

USDA Forest Service
Washington, DC

Via electronic web submission

February 2, 2021

Dear Forest Service,

This letter contains the comments of the undersigned on Forest Products Modernization - Batch 2 #ORMS-2747, as accessed at: <https://cara.ecosystem-management.org/Public/CommentInput?project=ORMS-2747>.

When providing opportunities for public comment on proposed Manual and Handbook sections, it would be helpful if the Forest Service provided the existing Manual and Handbook sections with the proposed changes, e. g., by denoting additions in colored text and highlighting deletions via strikethroughs. That way, reviewers can see exactly what changes are proposed and focus any comments accordingly. But because the agency did not provide this, we are commenting on the entire Manual and Handbook chapters provided via the above web link.

Also, there was no hard mail address provided, to which interested parties could mail comments and/or provided referenced material. The comment form accessed at the above weblink notes the “Option to Submit Comment Electronically”, but there is no other option available there. This violates agency regulations, which require that notices for commenting on directives must

Provide a physical mailing address and an internet address or similar online resource for submitting comments.

36 CFR 216.3(b)(2)¹. The address would be useful for people who prefer to submit comments on paper and to those who wish to mail paper copies of any references works cited in their comments.

Finally, there was no contact person listed for questions or from who to seek further information.

We noted these omissions in our previous comments on timber sale directives dated November 16, 2020. We again insist that the agency correct these flaws in all future proposed changes to the Manual and Handbooks.

FSM 2420

Under section 2420.3, paragraph 1 says that outside of Alaska, the transactional evidence method shall be used to appraise timber sales. We agree that this method is better than residual value, which is used to guarantee that the operator can make a profit, and we think it should also be used in Alaska. However, paragraph 3 states:

¹ See 83 Fed Reg 13649, March 30, 2018.

...but other valid appraisal methods may be used for sales where a detailed appraisal is not warranted, such as appraisal by comparison of similar sale offerings and the use of standard rates.

This seems to contradict paragraph 1. It is also not clear how “appraisal by comparison of similar sale offerings” differs from TE. Clarification is needed here on when methods other than TE could be used and under what circumstances.

PROBLEMS WITH PROPOSED APPLICATION OF KNUTSON-VANDENBURG IN FSH 2409.19 CHAPTERS 10 AND 20

The Knutson-Vandenberg (K-V) authority (1930; 16 U.S.C. 576) was originally intended to allow the Forest Service to collect a deposit on timber offered for sale that would later be used to ensure cut areas would be sufficiently reforested. The National Forest Management Act (1976) and the Department of Interior, Environment, and Related Agencies Appropriations Act for 2006 (P. L. 109-54, section 412) expanded the allowable uses of K-V funds. However, the Forest Service proposes to allow K-V money to be used for purposes for which it was likely never intended.

K-V funds must not be used to construct dams. Intuitively, using money to construct dams would seem to be very far removed from even the expanded authority for use of K-V money, which has always been intended for use in timber sale areas, and with expanded authority, in other areas within the same region. Under the expanded authority for K-V money use provided under section 412 of P. L. 109-54, it can be used for:

watershed restoration, wildlife habitat improvement, control of insects, disease and noxious weeds, community protection activities, and the maintenance of forest roads, within the Forest Service region in which the timber sale occurred: *Provided*, That such activities may be performed through the use of contracts, forest product sales, and cooperative agreements.

This would not appear to authorize dam construction. Indeed, it is hard to conceive of how a new dam could be related to a timber sale. Indeed, the agency’s own direction states that K-V funds are not to be used for:

Maintenance of facilities and other permanent improvements constructed with [cooperative work K-V] funds, except as described in section 13.7...

Section 13.5. And by the way, section 13.7 does not appear in the version of FSH 2409.19 Chapter 10 released for public comment.

This prohibition on use of K-V funds for facilities is reinforced by section 21.4 concerning regional K-V work (CWK2), for which K-V money cannot be used for “[c]onstruction, reconstruction, development, and maintenance of facilities”.

However, proposed sections 13.61 and 21.3 of FSH 2409.19 cite P. L. 92-367 as allowing K-V money to be used to construct small dams on national forest land. That Act does not authorize this expenditure of funds. Rather, this 1972 law requires the U. S. Army Corps of Engineers to inspect existing dams that might pose a hazard were they to fail and report to Congress on its findings. We do not understand how the Forest Service could possibly interpret this law to allow K-V money to be used to construct small dams on national forest land.

The proposed Handbook sections allowing dam construction with K-V money must be deleted.

K-V funds should not be used to fund potentially harmful projects. In addition to using K-V funds to construct dams, the proposed directives would allow use of such funds for other inappropriate activities. Section 13 Exhibit 02 lists numerous activities as being appropriate for funding with K-V money. Many of them are appropriate, but the following activities are at best questionable uses of this funding stream:

Chaining or prescribed burn to enhance rangeland ecosystems

Chaining is a bad practice, as it uproots trees just to make more land available for livestock grazing at the expense of natural ecosystems. Given that there is very little land on the national forests and grasslands containing any vegetation that is palatable to livestock that is not available for grazing, this practice is at least not necessary, and at worst, it leads to the destruction of natural grassland-shrubland ecosystems. Burning should be limited to restoring natural ecosystems and maintaining natural disturbance regimes.

Enhance vistas or highlight “character trees” by thinning, pruning, or planting seedlings

Highlighting character trees by cutting trees or other vegetation around them would make them more accessible to humans and thus more vulnerable to human damage, such as removal of branches, carving, etc.

Improve visual quality along roads and trails

Improving visual quality would require removing trees in many cases. This exacerbates the habitat-fragmenting problem of roads, as the road corridors would be made wider with removal of vegetation cover along roads.

Manipulate vegetation to improve diversity

Control undesirable vegetation

These activities are usually done to enhance timber growing capability, which may occur at the expense of natural diversity. Improving diversity must be done only in accordance with the natural composition and structure of vegetation on the site. Controlling “undesirable” vegetation should be limited to treating noxious weeds.

Pull back side cast from old roads to reduce landslide potential within sale area

We do not understand how pulling back sidecast material would reduce landslide potential. If sidecast material could promote landslides, then the slope is too steep to support a road in the

first place. Attempting to move the sidecast material might even trigger a landslide on steep slopes.

Improve wildlife habitat

This is too broad of a term to be used to allow use of K-V money. Almost any activity could improve habitat for some wildlife species, but the same activity could degrade habitat for other species, including ones that are threatened, endangered, proposed for ESA listing, sensitive, or of conservation concern.

Under section 21.1, CWK2 funds could be used to prepare NEPA. This would allow K-V money from one sale to be used to prepare another sale, including CWK2 activities. A CWK2 activity is defined as:

An activity that is funded with CWKV collections which have been declared unneeded to meeting the needs of [sale area improvement] plans from timber sales within the Region or from CWKV collections for use outside the sale area.

Section 20.5.

Units and regions would thus be encouraged to sell the highest value products, i. e., the largest trees, to collect enough K-V money from projects to be able to fund other projects, including NEPA preparation for additional sales. This is not appropriate. Any excess K-V collections should be returned to the Treasury.

We commend the agency for prohibiting the use of K-V money for project mitigation, i. e., activities that must take place to implement a project. (Section 10.5) Allowing K-V money to be used for mitigation would encourage operators to not implement measures required under the respective contracts. For the same reason, we are happy to see that for any range improvements, K-V money “must not be used to fund activities that are the responsibility of the permittee”.
Section 11.21.

Section 16.12b refers to “Region 15, Unit 08”. There is no region 15, so this error needs to be corrected.

Section 17.1 allows use of a CWKV pool as

an accounting process for each [proclaimed national forest], established for ease of accounting so that individual expenditures need not be tracked separately on a sale-by-sale basis.

However, further direction in this section prohibits the use of K-V money collected on a sale to be spent on activities associated with another sale. But if all the K-V money collected on national forest unit is in one pool, it might be impossible to ensure that K-V money wasn't being improperly spent, or that funds are not “transferred between sales to resolve negative balances”

in the regional K-V accounts. (The latter is prohibited by sec. 17.21.) We recommend that units be required to track K-V collections and expenditures for each sale.

STEWARDSHIP CONTACTING – FSH 2409.19 CHAPTER 60

Encourage public input on stewardship projects from all sources, not just the collaborative groups. Under “Other Key Elements” to consider for stewardship projects:

Public input from a collaborative group, partners, and other stakeholders shall be used to assist the agency in determining specific lands to be treated and types of restoration work activities to be conducted.

Section 61 1 b.

This implies that only public input from officially established collaborative groups or from recognized partners or stakeholders must be considered. However, many people not in the respective collaborative group for a project, nor identified as partners or stakeholders, may wish to have input, and such input must be encouraged. Such people may not be able to attend meetings or otherwise formally participate in collaborative activities. Under 61.11a (1), “Collaboration for stewardship projects is typically expected to go beyond the public involvement requirements of NEPA analysis”. This is good, but collaboration must be sure to include full NEPA analysis and public participation.

Thus, change the wording in section 61 1 b to state:

Public input from a collaborative group, partners, other stakeholders, and the public at large shall be used in determining specific lands to be treated, types of restoration work activities to be conducted, and constraints and limitations on any activities. The broadest possible public participation must be sought, and all input must be considered.

Similar language should also be added to section 61.11.

Stewardship and NEPA. The possibility of use of stewardship contracting should be mentioned in NEPA and decision documents. The proposed language discourages this:

Stewardship contracts and agreements are tools for meeting resource objectives and should not be included in the NEPA document and decision notice or memo as a requirement of the project.

61 1 c. We agree with not making stewardship contracting a requirement of any project, but this section should also state that the NEPA and decision documents should say, when applicable, that stewardship contracting will be used or may be considered because a project done with a stewardship contract may be implemented differently than one under a standard timber sale

contract. Also, some projects may be specifically designed to be done with a stewardship contract, as it might be difficult to otherwise accomplish work where the costs of services performed would exceed any product value.

Under 61.2 Exhibit 02, paragraphs 4 d and e, an appropriate stewardship project could allow livestock grazing to reduce fuels and thereby reduce fire hazard. This is inappropriate. Fires in rangeland are likely to be low intensity, burning through primarily grass and forbs. These fires usually do more good than harm, as they recycle nutrients and renew vegetation.

Livestock grazing likely would not reduce the possibility of fires in these areas unless the grazing was severe and denuded at least parts of the grazed area of vegetation. Otherwise, there would still be vegetation remaining to carry a fire. The intensive grazing needed to reduce fire would also cause considerable damage to soils, and to water quality in any nearby water bodies.

In short, livestock grazing probably wouldn't reduce the fire hazard, even if that was desirable. And if it did reduce the fire hazard, it would cause other problems. It must be removed from the list of appropriate stewardship project actions.

Allow and encourage small businesses to bid on stewardship projects. We believe that small businesses should participate in the stewardship program, and where appropriate and feasible, some such projects should be designed for smaller businesses. This gives the agency greater flexibility in designing projects, projects are too small to interest the larger sawmills.

To this end, proposed language appears to provide opportunity for small businesses to participate:

To ensure there is opportunity for use of local small business sawmills, make certain that the request for proposals for stewardship contracting projects considers technical evaluation criteria that give weight for use of local small businesses, including small business sawlog mills.

Section 61.5. However, this appears to be contradicted in the very next paragraph: "Do not include stewardship contracts and agreements in the timber sale set-aside program." Ibid. Similarly Exhibit 62 01 shows that set-asides for SBA sales and special salvage timber sales will not be required under any of the four types of contract proposed for use. Our understanding is that the "set aside" program exists specifically to assure that large businesses will not take all the sales. Thus excluding stewardship contracts from the set-aside program removes assurances that small businesses will have opportunities to bid on such projects.

This apparent contradiction must be resolved.

Require performance bonds. Under 62 Exhibit 01, performance bonds would generally not be required. This is a mistake, as it could encourage contractors to skip some of the required service work in projects where they receive products.

Can service-only contract really be used for stewardship projects? Service-only contracts are listed as one of the five types of contracts that can be used in stewardship projects. Section 62.1. Under these contracts “[r]emoval of timber or other forest products is not permitted”. Ibid. And:

A service-only stewardship contract is used when there is no exchange of goods for services. Distinguishing features include use of retained receipts (SSCC), bundling, and/or term lengths greater than five years.

62.14. But how could retained receipts result from implementation of a service-only contract, as there would be no receipts, since no products are sold? This needs to be clarified.

Also, how would a contract be awarded on a best-value basis, as required for stewardship contracts by section 61 (2)(a), if it only required service work? Wouldn't the agency award the contract to the lowest bidder?

Generally, we question whether service-only contracts would ever be appropriate for stewardship projects.

Task orders and NEPA. Activities done under an integrated resource service contract could be set out in task orders. Section 62.12. It also appears that NEPA for a project that contemplated certain tasks would not have to be done before a project was approved:

NEPA for future orders does not have to be completed prior to base contract award, but restoration treatment activities must be identified in a completed NEPA decision before they are implemented.

Ibid. This should be changed to require that disclosure of possible impacts under NEPA be done on all activities proposed in a project. NEPA done later in the process would only be ratifying a decision already made to perform the activities.

GOOD NEIGHBOR AUTHORITY - FSH 2409.18 CHAPTER 80

Proposed direction addresses revenue from projects approved under Good Neighbor Authority:

Revenue is generated from the sale of Federal timber between the effective date of award and completion of the agreement and may only be collected by States. ...

The State may transfer remaining revenue to another active good neighbor agreement within the State by October 1, 2023 or within 180 days prior to expiration, whichever comes first.

Executed agreements with planned projects may continue to collect and expend revenues past October 1, 2023. After this date, any unplanned revenues shall be returned to the U.S. Treasury upon completion or expiration of the agreement.

Section 81.31; emphasis added.

States should not be allowed to collect revenue from the sale of federal timber, and they certainly should not be allowed to keep it, as would be permitted under proposed section 82.4.

The Forest Service would not even receive any reimbursement of any appropriated funds it used to allow a state project to proceed:

Prior to receiving any funds from their Purchaser, the State will cover all costs they incur; or the Forest Service may choose to use appropriated funds to support the State's work. The Forest Service would not receive any direct reimbursement of these appropriated funds from the sale of timber if appropriated funds are used.

Section 82.4.

This is wrong – it is basically ceding authority over federal timber to the states. If the Forest Service uses appropriated funds to help a state finance a project, the Federal government should be able to recover some of these costs from revenue the state receives from selling federal timber.

Require NEPA documents for Good Neighbor projects to show specifically how the national forest lands involved would benefit from the project.

“Targeted grazing” is cited as an example of “restoration services” that can be approved for hazardous fuel reduction under a Good Neighbor agreement. Section 81.4 2 b. This is defined as follows:

Utilization of livestock grazing as a tool for vegetation and landscape management rather than livestock production.

Section 80.5.

Similar to using grazing to reduce fire risk (discussed above for stewardship projects), using livestock for “restoration” is likely to cause damage to soils, water quality, etc. Thus grazing is not likely to “restore” any land. The one exception might be using stock to control noxious

weeds.² If livestock grazing is permitted under the Good Neighbor Authority, it should be limited to this activity, and only where it won't cause significant damage to resources.

CONCLUSION

The Forest Service must not give away federal timber to the states. It must not allow the use of K-V money to build dams. It should not allow the use of K-V funds for projects that would cause considerable adverse impacts, including, but not limited to, the use of grazing for fuels and fire risk reduction.

Please inform us when final directives for the manual and handbook sections discussed in this letter are issued.

Sincerely,

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² For example, horses eat thistles and domestic sheep will eat leafy spurge.

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