

Planning Rule Federal Advisory Committee Written Public Comments May 7 - 9, 2013

The Forest Service received two written comments during the second meeting of the federal advisory committee from:

- 1. Northern New Mexico Stockman's Association**
- 2. Utah Department of Agriculture and Food, Grand Canyon Trust, and U.S. Forest Service Supervisor, Fishlake and Manti-La Sal NFs**

All comments are displayed on the following pages.

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

Certified Mail

Tony Tooke, Director Ecosystem Management Coordination
USDA, NFS-WO, Forest Management
U. S. Forest Service
1400 Independence Ave., S.W.
Washington, DC 20250-0003

Subject: 2012 Planning Rule Directives Comments

April 26, 2013

Jointly Submitted by the Northern New Mexico Stockman's Association and the County of Rio Arriba, New Mexico under Two Original Letters Containing Identical Content

Honorable Secretary Vilsack,

The purpose of this letter is to bring to your attention comments and concerns that have been identified during the review process of the proposed 2012 Planning Rule Directives. The proposed Directives identified in the Federal Register are intended to implement the new Forest Service 2012 Planning Rule by revising the US Forest Service Manuals and Handbooks for the various national forests.

The process for making changes to existing chapters of the Forest Service (FS) Handbooks, are governed by many Federal Laws, Statutory Authorities, Regulatory Authorities, and specifically the Code of Federal Regulations - Title 36: Parks, Forests, and Public Property. For example, the proposed revisions to the FS Handbook, under "Chapter 20 The Land Management Plan", states that this chapter has been completely changed -- "*also revises chapter in its entirety*". This process by the FS agency to revise the FS Handbook Chapters in their entirety has placed the stakeholder reviewers at a huge disadvantage. The FS agency did not provide the stakeholders with a matrix to compare changes between the existing handbook chapters and the new proposed changes. Therefore, we found it necessary to evaluate the proposed chapter language changes against the hierarchy of legal requirements, cited herein, that govern this massive exercise.

We find that the proposed language changes in Chapter 20 do not meet the requirements of the Code of Federal Regulations, 36 CFR 219: Planning, Subpart A: National Forest System Land and Resource Management Planning regarding the plan for sustainability. (*See sec: 219.10-Site-specific decisions, 219.8.-Sustainability*). In addition we find that the proposed changes did not meet the requirements of other federal laws such as the National Environmental Protection Act (NEPA) (P.L. 91-190) and The Multiple Use-Sustained Yield Act (P.L.86-517), again regarding the plan and management for sustainability. Thus, implementation of the 2012 Planning Rule via the proposed 2012 Planning Rule Directives (revisions) will have a profound and negative impact on minority native Hispanic farmers and ranchers in New Mexico and throughout the entire west because of the absence of any policy directives whatsoever regarding the sustainability of their multiple uses on Forest lands. It is important for USDA to recognize that

there are native Indo-Hispano families living at or below poverty level guidelines throughout New Mexico and Arizona who will suffer greatly if their presence on forest lands fails to provide them with a stable and “sustainable” economy, due to the lack of specific planning and management for this goal. Since the new directives have omitted any plan for management of grazing and other multiple uses for sustaining the economy of native communities, the plan must be corrected to address this omission, fatal to the interests of native ranching communities.

The proposed 2012 Planning Rule Directives, Chapter 20, “The Land Management Plan” as identified in the Federal Register is the first focus area for comments. This Chapter is of critical importance to the native minority people and communities of rural New Mexico that are and have been for decades dependent economically and socially on access to Federal Lands, their natural resources and all of the consumptive uses of the Forest. The “Southwestern Region” of the National Forest System encompasses approximately 20 million acres between the states of Arizona and New Mexico. The five national forests in New Mexico are vital to the economy, and social and cultural well-being of our state’s rural native families. Our comments begin by addressing the proposed change of the Chapter 20 Title. *See Chapter 20, - Changes chapter caption from “Adaptive Planning Process” to “Land Management Plan.” Also, revises chapter in its entirety.*”

Following is a summary recitation of our Comments:

Comment No 1. The proposed change from the “Adaptive Planning Process” to the “Land Management Plan” is a positive change that is more reflective with the content and purpose of this chapter. However, this change in title fails to fulfill its promise as discussed in the remainder of our comments.

Comment No 2. The chapter has been revised in its entirety and this action presents a huge disadvantage to the public stakeholder reviewers. The FS agency did not provide a comparison matrix illustrating the changes between the existing FS Handbook Policy and the proposed changes.

Proposed Change: Chapter 20, 23, 2-Social and Economic Sustainability and Multiple Use, 23.22e-Rangelands, Forage, and Grazing.

Comment No 3. The proposed language in sec. 23.22e-Rangelands, Forage, and Grazing, does not meet the requirements of the Code of Federal Regulations, 36 CFR 219: Planning, Subpart A: National Forest System Land and Resource Management Planning, (sec. 219.8.- Sustainability, (a) Sustaining social and economic systems.). The proposed language fails to provide the required framework or language to address and enable the sustainability of the social and economic contributions that grazing has on the native people and communities affected in this section.

Comment No 4. The proposed language in sec. 23.22e-Rangelands, Forage, and Grazing, does not meet the requirements of the Code of Federal Regulations, 36 CFR 219: Planning, Subpart A: National Forest System Land and Resource Management Planning, (sec. 219.8.-

Sustainability, (a) Sustaining social and economic systems.). The proposed language in this section does not provide language to address specific goals for the sustainability of the grazing activity. No directive has been provided for the future planning of the grazing component in order to maintain and sustain this activity in the land management plans.

Comment No 5. The proposed language in sec. 23.22e-Rangelands, Forage, and Grazing, does not meet the requirement of the National Environmental Protection Act (NEPA) (P.L. 91-190. See specifically: *Title 1, Sec.101, (b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may –*

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice:

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities:)

Section 23.22e-Rangelands, Forage, and Grazing does not provide the framework or language to address the specific elements to preserve the history and culture of native families grazing livestock on federal lands. Nor does it provide the goals or means to achieve and sustain life's amenities for the dependent grazing communities and its people.

Proposed Change; The proposed language in sec. 23.22e-Rangelands, Forage, and Grazing, does not meet the requirement of the Code of Federal Regulations, 36 CFR 219: Planning, Subpart A: National Forest System Land and Resource Management Planning, (sec. 219.8.-Sustainability, (a) Sustaining social and economic systems.).

Comment No 6. The FS agency, via the proposed 2012 Planning Rule Directives changes to “Chapter 20 The Land Management Plan”, has failed to apply and meet the requirements of the Code of Federal Regulations, 36 CFR 219: Planning, Subpart A: National Forest System Land and Resource Management Planning, (sec. 219.8.-Sustainability, (a) Sustaining social and economic systems.) for all components of the Handbooks. However, the FS has selectively applied the CFR requirements to the following Chapter 20 sections: 23.22b-Sustainable Recreation Resources and Opportunities to Connect People with Nature. And 23.1 - Ecological Sustainability and Diversity of Plant and Animal Communities. This poses a question. Why has the FS agency omitted other required components of the plan from this CFR? The FS agency has a responsibility to meet the 36 CFR requirements for all segments of multiple use including sec. 23.22e-Rangelands, Forage, and Grazing, which are critical to the survival of native people.

Proposed Change; Chapter 20, and the proposed language in sec. 23.22e-Rangelands, Forage, and Grazing, does not meet the requirement of the Code of Federal Regulations, 36 CFR 219: Planning, Subpart A: National Forest System Land and Resource Management Planning, (see sec. 219.10- Site-specific decisions.)

Comment No 7. The proposed changes to Chapter 20 and sub sec. 23.22e-Rangelands, Forage, and Grazing do not provide the framework or necessary language to recognize the “*valid*

existing rights” of native minority ranchers, although these grazing rights of the native ranchers have already been recognized in custom, culture, code, statute and Treaty. For example, “The Treaty of Guadalupe Hidalgo (1848)”, was given effect both in the U.S. Kearny Code of Territorial NM and the NM Constitution which historically protects the grazing rights and associated financial investments in their practice as the “valid existing rights” of the native inhabitants of New Mexico. The National Forest System has no policy to guide the recognition of these “valid existing rights” cited in Chapter 20, Plan Content and sub sec. 23.22e.

Since the grazing permit system affects valid existing rights, there also must be substantive inclusions in the proposed 2012 Planning Rule Directives on how legal “due process” will be guaranteed to the native minority rancher. Moreover, this “due process” must be of a high administrative standard that would be fully compliant with federal law. In general, the topic of “due process” has very little, if any, substantive treatment in the proposed 2012 Planning Rule Directives.

Proposed Change: FSH 1909.12 - LAND MANAGEMENT PLANNING HANDBOOK
CHAPTER 90 – REFERENCES, sec 91-AUTHORITY.

Comment No 8. The proposed change to the FSH fails to cite applicable Federal Laws such as National Environmental Protection Act (NEPA) (P.L. 91-190) and The Multiple Use-Sustained Yield Act (P.L.86-517). These federal laws set out requirements that must be met by the FS agency in the hierarchal flow of policy down to Land Management Plans and to the Responsible Official. The proposed 2012 Planning Rule Directives do not reflect a thorough or thoughtful incorporation of the requirements of NEPA or The Multiple Use-Sustained Yield Act.

Proposed Change: FSM 1900 - PLANNING CHAPTER 1920 - LAND MANAGEMENT
PLANNING, 1920.1 – Authority.

Comment No 9. Again, the proposed change to the FSM fails to cite applicable Federal Laws such as National Environmental Protection Act (NEPA) (P.L. 91-190) and The Multiple Use-Sustained Yield Act (P.L.86-517) in the authority and statutory sections. These federal laws set out requirements that must be met by the FS agency in the hierarchal flow of policy down to Land Management Plans and to the Responsible Official. Applicable sections of the law must be integrated and reflected in the FSM and FSH. For example, the National Environmental Protection Act (NEPA) (P.L. 91-190) sets out the following mandates:

See specifically; *Title 1, Sec.101, (b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may –*

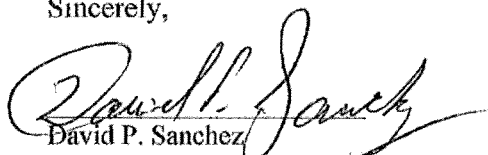
(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice:

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities:)

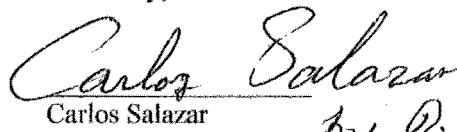
If NEPA is properly incorporated into and reflected throughout the proposed 2012 Planning Rule Directives, it is the observation of these commentators that the native minority ranchers will fare much better than their predecessors, who have steadily lost ground and presence in their native lands under the permit system currently in place and in practice. It is the further opinion of these commentators that NEPA and the other cited law in these comments would justly require that outcome.

In closing, Mr. Secretary, based on our review of the proposed 2012 Planning Rule Directives via the proposed changes to the FSM and the FSH identified currently in the Federal Register, we conclude that the "Proposed Rule and Directives", as they are written, do not set forth the necessary policy and requirements to address the referenced laws cited herein. The proposed changes to the specific sections of the FS Handbook do not establish the framework and policy language to address and ensure the needs of a minority class of people that are economically and socially depended on the natural resources of Forest Service Lands, especially like those engaged in ranching and logging. We would also like to mention that we appreciate your efforts and commitment to the Planning Rule Advisory Committee, and once again emphasize the importance of the Planning Rule process. The proposed changes to the Forest Service Land Management have a direct impact to the livelihood of all New Mexicans. We would like to continue to work with the FS Agency, (in particular, Mr. Tony Tooke), and the Planning Rule Advisory Committee in order to provide our experience and expertise towards the development of sound and comprehensive FS Policies which are inclusive of minority native people..

Sincerely,


David P. Sanchez
Board of Directors
Northern New Mexico Stockman's Association

Sincerely,


Carlos Salazar
President
NNMSA
by D.S.

Cc: U.S. Senator Tom Udall
U. S. Congresswoman Michelle Lujan-Grisham
U. S. Congressman Ben Ray Lujan
Lorenzo Valdez, FACA Committee Member
Tomas Campos, Rio Arriba County Manager
Rio Arriba County Board of Commissioners:
Alfredo Montoya, Barney Trujillo and Danny Garcia
Moises Morales, Rio Arriba County Clerk
Ted J. Trujillo, Rio Arriba County Attorney
Rudy Arredondo, President National Latino Farmers and Ranchers Trade Association
Lorette Picciano, Executive Director Rural Coalition/Coalicion Rural

Point of contact for NNMSA: David P. Sanchez, Chairman of the Issues Committee, P. O. Box 855,
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March 29, 2013

USDA Forest Service, Ecosystem Management Coordination
Tony Tooke, Director
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Washington, DC 201250-(1104)

Dear Tony,

We write to request the opportunity to present information to the USFS Planning Rule Federal Advisory Committee, via a webinar, on a unique collaboration's consensus report and recommendations on sustainable livestock grazing on Forest Service Lands. Two of the proposed presenters were members of the 14-member collaboration: Bill Hopkin (Utah Department of Agriculture and Food) and Mary O'Brien (Grand Canyon Trust). The third presenter was a participant in the collaborative as a technical advisor: Allen Rowley (U.S. Forest Service Supervisor, Fishlake and Manti-La Sal NFs).

The nature of the information

We would like to offer a powerpoint presentation in which we summarize the collaborative's report, *Collaborative Group on Sustainable Grazing for U.S. Forest Service Lands in Southern Utah: Consensus Report and Recommendations¹*

The collaboration is perhaps unique in its diversity of interests in Forest Service grazing management.² It reached consensus on two fundamental questions relevant to the FACA committee:

1. What are simple indicators of ecologically, economically, and socially sustainable grazing on Forest Service lands?
2. What is needed to support sustainable grazing on Forest Service lands?

The collaboration's report includes recommendations for ongoing monitoring and evaluation of recommended, simple ecological, social, and economic indicators of sustainable grazing; as well as recommendations for effective, collaborative engagement of multiple interests in support of sustainable grazing on Forest Service lands (both of livestock and wild ungulates).

Although the content of our presentation is focused on grazing, we believe the recommendations for multi-stakeholder monitoring and engagement would be of broad interest to the full committee.

¹ <http://www.law.utah.edu/wp-content/uploads/Sustainable-Grazing-So-UT-FS-Final-Report.1231121.pdf>

² Brigham Young University, private landowner, Utah Cattlemen's Association, Utah State University, Natural Resources Conservation Service, Utah Grazing Improvement Program, Wayne County Commission, Utah Farm Bureau, Utah Wool Growers Association, Grand Canyon Trust, Utah Dept. of Natural Resources, Trout Unlimited, The Nature Conservancy

Why the information cannot be submitted effectively during the standard public comment methods for the committee meetings

The FACA committee does not have a grazing work group, so this webinar would be a singular chance for the committee to engage simultaneously with a U.S. Forest Service supervisor, a state agricultural agency entity that works with permittees to support and improve grazing, and a conservation group representative.

The conservation group representatives on the committee have experience primarily with forest health and wildlife issues, and thus this webinar would offer the chance for dialogue with an environmental group representative that has engaged with the Forest Service for three decades regarding grazing management.

If you have any questions or would like to speak with all three of us on the phone to answer any questions you have about this request, please let me know, and I'd help you find a time we could all speak with you.

Thank you for working on this public input process.

Sincerely,

Mary H. O'Brien

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With
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