

February 2, 2018

NEPA Services Group  
c/o Amy Barker  
USDA Forest Service  
Geospatial Technology and Applications Center  
2222 West 2300 South  
Salt Lake City, UT 84119

RE: Advanced Notice of Proposed Rulemaking: National Environmental Policy Act  
Compliance: 36 CFR 220: Docket No. RIN 0596-AD31

Dear Ms. Barker:

The American Farm Bureau Federation is pleased to offer its comments on the proposal from the USDA Forest Service to move and revise its policies regarding the National Environmental Policy Act (NEPA).

Farmers and ranchers rely on federal forests and rangelands for economic and recreational opportunities. Livestock grazing on federal lands forms an integral part of ranching operations across the United States, especially in the West. But farmers use national forests and rangelands throughout the United States in a variety of other ways. Federal lands throughout the country are important components of our nation's watersheds that provide water to a large number of Americans. In addition, federal lands are often adjacent to farm and ranch lands. Wildfires, insects and invasive species that ravage federal lands also threaten neighboring private farm and ranch lands.

American farmers and ranchers have a genuine interest in healthy and productive federal forest and rangelands. At the same time, we have a genuine interest in seeing lands managed in an environmentally sound manner. Farmers and ranchers understand and appreciate the fact that they can survive only by being good stewards of the land.

NEPA was designed to ensure that environmental impacts are considered in proposed agency decision-making. The statute set forth a general framework for accomplishing this goal. The Council on Environmental Quality (CEQ) developed rules that fleshed out the process to be followed to comply with NEPA. In addition, the courts have played a significant role in defining NEPA requirements through the many lawsuits brought to interpret its provisions.

The combination of these factors has made NEPA compliance merely a box to be checked in the decision-making process rather than fostering a meaningful discussion of environmental impacts. NEPA procedures in many instances have become mechanical, and agency personnel have become overly cautious in preparing NEPA documents. Agency personnel often write NEPA documents in anticipation of litigation, instead of aiding in decision-making.

The Forest Service NEPA handbook was last comprehensively revised in 1992, more than 25 years ago. Since that time, the litigation-driven approach to NEPA has led the Forest Service to engage in exhaustive NEPA analysis which has restricted the Agency's ability to eliminate or prevent damage to the environment, which is one of the key purposes of the underlying NEPA Statute.

These conditions have especially crippled the Forest Service, with “analysis paralysis” frequently the primary factor keeping the Forest Service from accomplishing its land management goals.

We are pleased to see that the Forest Service has taken these thoughtful first steps toward addressing some of the concerns with what NEPA has become. Specifically, the Advanced Notice of Proposed Rulemaking (ANPR) asked for comments on the following:

1. Process and analysis requirements that can be modified, reduced, or eliminated in order to reduce time and cost while maintaining science-based, high quality analysis; public involvement, and honoring agency stewardship responsibilities; **(Category One)**
2. Approaches to landscape-scale analysis and decision making under NEPA that facilitate restoration of National Forest System Lands; **(Category Two)**
3. Classes of actions that are unlikely, either individually or cumulatively, to have significant impacts and therefore should be categorically excluded from NEPA environmental assessment and environmental impact statement requirements; such as integrated restoration projects, special use authorizations, and activities to maintain and manage Agency sites (including recreation sites), facilities, and associated infrastructure; **(Category Three)**
4. Ways the Agency might expand and enhance coordination of environmental review and authorization decisions with other Federal agencies, as well as State, Tribal, or local environmental reviews. **(Category Four)**

### **NEPA Overview**

A fundamental tenet of NEPA is that it is a procedural statute. NEPA does not mandate any particular outcome or require an agency to select an alternative that has the fewest environmental consequences. NEPA simply requires that an agency take a “hard look” at the environmental consequences of any major federal action it is undertaking. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989); *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n.21 (1976). Once the procedural elements of NEPA have been satisfied and the environmental consequences of a proposed action have been given the required scrutiny, an agency may issue its decision relying on the factors and considerations specified in the statute under which it is acting.

When evaluating a proposed agency action under NEPA, an agency can begin by conducting an Environmental Assessment (“EA”), which is a concise environmental analysis that allows an agency to evaluate the significance of any potential environmental impacts of the proposed action. *See* 40 C.F.R. § 1508.9. If the agency determines that the environmental impacts of a proposed action will not be significant, it can issue a Finding of No Significant Impact (“FONSI”) and conclude its NEPA obligations. *Id.* §§ 1508.9, 13. However, if an agency determines—either before or after conducting an EA—that a project’s environmental impacts will be significant, it must prepare an Environmental Impact Statement (“EIS”) that addresses,

among other things, “the environmental impact of the proposed action” and “alternatives to the proposed action.” 42 U.S.C. § 4332(C).

To complete this analysis, an agency must consider the direct, indirect, and cumulative effects of the proposed action 40 C.F.R. §§ 1508.7, 8. However, the scope of such a review is appropriately limited by the requirement that such effects be “reasonably foreseeable” and, for indirect effects, proximately caused by the proposed action under review. *Dep’t of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004); *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005). In addition, the agency must evaluate mitigation measures which, if implemented, could reduce the environmental impact of the proposed action. *Id.* §§ 1508.20, 25.

Importantly, as discussed in more detail below, the scope of a NEPA analysis is not unlimited, and only that information that is useful to the environmental decision maker need be presented. *See Dep’t. of Trans. v. Public Citizen*, 541 U.S. 752, 767-770 (2004) (“Rule of reason” limits agency obligation under NEPA to considering environmental information of use and relevance to decision maker. An agency need not evaluate an environmental effect where it “has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions”). Thus, despite its lack of substantive requirements, these procedural obligations, coupled with opportunities for public involvement, *see* 40 C.F.R. Part 1503, ensure that agencies are fully informed of potential environmental impacts before taking final action with respect to a proposed federal action.

### **Category One**

The time required to prepare an environmental impact statement (EIS) has risen from 817 days to over 1300. The number of days required to complete an environmental assessment increased from 594 to 730. While Council on Environmental Quality Guidance says that EIS’s should “normally” be less than 150 pages, and EA’s should generally be between 10 to 15 pages, the Forest Service is notorious for producing EIS’s that run several hundred pages, with associated documentation running into the thousands of pages.

According to the Government Accountability Office (GAO), the Forest Service between 2008 and 2012 produced more than twice as many EISs as the Army Corps of Engineers or the Federal Highway Administration, and nearly two and a half times as many as the Bureau of Land Management. According to that same study, it takes the Forest Service longer to complete all types of NEPA analyses than other Federal agencies as well.

The Forest Service should align its NEPA handbook and manual direction with the direction from the Council on Environmental Quality that calls for careful and proportionate use of NEPA tools. Specifically, CEQ regulations indicate that the text of a final EIS that addressed the purpose and need, alternatives, affected environment, and environmental consequences should normally be less than 150 pages, and a final EIS for proposals of unusual scope or complexity should normally be less than 300 pages.

Additionally, full NEPA analysis on a proposed action should only be conducted once. National forest management has been burdened with ponderous and duplicative procedural requirements for too long and the impacts are crippling the ability of the agency to manage its forests. There is no need to perform full NEPA analysis at both the forest planning stage and the site-specific

implementation stage. We would support efforts to categorically exclude the development of forest plans from NEPA documentation.

### **Category Two**

The use of landscape-scale analysis and decision making has a mixed record of success. The idea of shifting forest management and planning to a landscape level approach might prohibit other uses and conflict with the Multiple Use Sustained Yield Act and the principles of multiple use in general. We strongly oppose the artificial exclusion of certain longstanding forest uses from traditional areas simply because a forest supervisor thinks it might not be compatible with desired conditions. There are no safeguards to prevent a forest supervisor from using landscape scale planning to eliminate uses such as livestock grazing from national forests.

Landscape scale planning can often be contrary to sound management policies. Often the best forest management can be accomplished by promoting a number of different uses within the same area. Grazing permittees who are no longer allowed on their allotment because grazing has been deemed not suitable within a certain landscape are adversely affected no less than if the agency had taken their permits away. While there may be instances where a landscape scale analysis may be appropriate, a careful balance between landscape scale and smaller, more nimble projects will be required to ensure reductions in time for plan analysis.

Landscape-level analysis and decision making should not become an unintentionally created “new” planning level which is required to move forward with project level decisions. Any approach to landscape-level analysis and decision making must ensure that project level decisions can go forward quickly, with little or no additional analysis required at the projects.

### **Category Three**

One of the big stumbling blocks regarding the application of NEPA concerns emergency situations in which quick action is required by the agency to address an immediate problem. Such emergencies could be wildfires, pest outbreaks, or any other similar situation.

In such cases, the required immediate response does not allow sufficient time to comply fully with NEPA before acting. The Forest Service should further revise its policies to allow for more workable procedures for addressing these situations and at the same time maintaining the integrity of the NEPA requirements. Agency line officers should be permitted to take the necessary actions without first complying with NEPA, but providing for consultation with the Washington Office.

We support efforts to eliminate the requirement to consider alternatives (including the no-action alternative) when there are no unresolved conflicts concerning resource issues. This flexibility would eliminate another mechanical application of NEPA that requires consideration of multiple alternatives, even when there is agreement on the course of action. By doing so, resources can be focused on an examination of the environmental impacts on the proposed action instead of developing needless straw-man alternatives that would not be considered by the agency anyway.

We support efforts to clarify the definition of “cumulative effects” and explicitly limit required cumulative effects analysis to known impacts of previous management in the project area.

Clarification will reduce the opportunity for litigation, and provide more certainty to the agency and the regulated community.

The Forest Service should abide by the following principles when considering grazing in management decisions and environmental analysis:

- Cooperate in a timely manner with permittees;
- Use proven and accepted scientific analysis methods;
- Use prior and concurrent consultations with credible third parties; and
- Evaluate and make decisions on an allotment-by-allotment basis;

NEPA analysis and compliance should be cost effective and recognize the appropriate role of the grazing permittee in the planning process and create standards that are attainable.

Forest Service actions for fire suppression and prevention should include a plan to reduce the fuel load by targeted grazing, prescribed burns, green stripping, and permanent fire breaks. Additionally, fire suppression and prevention activities should be streamlined and waived from NEPA requirements.

#### **Category Four**

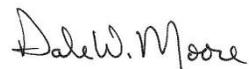
National forests often greatly impact local communities. This is especially true in the West, where national forests might comprise a significant part of a county area. What happens on these forests directly affects how local governments and communities respond. As a result, local governments should play an integral role in the forest planning process. We support federal efforts to provide local governments with increased input in the planning process.

The Forest Service should coordinate and cooperate in a meaningful way with states, counties and other local governments in making land management plans and decisions. An effective agency coordination process should allow the Forest Service to negotiate in good faith and to display valid, compelling and peer-reviewed evidence when federal decisions are opposed by a majority of the affected counties and conservation district boards.

Additionally, the Forest Service should guarantee coordination and consultation requirements in other federal statutes are respected, regardless of whether an agency is designated as a cooperating agency.

Thank you for the opportunity to comment on the ANPR. We look forward to working with you as you move forward in this process.

Sincerely,



Dale Moore  
Executive Director  
Public Policy