
July 23, 2019

Vicki Christiansen
Chief, U.S. Forest Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Dear Chief Christiansen:

Western Governors appreciate the U.S. Forest Service's (USFS) commitment to partner with states on forest and rangeland management objectives in the Shared Stewardship [Memorandum of Understanding](#) (MOU) between the Western Governors' Association (WGA) and the U.S. Department of Agriculture (USDA). Western Governors look forward to working with USFS to develop regional, collaborative solutions to challenges associated with wildfire mitigation and response, vegetation management, and cheatgrass and invasive species. In the MOU's spirit of collaboration, this letter provides feedback on the process and substance of the USFS's proposed rule, National Environmental Policy Act (NEPA) Compliance, [84 FR 27544](#) (Proposed Rule).

Process Recommendations Regarding the Proposed Rule

As stated in the MOU, Governors – as the chief elected officials of their states – expect to engage with federal officials on the formulation and execution of public policy. Governors also have specialized knowledge of their states' environments, resources, laws, culture, and economies that is essential to informed federal decision-making. By operating as authentic collaborators, the states and federal government can improve their service to the public by creating more efficient, effective, and enduring policy.

Because states manage environmental and natural resources within their borders, Governors are necessary partners in federal permitting and environmental reviews affecting those resources. Western Governors are eager to work with USFS to streamline NEPA reviews without shortening timelines for state input and consultation, or compromising natural resource, wildlife, environmental quality, or cultural values. Early, meaningful, and substantive federal consultation with states and the use of state expertise can reduce duplication and conflict, rendering these reviews more efficient and effective.

For these reasons, Western Governors have urged USFS to meaningfully engage with states – outside of, and in addition to, the public process – as it reviews NEPA regulations and to use the opportunity to strengthen the state-federal relationship in the NEPA process (see [January 26, 2018 comments](#); [March 7, 2018 letter](#); [August 21, 2018 letter](#)). The Proposed Rule neither reflects meaningful consultation nor seizes this opportunity. In addition, USFS has not engaged with states on proposed revisions to its directives, Forest Service Handbook (FSH 1909.15), Manual (FSM 1950), or other guidance to align with this rulemaking.

Such consultation is especially critical where states have been assigned NEPA responsibilities, such as under the Surface Transportation Project Delivery Program for certain infrastructure activities, and under the Safe, Accountable, Flexible, Efficient Transportation Equity Act for highway projects classified as Categorical Exclusions (CEs). Federal consultation with Governors, as co-sovereigns

and co-managers of land and resources, cannot be effectively conducted through the routine notice and comment process available to the general public. It should occur prior to (as well as after) publication of advanced notices and proposed notices of rulemaking. If USFS believes there are legal or other obstacles to meaningful state-federal consultation – including the exchange of draft, non-public documents – the Governors stand ready to work with the agency to address these issues.

Substantive Recommendations Regarding the Proposed Rule

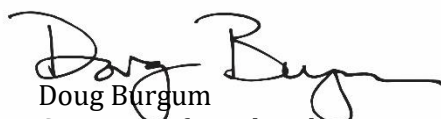
State Engagement in the NEPA Process: Governors have concerns about the Proposed Rule’s lack of direction to USFS officials regarding engagement with states as part of the NEPA process. Section 220.4 of the Proposed Rule improperly equates states with the public or stakeholders by providing the same direction to USFS officials regarding engagement with states as to the public. It gives USFS officials complete discretion about whether and how to conduct engagement activities with states.


As noted in WGA Policy Resolution [2018-15, Modernizing Western Infrastructure](#), states have unique and critical duties to serve their citizens and should not be considered ordinary “stakeholders” for purposes of the NEPA process. Western Governors urge USFS to distinguish between public engagement and consultation with government entities. USFS should also specifically describe what consultation with states requires as part of the NEPA process. Appropriate requirements are described in detail in our previous communications (see [January 26, 2018 comments](#); [March 7, 2018 letter](#); [August 21, 2018 letter](#)).

Categorical Exclusions: In the WGA National Forest and Rangeland Management Initiative [June 2017 Special Report](#), Governors advocate for a new restoration CE for projects in compliance with land management plans and for which no significant impacts to the environment occurred over the previous five years. As a result, the Governors appreciate the Proposed Rule’s addition of an ecosystem restoration CE, Section 220.5(e)(26), and broadening of the existing restoration CE, Section 220.5(e)(20). We encourage USFS’s consideration of an additional limited, short-term CE for landscape-scale (greater than 100,000 acres) restoration projects in landscapes with demonstrated ecological and economic need and effective existing collaboration among stakeholders.

Western Governors appreciate their partnership with USDA and USFS in land management. This partnership can be strengthened through changes to USFS’s treatment of states in the NEPA and rulemaking processes. For administrative recordkeeping purposes, we will also submit this letter through regulations.gov; the Governors, however, maintain that the public notice and comment process is an insufficient channel for state-federal communications on agency actions that affect states.

Sincerely,


Doug Burgum
Governor of North Dakota
Chair, WGA


Kate Brown
Governor of Oregon
Vice Chair, WGA