations in the management of the livestock and range resources on a single range allotment, associated groups of allotments, or other association-controlled lands on which the members' livestock are permitted to graze...

of these types of projects under 36 CFR 220.6. Utilizing a CX for these types of projects would also better comply with 40 CFR 1500.^{2,3,4} We also believe the FS should better utilize Good Neighbor Authority, HFI, and HFRA in Wyoming.

4) Ways the FS could expand and/or enhance coordination with other local, state, tribal, or federal agency reviews

a. Memoranda of Understanding (MOU)

The State of Wyoming maintains an MOU with both the Rocky Mountain and Intermountain Regions of the Forest Service regarding Cooperating Agency status on NEPA analyses for National Forest System lands in Wyoming. This agreement allows WDA to participate in NEPA projects based on the issues and priorities of the state. We strongly believe expanding umbrella MOUs to other governmental entities will ensure improved coordination with potential cooperators and local entities.

b. Interdisciplinary Team (IDT) participation

In addition to the MOU mentioned above, we believe incorporating agencies into IDTs allows them to be fully engaged in the development of the project, assisting in the analysis/review of a project early and often, and promotes the development of a broad yet realistic range of alternatives. This also can decrease the number of comments the FS must respond to at key NEPA benchmarks and help streamline processes. We also believe engaging partners earlier provides the ideal venue to input professional expertise, data and information which may help expedite the planning process.

c. Central Repository for Manuals and Handbooks

While federal regulations are easily found online, FS manuals and handbooks have proven difficult to obtain. In many cases, the desired manual or handbook can be found but is not complete, is only linked to a FS directive for field staff and FS personnel, or leads to a broken link. We would suggest the FS develop a single resource for those partners and the public looking for manuals and handbooks that is easily found, contains complete documents, and is updated as needed.

In summary, we believe the FS has ample room to affect change in the way they approach planning. Whether that be through increased use of existing regulations or decreased dependence on others, we hope the FS will take this opportunity to improve NEPA processes. We would Thank you for the opportunity to comment.

Sincerely,



Doug Miyamoto
Director

DM/jb

CC: Governor's Policy Office
Wyoming Board of Agriculture
Wyoming Association of Conservation Districts
Wyoming Farm Bureau Federation
Wyoming County Commissioner's Association

Wyoming Game and Fish Department
Wyoming State Grazing Board
Wyoming Stock Growers Association
Public Lands Council