

SUBMIT COMMENTS ON THE PROPOSED FOREST PLANNING RULE
DEADLINE: MAY 16

The U.S. livestock industry depends on forage from federal lands. The proposed Forest Service Planning Rule would deal a crippling blow to National Forest System grazing and the entire industry. Instead of focusing on productive and sustainable uses of forest resources (such as grazing), the rule is centered almost entirely on “preservation.” It contains vague language and unachievable requirements that would invite litigation and, ultimately, preclude grazing and other productive uses.

Submitting comments on the Proposed Rule is easy. [Submit your comments](#) by the **MAY 16 DEADLINE at the govcomments.com website. First, fill out your personal contact information. [Suggested comments are below and at this link](#) for you to customize to fit your individual message, which will need to be copied and pasted into the message box. You may also edit, print, and send your comments via fax (801-397-1605) or mail: Forest Service Planning DEIS, C/O Bear West Company, 132 E 500 S, Bountiful, UT 84010.**

[No later than] May 16, 2011

Forest Service Planning DEIS
c/o Bear West Company
132 E. 500 S
Bountiful, UT 84010

Re: National Forest System Land Management Planning Notice of Proposed Rulemaking and Draft Programmatic EIS

To Whom It May Concern:

Thank you for the opportunity to comment on the Forest Service’s Proposed Forest Planning Rule (Proposed Rule), published in the Federal Register February 14, 2011. I am making these comments as a member of the cattle industry, an industry that depends on the availability of forage from National Forest System (NFS) lands. Please consider these comments and include them in the administrative record for the Propose Rule and the draft programmatic environmental impact statement (DPEIS).

Federal land ranchers’ livelihoods, and thus the entire industry, are directly affected by this rulemaking process. The Proposed Rule will be costly and cumbersome compared to the existing rule, putting at jeopardy the rangeland program and ranchers’ ability to continue their livestock grazing practices. The Proposed Rule focuses on only a select few of the many multiple uses the Forest Service is congressionally mandated to oversee, and fails to give appropriate weight to NFS lands’ role in providing social and economic sustainability. I believe that social, environmental and economic considerations are not competing values, but rather interdependent components, all of which play an important role in effectively managing NFS lands.

Please consider the following points:

If the Proposed Rule is implemented, all multiple uses on NFS lands are at risk:

- The Forest Service’s authorizing statutes, the National Forest Management Act (NFMA) and the Multiple Use-Sustained Yield Act (MUSYA), provide that “the Secretary shall assure that (Forest Service) plans” provide for “multiple use and sustained yield” of products and services including “outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness”.
- The Proposed Rule dedicates an entire section to wildlife; focuses on climate change and carbon sequestration; and even highlights the role NFS lands play in “spiritual sustenance”. It lists only “ecosystem services” as a multiple use that “contributes to local, regional, and national economies in a sustainable manner.” However, it ignores the NFMA provisions concerning other forest resources, such as grazing and timber, which are the lifeblood of many rural communities. The Proposed Rule should be rewritten to give equal weight to all multiple uses and to all three aspects of “sustainability”: “social, economic and ecological”.

The Proposed Rule threatens to place even greater burdens on agency resources because of its vague, complex, and unrealistic requirements, both substantive and procedural:

- **“Guidelines” as legally enforceable standards:** The rule states that all projects “must comply” with the “guidelines”. This change throws away management flexibility and the Forest Service’s hard fought victories establishing that guidelines are discretionary—not mandatory. The resulting procedural and litigation costs will take away from other programs. Many elements being put into the Rule would be better placed in the Forest Service Manual or Handbook, where they can more easily be adjusted if they are not workable.
- **Use of “best available science”:** I agree that the use of sound science is integral to forest planning. However, the proposed requirements for documenting the consideration of “the best available science” will slow the planning process and create a new legal burden on the Forest Service to provide proof that they did, in fact, consider the “best available science”. I recommend that the Planning Rule simply require that the Forest Service take into account available, relevant scientific information, along with other factors, in the amendment or revision of forest plans—without any reference to which information is “best.”
- **Heightened monitoring requirements:** Monitoring is an integral part of land management and land management planning. However, I recommend that you eliminate the requirements in the Proposed Rule to monitor “measurable changes on the unit related to climate change and other stressors”; to evaluate monitoring information on a biennial cycle instead of the current five year cycle; and to develop a “broader scale” monitoring strategy. These added requirements will increase costs and personnel at the expense of on-the-ground management. I would also recommend that monitoring plans include outputs, such as animal unit months (AUMs), timber sales, recreation visitor days and miles of trails.

- **The “viable population” requirement:** The “viability” requirement is unattainable, procedurally impossible, and currently one of the most frequent claims in forest plan litigation. While the term “maintain viable populations” does not occur in NFMA, the Proposed Rule would nonetheless require the Forest Service to “maintain viable populations of species of conservation concern within the planning area.” There is no scientific consensus on what level of population is “viable” or how it is to be “maintained”. Thus, using these words (especially as applied to *all* species including fungus and moss, as the Proposed Rule would do) will perpetuate and likely increase the amount of lawsuits filed against the Forest Service. Species viability is the responsibility of the states, not the Forest Service.
- **Definition of “Species of Conservation Concern”:** The Proposed Rule’s “viable population” requirement would apply to “species of conservation concern,” defined as “[s]pecies other than federally listed threatened or endangered species or candidate species, for which the responsible official has determined that there is evidence demonstrating significant concern about its capability to persist over the long-term in the plan area.” As it stands, this definition is not science-based, and is likely to lead to arbitrary and capricious decision-making on the parts of responsible officials. If “species of conservation concern” are to impact land management planning decisions, they must be better defined.
- **“At-risk species” are referenced in the DPEIS, but not in the Proposed Rule:** The DPEIS suggests that the viability requirement would be extended to “at-risk species” (including all species, from slugs to fungus) on national forests and grasslands. However, “at-risk species” are not discussed in the Proposed Rule or adequately analyzed in the DPEIS. As with “species of conservation concern,” the Forest Service should reconsider its authority for extending protections to “at-risk species,” define the term in the rule, and analyze the effects of the additional protections in the DPEIS.
- **The requirement to maintain “the diversity of plant and animal communities”:** According to NFMA, the Proposed Rule should require that Forest Service plans maintain existing *habitat* diversity, “based on the suitability and capability of the specific land area”, rather than focusing on measuring species populations. NFMA calls for management “to meet overall multiple-use objectives”; habitat diversity is just one multiple-use objective that should be included in the rule.
- **“Focal Species”:** To determine whether a land management plan is meeting the requirement of the Proposed Rule to provide for ecosystem diversity, the Proposed Rule requires monitoring the status of “focal species.” However, the theory of monitoring focal species (also known as “management indicator species” or “MIS”) to provide insight into the integrity of ecological systems and the status of other species has been discredited. Thus, the theory should not be employed as part of the Proposed Rule. Rather than concentrating on species populations, the Forest Service should concentrate on habitat diversity.
- **The “public engagement” requirement:** The language requiring that the agency “shall encourage” public input creates an obligation for the agency to affirmatively gather

public comment—and a legal question as to the threshold of encouragement, rendering the agency vulnerable to more litigation. It also distances the decision-making process from the local area.

- **Coordination with local governments:** The risk of litigation is heightened further by the Proposed Rule’s weakening of the coordination process by which local governments may meaningfully participate in the development of land and resource management plans, a provision mandated under NFMA and currently included in the 1982 Planning Rule. The Proposed Rule directs the agency to solicit “public participation”, but local governments, the entities responsible for supplying a balanced representation of local needs, are not given adequately elevated coordination status over individual special interests.
- **The Forest Service should consider the 2008 Planning Rule as an alternative in the DPEIS:** While it considers the planning rules from 1982 and 2000, the DPEIS fails to consider the 2008 Planning Rule as an alternative. Unlike the 2000 Planning Rule, the 2008 Planning Rule was not found “infeasible” to implement or held “substantively inadequate” by a court. Thus, the 2008 Planning Rule represents a viable alternative.
- **The use of the pre-decisional objections process is good:** The Proposed Rule appropriately calls for objections to a draft plan to be made before the final plan is released. This requirement would allow the agency to take issues into account and make appropriate changes so as to avoid litigation. Under the current appeals system, those who just want to stop a project are not required to participate in pre-decisional planning, and may simply sue once a final decision is made.

Because of the concerns established in these comments, I request that the Forest Service revise the Proposed Rule to be consistent with its authority under NFMA and the MUSYA and to appropriately consider all of its multiple-use objectives, including providing range resources. The Forest Service’s ability to provide range resources and to manage for sustainable and healthy forest lands is integral to the success of ranching operations and entire communities across the west.

Sincerely,

[name]

[title, company, association, etc.]

[address]