

Forest Service Planning Rule

On January 26, 2012, the Forest Service released the Programmatic Environmental Impact Statement (PEIS) containing as the Preferred Alternative a new Forest Planning Rule. AFRC submitted detailed comments on the Draft Rule, issued February 14, 2011, expressing its members' concerns about the policy direction the rule takes, the cost in taxpayer dollars of compliance by the agency and the impact on traditional multiple uses, such as recreation, timber and grazing. AFRC strongly urged the Forest Service to substantially revise the Draft Rule and to thoroughly test its implementability as was done for the 2002 Rule. The final Rule fails to remedy the concerns expressed in AFRC's detailed comments and, in some cases, strays further from the agency's statutory mandate under the National Forest Management Act (NFMA) and the Multiple-Use Sustained Yield Act.

The Rule ignores the appropriate role and balance of multiple-uses.

The Forest Service's authority comes from the Multiple-Use Sustained Yield Act and the requirements of the National Forest Management Act. Instead of focusing on active land management uses such as timber, grazing and recreation the new Rule launches off into areas like ecosystem services, carbon sequestration and "spiritual sustenance." The new Rule fails to balance environmental, social and economic concerns in the planning process, instead elevating "ecological integrity" to a higher level of concern.

The requirement to "use best available scientific information" rather than agency expertise and available, relevant science will make decision making less responsive, more time consuming and vulnerable to litigation.

The Rule imposes detailed requirements for documentation of the agency's deliberative process in choosing what is "best available scientific information" which will undoubtedly lead to lawsuits that will halt all progress. This wording seems to give away much that the agency gained in the 2008 Ninth Circuit *en banc* decision (*Lands Council v. McNair*) which says the agency's expertise deserves deference.

Requirements to maintain a diversity of plant and animal communities should be placed within the context of multiple use objectives.

NFMA requires that plans "provide for *diversity of plant and animal communities* based on the suitability and capability of the specific land area in order *to meet overall multiple-use objectives.*" The new Rule continues a mistake the Forest Service made in the 1982 rule by ignoring the mandated link between species diversity and multiple use objectives. Moreover, the new Rule "raises the bar" to include viability of all species in the six taxonomic Kingdoms, i.e., Plants, Animals, Fungi, Bacteria, Algae, and Protozoa. The agency acknowledges it knows very little about invertebrates. The 1982 viability requirement for vertebrates has cost the Forest Service \$1 billion and 29 years of litigation that is on-going. Adding invertebrates assures another \$1 billion in cost over the next decade and 30 more years of litigation. The "species of conservation concern" requirements of the Rule institute on a national scale the Survey and Manage requirements of the Northwest Forest Plan that have caused so much expense and litigation gridlock.

The final rule introduces specific widths for riparian buffers and calls for the Chief to establish national water quality Best Management Practices (BMPs).

Establishing a nationwide minimum riparian buffer width of 100 feet is a clear example of managing through rule, rather by using agency knowledge and expertise tailored to on-the-ground conditions. It is the opposite of reliance on relevant, applicable scientific information. Establishment of National Forest System-wide BMPs is similarly untenable and could compromise state level BMPs that respond to local conditions.

The rule is unduly cumbersome and focuses too much on process and procedure.

One of the objectives of the new Rule was that it be workable, affordable and able to withstand court challenges so the agency won't have to do it over again. Under a January 18, 2011 Executive Order signed by President Obama, rules are supposed to be made more cost effective, less burdensome and more flexible. The new Rule is just the opposite. The final Rule even adds to process by introducing a new layer of "national oversight" and making the Chief the final decision maker on what are "species of conservation concern."

The regulation effectively makes Forest Plan "guidelines" legally enforceable standards.

AFRC recommended preserving the current distinction between "guidelines" and "standards." The new Rule states that all projects "must comply" with the guidelines. This change throws away management flexibility and the Forest Service's hard fought victories establishing that guidelines are discretionary, not mandatory.

The "public engagement" requirement distances the decision-making process from the local area and renders the agency vulnerable to more litigation.

The language requiring that the agency "shall encourage" public input creates an obligation to affirmatively gather public comment—and a legal question as to the legal threshold of encouragement. And even as the Rule calls for greater "public input," it weakens the existing requirement to coordinate forest planning with local governments and their plans.

Recommendation:

The Forest Service has announced that it will begin implementing the new Planning Rule on four National Forests: Nez-Perce, Chugach, Sierra Sequoia and Cibola. Congress should require the agency to complete those plan revisions prior to beginning any other work under the new Rule and to report to it on costs and efficiencies of use of the new Planning Rule. In that way, needed changes in the Rule would be identified and problems remedied before system-wide application.

The American Forest Resource Association www.amforest.org (AFRC), headquartered in Portland, Oregon, represents over 50 forest products businesses and forest landowners throughout the West. Its mission is to create a favorable operating environment for the forest products industry, ensure a reliable timber supply from public and private lands, and promote sustainable management of forests by improving federal laws, regulations, policies and decisions that determine or influence the management of all lands. For information, contact Tom Partin 503 222 9505 tpartin@amforest.org

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