



April 29, 2013

VIA MAIL AND INTERNET

USDA Forest Service
Planning Directives Comments
P.O. Box 40088
Portland, OR 97240
<https://cara.ecosystem-management.org/Public/CommentInput?Project=30641>

PLANNING DIRECTIVES - RIN 0596-AD06

Re: Western Urban Water Coalition Comments on Proposed Directives to Implement Forest Service Planning Rule Published February 27, 2013

Dear Secretary of Agriculture and Forest Service representatives:

This letter provides comments on behalf of the Western Urban Water Coalition (“WUWC”), regarding the Proposed Directives to be contained in the Forest Service Manual (“FSM”)¹ and Forest Service Handbook (“FSH”).² The Forest Service published notice of the Proposed Directives in the Federal Register at 78 Fed. Reg. 13316-13319 (Feb. 27, 2013). The Proposed Directives are intended to provide guidance for implementing the revised regulations issued in April 2012 for national forest system land and resource management planning and codified at 36 C.F.R. Part 219 (the “Planning Rule”).³ These comments are based on our review of the

¹ The FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by USFS Line Officers and primary staff to plan and execute programs and activities.

² The FSH is the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities contained in the FSM.

³ The 2012 Planning Rule was a significant revision of the USFS planning regulations that had been in place since 1982. The Planning Rule’s “ecosystem management” approach and provisions related to plant and animal community diversity, species viability, and watershed and water quality protection present potential new restrictions, burdens and challenges for access to and management of municipal reservoirs and water delivery systems. WUWC and its members participated in the public rulemaking process for the Planning Rule.

Proposed Directives and accompanying information in the Federal Register and on the Forest Service website.

The WUWC consists of the largest urban water utilities in the West, serving over 35 million western water consumers in 15 metropolitan areas in five states. The membership of the WUWC includes the following urban water utilities: *Arizona* – Central Arizona Project and City of Phoenix; *California* – East Bay Municipal Utility District, Los Angeles Department of Water and Power, Metropolitan Water District of Southern California, San Diego County Water Authority, City and County of San Francisco Public Utilities Commission and Santa Clara Valley Water District; *Colorado* – City of Aurora, City of Colorado Springs, and Denver Water; *Nevada* – Las Vegas Valley Water District, Southern Nevada Water Authority and Truckee Meadows Water Authority; and *Washington* – Seattle Public Utilities.

Several WUWC members make use of areas administered by the U.S. Forest Service (USFS) for water supply purposes. These uses include the location of facilities on such lands, the use of water from such areas, the need to access water supply facilities across such lands and the use of water supply utility facilities and grounds for recreation and other multiple use activities.

The WUWC supports the efforts of the USFS to provide clarity and guidance on implementation of the Planning Rule. These comments set forth recommendations for improving the Proposed Directives to achieve that objective, consistent with the multiple use mandate governing the National Forest system.

COMMENTS

I. General Comments

A. Guidance regarding timeframes to complete planning processes

The supplemental information for the Planning Rule indicates that the USFS expects plan revisions to be completed within 3-4 years, compared with 5-7 years or longer under the 1982 Rule. FSM 1921.03, in numbered items 3 and 4, instructs responsible officials to complete planning in a timely and efficient manner and states that revisions should be completed “if funding is available” within two to four years. However, the Proposed Directives do not appear to contain much additional guidance on the importance of completing assessments, plan revisions, and other planning activities within reasonable time frames and at less cost than has previously been the case. USFS should revise FSH Chapter 10 (Assessment), FSH Section 21 (Developing, Revising, Amending or Administratively Changing a Plan), and FSH Section 43

(Public Participation and the Role of Collaboration) to put more emphasis on time frames and cost-effectiveness.

B. Ecological sustainability and diversity of plant and animal communities

Provisions of the Proposed Directives focus very heavily on advancing the goals of ecological sustainability and biodiversity. There is quite a contrast between the volume of material regarding these components of the Planning Rule, compared to the sparse text regarding resource utilization, economic and social sustainability, and related topics. The Proposed Directives should be revised to address this imbalance by placing an equal emphasis on the need to promote multiple uses of the national forests in an economically viable and consistent manner.

C. No retroactive or mandatory application of Directives.

The updated FSM and FSH Directives will not be effective until they are issued in final form. The final version should clearly provide that the Directives guidance is prospective only and that no national forest will be required to redo, modify, or revisit plan revisions, amendments or other steps that began before the effective date of the final updated Directives. Such an approach is particularly appropriate since the Directives material should be nonbinding “how to” guidance rather than mandated regulatory requirements.

D. Simplified and non-mandatory Text

The FSH is too long and complex. At over 400 pages (not counting the regulatory appendices), the document is not “user-friendly,” and may not help in making USFS decisions more efficient or public involvement more effective. USFS should make a special effort to reduce the complexity of the FSH and eliminate redundant discussions and overly-detailed provisions. In addition, the FSH is intended to be general guidance, not prescriptive in nature. Nonetheless, many of the FSH provisions dictate requirements and use mandatory language like “shall” and “must.” Such terms should be replaced with guidance terminology like “may” or “should,” unless restating regulatory requirements. In general, regulatory requirements should not be restated in the FSH, but adopted by reference.

II. Specific Comments

A. FSH 1909.12, Chapter 10 – Assessment

This chapter describes the procedures for writing an assessment for development, amendment, or revision of land management plans.

Section 12.5: Identifying At-Risk Species (Federally Recognized Species and Potential Species of Conservation Concern.

We understand that early adopter Forests are finding the identification of potential Species of Conservation Concern (SCC) one of the most challenging tasks involved in preparing an assessment report for plan revision. The range of potential SCCs within the criteria set out in the Proposed Directives is very large, and available information is incomplete for many species. As a result, SCC designation may result in significant delays in the planning process and the imposition of restrictions that are more burdensome than necessary.

The final Directives should emphasize that identifying as well as evaluating and ultimately determining potential SCCs for plan revision is to be based on readily available, accessible information. Where such information for a species is insufficient to identify or address concerns, that species need not be included or further addressed as a potential SCC. The provisions regarding assessment of potential SCCs should further emphasize flexibility and discretion for the Forest and Region regarding sources of information, degree of consideration of that information, and other components of assessment. It is contrary to the stated purposes of the Planning Rule for revisions to become bogged down and overwhelmed by efforts to capture all information about potential SCCs or otherwise go beyond a focused inventory and evaluation based on the available and useful information.

B. FSH 1909.12, Chapter 20 - Requirements for Plan Content

This chapter describes the land management plan under the 2012 Planning Rule and explains the procedures for developing, amending, and revising land management plans.

Section 23.11a: Natural Range of Variation

The provisions regarding plan components to restore and maintain ecosystem characteristics to be within the “natural range of variability” (“NRV”) does not sufficiently take into account the existence and need for continued water storage and delivery infrastructure that may be considered a departure from or alteration of NRV. Continued use of this water infrastructure and related valid existing rights should be included in the criteria for exceptions from NRV in Section 23.11a(2).

Section 23.12c(4): Best Management Practices (“BMPs”) for water quality.

The Planning Rule at 36 C.F.R. 219.8(a)(4) requires the Chief to establish requirements for national best management practices (BMPs) for water quality in the Directives and other forest plan components. We believe the national approach to BMPs apparently contemplated by 36 C.F.R. 219.8(a)(4) still must provide for variation in BMPs among regions and states based on the wide range of topographic, climate and other field conditions present, and to be consistent with various state forest practice acts and state regulations. Any USFS BMPs should incorporate and adopt existing state BMPs.

Moreover, in this section there appears to be little, if any, recognition of water rights and existing reservoirs and other water infrastructure within and adjacent to national forest lands in the development of BMPs for water quality. The continued viability of this water infrastructure and related valid existing rights should be incorporated into BMPs.

Section 23.13c: Species of Conservation Concern.

This section would be more useful if it provided guidance about final identification of any SCCs for purposes of forest plan revision components and other content. FSH Section 12.52, and perhaps other portions of FSH Chapter 12, provide guidance about identifying and evaluating potential SCCs as part of the Assessment for a plan revision, but are not clear regarding final identification and listing of SCCs by the Regional Forester. The final Directives should allow for a clear determination based on available information when no SCCs are identified for a particular forest or area.

C. FSH 1909.12, Chapter 70 - Wilderness Evaluation and FSM 1923

Chapter 70 describes the process for identifying and evaluating lands that may be suitable for inclusion in the National Wilderness Preservation System and determining whether to recommend any such lands for wilderness designation. FSM 1923 contains related provisions. Access to lands within the National Forests is critical to water management in the Western U.S., and additional wilderness designations could restrict such access.

FSH 1909.12, Chapter 70 and FSM 1923: Both of these documents should be rewritten to provide guidance for a focused and cost-effective inventory and evaluation of eligibility and suitability that is based upon existing forest plan reviews and designations, RARE reviews, nationwide and state-specific (e.g. Colorado) roadless area rule reviews and designations, and state-specific and other wilderness legislation. As currently drafted, both the FSH Chapter 70 and FSM 1923 provisions suggest a zero-based, all-inclusive new inventory without reference to the extensive reviews and designations that have already been completed, many of them quite recently. For example, FSM 1923.03 and FSH sections 70.6 and 71 require the responsible official to identify and create an inventory of “all” lands that may be suitable for Congressional designation as Wilderness, without reference to any prior reviews. The Planning Rule does not require identification of “all” potentially eligible or suitable lands. The criteria for area eligibility in Section 71.2 should otherwise be narrowed to be no broader than those in the existing Forest Service Handbook at Section 1909.12, Chapter 70, because the new Planning Rule did not change these criteria.

Section 71.22 appears to require areas with existing forest system roads as well as other historic or established roads to be included in the inventory, and should be corrected to exclude all such

areas with existing roads. Similarly, areas with roads providing access to water utility infrastructure should be excluded.

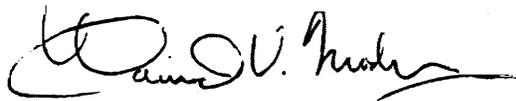
D. FSM 1923 and other FSM and FSH provisions regarding management of areas recommended for wilderness, wild and scenic river, or other designations.

Provisions regarding management of areas that are recommended for wilderness, wilderness study, wild and scenic rivers, or other statutory designation should be clarified to be consistent with existing law and realistic. For example, proposed FSM 1923.03 numbered item 3 on page 15 is too broad and general. It reads: "Any area recommended for wilderness or wilderness study designation is *not* available for *any* use or activity that *may* reduce the wilderness potential of an area." (Emphasis added.) This provision should be changed to read: "An area recommended for wilderness or wilderness study designation is not available for a use or activity that will substantially reduce the wilderness characteristics making it suitable for wilderness designation, subject to valid existing rights and except as otherwise provided by applicable law or regulation."

CONCLUSION

Thank you for the opportunity to provide comments on the Proposed Directives as published in the February 27, 2013 Federal Register. If you have any questions regarding the comments in this letter, please contact our counsel, Donald C. Baur at (202) 654-6234 and Paul B. Smyth of Perkins Coie, LLP at (202) 654-6251.

Sincerely,

A handwritten signature in black ink, appearing to read "David Modeer". The signature is fluid and cursive, with a long horizontal stroke at the end.

David Modeer
Chair
Western Urban Water Coalition

cc:
Perkins Coie LLP
700 Thirteenth St. NW
Washington, DC 20005-3960