

# FEDERAL LAND USE PLANNING FOR FLUID MINERAL DEVELOPMENT OTERO MESA AND VALLE VIDAL

## I. Statutes and Regulations

### A. Federal Land Policy Management Act (FLPMA)

- Bureau of Land Management-management of public lands
  - 43 U.S.C. §1701 *et seq.*
  - 43 CFR Subpart 1610
- 43 U.S.C. §1702 Multiple use and sustained yield in accordance with land use plans
- State plans, programs and policies 43 U.S.C. 1712(c)(9), 43 CFR §1610.3-2
  - Management plans to be consistent with state policies, plans and programs to maximum extent determined by Secretary to be consistent with federal law and the purposes of FLPMA
  - State has 60 days after issuance of proposed RMPA to identify inconsistencies with state or local plans, policies or programs and provide written recommendations

### B. 1976 National Forest Management Act

- Forest Service- land management plans for units of the National Forest System
  - 16U.S.C. §1600 *et seq.*
  - 36 CFR Part 219

### C. National Environmental Policy Act (NEPA), 42 U.S.C. §4321 *et seq.*

- Applies to Federal agencies
  - 40 CFR Part 1500
    - requirements for implementing procedural provisions
  - "hard look" at environmental consequences of federal actions
- Environmental Impact Statement (EIS)
  - 40 CFR Part 1502
  - Prepare if possibility of significant environmental harm
  - Analyze alternatives to proposed action
  - Analyze direct and indirect impacts of proposed action and alternatives
    - cumulative impacts
    - incremental impact when added to other past, present and reasonably foreseeable actions
- Public review and comment throughout process

## II. Otero Mesa

### A. Background

- Bureau of Land Management decision area
  - Sierra and Otero counties

- 2 million acres
- 1986 Resource Management Plan (RMP)
  - oil and gas leasing-fluid mineral development
  - standard BLM leasing procedures
  - 1988 to 1998 - 143,000+ leased in Otero County
- Changes in BLM RMP requirements for fluid mineral development
  - Procedures for environmental and resource analysis
  - Amend existing RMP to meet 1992 requirements
- Exploratory drilling showing possible substantial production
- BLM determines need to amend RMP

#### B. Amendments to RMP

- October, 1998-BLM began planning and NEPA process
- October, 2000- Draft EIS issued
  - No Action alternative
  - Two additional alternatives
    - Alternative A-preferred alternative
- December, 2003 – Proposed RMP Amendment and Final EIS
  - Alternative A with modifications-preferred alternative
  - Public comment period
  - Consistency review with State and local plans
- March, 2004- Governor Richardson submits Consistency Review
  - State opposed preferred alternative
  - Proposed more stringent protections for sensitive areas
- May, 2005 – State BLM Director Linda Rundell
  - refused to adopt State recommendations
  - determined no inconsistencies
  - issued Supplement to Proposed RMPA and Final EIS
- Governor Richardson appealed Director Rundell's decision to Director of BLM
- January 21, 2005-BLM Director rejected Governor Richardson's appeal
- January 24, 2005-Record of Decision (ROD)
  - Approving final RMPA
  - Approving EIS

#### C. Litigation:

- Lawsuits filed by State of New Mexico and New Mexico Wilderness Alliance and other conservation groups (consolidated)

- United States District Court, District of New Mexico, Civ. No. 05-460 BB/RHS and Civ. No. 05-0588 BB/RHS
- Challenging BLM final decision
- Alleged violations of NEPA, FLPMA and National Historic Preservation Act (NHPA), 16 U.S.C. §470 *et seq.*
- State allegations
  - BLM violated FLPMA by adopting an RMPA that is inconsistent with State plans, programs and policies and by refusing to adopt any or all of Governor's proposed plan for oil and gas leasing in the Project Area
  - Violated FLPMA by failing to provide public with the Governor's proposed Otero Mesa plan and with opportunity to comment
  - Violated FLPMA by failing to give priority to the designation of areas of critical environmental concern and failing to designate Otero Mesa and Nutt grasslands as areas of critical environmental concern
  - Violated NEPA by failing to prepare supplemental draft EIS on the December, 2003 Proposed RMPA
  - Violated NEPA by failing to adequately analyze the environmental impacts of the Otero Mesa RMPA
  - Violated NEPA by failing to prepare an EIS that analyzed a range of reasonable alternatives
  - Violated NHPA by failing to commence and complete required consultation
  - Violated NHPA by failing to develop a program for identification and preservation of historic and cultural sites
  - BLM acted arbitrarily and capriciously in violation of APA by approving the Otero Mesa RMPA and ROD based on an EIS that is legally inadequate
  - Violated NEPA and NHPA in approving actions implementing Otero Mesa RMPA, including approval of a 1600-acre lease and proposed gas pipeline
- Amended Complaint filed by State-October 11, 2005
  - Added claim related to BLM's proposed July 20, 2005 oil and gas sale of a 1600-acre lease on Otero Mesa, within the area covered by the challenged Otero Mesa RMPA
- Briefing to be complete by January, 2006
  - State brief filed October 17, 2005
- Oral argument-end of January, 2006

### **III. Valle Vidal**

#### **A. Facts:**

- Carson National Forest
- Donated by Pennozil in 1982- 101,794 acres.
- Since acquisition, managed under a Multiple Use Area Guide
  - Current use: "multiple use management of the land for its unique combination of wildland resources, primary public outdoor recreation, continued timber production, forage for livestock and wildlife, unique wildlife habitat and watershed."

- 2002- Carson National Forest received request to lease approximately 40,000 acres in the for natural gas development
  - Amendment to Land Management Plan (LMP)
  - Leasing analysis pursuant to 36 CFR 228.102

#### B. Amendments to LMP:

- Reasonable Foreseeable Development Scenario (RFDS)
  - Completed 2004
  - Provides "reasonable estimate of what oil and gas exploration and development activities might be proposed" if a decision is made to lease the area
  - 20-year projection
  - "Knowledge baseline" for leasing decision
- Land Management Plan Amendment
  - Notice of Intent (NOI) to Prepare Environmental Impact Statement (EIS)
    - Published 70 Fed.Reg. 34441, June 14, 2005
    - Purpose: "to incorporate standards and guidelines for the management of the Valle Vidal area of the Carson National Forest"
    - "Proposed Forest Plan Amendment for the Valle Vidal"
  - Comments on proposed amendment due September 15, 2005
  - Draft EIS available February or March, 2006
    - 90-day comment period
  - September 2006- Release of Final EIS (FEIS) and Record of Decision (ROD)
- Leasing analysis will begin after completion of Land Management Plan amendment
  - 36 CFR 228.102
  - NOI for Leasing analysis – scheduled for November 2006
  - Public scoping period – 45 to 60 days
  - March-September 2007 – preparation of draft EIS (DEIS)
  - October 2007- release of DEIS
    - 60-90 day comment period
  - June 2008- FEIS and ROD

#### C. Legislation

- H.R. 3817: Withdrawal of Valle Vidal Unit, Carson National Forest, New Mexico, from Mining Laws
  - Tom Udall
  - Introduced September 15, 2005
  - Referred to House Subcommittee on Forests and Forest Health
- S. 1734: To Establish the Valle Vidal National Preserve in the State of New Mexico
  - Jeff Bingaman

- Introduced September 20, 2005
- Referred to Senate Energy and Natural Resources Committee

TITLE 43--PUBLIC LANDS

CHAPTER 35--FEDERAL LAND POLICY AND MANAGEMENT

SUBCHAPTER I--GENERAL PROVISIONS

Sec. 1702. Definitions

Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act--

(a) The term ``areas of critical environmental concern'' means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

(b) The term ``holder'' means any State or local governmental entity, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under subchapter V of this chapter.

(c) The term ``multiple use'' means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(d) The term ``public involvement'' means the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.

(e) The term ``public lands'' means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except--

- (1) lands located on the Outer Continental Shelf; and
- (2) lands held for the benefit of Indians, Aleuts, and Eskimos.

(f) The term ``right-of-way'' includes an easement, lease, permit, or license to occupy, use, or traverse public lands granted for the purpose listed in subchapter V of this chapter.

(g) The term ``Secretary'', unless specifically designated otherwise, means the Secretary of the Interior.

(h) The term ``sustained yield'' means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

(i) The term ``wilderness'' as used in section 1782 of this title shall have the same meaning as it does in section 1131(c) of title 16.

(j) The term ``withdrawal'' means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than ``property'' governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

(k) An ``allotment management plan'' means a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands or on lands within National Forests in the eleven contiguous Western States and which:

(1) prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned; and

(2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(3) contains such other provisions relating to livestock grazing and other objectives found by the Secretary concerned to be consistent with the provisions of this Act and other applicable law.

(l) The term ``principal or major uses'' includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

(m) The term ``department'' means a unit of the executive branch of the Federal Government which is headed by a member of the President's Cabinet and the term ``agency'' means a unit of the executive branch of the Federal Government which is not under the jurisdiction of a head of a department.

(n) The term ``Bureau means the Bureau of Land Management.

(o) The term ``eleven contiguous Western States'' means the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(p) The term ``grazing permit and lease'' means any document authorizing use of public lands or lands in National Forests in the eleven contiguous western States for the purpose of grazing domestic livestock.

(Pub. L. 94-579, title I, Sec. 103, Oct. 21, 1976, 90 Stat. 2745.)

#### References in Text

This Act, referred to in the opening par. and in subsec. (k), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

The general land laws, referred to in subsec. (j), are classified generally to this title.

The Federal Property and Administrative Services Act, referred to in subsec. (j), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended, known as the Federal Property and Administrative Services Act of 1949, as amended. Provisions of that Act relating to management and disposal of property are classified to chapter 10 (Sec. 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

#### Section Referred to in Other Sections

This section is referred to in sections 1331, 1761, 1783, 1902, 2302 of this title; title 16 sections 410ii-3, 410ii-5, 460ccc, 460ooo, 460ppp-1, 5207; title 30 section 1028.

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## TITLE 43--PUBLIC LANDS

### CHAPTER 35--FEDERAL LAND POLICY AND MANAGEMENT

#### SUBCHAPTER II--LAND USE PLANNING AND LAND ACQUISITION AND DISPOSITION

##### Sec. 1712. Land use plans

###### (a) Development, maintenance, and revision by Secretary

The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

###### (b) Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision

In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

###### (c) Criteria for development and revision

In the development and revision of land use plans, the Secretary shall--

- (1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;
- (2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;
- (3) give priority to the designation and protection of areas of critical environmental concern;
- (4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;
- (5) consider present and potential uses of the public lands;
- (6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;
- (7) weigh long-term benefits to the public against short-term benefits;
- (8) provide for compliance with applicable pollution control

laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 4601-4 et seq.], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. 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.

- (d) Review and inclusion of classified public lands; review of existing land use plans; modification and termination of classifications

Any classification of public lands or any land use plan in effect on October 21, 1976, is subject to review in the land use planning process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification consistent with such land use plans.

- (e) Management decisions for implementation of developed or revised plans

The Secretary may issue management decisions to implement land use plans developed or revised under this section in accordance with the following:

(1) Such decisions, including but not limited to exclusions (that is, total elimination) of one or more of the principal or major uses made by a management decision shall remain subject to reconsideration, modification, and termination through revision by the Secretary or his delegate, under the provisions of this section, of the land use plan involved.

(2) Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of

the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of nonapproval of the management decision or action, then the management decision or action shall be promptly terminated by the Secretary. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the management decision or action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same management decision or action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) Withdrawals made pursuant to section 1714 of this title may be used in carrying out management decisions, but public lands shall be removed from or restored to the operation of the Mining Law of 1872, as amended (R.S. 2318-2352; 30 U.S.C. 21 et seq.) or transferred to another department, bureau, or agency only by withdrawal action pursuant to section 1714 of this title or other action pursuant to applicable law: Provided, That nothing in this section shall prevent a wholly owned Government corporation from acquiring and holding rights as a citizen under the Mining Law of 1872.

(f) Procedures applicable to formulation of plans and programs for public land management

The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.

(Pub. L. 94-579, title II, Sec. 202, Oct. 21, 1976, 90 Stat. 2747.)

This Act, referred to in subsecs. (a) and (c)(9), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

Act of September 3, 1964, as amended, referred to in subsec. (c)(9), is Pub. L. 88-578, Sept. 3, 1964, 78 Stat. 897, as amended, known as the Land and Water Conservation Fund Act of 1965, which is classified generally to part B (Sec. 4601-4 et seq.) of subchapter LXIX of chapter 1 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 4601-4 of Title 16 and Tables.

The Mining Law of 1872, as amended, referred to in subsec. (e)(3), is act May 10, 1872, ch. 152, 17 Stat. 91, as amended, which was incorporated into the Revised Statutes of 1878 as R.S. Secs. 2319 to 2328, 2331, 2333 to 2337, and 2344, which are classified to sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of Title 30, Mineral Lands and Mining. For complete classification of R.S. Secs. 2318-2352, see Tables.

#### Section Referred to in Other Sections

This section is referred to in sections 1713, 1732, 1752, 1781, 1783, 1784, 1901, 1903, 1904, 2304 of this title; title 16 sections 460uu-43, 460iii, 1333; title 42 section 6508.

### **43 CFR § 1610.3-2 Consistency requirements.**

(a) Guidance and resource management plans and amendments to management framework plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans.

(b) In the absence of officially approved or adopted resource-related plans of other Federal agencies, State and local governments and Indian tribes, guidance and resource management plans shall, to the maximum extent practical, be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian tribes. Such consistency will be accomplished so long as the guidance and resource management plans are consistent with the policies, programs and provisions of Federal laws and regulations applicable to public lands, including, but not limited to, Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise and other pollution standards or implementation plans.

(c) State Directors and Field Managers shall, to the extent practicable, keep apprised of State and local governmental and Indian tribal policies, plans, and programs, but they shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.

(d) Where State and local government policies, plans, and programs differ, those of the higher authority will normally be followed.

(e) Prior to the approval of a proposed resource management plan, or amendment to a management framework plan or resource management plan, the State Director shall submit to the Governor of the State(s) involved, the proposed plan or amendment and shall identify any known inconsistencies with State or local plans, policies or programs. The Governor(s) shall have 60 days in which to identify inconsistencies and provide recommendations in writing to the State Director. If the Governor(s) does not respond within the 60-day period, the plan or amendment shall be presumed to be consistent. If the written recommendation(s) of the Governor(s) recommend changes in the proposed plan or amendment which were not raised during the public participation process on that plan or amendment, the State Director shall provide the public with an opportunity to comment on the recommendation(s). If the State Director does not accept the recommendations of the Governor(s), The State Director shall notify the Governor(s) and the Governor(s) shall have 30 days in which to submit a written appeal to the Director of the Bureau of Land Management. The Director shall accept the recommendations of the Governor(s) if he/she determines that they provide for a reasonable balance between the national interest and the State's interest. The Director shall communicate to the Governor(s) in writing and publish in the Federal Register the reasons for his/her determination to accept or reject such Governor's recommendations.

[48 FR 20368, May 5, 1983, as amended at 70 FR 14567, Mar. 23, 2005]

TITLE 16--CONSERVATION

CHAPTER 36--FOREST AND RANGELAND RENEWABLE RESOURCES PLANNING

SUBCHAPTER I--PLANNING

Sec. 1604. National Forest System land and resource management plans

- (a) Development, maintenance, and revision by Secretary of Agriculture as part of program; coordination

As a part of the Program provided for by section 1602 of this title, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.

- (b) Criteria

In the development and maintenance of land management plans for use on units of the National Forest System, the Secretary shall use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences.

- (c) Incorporation of standards and guidelines by Secretary; time of completion; progress reports; existing management plans

The Secretary shall begin to incorporate the standards and guidelines required by this section in plans for units of the National Forest System as soon as practicable after October 22, 1976, and shall attempt to complete such incorporation for all such units by no later than September 30, 1985. The Secretary shall report to the Congress on the progress of such incorporation in the annual report required by section 1606(c) of this title. Until such time as a unit of the National Forest System is managed under plans developed in accordance with this subchapter, the management of such unit may continue under existing land and resource management plans.

- (d) Public participation in management plans; availability of plans; public meetings

The Secretary shall provide for public participation in the development, review, and revision of land management plans including, but not limited to, making the plans or revisions available to the public at convenient locations in the vicinity of the affected unit for a period of at least three months before final adoption, during which period the Secretary shall publicize and hold public meetings or comparable processes at locations that foster public participation in the review of such plans or revisions.

- (e) Required assurances

In developing, maintaining, and revising plans for units of the National Forest System pursuant to this section, the Secretary shall

assure that such plans--

(1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960 [16 U.S.C. 528-531], and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and

(2) determine forest management systems, harvesting levels, and procedures in the light of all of the uses set forth in subsection (c)(1) of this section, the definition of the terms ``multiple use'' and ``sustained yield'' as provided in the Multiple-Use Sustained-Yield Act of 1960, and the availability of lands and their suitability for resource management.

(f) Required provisions

Plans developed in accordance with this section shall--

(1) form one integrated plan for each unit of the National Forest System, incorporating in one document or one set of documents, available to the public at convenient locations, all of the features required by this section;

(2) be embodied in appropriate written material, including maps and other descriptive documents, reflecting proposed and possible actions, including the planned timber sale program and the proportion of probable methods of timber harvest within the unit necessary to fulfill the plan;

(3) be prepared by an interdisciplinary team. Each team shall prepare its plan based on inventories of the applicable resources of the forest;

(4) be amended in any manner whatsoever after final adoption after public notice, and, if such amendment would result in a significant change in such plan, in accordance with the provisions of subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section; and

(5) be revised (A) from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every fifteen years, and (B) in accordance with the provisions of subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section.

(g) Promulgation of regulations for development and revision of plans; environmental considerations; resource management guidelines; guidelines for land management plans

As soon as practicable, but not later than two years after October 22, 1976, the Secretary shall in accordance with the procedures set forth in section 553 of title 5, promulgate regulations, under the principles of the Multiple-Use Sustained-Yield Act of 1960 [16 U.S.C. 528-531] that set out the process for the development and revision of the land management plans, and the guidelines and standards prescribed by this subsection. The regulations shall include, but not be limited to--

(1) specifying procedures to insure that land management plans are prepared in accordance with the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.], including, but not limited to, direction on when and for what plans an environmental impact statement required under section 102(2)(C) of that Act [42 U.S.C. 4332(2)(C)] shall be prepared;

(2) specifying guidelines which--

(A) require the identification of the suitability of lands for resource management;

(B) provide for obtaining inventory data on the various renewable resources, and soil and water, including pertinent maps, graphic material, and explanatory aids; and

(C) provide for methods to identify special conditions or situations involving hazards to the various resources and their relationship to alternative activities;

(3) specifying guidelines for land management plans developed to achieve the goals of the Program which--

(A) insure consideration of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resources, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish;

(B) provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan;

(C) insure research on and (based on continuous monitoring and assessment in the field) evaluation of the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land;

(D) permit increases in harvest levels based on intensified management practices, such as reforestation, thinning, and tree improvement if (i) such practices justify increasing the harvests in accordance with the Multiple-Use Sustained-Yield Act of 1960, and (ii) such harvest levels are decreased at the end of each planning period if such practices cannot be successfully implemented or funds are not received to permit such practices to continue substantially as planned;

(E) insure that timber will be harvested from National Forest System lands only where--

(i) soil, slope, or other watershed conditions will not be irreversibly damaged;

(ii) there is assurance that such lands can be adequately restocked within five years after harvest;

(iii) protection is provided for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment, where harvests are likely to seriously and adversely affect water conditions or fish habitat; and

(iv) the harvesting system to be used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber; and

(F) insure that clearcutting, seed tree cutting, shelterwood cutting, and other cuts designed to regenerate an evenaged stand of timber will be used as a cutting method on National Forest

System lands only where--

(i) for clearcutting, it is determined to be the optimum method, and for other such cuts it is determined to be appropriate, to meet the objectives and requirements of the relevant land management plan;

(ii) the interdisciplinary review as determined by the Secretary has been completed and the potential environmental, biological, esthetic, engineering, and economic impacts on each advertised sale area have been assessed, as well as the consistency of the sale with the multiple use of the general area;

(iii) cut blocks, patches, or strips are shaped and blended to the extent practicable with the natural terrain;

(iv) there are established according to geographic areas, forest types, or other suitable classifications the maximum size limits for areas to be cut in one harvest operation, including provision to exceed the established limits after appropriate public notice and review by the responsible Forest Service officer one level above the Forest Service officer who normally would approve the harvest proposal: Provided, That such limits shall not apply to the size of areas harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm; and

(v) such cuts are carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and esthetic resources, and the regeneration of the timber resource.

(h) Scientific committee to aid in promulgation of regulations; termination; revision committees; clerical and technical assistance; compensation of committee members

(1) In carrying out the purposes of subsection (g) of this section, the Secretary of Agriculture shall appoint a committee of scientists who are not officers or employees of the Forest Service. The committee shall provide scientific and technical advice and counsel on proposed guidelines and procedures to assure that an effective interdisciplinary approach is proposed and adopted. The committee shall terminate upon promulgation of the regulations, but the Secretary may, from time to time, appoint similar committees when considering revisions of the regulations. The views of the committees shall be included in the public information supplied when the regulations are proposed for adoption.

(2) Clerical and technical assistance, as may be necessary to discharge the duties of the committee, shall be provided from the personnel of the Department of Agriculture.

(3) While attending meetings of the committee, the members shall be entitled to receive compensation at a rate of \$100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, for persons in the Government service employed intermittently.

(i) Consistency of resource plans, permits, contracts, and other instruments with land management plans; revision

Resource plans and permits, contracts, and other instruments for the

use and occupancy of National Forest System lands shall be consistent with the land management plans. Those resource plans and permits, contracts, and other such instruments currently in existence shall be revised as soon as practicable to be made consistent with such plans. When land management plans are revised, resource plans and permits, contracts, and other instruments, when necessary, shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights.

(j) Effective date of land management plans and revisions

Land management plans and revisions shall become effective thirty days after completion of public participation and publication of notification by the Secretary as required under subsection (d) of this section.

(k) Development of land management plans

In developing land management plans pursuant to this subchapter, the Secretary shall identify lands within the management area which are not suited for timber production, considering physical, economic, and other pertinent factors to the extent feasible, as determined by the Secretary, and shall assure that, except for salvage sales or sales necessitated to protect other multiple-use values, no timber harvesting shall occur on such lands for a period of 10 years. Lands once identified as unsuitable for timber production shall continue to be treated for reforestation purposes, particularly with regard to the protection of other multiple-use values. The Secretary shall review his decision to classify these lands as not suited for timber production at least every 10 years and shall return these lands to timber production whenever he determines that conditions have changed so that they have become suitable for timber production.

(l) Program evaluation; process for estimating long-term costs and benefits; summary of data included in annual report

The Secretary shall--

(1) formulate and implement, as soon as practicable, a process for estimating long-terms \1\ costs and benefits to support the program evaluation requirements of this subchapter. This process shall include requirements to provide information on a representative sample basis of estimated expenditures associated with the reforestation, timber stand improvement, and sale of timber from the National Forest System, and shall provide a comparison of these expenditures to the return to the Government resulting from the sale of timber; and

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\1\ So in original. Probably should be ``long-term''.

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(2) include a summary of data and findings resulting from these estimates as a part of the annual report required pursuant to section 1606(c) of this title, including an identification on a representative sample basis of those advertised timber sales made below the estimated expenditures for such timber as determined by the above cost process; and \2\  

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\2\ So in original. The ``; and'' probably should be a period.

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- (m) Establishment of standards to ensure culmination of mean annual increment of growth; silvicultural practices; salvage harvesting; exceptions

The Secretary shall establish--

(1) standards to insure that, prior to harvest, stands of trees throughout the National Forest System shall generally have reached the culmination of mean annual increment of growth (calculated on the basis of cubic measurement or other methods of calculation at the discretion of the Secretary): Provided, That these standards shall not preclude the use of sound silvicultural practices, such as thinning or other stand improvement measures: Provided further, That these standards shall not preclude the Secretary from salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow or other catastrophe, or which are in imminent danger from insect or disease attack; and

(2) exceptions to these standards for the harvest of particular species of trees in management units after consideration has been given to the multiple uses of the forest including, but not limited to, recreation, wildlife habitat, and range and after completion of public participation processes utilizing the procedures of subsection (d) of this section.

(Pub. L. 93-378, Sec. 6, formerly, Sec. 5, Aug. 17, 1974, 88 Stat. 477, renumbered Sec. 6 and amended Pub. L. 94-588, Secs. 2, 6, 12(a), Oct. 22, 1976, 90 Stat. 2949, 2952, 2958.)

#### References in Text

The Multiple-Use Sustained-Yield Act of 1960, referred to in subsecs. (e) and (g), is Pub. L. 86-517, June 12, 1960, 74 Stat. 215, as amended, which is classified generally to sections 528 to 531 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 528 of this title and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (g)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (Sec. 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

#### Amendments

1976--Subsec. (a). Pub. L. 94-588, Sec. 12(a), substituted ``section 4'' for ``section 3'' in the original, which, because of the translation as ``section 1602 of this title'' required no change in text.

Subsecs. (c) to (m). Pub. L. 94-588, Sec. 6, added subsecs. (c) to (m).

#### Transfer of Functions

For transfer of certain enforcement functions of Secretary or other official in Department of Agriculture under this subchapter to Federal

Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 1601 of this title.

#### Revision of Forest Plans

Pub. L. 107-63, title III, Sec. 327, Nov. 5, 2001, 115 Stat. 470, provided that: ``Prior to October 1, 2002, the Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)(A)) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System. Nothing in this section exempts the Secretary from any other requirement of the Forest and Rangeland Renewable Resources Planning Act (16 U.S.C. 1600 et seq.) or any other law: Provided, That if the Secretary is not acting expeditiously and in good faith, within the funding available, to revise a plan for a unit of the National Forest System, this section shall be void with respect to such plan and a court of proper jurisdiction may order completion of the plan on an accelerated basis.''

Expeditious Completion of Management Plans of Forest Service and Bureau of Land Management; Continuation of Existing Plans; Judicial Review

Pub. L. 101-121, title III, Sec. 312, Oct. 23, 1989, 103 Stat. 743, provided that: ``The Forest Service and Bureau of Land Management are to continue to complete as expeditiously as possible development of their respective Forest Land and Resource Management Plans to meet all applicable statutory requirements. Notwithstanding the date in section 6(c) of the NFMA (16 U.S.C. 1600) [16 U.S.C. 1604(c)], the Forest Service, and the Bureau of Land Management under separate authority, may continue the management of lands within their jurisdiction under existing land and resource management plans pending the completion of new plans. Nothing shall limit judicial review of particular activities on these lands: Provided, however, That there shall be no challenges to any existing plan on the sole basis that the plan in its entirety is outdated, or in the case of the Bureau of Land Management, solely on the basis that the plan does not incorporate information available subsequent to the completion of the existing plan: Provided further, That any and all particular activities to be carried out under existing plans may nevertheless be challenged.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100-446, title III, Sec. 314, Sept. 27, 1988, 102 Stat. 1825.

Pub. L. 100-202, Sec. 101(g) [title III, Sec. 314], Dec. 22, 1987, 101 Stat. 1329-213, 1329-254.

Pub. L. 99-500, Sec. 101(h) [title II], Oct. 18, 1986, 100 Stat. 1783-242, 1783-268, and Pub. L. 99-591, Sec. 101(h) [title II], Oct. 30, 1986, 100 Stat. 3341-242, 3341-268.

#### Section Referred to in Other Sections

This section is referred to in sections 460oo, 460vv-4, 460hhh-4, 460jjj-1, 539d, 542d, 545a, 546a-1, 1611 of this title; title 42 section 8855; title 43 section 1752.

## **Title 36: Parks, Forests, and Public Property**

### **PART 219—PLANNING**

#### **Subpart A—National Forest System Land and Resource Management Planning**

**Authority:** 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

**Source:** 70 FR 1055, Jan. 5, 2005, unless otherwise noted.

##### **§ 219.1 Purpose and applicability.**

(a) The rules of this subpart set forth a process for land management planning, including the process for developing, amending, and revising land management plans (also referred to as plans) for the National Forest System, as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), hereinafter referred to as NFMA. This subpart also describes the nature and scope of plans and sets forth the required components of a plan. This subpart is applicable to all units of the National Forest System as defined by 16 U.S.C. 1609 or subsequent statute.

(b) Consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531), the overall goal of managing the National Forest System is to sustain the multiple uses of its renewable resources in perpetuity while maintaining the long-term productivity of the land. Resources are to be managed so they are utilized in the combination that will best meet the needs of the American people. Maintaining or restoring the health of the land enables the National Forest System to provide a sustainable flow of uses, benefits, products, services, and visitor opportunities.

(c) The Chief of the Forest Service shall establish planning procedures for this subpart for plan development, plan amendment, or plan revision in the Forest Service Directive System.

##### **§ 219.3 Nature of land management planning.**

(a) *Principles of land management planning.* Land management planning is an adaptive management process that includes social, economic, and ecological evaluation; plan development, plan amendment, and plan revision; and monitoring. The overall aim of planning is to produce responsible land management for the National Forest System based on useful and current information and guidance. Land management planning guides the Forest Service in fulfilling its responsibilities for stewardship of the National Forest System to best meet the needs of the American people.

(b) *Force and effect of plans.* Plans developed in accordance with this subpart generally contain desired conditions, objectives, and guidance for project and activity decisionmaking in the plan area. Plans do not grant, withhold, or modify any contract, permit, or other legal instrument, subject anyone to civil or criminal liability, or create any legal rights. Plans typically do not approve or execute projects and activities. Decisions with effects that can be meaningfully evaluated (40 CFR 1508.23) typically are made when projects and activities are approved.

##### **§ 219.4 National Environmental Policy Act compliance.**

(a) In accordance with 16 U.S.C. 1604(g)(1) this subpart clarifies how the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4346) (hereinafter referred to as NEPA) applies to National Forest System land management planning.

(b) Approval of a plan, plan amendment, or plan revision, under the authority of this subpart, will be done in accordance with the Forest Service NEPA procedures and may be categorically excluded from NEPA documentation under an appropriate category provided in such procedures.

(c) Nothing in this subpart alters the application of NEPA to proposed projects and activities.

(d) Monitoring and evaluations, including those required by §219.6, may be used or incorporated by reference, as appropriate, in applicable NEPA documents.

## **§ 219.7 Developing, amending, or revising a plan.**

(a) *General planning requirements.* (1) *Plan Documents or Set of Documents.* The Responsible Official must maintain a Plan Document or Set of Documents for the plan. A Plan Document or Set of Documents includes, but is not limited to, evaluation reports; documentation of public involvement; the plan, including applicable maps; applicable plan approval documents; applicable NEPA documents, if any; the monitoring program for the plan area; and documents relating to the EMS established for the unit.

(2) *Plan components.* Plan components may apply to all or part of the plan area. A plan should include the following components:

(i) *Desired conditions.* Desired conditions are the social, economic, and ecological attributes toward which management of the land and resources of the plan area is to be directed. Desired conditions are aspirations and are not commitments or final decisions approving projects and activities, and may be achievable only over a long time period.

(ii) *Objectives.* Objectives are concise projections of measurable, time-specific intended outcomes. The objectives for a plan are the means of measuring progress toward achieving or maintaining desired conditions. Like desired conditions, objectives are aspirations and are not commitments or final decisions approving projects and activities.

(iii) *Guidelines.* Guidelines provide information and guidance for project and activity decisionmaking to help achieve desired conditions and objectives. Guidelines are not commitments or final decisions approving projects and activities.

(iv) *Suitability of areas.* Areas of each National Forest System unit are identified as generally suitable for various uses (§219.12). An area may be identified as generally suitable for uses that are compatible with desired conditions and objectives for that area. The identification of an area as generally suitable for a use is guidance for project and activity decisionmaking and is not a commitment or a final decision approving projects and activities. Uses of specific areas are approved through project and activity decisionmaking.

(v) *Special areas.* Special areas are areas within the National Forest System designated because of their unique or special characteristics. Special areas such as botanical areas or significant caves may be designated, by the Responsible Official in approving a plan, plan amendment, or plan revision. Such designations are not final decisions approving projects and activities. The plan may also recognize special areas designated by statute or through a separate administrative process in accordance with NEPA requirements (§219.4) and other applicable laws.

(3) *Changing plan components.* Plan components may be changed through plan amendment or revision, or through an administrative correction in accordance with §219.7(b).

(4) *Planning authorities.* The Responsible Official has the discretion to determine whether and how to change the plan, subject to the requirement that the plan be revised at least every 15 years. A decision by a Responsible Official about whether or not to initiate the plan amendment or plan revision process and what issues to consider for plan development, plan amendment, or plan revision is not subject to objection under this subpart (§219.13).

(5) *Plan process.* (i) Required evaluation reports, plan, plan amendments, and plan revisions must be prepared by an interdisciplinary team; and

(ii) Unless otherwise provided by law, all National Forest System lands possessing wilderness characteristics must be considered for recommendation as potential wilderness areas during plan development or revision.

(6) *Developing plan options.* In the collaborative and participatory process of land management planning, the Responsible Official may use an iterative approach in development of a plan, plan amendment, and plan revision in which plan options are developed and narrowed successively. The key steps in this process shall be documented in the Plan Set of Documents.

(b) *Administrative corrections.* Administrative corrections may be made at any time and are not plan amendments or revisions. Administrative corrections include the following:

- (1) Corrections and updates of data and maps;
- (2) Corrections of typographical errors or other non-substantive changes;
- (3) Changes in the monitoring program and monitoring information (§219.6(b));
- (4) Changes in timber management projections; and
- (5) Other changes in the Plan Document or Set of Documents, except for substantive changes in the plan components.

(c) *Approval document.* The Responsible Official must record approval of a new plan, plan amendment, or plan revision in a plan approval document, which must include:

- (1) The rationale for the approval of the plan, plan amendment, or plan revision;
- (2) Concurrence by the appropriate Station Director with any part of the plan applicable to any experimental forest within the plan area, in accordance with §219.2(b)(3);
- (3) A statement of how the plan, plan amendment, or plan revision applies to approved projects and activities, in accordance with §219.8;
- (4) Science documentation, in accordance with §219.11; and
- (5) The effective date of the approval (§219.14(a)).

### **§ 219.9 Public participation, collaboration, and notification.**

The Responsible Official must use a collaborative and participatory approach to land management planning, in accordance with this subpart and consistent with applicable laws, regulations, and policies, by engaging the skills and interests of appropriate combinations of Forest Service staff, consultants, contractors, other Federal agencies, federally recognized Indian Tribes, State or local governments, or other interested or affected communities, groups, or persons.

(a) *Providing opportunities for participation.* The Responsible Official must provide opportunities for the public to collaborate and participate openly and meaningfully in the planning process, taking into account the discrete and diverse roles, jurisdictions, and responsibilities of interested and affected parties. Specifically, as part of plan development, plan amendment, and plan revision, the Responsible Official shall involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program. The Responsible Official has the discretion to determine the methods and timing of public involvement opportunities.

(1) *Engaging interested individuals and organizations.* The Responsible Official must provide for and encourage collaboration and participation by interested individuals and organizations, including private landowners whose lands are within, adjacent to, or otherwise affected by future management actions within the plan area.

(2) *Engaging State and local governments and Federal agencies.* The Responsible Official must provide opportunities for the coordination of Forest Service planning efforts undertaken in accordance with this subpart with those of other resource management agencies. The Responsible Official also must meet with and provide early opportunities for other government agencies to be involved, collaborate, and participate in planning for National Forest System lands. The Responsible Official should seek assistance, where appropriate, from other State and local governments, Federal agencies, and scientific and academic institutions to help address management issues or opportunities.

(3) *Engaging Tribal governments.* The Forest Service recognizes the Federal Government's trust responsibility for federally recognized Indian Tribes. The Responsible Official must consult with, invite, and provide opportunities for federally recognized Indian Tribes to collaborate and participate in planning. In working with federally recognized

Indian Tribes, the Responsible Official must honor the government-to-government relationship between Tribes and the Federal Government.

(b) *Public notification.* The following public notification requirements apply to plan development, amendment, or revision, except when a plan amendment is approved contemporaneously with approval of a project or activity and the amendment applies only to the project or activity, in which case 36 CFR part 215 or part 218, subpart A, applies:

(1) *When formal public notification is provided.* Public notification must be provided at the following times:

- (i) Initiation of development of a plan, plan amendment, or plan revision;
- (ii) Commencement of the 90-day comment period on a proposed plan, plan amendment, or plan revision;
- (iii) Commencement of the 30-day objection period prior to approval of a plan, plan amendment, or plan revision;
- (iv) Approval of a plan, plan amendment, or plan revision; and
- (v) Adjustment to conform to this subpart of a planning process for a plan, plan amendment, or plan revision initiated under the provisions of a previous planning regulation.

(2) *How public notice is provided.* Public notice must be provided in the following manner:

- (i) All required public notices applicable to a new plan, plan revision, or adjustment of any ongoing plan revision as provided at §219.14(e) must be published in the Federal Register and newspaper(s) of record.
- (ii) Required notifications that are associated with a plan amendment or adjustment of any ongoing plan amendment as provided at §219.14(e) and that apply to one plan must be published in the newspaper(s) of record. Required notifications that are associated with plan amendments and adjustment of any ongoing plan amendments (as provided at §219.14(e)) and that apply to more than one plan must be published in the Federal Register.
- (iii) Public notification of evaluation reports and monitoring program changes may be made in a manner deemed appropriate by the Responsible Official.

(3) *Content of the public notice.* Public notices must contain the following information:

- (i) *Content of the public notice for initiating a plan development, plan amendment, or plan revision.* The notice must inform the public of the documents available for review and how to obtain them; provide a summary of the need to develop a plan or change a plan; invite the public to comment on the need for change in a plan and to identify any other need for change in a plan that they feel should be addressed during the planning process; and provide an estimated schedule for the planning process, including the time available for comments, and inform the public how to submit comments.
- (ii) *Content of the public notice for a proposed plan, plan amendment, or plan revision.* The notice must inform the public of the availability of the proposed plan, plan amendment, or plan revision, including any relevant evaluation report; the commencement of the 90-day comment period; and the process for submitting comments.
- (iii) *Content of the public notice for a plan, plan amendment, or plan revision prior to approval.* The notice must inform the public of the availability of the plan, plan amendment, or plan revision; any relevant evaluation report; and the commencement of the 30-day objection period; and the process for objecting.
- (iv) *Content of the public notice for approval of a plan, plan amendment, or plan revision.* The notice must inform the public of the availability of the approved plan, plan amendment, or plan revision, the approval document, and the effective date of the approval (§219.14(a)).
- (v) *Content of the public notice for an adjustment to an ongoing planning process.* The notice must state how a planning process initiated before the transition period (§219.14(b) and (e)) will be adjusted to conform to this subpart.

### **§ 219.13 Objections to plans, plan amendments, or plan revisions.**

(a) *Opportunities to object.* Before approving a plan, plan amendment, or plan revision, the Responsible Official must provide the public 30 calendar days for pre-decisional review and the opportunity to object. Federal agencies may not object under this subpart. During the 30-day review period, any person or organization, other than a Federal agency, who participated in the planning process through the submission of written comments, may object to a plan, plan amendment, or plan revision according to the procedures in this section, except in the following circumstances:

(1) When a plan amendment is approved contemporaneously with a project or activity decision and the plan amendment applies only to the project or activity, in which case the administrative review process of 36 CFR part 215 or part 218, subpart A, applies instead of the objection process established in this section; or

(2) When the Responsible Official is an official in the Department of Agriculture at a level higher than the Chief of the Forest Service, in which case there is no opportunity for administrative review.

(b) *Submitting objections.* The objection must be in writing and must be filed with the Reviewing Officer within 30 days following the publication date of the legal notice in the newspaper of record of the availability of the plan, plan amendment, or plan revision. Specific details will be included in the Forest Service Directive System. An objection must contain:

(1) The name, mailing address, and telephone number of the person or entity filing the objection. Where a single objection is filed by more than one person, the objection must indicate the lead objector to contact. The Reviewing Officer may appoint the first name listed as the lead objector to act on behalf of all parties to the single objection when the single objection does not specify a lead objector. The Reviewing Officer may communicate directly with the lead objector and is not required to notify the other listed objectors of the objection response or any other written correspondence related to the single objection;

(2) A statement of the issues, the parts of the plan, plan amendment, or plan revision to which the objection applies, and how the objecting party would be adversely affected; and

(3) A concise statement explaining how the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy or how the objector disagrees with the decision and providing any recommendations for change.

(c) *Responding to objections.* (1) The Reviewing Officer (§219.16) has the authority to make all procedural determinations related to the objection not specifically explained in this subpart, including those procedures necessary to ensure compatibility, to the extent practicable, with the administrative review processes of other Federal agencies. The Reviewing Officer must promptly render a written response to the objection. The response must be sent to the objecting party by certified mail, return receipt requested.

(2) The response of the Reviewing Officer shall be the final decision of the Department of Agriculture on the objection.

(d) *Use of other administrative review processes.* Where the Forest Service is a participant in a multi-Federal agency effort that would otherwise be subject to objection under this subpart, the Reviewing Officer may waive the objection procedures of this subpart and instead adopt the administrative review procedure of another participating Federal agency. As a condition of such a waiver, the Responsible Official for the Forest Service must have agreement with the Responsible Official of the other agency or agencies that a joint agency response will be provided to those who file for administrative review of the multi-agency effort.

(e) *Compliance with the Paperwork Reduction Act.* The information collection requirements associated with submitting an objection have been approved by the Office of Management and Budget and assigned control number 0596-0158.

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TITLE 42--THE PUBLIC HEALTH AND WELFARE

CHAPTER 55--NATIONAL ENVIRONMENTAL POLICY

SUBCHAPTER I--POLICIES AND GOALS

Sec. 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall--

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as

provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.\1\

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\1\ So in original. The period probably should be a semicolon.

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(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

(Pub. L. 91-190, title I, Sec. 102, Jan. 1, 1970, 83 Stat. 853; Pub. L. 94-83, Aug. 9, 1975, 89 Stat. 424.)

#### Amendments

1975--Subpars. (D) to (I). Pub. L. 94-83 added subpar. (D) and

redesignated former subpars. (D) to (H) as (E) to (I), respectively.

#### Certain Commercial Space Launch Activities

Pub. L. 104-88, title IV, Sec. 401, Dec. 29, 1995, 109 Stat. 955, provided that: ``The licensing of a launch vehicle or launch site operator (including any amendment, extension, or renewal of the license) under chapter 701 of title 49, United States Code, shall not be considered a major Federal action for purposes of section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) if--

``(1) the Department of the Army has issued a permit for the activity; and

``(2) the Army Corps of Engineers has found that the activity has no significant impact.''

#### Section Referred to in Other Sections

This section is referred to in sections 2242, 2297h-5, 4334, 6508, 7153, 7274g, 7609, 8473, 9117, 10132, 10133, 10134, 10141, 10155, 10161, 10165, 10196, 10197 of this title; title 15 section 793; title 16 sections 410hh, 544o, 1379, 1536, 1604, 2403a, 3120, 3149, 3232; title 21 section 379o; title 23 sections 112, 133; title 25 sections 2103, 2104; title 30 sections 185, 226, 1147, 1292, 1419; title 33 section 1504; title 43 sections 1331, 1344, 1751, 2005, 2006; title 45 sections 791, 1116; title 49 sections 40128, 44715; title 50 App. sections 2095, 2096.

## **Title 40: Protection of Environment**

### **PART 1500—PURPOSE, POLICY, AND MANDATE**

#### **§ 1500.2 Policy.**

Federal agencies shall to the fullest extent possible:

- (a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.
- (b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.
- (c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.
- (d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.
- (e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.
- (f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

## **Title 40: Protection of Environment**

### **PART 1502—ENVIRONMENTAL IMPACT STATEMENT**

**Authority:** NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

**Source:** 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

#### **§ 1502.1 Purpose.**

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

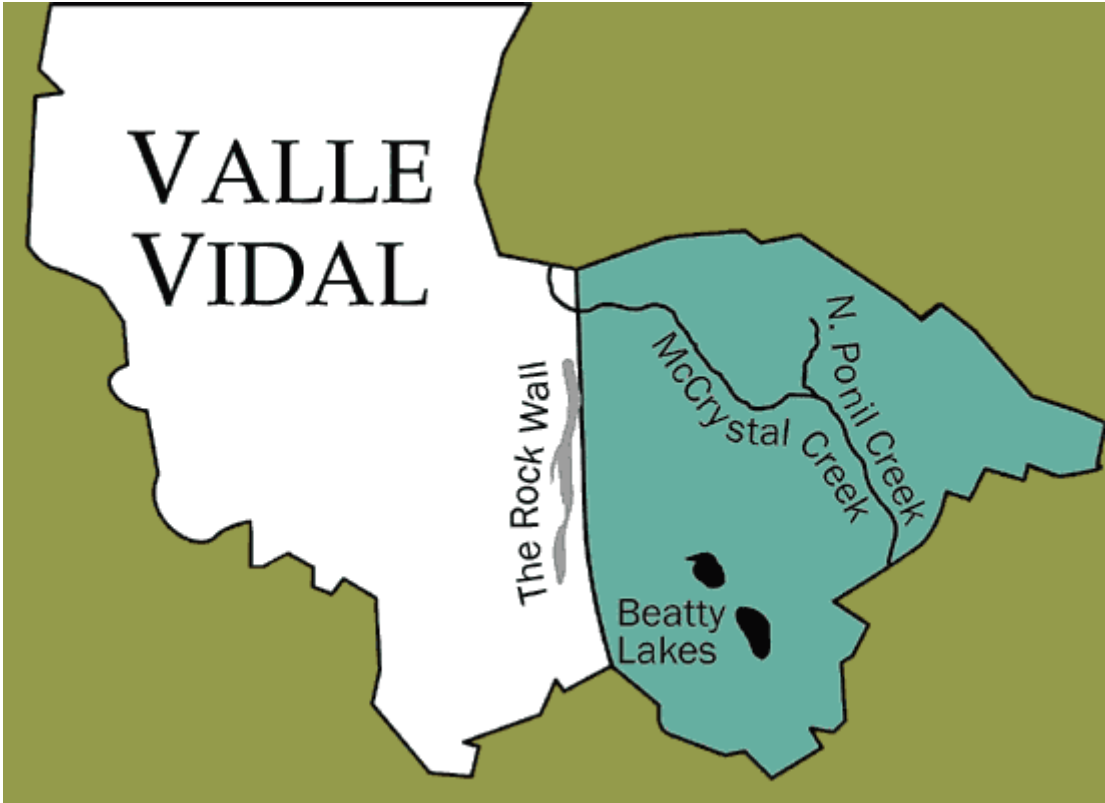
#### **§ 1502.2 Implementation.**

To achieve the purposes set forth in §1502.1 agencies shall prepare environmental impact statements in the following manner:

- (a) Environmental impact statements shall be analytic rather than encyclopedic.
- (b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.
- (c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.
- (d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.
- (e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.
- (f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§1506.1).
- (g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.



The green area in the map above represents the 101,000-acre Valle Vidal. The green area east of The Rock Wall in the close-up map below represents the 40,000 acres of the Valle Vidal that is proposed for coalbed methane gas development.



**IN THE SENATE OF THE UNITED STATES**

September 20, 2005 109th CONGRESS

1st Session

**S. 1734**

To establish the Valle Vidal National Preserve in the State of New Mexico.

Mr. BINGAMAN introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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**A BILL**

To establish the Valle Vidal National Preserve in the State of New Mexico.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Valle Vidal Preservation Act.'

**SEC. 2. FINDINGS.**

Congress finds that--

- (1) the Valle Vidal Unit of the Carson National Forest comprises approximately 100,000 acres of some of the finest scenic, wildlife, and outdoor recreational resources in New Mexico;
- (2) the Valle Vidal provides a home for a spectacular array of game and nongame wildlife, in a setting that uniquely allows for close public interaction;
- (3) the Valle Vidal provides an unparalleled opportunity to hunt world-class trophy elk among New Mexico's largest herd, drawing hunters from throughout the State, region, and the United States;
- (4) the Valle Vidal is an important component of efforts to recover the native Rio Grande cutthroat trout and provides miles of fish habitat prized by anglers;
- (5) the open meadows and sweeping vistas of the Valle Vidal are extraordinary for the region, allowing visitors to take in the expansive spaces filled with tall grass and thick patches of pine, spruce, and aspen;
- (6) the Valle Vidal comprises the headwaters of the Rio Costilla in the Rio Grande watershed, and numerous streams in the Canadian River drainage, making it an important source of fresh water for human and wildlife needs in New Mexico;
- (7) the Valle Vidal is an important part of New Mexico's ranching heritage and the local ranchers have worked cooperatively with the Forest Service to establish

a grazing program within the Valle Vidal that meets the needs of the ranchers, the wildlife, and visitors with notable sensitivity to protection of the natural resources;

(8) the wilds of the Valle Vidal provide an outstanding backcountry experience for enthusiasts, including the Scouts of the nearby Philmont Scout Ranch; and

(9) for these and other reasons, the Valle Vidal is treasured as a special place for New Mexicans justifying enhanced protection so future generations may enjoy the Valle Vidal.

### **SEC. 3. DEFINITIONS.**

In this Act:

(1) PRESERVE- The term `Preserve' means the Valle Vidal National Preserve.

(2) SECRETARY- The term `Secretary' means the Secretary of Agriculture.

(3) STATE- The term `State' means the State of New Mexico.

### **SEC. 4. VALLE VIDAL NATIONAL PRESERVE, NEW MEXICO.**

(a) Establishment- To preserve the wildlife, scenic, watershed, recreational, geological, educational, and scientific values of the Valle Vidal and to secure now and for future generations the opportunity to experience and enjoy the wonders of the area, there is established the Valle Vidal National Preserve.

(b) Boundaries- The boundaries of the Preserve shall be those of the Valle Vidal Unit of the Carson National Forest in existence on the date of enactment of this Act.

(c) Purpose- The purpose of the Preserve is to protect and enhance the values described in subsection (a) for current and future generations.

(d) Withdrawal- Subject to valid existing rights, the Federal land and interests in land included within the Preserve are withdrawn from--

(1) all forms of entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the public land mining laws; and

(3) operation of the mineral leasing and geothermal leasing laws and the mineral materials laws.

(e) Fish and Game-

(1) IN GENERAL- Except as provided in paragraph (2), nothing in this title affects the responsibilities of the State with respect to fish and wildlife, including the regulation of hunting, fishing, and trapping within the Preserve.

(2) NO HUNTING, FISHING, OR TRAPPING ZONES OR PERIODS- The Secretary may, in consultation with the State, designate zones where, and establish periods when, no hunting, fishing, or trapping shall be permitted in the Preserve for reasons of public safety, administration, the protection of nongame species and their habitats, or public use and enjoyment.

(f) Management-

(1) IN GENERAL- The Secretary shall manage the Preserve in a manner that conserves, protects, and enhances the resources and values of the Preserve (including the resources and values described in subsection (a)) pursuant to the

laws applicable to the National Forests and other applicable law, including this Act.

(2) USE- The Secretary shall allow only such uses of the Preserve as the Secretary finds will further the purposes for which the Preserve is established.

(3) LIMITATION ON USE OF MOTORIZED VEHICLES- Unless needed for administrative purposes or to respond to an emergency (as determined by the Secretary), use of a motorized vehicle in the Preserve shall be permitted only on roads specifically designated for such use by the Secretary.

## **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this Act.

*END*