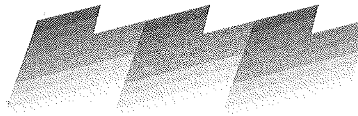

UTAH ASSOCIATION OF COUNTIES

A Unifying Voice for County Government

May 16, 2011

Tom Tidwell
Chief, U.S. Forest Service
1400 Independence Avenue, S.W.
Washington, D.C. 20250-0003

Forest Service Planning DEIS
C/O Bear West Company
172 East 500 South
Bountiful, UT 84010

Re: Proposed Planning Rule – U.S. Forest Service 76 FR 8480
(36 CRF Part 219) and Draft Programmatic EIS

Dear Sir or Madame:

Utah Association of Counties (UAC) appreciates the opportunity to submit the following comments on the proposed National Forest System Land Management Planning Rule (Planning Rule). UAC represents the 29 counties of the State of Utah, all of whom have a strong interest in the health, vitality and productivity of Utah's national forests.

Section by Section Analysis

§219.1 – Purpose and Applicability
There is in this section and throughout the draft Planning Rule, a patent over-use of the term "ecosystem services" in an apparent effort to skew, dilute and water-down the Congressionally honored and sanctioned "multiple use" mission of the National Forests. This section and entire planning rule should be purged of this unfortunate term that lacks legal grounding in the Congressional statutes governing the management of NFS lands. *See, e.g.,* the Multiple Use Sustained Yield Act of 1960 (MUSYA), which declares as the policy of Congress "that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed and wildlife and fish purposes." Strikingly absent from any of the statutory authorities, is authority to perform management for ecosystem services.

§219.2 – Levels of planning and responsible officials
The Forest Service must proactively seek out and establish a pattern of coordination and cooperation with elected county officials of all counties in which the given planning area exists. Elected county officials are the only legally accountable representatives of the "public" at the local level, and they deserve active and good faith coordination and consistency with their local plans and policies throughout the planning process. This section should be amended accordingly.

This section should be amended further to ensure that planning takes place at the most local level of the Forest Service agency structure, the unit manager level, as opposed to the region,

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district or national level. Such higher level planning is a colossal duplication of effort and therefore a colossal waste of resources which the Forest Service simply does not have in this era of strained and depleted budgets and out-of-control national debt.

§219.2(b)(3) should be amended to guard against unaccountable and unpredictable take-over of local unit supervisor roles by higher, more remote and less knowledgeable and less accountable national authorities within the National Forest System.

§219.3 – Role of science in planning
The role of science is important in the planning process. But the Planning Rule itself should not hold Forest Service to a hopelessly unattainable standard of undue scientific documentation for every detail. That will only lead to unproductive litigation. The Planning Rule should accord the local unit supervisor sound discretion to determine the quantity and quality of science deemed "best" and appropriate for each planning situation.

§219.4 – Requirements for public participation
Early and throughout the planning process, thorough collaboration, coordination and consistency with local government officials in the planning process are essential, and the language of this section should be amended to ensure this will happen. The agency should give increased weight to local communities directly impacted by the plan and to the local governments who legally represent such communities, as opposed to various non-governmental special interest groups. NEPA requires cooperation with local government officials. So does the guidance from the White House Council on Environmental Quality (CEQ).

The phrase "to the extent practicable and appropriate" should be stricken from §219.4(b)(1) and replaced with "to achieve consistency the maximum extent practicable between the proposed forest and local plans." It is always appropriate and practicable for the agency to coordinate and achieve consistency with local governments. In the spirit of the NEPA and CEQ requirements quoted above, the Forest Service as a matter of good sense and good policy ought to amend this section and adopt the standard used in the Federal Land Policy Management Act for BLM land management planning purposes: "Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." 43 U.S.C. 1712(c)(9). This section should also add the following: "Where the forest plan may not be made consistent with local plans, the responsible official shall document how and why its plan is not consistent with local plans, as determined by local officials, and explain why its plan cannot be made consistent with local plans."

§219.6 – Assessments
Where gaps exist in the available science, this section should be written to shield and protect the local unit manager from lawsuits for not engaging new scientific studies to push the scientific frontier further. This section of the Planning Rule should ensure the local unit manager has some flexibility to fill in those gaps using best practices and his or her experience and judgment.

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§219.7 – New plan development or plan revision
All Forest planning efforts should require the reduction of the Fire Regime Condition Class (FRCC) to meet local government desired levels and objectives, in order to protect the populations, livestock and infrastructure of each affected county in the planning area. NFS lands should be actively managed to reduce the threat of wildfire and the unnecessary release of Co2, and this section of the Planning Rule should be amended to give NFS maximum flexibility in this regard, both at the planning level and the every-day management level. Reduction of FRCC 3 to FRCC 2 and FRCC 1 is the best outcome both economically and environmentally. Catastrophic wildfires yearly are destroying much of NFS habitat, not to mention valuable water shed and timber resources on which counties are so dependent.

The 1984 Utah Wilderness Act, Public Law 98-428, enacted a hard release of all non-wilderness Forest Service lands in Utah from any de facto wilderness treatment. The Planning Rule in general, and this section in particular, should be amended to provide that no local unit manager, and no higher up Forest Service official for that matter, shall ever include in any forest plan, a provision for the de facto administrative wilderness management or "roadless management" (wilderness management by another name) of lands in any State, such as Utah, where Congress through past legislation has determined there shall be "no more wilderness" unless Congress so acts.

§219.8 – Sustainability
This section, while strong on ecological sustainability, is weak on economic and social sustainability. This section needs major re-working to strengthen and ensure sustainability in the economic and social aspects of Forest Service management. The rule needs to provide maximum support for logging and timber activities, because these will help ecological sustainability as well. This section is far too excessive in its favoring of "ecosystem services," and falls far short of the needed clarity and strength of direction toward social and economic health and prosperity of communities in and around each planning area. This section should be amended to ensure the forest planning area will be used in a way to increase the vitality of local communities.

§219.9 – Diversity of plant and animal communities
This section in its draft form threatens to put Forest Service on a never-ending legal slippery slope to manage species and ensure their outcomes and populations, when NFS's only statutory duty is to manage the habitat. USFS is not a biological preserve management entity. It manages the Forest, and by law just as much if not more so for human kind as for various non-human species. This section as presently written will subject NFS to unattainable standards of species attainment and biological preserve guaranties, that will subject NFS to endless litigation. It is crucial to amend this section to back off from species management and get NFS back into managing the habitat.

§219.10 – Multiple Uses
This section erroneously and unlawfully provides for the protection of *recommended* wilderness areas and *eligible* wild and scenic river segments. Congress gave NFS no legal authority to perform such interim management in contravention of the multiple use mandate

of MUSYA. This assertion of authority to protect so-called *recommended* wilderness and *eligible* wild and scenic river segments runs directly contrary to the 1984 Utah Wilderness Act, wherein Congress expressly stated that one of its purposes was to "insure that certain other national forest system lands [other than those lands the Act designated as Wilderness] be available for non-wilderness multiple uses." Public Law 98-428 at Sec. 101(b)(2). Congress in the same Act further provided that Forest Service lands in Utah not designated as wilderness by the date of the Act "shall be managed for multiple use in accordance with land management plans pursuant to [applicable law including NFMA]." *Id.* at Sec. 201(b)(3). This section of the Planning Rule should be amended to recognize and comply with the foregoing Congressional authorities. Otherwise this Section and the entire Planning Rule are rendered *ultra vires.*

Nor may Forest Service use any statewide roadless inventory subsequent to the Roadless Area Review Evaluation (RARE II (1979)) to identify more alleged "roadless areas" above and beyond those identified in RARE II and manage such lands as "roadless areas" (aka de facto wilderness areas) absent Congressional authority. See, *id.,* at Sec. 201(b)(5): "[U]nless expressly authorized by Congress, Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of national forest service lands in the State of Utah [above and beyond that conducted in RARE II] for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System."

§219.19 – Definitions
Ecosystems should not be put on the same par as multiple uses under the Multiple Use and Sustained Yield Act (MUSYA). The proposed rule defines ecosystem services too broadly and improperly elevates ecosystem services to the same level of importance as multiple uses under MUSYA. To the extent this section authorizes ecosystem services to trump the multiple uses in the MUSYA, this section constitutes an improper end run around MUSYA without an subsequent act of Congress. The section should be amended to put multiple uses under MUSYA back on their proper legal and statutory footing.

Other
Only those who have submitted "formal comments" related to a plan, plan amendment, or plan revision during public participation opportunities provided in the planning process, should be allowed to file objections thereto.

Also, objections should be based on the substance of the objector's formal comments, unless the objection concerns an issue that arose after opportunities for formal comment.

It is appropriate that the burden falls on the objector to demonstrate compliance with these requirements.

Concurrence With and Incorporation of Comments from State and Local Governments

UAC concurs with and incorporates herein by this reference the written comments on the above-referenced planning rule submitted by the State of Utah and the written comments

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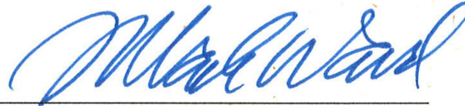
on the above-referenced submitted by Duchesne County, Garfield County and Washington County, Utah.

Sincerely,

UTAH ASSOCIATION OF COUNTIES



J. Mark Ward
Senior Policy Analyst and Public Lands Counsel