



## WESTERN GOVERNORS' ASSOCIATION

C.L. "Butch" Otter  
Governor of Idaho  
Chairman

Christine O. Gregoire  
Governor of Washington  
Vice Chair

Pam O. Inmann  
Executive Director

Headquarters:  
1600 Broadway  
Suite 1700  
Denver, CO 80202

303-623-9378  
Fax 303-534-7309

Washington, D.C. Office:  
400 N. Capitol Street, N.W.  
Suite 388  
Washington, D.C. 20001

202-624-5402  
Fax 202-624-7707

[www.westgov.org](http://www.westgov.org)

May 10, 2011

The Honorable Tom Vilsack  
Secretary of Agriculture  
U.S. Department of Agriculture  
1400 Independence Ave. S.W.  
Washington, DC 20250

Dear Secretary Vilsack:

We are pleased to submit our comments on the National Forest System Land Management Planning Rule. More than 85 percent of the lands being managed under this rule are in the West and, as a former governor, you know that states and the federal government share jurisdiction over U.S. Forest Service lands. Western Governors believe strongly in the mission of the U.S. Forest Service to "*sustain health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations.*" Given the joint authority and shared goals, it is imperative that the Planning Rule consistently and clearly recognizes state authorities, as well as the need for inclusive processes and transparency, which will improve planning efforts and collaboration while reducing litigation. Further, given that both the Western Governors and the Obama administration have made the strengthening of our transmission grid a high priority, the Planning Rule must ensure that forest plans recognize this.

The Western Governors' comments aim to clarify the roles of federal, state and local governments in relation to defining and measuring sustainable forest management, promoting regional collaboration, joint planning and coordinated action. We consider it imperative that the U. S. Forest Service coordinate closely with states, tribes and local governments as you refine and implement a new Planning Rule. We stand ready to assist in this endeavor as do our forestry, water and wildlife experts that helped to develop these comments.

If you have any questions, please feel free to contact us, or Pam Inmann, WGA's Executive Director. With our recommended improvements to the draft rule, we can together ensure the health and productivity of our nation's forests, watersheds and wildlife.

Sincerely,

C.L. "Butch" Otter  
Governor of Idaho  
Chair

Christine Gregoire  
Governor of Washington  
Vice Chair

cc: Forest Service Planning DEIS c/o Bear West Company

Attachment

## **Western Governors' Association Comments on U.S. Forest Service Planning Rule**

### **Overarching Comments**

#### **Siting Transmission Lines and Renewable/Non-renewable Energy Development**

For several years Western Governors have worked together and with federal land managers to facilitate planning and siting for new electricity transmission lines in the West. Planning for new transmission has been a high priority goal for state and federal governments in recent years, however, the proposed rule does not require plans to appropriately provide for the inclusion of transmission corridors. New transmission will likely cross several forests in the coming years, yet the proposed planning rule does not identify a regional or federal official who would be responsible for transmission planning across multiple forests in multiple states. This is a significant omission, and the rule should be amended to consider how the Forest Service will work with Governors on large multi-forest, multi-state projects.

Numerous national laws and policies related to Forest System lands provide for the use of minerals, oil and gas; renewable energy development; and utility corridors, including transmission. Demand for these resources and use of the lands is increasing and so is the complexity land managers face in crafting development projects. The difficulty land managers face is that the proposed rule only requires consideration of these activities and does not provide specific provisions to guide the planning and implementation of these various activities. We suggest that a subsection of the rule be developed to specifically address planning for transmission lines; other utility infrastructure and facilities; and mineral and energy resources.

#### **Economic Impact**

The management of public lands can significantly impact the economy of some local communities. Although the current planning rule requires the U.S. Forest Service to consider the economic and social impact to local communities when developing local national forest plans and decisions, the U.S. Forest Service could improve on this impact analysis. We are concerned that the new Planning Rule fails to reflect the interdependency and coequality among ecological, social and economic elements of sustainability. For example, in Section 219.8 plans must include components that “guide the unit’s contribution” to social and economic sustainability, but must “maintain or restore” various ecological components. The new Planning Rule must balance preservation, as well as social and economic benefits, and it should apply the “maintain or restore” language to all elements. To that end, it must utilize clear, definitive economic indicators when developing plan standards and when making project-level decisions. This will provide for transparency in analysis and increased protection for our communities and natural resources from the economic impacts resulting from the lack of management and restoration activities.

By establishing clear and timely processes that allow local economies to grow, while protecting our natural resources, the U.S. Forest Service will effectively meet their agency mission to provide for the productivity of the Nation’s forests and grasslands. The Planning Rule must

provide additional direction for an increase in large-scale forest restoration and more active management. The current definition of “productivity” should be amended to include economic productivity.

#### State Authority

The Planning Rule fails to acknowledge the unique authority states have to manage wildlife, forest and water resources; to protect public health and safety within their boundaries; and to participate in land use planning processes that have a direct impact on their economies and communities. The Planning Rule should be revised to more clearly define the role of state governments in forest planning, and to acknowledge the trust responsibility of the states. We provide additional detail about how this could be achieved in the section below regarding coordination and consistency with state and local plans and assessments.

The Planning Rule appropriately requires the U.S. Forest Service to provide opportunities for public participation, including state governments, and directs the responsible official to take into account the discrete and diverse roles, jurisdictions, responsibilities and skills of interested and affected parties. However, greater recognition should be given to the trust authority state governments have over water, wildlife and forest resources; their primary authority and expertise to protect public health and safety; and the states’ right to engage in federal land planning processes.

Specifically, the Planning Rule should “require coordination with state governments and seek the policy advice of the Governor” (see similar BLM language in CFR Title 43, Public Lands: Interior, Subtitle B—Regulations Relating to Public Lands, Part 1610.3-1.b). The Planning Rule should provide state governments the opportunity to review, advise and provide suggestions on those issues and topics that may affect or influence state government programs. To facilitate coordination with state governments, the U.S. Forest Service should seek the policy advice of the Governor(s) on: the timing, scope and coordination of plan components; definition of planning areas; scheduling of public involvement activities; and the multiple use benefits and constraints on public lands, etc.

In addition, Section 219.4 of the draft planning rule reads that “where appropriate” the responsible official “should encourage” states to seek cooperating agency status in the NEPA process for a plan development, amendment or revision. Cooperating agency status is always appropriate for state governments in the NEPA process, and the planning rule should be revised to direct the responsible official to “offer cooperating agency status to state and local governments in all instances.”

#### Coordination and Consistency with State and Local Plans and Assessments

The U.S. Forest Service should coordinate with states and ensure that Forest, Resource and Fire Management Plans incorporate the plans and policies of state and local governments. The Planning Rule should recognize and allow for protection and conservation values as identified by state authorities; state assessments and plans; and local agreements. Current language in the Planning Rule only requires the U.S. Forest Service to “consider” State and locally developed water, wildlife and community fire protection plans.

The Planning Rule should require that land and resource management plans be consistent with state plans, programs and policies. At a minimum, the rules should include a consistency requirement no less stringent than that found in current BLM planning rules shown below. CFR Title 43, Public Lands: Interior, Subtitle B—Regulations Relating to Public Lands, Part 1610-3.2 Consistency Requirements provide:

(a) Guidance and resource management plans and amendments to management plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans.

(b) In the absence of officially approved or adopted resource-related plans of other Federal agencies, State and local governments and Indian tribes, guidance and resource management plans shall, to the maximum extent practical, be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian tribes. Such consistency will be accomplished so long as the guidance and resource management plans are consistent with the policies, programs and provisions of Federal laws and regulations applicable to public lands.

Recently, federal land and resource managers and state foresters jointly developed State Forest Resource Assessments. These “all lands” assessments and strategies must be the basis for any federal land and resource management plan. The U.S. Forest Service must work with state and local governments to implement collaboratively developed solutions that will improve the health of our forest lands and reduce negative impacts on watershed health. We are concerned that the current language in the Planning Rule does not mandate consideration of or consistency with these assessments.

#### Multiple-Use

The Planning Rule introduces new phrases, such as “sustainable multiple uses” and “ecosystem services,” in particular as they relate to multiple uses. These terms or phrases as they are currently used throughout the draft Planning Rule are ambiguous. These ambiguities are certain to invite litigation as they are interpreted and implemented by the responsible official. The definition section of the Planning Rule should be expanded to include these phrases, clearly identifying their intent, and appropriate definitions should be reached by collaboration.

Previously we recommended adding a section on the siting of transmission lines and on renewable and non-renewable energy development. If a section is not developed to address these concerns, we believe strongly that you should include the suggested language below:

In Section 219.10, it states that “... the plan must provide for multiple uses, including ecosystem services, outdoor recreation, range, timber, watershed, wildlife and fish.” It goes on to say that the responsible official shall consider other items, including renewable and non-renewable energy and mineral resources, and sustainable management of infrastructure, such as recreational

Western Governors’ Association Comments on the National Forest System Land Management Planning Rule

facilities and transportation and utility corridors. There is a substantial difference between being required to provide for multiple uses and simply having responsible officials consider them. It is appropriate for the responsible official to consider the value-driven items listed under 219.10(a)(1-9), but such things as energy, minerals and transmission are uses and should be listed as such. We would amend Section 219.10 to read:

“In meeting the requirements of 219.8 and 219.9 within U.S. Forest Service authority, the capability of the plan area and the fiscal capability of the unit, the plan must provide for multiple uses, including but not limited to renewable and non-renewable energy; mineral resources; infrastructure, such as recreational facilities, and transportation and utility corridors; ecosystem services; outdoor recreation; range timber; watersheds; wildlife; and fish.

#### Land and Resource Management Plan Components

The Planning Rule eliminates the distinction between plan guidelines and standards, thus making guidelines legally enforceable standards that all projects must “comply with.” This change does not allow for the flexibility and discretion needed when making project-level decisions. Guidelines are meant to be discretionary, while standards are mandatory. The Planning Rule should be written so that these are very clearly defined.

#### Cross Unit Planning

The U.S. Forest Service must be able to recognize and manage for landscape-scale issues that should be addressed on a broader geographical scale, rather than as a single planning unit. The Planning Rule should provide greater clarity and substantial emphasis on this issue. For example, the monitoring provisions of the draft rule explicitly call for officials from two or more forest planning units to jointly develop monitoring that is necessary beyond the boundaries of a single unit. Similar language should be included as well in the draft rule regarding assessment and plan development. Draft language in Section 219.6(b)(3) that calls for assessment and planning regarding “the distinctive roles and contributions of the unit within the context of the broader landscape” does not provide Forest Supervisors with explicit direction, as does the monitoring section, which calls for working across boundaries with neighboring forest planning units regarding assessments and plans. A final rule should require cross unit planning across all of its phases and components. The final rule should also require that plans identify the officials or office, and the process that will be used for project-level consideration of uses that span multiple units.

#### Sustainability and Science

Western Governors’ Association policy promotes the need for a common landscape-scale vision for the sustainable management of forests. Existing criteria and indicators for the sustainable management of the nation’s forests provide an in-place framework for protecting and maintaining America’s forest and a national policy on sustainable forests. In 1998, the National Association of State Foresters and the U.S. Forest Service jointly agreed that the Montreal Process Criterion and Indicators could provide a clearer vision for the management of the nation’s public and private forest lands. The Planning Rule makes no mention of using these

criteria and indicators to measure sustainability, and current language does not equally address the components of ecological, social and economic sustainability. It is unclear how the U.S. Forest Service will establish consistency among these three components and measure sustainability.

Language in the Planning Rule refers to providing for the “best available science.” While important, this could be cumbersome, as well as very time consuming and expensive. Sound science is crucial in planning and management, but proving what science is “best” will undoubtedly lead to litigation. In order to respect state trust responsibilities and authority, science should be collected as thoroughly as possible in the timeframe provided and include data from affected states.

#### Stakeholder Input

Early versions of the planning rule included specific language regarding coordination with local government, as required by the National Environmental Protection Act and the National Forest Management Act. Western Governors recommend the coordination include an improved and effective legal framework and consultation process on local and state responsibilities and needs, as well as regional protocols that have been developed with state, tribal and local government representatives. The Planning Rule must recognize and include collaborative stakeholder groups throughout all phases of project development, such as fuels management, community, environmental and economic needs and a balance between natural resource use and protection, while achieving land and resource management plan outcomes.

In Section 219.4, “Requirements for public participation,” subsection (b) details requirements for coordination with other public planning efforts. This section requires coordination with State and local governments, “only to the extent practicable.” The Planning Rule should be modified and state that “applicable local and regional collaborative groups, including federal, tribal, state and local members, should be involved in plan development.”

#### **Comments Regarding Forest and Fire Management**

The Planning Rule should explicitly acknowledge the importance of the “salvage or sanitation harvesting of timber which is substantially damaged by fire, windthrow or other catastrophe, or which are in imminent danger from insect or disease attack,” which is emphasized in the plain text of the NFMA statute numerous times. 16 U.S.C. 1604 (g)(F)(iv), (k), (m) and 1611.

#### **Comments Regarding State Wildlife Agency Information**

##### Use of State Wildlife Data

The new planning rule should reference the work of Western state wildlife agencies to establish regionally compatible decision support systems (DSS) for crucial wildlife habitat and corridors. Doing so would recognize that states possess broad trustee, police powers and primacy over fish and wildlife within their borders, and acknowledging the June 2009 wildlife data coordination Memorandum of Understanding, which was signed by the Governors and Secretaries of the Interior, Energy and Agriculture.

The “America's Great Outdoors” (AGO) report of February 2011 specifically calls on USDA to work with states to use scientific data concerning the locations of critical wildlife corridors to help restore and conserve those corridors. The U.S. Forest Service planning rule is in fact specifically called out in the AGO report as an example of a federal policy that needs to incorporate wildlife corridor conservation and restoration. Given the states' jurisdiction over wildlife, the June 2009 MOU, and the administration's own recommendations in its AGO report, we believe the draft planning rule significantly lacks the necessary comprehensive commitment to incorporate and use wildlife data developed by the states and should be revised as described below.

The Planning Rule should require the U.S. Forest Service to consult state wildlife agencies and their DSSs and integrate that information into its planning processes at the earliest possible stage. State wildlife data available through a DSS, or otherwise, should be referenced and incorporated in the following draft sections of the rule:

219.3 - As a source of best available science;

219.6 - For purposes of developing assessments for forest plan developments or revisions in addition to State Wildlife Action Plans;

219.9 - For purposes of developing components of plans regarding plant and animal diversity, particularly in species conservation; and

219.2 - For use in undertaking broad-scale monitoring strategies particularly with respect to migratory species and adaptation to climate change.

In order for the planning rule and future forest plans to meet legal standards and the commitments this administration has made with Governors by agreement and policy pronouncements, the rule needs to contain explicit direction throughout its provisions for the U.S. Forest Service to incorporate and use state wildlife data.

#### *Need for Cross-Unit Planning*

Related to cross-unit system planning, such a requirement is vital to provide needed flexibility to address species' viability requirements as well as other landscape-level issues. Information available through state wildlife DSSs, the commitment to which is recommended above, will substantially enhance the ability of forest managers to work across unit boundaries. Because the state systems are being explicitly designed with a goal of compatibility across political jurisdictions, they promise to offer the best source of wildlife data at the landscape scale.

#### *Coordinating Forest Service Landscape-scale Mapping with State Initiatives*

Although not directly stated in the draft rule, it has come to our attention that the U.S. Forest Service is considering the development of landscape-scale mapping tools to better assess and plan agency actions. While we appreciate the need for such tools, and given the MOU that Governors signed with the Secretary of Agriculture, the Forest Service should be working closely with those state wildlife agencies that are in the midst of developing and deploying DSSs. Developing mapping tools that are closely linked with wildlife mapping efforts already being

undertaken at the state level will ensure that public funds are used with the greatest efficiency. Ensuring consistency between state and federal wildlife maps also will lead to greater public confidence in land and wildlife management agency actions.

### **Comments Regarding State Water Management**

The new Forest Planning Rule must recognize the important connections between forests and clean water supply. As you well know, the national forests were created in part to protect our vital source watersheds for clean freshwater supplies. Nowhere is the connection between national forests and clean water supply more critical than in the American West. The top-line recommendation of WGA's June 2008 report, *Water Needs and Strategies for a Sustainable Future: Next Steps*, highlights the need for Integrated Water Resources Planning at all levels of government. The report continues, "states should identify, restore and preserve high value watersheds and natural features...that provide ecological service (mitigate flooding, filter and remove pollutants, recharge ground water, etc.), and that may minimize the need for structural alternatives."

In this case, we ask that the new Planning Rule consider the impacts of forest health and management practices on freshwater supply and water quality and directly engage local and downstream water providers for input on forest management. For the purposes of the planning rule, public water supplies and associated water quality should be treated not just as an "ecosystem element" (sec 219.8 (a)(2)(iv)), but as a critical resource with significant economic and community values under the "multiple use" provisions of the rule (sec 219.10(a)). In addition, state and local water resource managers should be explicitly acknowledged in the planning rule, and they should be consulted by the U.S. Forest Service for the purpose of evaluating the impacts of forest management and new forest plans on the quantity and quality of public water supplies.

Further, the new Planning Rule should explicitly accommodate the need to operate and maintain water supply infrastructure and data collection devices on forest lands. As you know, many diversions, water conveyance infrastructure, and water data collection facilities occur on national forest lands. Because water supply operators must make periodic improvements and repairs, they generally need to have access to operate and maintain infrastructure to ensure proper function and public safety. In addition, water resource managers must be able to collect data on streamflow and snowpack on forest service lands in order to manage the resource effectively. Regular and prompt access to national forests for these purposes should be accommodated in the Planning Rule. This issue is particularly acute in lands managed as wilderness or roadless areas.

Finally, the new Planning Rule must recognize the preeminent role of the states in adjudicating and allocating rights to the use of water for federal and non-federal purposes.