



November 8, 2019

Ashley National Forest
Attention: Forest Plan Revision
355 North Vernal Avenue
Vernal, UT 84078-5118

Submitted electronically to: <https://cara.ecosystem-management.org/Public/CommentInput?Project=49606> and by email to AshleyForestPlan@fs.fed.us

Dear Ashley National Forest Plan Revision Team,

Please accept these comments on the May 2019 *Proposal to Revise the Land Management Plan for the Ashley National Forest*, (“Proposed Forest Plan” or “PFP”) and the supporting documents. Western Resource Advocates, on whose behalf I submit these comments, welcomes this chance to provide feedback, data and recommendations at this stage of the Ashley’s forest planning process.

From its offices across the Intermountain West, including Utah, Western Resource Advocates (WRA) works to protect our land, air and water to ensure that vibrant communities exist in balance with nature. We have as a goal that half of western landscapes and habitat will be protected and connected to support thriving wildlife populations and unparalleled opportunities to enjoy the West’s natural beauty. In furtherance of this mission, we have participated in forest planning processes throughout Utah and have provided comments during previous phases of the Ashley’s forest plan revision.

We make the following comments based on the requirements of the 2012 Planning Rule, 36 C.F.R. §§ 219.1 to 219.19, the best available scientific information and the desired conditions, objectives, standards and guidelines, goals and monitoring we believe are appropriate to achieve the directive of the planning rule – that the Forest Plan result in the protection and restoration of the ecological values of the Ashley National Forest.

I. The 2012 Planning Rule

As the Proposed Forest Plan itself acknowledges, the PFP must conform to the National Forest System Land Management Planning regulations, known as the 2012 Planning Rule. The planning rule requires the Forest Service to use public input and best available scientific data and analysis to inform its planning decisions. 77 Fed. Reg. 21162 (April 9, 2012). According to the Forest Service, the 2012 Planning Rule “contains a strong emphasis on protecting and enhancing water resources, restoring land and water ecosystems, and providing ecological conditions to support the diversity of plant and animal communities, while providing for ecosystem services and multiple uses.” 77 Fed. Reg. at 21163. Further, the planning regulation requires the Forest Service to identify priority watersheds for restoration. 77 Fed. Reg. at 21207.

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Thus, the final version of the Ashley Forest Plan should be based on the best available scientific information and robust public input and ultimately ensure that the Forest's ecological values, including air, soil and water resources and quality, are protected, restored and enhanced so that they support biodiversity, ecosystem services and multiples uses.

More specifically, Forest Service regulations mandate that the agency use "best available scientific information" as the foundation of its Forest Plan assessments, revision and monitoring. 36 C.F.R. § 219.3. Importantly, the Forest Service must actually "document how the best available scientific information was used to inform the assessment, the plan or amendment decision, and the monitoring program." 36 C.F.R. § 219.3. "Such documentation must...[i]dentify what information was determined to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered." 36 C.F.R. § 219.3. "Available" information is defined as information that "is currently and readily accessible."¹ FSH 1900.12, Chp. 10 at 7.

A plan's monitoring program is a critical component of a forest plan revision. The 2012 Planning Rule "require[s] monitoring of select watershed and ecosystem conditions, as well as progress toward meeting the plan's desired conditions and objectives." 77 Fed. Reg. at 21209. Specific to air, water and soil resources, the 2012 Planning Rule requires that a plan's monitoring program contain, *inter alia*, "one or more questions and associated indicators that address each of the following: (1) The status of select watershed conditions; (2) the status of select ecological conditions including key characteristics of terrestrial and aquatic ecosystems;... (6) measurable changes on the plan area related to climate change and other stressors affecting the plan area; (7) progress toward meeting the desired conditions and objectives in the plan, including for providing multiple use opportunities; and (8) the effects of each management system to determine that they do not substantially and permanently impair the productivity of the land." 77 Fed. Reg. at 21230. Further, the planning regulation establishes a connection among a plan's assessment, revision and monitoring elements – each phase must inform the other. Thus,

[t]he information gathered and evaluated in the assessment phase will help the responsible official to develop a strategic monitoring program, and the information from monitoring will be used to indicate whether a new assessment is warranted, and to inform future assessments and plan components and other plan content.

77 Fed. Reg. at 21231.

¹ The Forest Service explains the term "available" as referring to "information is currently and readily accessible by the Forest Service in a form useful for the planning process without further data collection, modification, or validation. If no available information exists for the topic areas described in 36 CFR 219.6(b), there is no requirement to begin new studies to acquire or develop such information." Forest Service Handbook 1900.12, Chp. 10 at 7.

II. Air, Soil, and Water Resources and Quality

The 2012 Planning Rule states that, among ecological values, a plan revision assessment must address air, soil and water resources and quality. 36 CFR 219.6(b)(2). The rule also specifies that a plan revision “must include plan components, including standards or guidelines, to maintain or restore” air quality, soils and soil productivity and water quality. 36 C.F.R. § 219.8(a)(2)(i)-(iii); *see also* (a)(1)(“The plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore structure, function, composition[.]”).

In the context of an ecological condition, the 2012 Planning Rule defines to “maintain” as “to keep in existence or continuance of the desired ecological condition in terms of its desired composition, structure, and processes” through active or passive management. 36 C.F.R. § 219.19. To “restore” means to renew by the “process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed.”² 36 C.F.R. § 219.19.

As the text of the 2012 planning rule makes plain, “standards and guidelines” are a mandatory element of a Forest Plan. 77 Fed. Reg. at 21208 (“Additionally, [36 C.F.R. § 219.8(a)(2)] was modified to add the term ‘standards or guidelines’ to clarify here and in similar sentences throughout §§ 219.8 through 219.11 that standards or guidelines must be part of the set of plan components developed to comply with requirements throughout the rule.”). The Forest Service defines “standards” as “mandatory constraints on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.” 36 C.F.R. § 219.7(e)(1)(iii); *see also* 36 C.F.R. § 219.7(e)(1)(iv) (defining a “guideline” as a “constraint on project and activity decisionmaking that allows for departure from its terms, so long as the purpose of the guideline is met.”). Guidelines are also intended “to help achieve or maintain a desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.” 36 C.F.R. § 219.7(e)(1)(iv).

The Forest Service has also made clear that the directive “to maintain or restore” encompasses the concept of the protection of ecological resources. 77 Fed. Reg. at 21208 (“The Department also changed the phrase ‘maintain, protect, or restore’ of the proposed rule to ‘maintain or restore’ here and throughout the final rule. This change...recognizes that the concept of protection is incorporated as part of how a responsible official accomplishes the direction to maintain or restore individual resources.”).

² “Ecological restoration focuses on reestablishing the composition, structure, pattern, and ecological processes necessary to facilitate terrestrial and aquatic ecosystems sustainability, resilience, and health under current and future conditions.” 36 C.F.R. § 219.19 (definition of restoration).

A. Air Quality

Assessment of Air Quality

The October 2017 *Assessment Report of Ecological, Social, and Economic Conditions on the Ashley National Forest* states that

[c]ompared to many areas in the country, air quality in and near the Ashley National Forest and Flaming Gorge National Recreation area is good to excellent.... The Ashley National Forest is in conformance with current national ambient air quality standards.

Assessment Report at 8. These statements appear to conflict with best available science.

First, the U.S. EPA designated the Uinta Basin as a marginal nonattainment area for the 2015 ozone standard, effective August 2018.³ 83 Fed. Reg. 25776, 25837 (June 4, 2018). The Uinta Basin Nonattainment Area is defined to include all lands in Duchesne and Uintah counties “below a contiguous external perimeter of 6,250 ft. in elevation...including mesas and buttes which may have an elevation greater than 6,250 ft., but which are surrounded on all sides by land lower than 6,250 ft.” *Id.* Therefore, almost all the Ashley National Forest is “in or near” the Uinta Basin Nonattainment Area. Without analysis that compares the boundaries of the Uinta Basin Nonattainment Area to the boundaries of the National Forest, the Forest Service cannot maintain that the Ashley is “in conformance with” the national ambient air quality standards (NAAQS).⁴ Indeed, the Forest Service appears to admit this, noting “[t]he nonattainment area includes some boundary portions of the Ashley National Forest along the foothills of the Uinta Mountains.” PPR at 9.

Second, as WRA explained in its August 2017 Comments, Utah, Duchesne and Uintah counties are also plagued by significant concentrations of fine particulate matter air pollution.⁵ Once again, readily available information indicates that the Ashley is “in or near” areas characterized by spikes in fine particulate matter air pollution.

The Forest Service also states that the Ashley “has limited local emissions sources, and predominantly very robust air dispersion.” Assessment Report at 8. However, elsewhere the Forest Service admits “[o]il and gas development in the South Unit has increased in the past decade, with a growing number of oil well pads and access routes.” Assessment Report at 21; *see also id.* at 45 (“Between 2009 and 2014 in the Duchesne-Roosevelt South Unit, the Berry

³ In its August 2017 comments on a similar statement made in the draft Assessment Report, WRA provided ample evidence that air quality in the Uinta Basin, including areas in and near the Ashley, was extremely poor – even at that time. WRA August 2017 Comments at 1-2. WRA hereby references and incorporates those comments herein.

⁴ The Forest Service states that “the lowermost 16 acres of Right Fork Antelope Canyon and lowermost 165 acres of Left Fork Antelope Canyon are below 6,500 feet.” ASWRR at 29.

⁵ WRA August 2017 Comments at 2.

Petroleum Company drilled more than 100 wells and constructed roads and well pads across their lease areas” and “future drilling or development of oil and gas on the Ashley National Forest would depend on future oil prices and other factors.”). The Forest Service also maintains that “oil and natural gas among other forms of energy extraction and tourism are **major** industries associated with the Ashley National Forest.” *Id.* at 74 (emphasis added). Oil and gas development is a significant source of air pollution and is the chief cause of the harmful levels of ozone air pollution found in the Uinta Basin Nonattainment Area.⁶

There are also 1,472 miles of roads on the Ashley National Forest Service. Assessment Report at 99. Vehicles traveling on roads are a significant source of fugitive dust, air pollution that causes substantial local and regional impacts.⁷

Yet, the Forest Service does not discuss or quantify emissions from activities on the Forest, including emissions from the “major” oil and gas industry and the use of roads on the Ashley.⁸ Similarly, while the agency anticipates increases in oil and gas industry and the use of the Ashley’s roads, it does not seem to acknowledge and therefore address these local threats to air quality on the Forest.

Thus, the Forest Service may lack the basis to state that “[t]he greatest threat to air quality on the Ashley is from human-generated sources outside the national forest.” Assessment Report at 11. The agency fails to consider that emissions from oil and gas development and other mineral development and the use of paved unpaved roads **on** the Forest are considerable sources of emissions and sources that they agency may be in a better position to control. The Forest Service should acknowledge and attempt to quantify these emissions and consider what it can do to minimize air pollution from these sources.

The Forest Service acknowledges that “[a]ll areas of the Ashley National Forest are considered Class II areas, including the High Uintas Wilderness.” Assessment Report at 10. That the entire Ashley is a Class II airshed is important because the protections afforded Class II areas apply across the Forest, in addition to the High Uintas.

⁶ <https://deq.utah.gov/air-quality/ozone-in-the-uinta-basin> (“Increased oil and gas exploration and production in the Uinta Basin has contributed to the increase in the precursor gases that lead to the formation of ozone.”).

⁷ *E.g.* https://www.nrs.fs.fed.us/pubs/gtr/gtr_ne25/gtr_ne25_295.pdf (“By far the most significant contributor of fugitive dust to the total suspended particulate burden is vehicular travel on paved and unpaved surfaces.”); https://www.wrapair.org/forums/dejf/fdh/content/FDHandbook_Rev_06.pdf at 1-11.

⁸ The Forest Service “suggests,” without citation, that dust in the High Uintas is not local. September 2017 *Air, Soil and Watershed Resources Report* at 32. However, this assertion does not appear to apply to other parts of the Forest where the use of paved and unpaved roads likely has a significant local and regional impact on air quality and air quality related values.

The Forest Service admits that the deposition of nitrogen and phosphorous is having an adverse effect on water chemistry and possibly aquatic organisms on the Ashley. Assessment Report at 11. The agency states that this “deposition of nutrients is traced to upwind and surrounding sources.” *Id.* It is unclear what the agency means by “surrounding sources,” but this statement suggests that local activities are harming Forest values including water quality. The sources of nutrient deposition are important to identify and this information is critical to ensuring that the Forest Plan Revision is successful in restoring these degraded water bodies and the ecological values they embody.

The September 2017 *Air, Soil and Watershed Resources Assessment Report* (ASWRR) states that in “Utah, air pollution is regulated by the Department of Environmental Quality’s Division of Air Quality.”⁹ This statement is misleading. Actually, the U.S. Environmental Protection Agency implements the Clean Air Act on all Indian Country in Utah and so regulates air pollution in much of the Uinta Basin.¹⁰

The Connection Between the Assessment and the Plan Revision

As mentioned above, the 2012 Planning Rule requires the Forest Service to “document how the best available scientific information was used to inform the assessment, the plan or amendment decision, and the monitoring program.” 36 C.F.R. § 219.3. This explanation is largely or completely missing from the Proposed Plan Revision and supporting documents.

In the case of air quality, the best available science indicates that air quality in and near the Ashley is poor – the Uinta Basin is not meeting the 2015 ozone NAAQS and has been declared a nonattainment area and the Ashley is being impacted by emissions from the Wasatch Front, which is also plagued by poor air quality. At the same time, emissions from activities on the Ashley, including from oil and gas development and the use of Forest roads, appear to be having a direct and cumulative negative impact on air quality and on ecological values sensitive to air pollution.

We suggest that the Forest Service explain how its assessment of air quality in and near the Ashley has informed the Proposed Plan Revision. This is particularly important because the Forest Service has identified or should identify air quality impacts from management activities on the Forest that, individually or when combined with existing air pollution, threaten ecological values on the Ashley. In this context, we suggest that the Forest Service explain how the actions and management decision it can take will serve to maintain, protect and restore air quality and the ecological and other values on the Forest sensitive to air pollution.

⁹ September 2017 Air, Soil and Watershed Assessment at 11.

¹⁰ 83 Fed. Reg. at 25838, fn. 3; *see also* <https://deq.utah.gov/communication/state-of-the-environment-report/uinta-basin-2018-state-of-the-environment-report-aq> (“Approximately two-thirds of currently producing oil and gas wells — ninety percent of the gas production and half of the oil production in the Uinta Basin — are located in Indian Country where the tribe and EPA have regulatory authority.”).

The Proposed Plan Revision

Also as discussed above, a plan revision “must include plan components, including standards or guidelines, to maintain or restore” air quality. 36 C.F.R. § 219.8(a)(2)(i). We suggest that the Proposed Plan Revision more specifically meet these requirements.

The Forest Service proposes as a desired condition: “Ambient air quality across the Ashley National Forest complies with Federal and State standards, and State air quality management plans.” PPR at 10. Initially, this provision should reference **federal** and state air quality management plans, known as “implementation plans,” as EPA will likely be completing a “Federal Implementation Plan” for the Uinta Basin.

The Forest Service proposes as a desired condition: “The overall air quality supports human and ecosystem health, visibility, recreation, multiple-use and wilderness values – recognizing that short-term smoke impacts may periodically occur from wildland fire events on the Ashley National Forest.” A subsequent desired condition states: “Annual deposition of air pollutants is below published critical loads or levels for targeted resources on the Ashley National Forest.” PPR at 10.

Initially, it is unclear what is meant by “overall.” Second, as the 2012 Planning Rule requires the maintenance, protection and restoration of Forest ecological values, the term “support” might be replaced with the phrase “maintains, protects and restores.”

Third, we suggest that this provision be expanded to more thoroughly address the maintenance, protection and restoration of the High Uintas Wilderness Area and other sensitive areas of the Forest. Because ecological values in these areas, including plant communities, soils, water quality and visibility, are being and could be harmed by the direct, indirect and cumulative impacts of air pollution, the Forest Plan should ultimately maintain and restore these values, including by protecting them from air pollution. This requirement should be reflected as a desired condition.

Such an approach is further warranted under the 1964 Wilderness Act, which identified management goals for both Class I and Class II Wilderness Areas. The Act requires the Forest Service to administer Wilderness Areas “for the use of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness.” National Forest System Wilderness Implementing Regulations state further that “Wilderness Resources shall be managed to promote perpetuate and where necessary restore the wilderness character of the land.” As the Forest Service acknowledges, the “Wilderness Act mandates that wilderness areas, regardless of Clean Air Act designation, are to be managed to preserve and protect wilderness character (including air quality) and natural wilderness conditions.” PPR at 9.

Thus, we further suggest that the Ashley establish air quality related values (AQRVs) and wilderness air quality values (WAQVs) for the High Uintas and other areas of the Forest.

Monitoring AQRVs and WAQVs will help determine whether air pollution is harming ecosystem health and ecosystem values such as soils and water quality. In addition, both air chemistry and atmospheric deposition monitoring are necessary to establish linkages between air pollution and any change to ecosystem health and values. “Published critical loads or levels for targeted resources” should be defined and Forest Service research and analysis cited.

The only air quality guideline is as follows:

Forest Service management actions should not cause or contribute to exceeding ambient air quality standards or reductions in visibility that could impede States’ demonstrations of reasonable progress toward air quality goals. To this end, forest management decisions and actions, subject to State and Federal air quality rules and permitting, should consider and incorporate best available control technology on new projects and best available retrofit technology on existing projects under new review.

PPR at 10.

Again, this provision is improperly restricted to state air quality goals and fails to acknowledge that EPA will be implementing the Clean Air Act throughout much of the Uinta Basin. Second, it is unclear what the phrase “subject to State and Federal air quality rules and permitting” modifies. It is also unclear what authority the Forest Service has to require retrofit technology on “existing projects” and whether and when any “existing projects” will be under “new review.” We suggest that in addition to technology, this provision refer to “controls.”

We suggest the following as an appropriate “**standard**.”

The Forest Service will ensure that its Forest management decisions and actions minimize emissions of air pollution, including fugitive dust. The Forest Service will, to the extent its authority allows, require best available control technology and controls for new projects and best available retrofit technology and controls on existing projects.

We also suggest that the following be added as “**desired conditions**” this section:

Ambient air is of sufficient quality to maintain, protect and restore air quality related values (AQRVs), wilderness air quality values (WAQVs), visibility, human and ecosystem health, high quality recreation, and multiple use values.

Activities do not cause or contribute to violations of federal air quality standards, regulations or requirements, are in compliance with applicable state and/or federal implementation plans, protect and do not consume Class I and Class II increment and maintain and restore AQRVs/WAQVs.

Night skies are clear and dark, providing for stargazing.

We also suggest that the following be added as “**standards**” this section:

Emissions of air pollution, including fugitive emissions, from land management activities and projects are eliminated or minimize to the greatest extent possible, including by employing appropriate design features and requiring available mitigation and control measures and technology.

Greenhouse gas emissions from land management activities and other activities on the Forest are minimized.

Wildland fuel loadings resemble natural range of variation conditions in order to reduce the potential for harmful effects on air quality from high intensity wildfires.

Monitoring

We suggest the following **monitoring program** components:

Question:

Is air quality of sufficient quality to maintain, protect and restore air quality related values (AQRVs), wilderness air quality values (WAQVs), visibility, human and ecosystem health, high quality recreation, and multiple use values.

Monitoring Requirements:

Establish for High Uintas Wilderness Area: 1) AQRVs/WAQVs to represent resources that may be adversely impacted by a change in air quality; 2) one or more sensitive receptor(s) to indicate any trends in the condition of each AQRV/WAQV; 3) a protocol for monitoring the sensitive receptors; and, 4) the baseline condition of each AQRV/WAQV based on monitoring of and reporting on each sensitive receptor.

Every subsequent year, monitor and report on each sensitive receptor as a means of establishing any trends in the condition of each Wilderness AQRV/WAQV.

Establish for two additional representative sensitive Class II areas in different districts of the Ashley: 1) AQRVs to represent resources that may be adversely impacted by a change in air quality; 2) one or more sensitive receptor(s) to indicate any trends in the condition of each AQRV; 3) a protocol for monitoring the sensitive receptors; and, 4) the baseline condition of each AQRV, based on monitoring of and reporting on each sensitive receptor.

Every subsequent year, monitor and report on each sensitive receptor as a means of establishing any trends in the condition of each Class II AQRV.

Question:

Are activities causing or contributing to violations of federal air quality standards, regulations or requirements and are activities in compliance with applicable state and/or federal implementation plans, protecting Class I and Class II increment and safeguarding AQRVs/WAQVs?

Monitoring Program:

Establish at least one long-term a monitoring site to record year-round meteorological conditions, wet and dry deposition, hourly ozone concentrations and hourly concentrations and the composition and origin of particulate matter.

Every subsequent year, report on monitoring as a means of establishing any trends in the condition of air quality on the Ashley.

B. Soils

The 2012 Planning Rule specifies that a plan revision “must include plan components, including standards or guidelines, to maintain or restore...soils and soil productivity, including guidance to reduce soil erosion and sedimentation.” 36 C.F.R. § 219.8(a)(2)(ii); *see also* (a)(1)(“The plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore structure, function, composition[.]”).

The Forest Service’s first guideline focuses on keeping “detrimental soil disturbance” at or below 15% of the area impacted by vegetation management activities. PPR at 12. The guideline further appears to allow this detrimental soil disturbance to remain in perpetuity. *Id.* Contrary to the planning regulation, this provision does not “reduce soil erosion and sedimentation,” but rather authorizes it to occur. Moreover, this guideline does not ultimately protect, maintain and restore soils and soil productivity. Further, this guideline applies equally to sensitive soils, thereby increasing the chances that it will result in long term adverse impacts to soils.

The second soil guideline states:

Areas occupied by landings, temporary roads and main skid trails within timber projects and timber sales should establish in post-project reclamation a minimum of 60 percent effective ground cover for distances needed (project-specific) to protect soil resources from erosion and prevent recreational use.

PPR at 12. Again, this guideline does not establish a timeline for protecting, maintaining and restoring the 40% of the area that may not have effective ground cover. As a result and contrary to the planning regulation, this provision does not “reduce soil erosion and sedimentation,” but rather authorizes it to occur. Moreover, this guideline does not ultimately protect, maintain and

restore soils and soil productivity. Further, this guideline applies equally to sensitive soils, thereby increasing the chances that it will result in long term adverse impacts to soils.

The soil guidelines also include the following: “Ground-based mechanical equipment for vegetation management should not operate in areas where sustained grades exceed 40 percent in order to minimize the likelihood of soil displacement and erosion.” PPR at 13. To avoid confusion, this guideline should be mandatory. The agency also proposes as a guideline: “Incorporate design features or mitigation measures to reduce impacts of management actions (compaction, displacement, increased bare soil) on sensitive soils.” PPR at 13. Because the 2012 Planning Rule requires protection of all soils and mandates that standards and guidelines be developed and implemented to reduce soil erosion and sedimentation, this provision should apply to all soils, not just “sensitive” soils.

C. Water Quality

The first “purpose and need” of the 2012 Planning Rule is to “[e]mphasize restoration of natural resources to make our NFS lands more resilient to climate change, protect water resources, and improve forest health.” 77 Fed. Reg. at 21164. Second, the Forest Service underscores that the planning rule must lead to the sustainable management of the Forest, stressing that forest plans must be responsive and adaptive “to issues such as the challenges of climate change; the need for forest restoration and conservation, watershed protection, and species conservation; and the sustainable use of public lands to support vibrant communities.” 77 Fed. Reg. at 21163.

The rule also specifies that a plan revision “must include plan components, including standards or guidelines, to maintain or restore” water quality and “water resources in the plan area, including lakes, streams, and wetlands; ground water; public water supplies; sole source aquifers; source water protection areas; and other sources of drinking water (including guidance to prevent or mitigate detrimental changes in quantity, quality, and availability).” 36 C.F.R. § 219.8(a)(2)(iii)–(iv); *see also* (a)(1) (“The plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore structure, function, composition[.]”).

Water Quality Assessment

In order to fulfill these requirements, the Proposed Plan Revision must: 1) detail which waters on the Ashley are failing to meet Utah and Wyoming water quality standards and why those standards are not being met; 2) describe those waters for which monitoring data is unavailable; and, 3) identify, specify the condition of and prioritize protection and restoration of watersheds that provide drinking water or that are recharge zones for aquifers that provide drinking water. However, the various assessments do not provide this information. As a result, the Proposed Plan Revision cannot meet the requirements of the 2012 Planning Rule.

The Forest Service mentions that the Ashley contains sources of drinking water and claims that this information is not open to the public. ASWRR at 84. However, the Forest Service can determine the condition of these sources and the protections afforded them and determine whether additional management safeguards are necessary all publically and all without revealing the location of these sources. Moreover, if the agency is going to claim that critical information may not be disclosed to the public, the agency should provide citation for this assertion and construe it narrowly so as to avoid impairing opportunities for meaningful public participation in the forest planning process.

The Forest Service mentions Utah’s Integrated Reports but fails to identify waters on the Ashely that are not meeting their beneficial uses. ASWRR at 85-87. The agency fails to reference the most recent Utah Integrated Report – which is the 2016 Report.¹¹ The Forest Service fails to provide any information on whether the streams and other water bodies on the Forest are meeting state water quality standards and whether the streams and other water bodies are listed as impaired on the Utah and/or Wyoming 303(d) lists of impaired waters.

The Forest Service mentions 303(d) listing as being a factor in determining watershed condition, ASWRR at 93-94 & 97, but fails to map these impaired waters, explain how this impairment is considered in the overall assessment and fails to draw the connection, if any, between impaired uses and other watershed conditions such as road proximity, road maintenance, oil and gas development, livestock grazing and riparian vegetation condition.

The Forest Service fails to specify the Utah Water Quality Standards applicable to the Ashley. By rule, all waters in the Ashley National Forest in Utah, have been designated as Category 1 waters. Utah Admin. Code R317-2-12.1. In Utah, “Category 1” waters are given the same protections granted to Outstanding National Resources Waters under the federal antidegradation policy. Utah Admin. Code R317-2-3.2. Category 1 waters are of exceptional recreational or ecological significance and shall be maintained at existing high quality. *Id.* To achieve this end, no “new” point source discharges shall be allowed into Category 1 waters and nonpoint sources shall be controlled to the extent feasible through implementation of best management practices or and regulatory programs. *Id.*¹² The Proposed Plan Revision must ultimately ensure that Forest Service management activities and decisions comply with this Utah water quality standard.

The Connection Between the Assessment and the Plan Revision

As mentioned above, the 2012 Planning Rule requires the Forest Service to “document how the best available scientific information was used to inform the assessment, the plan or amendment

¹¹ <https://documents.deq.utah.gov/water-quality/monitoring-reporting/integrated-report/DWQ-2017-004941.pdf>

¹² “Discharges may be allowed where pollution will be temporary and limited after consideration of the factors in R317-2-3.5.b.4, and where best management practices will be employed to minimize pollution effects.”

decision, and the monitoring program.” 36 C.F.R. § 219.3. This explanation is largely or completely missing from the Proposed Plan Revision and supporting documents.

In the case of water quality, the best available science indicates that many waters in the Ashley are failing to support their beneficial uses and are not meeting state water quality standards. ASWRR at 93-97. For this and other reasons, many watersheds on the Ashley are functioning at risk or at impaired function. *Id.* Moreover, because Utah Water Quality Standards prohibit the degradation of the high quality of waters in the Forest, it is plain that water quality standards are not being met on the Ashley. *Id.* At the same time, water quality impairment on the Ashley is having a direct, indirect and cumulative negative impact on water resources, watershed health, drinking water sources and other ecological values.

We suggest that the Forest Service explain how its assessment of water quality on the Ashley has informed the Proposed Plan Revision. This is particularly important because the Forest Service has identified or should identify water quality impacts from management activities on the Forest that, individually or when combined with existing water quality impairments, threaten ecological values on the Ashley. In this context, we suggest that the Forest Service explain how the actions and management decision it can take will serve to maintain, protect and restore water quality and the ecological and other values on the Forest dependent on high water quality.

The Proposed Plan Revision

Included among the relevant desired conditions is the following: “Water quality (including groundwater) meets or exceeds State and Federal standards and fully supports designated and existing beneficial uses, where attainable. Aquifers possessing groundwater that provide designated beneficial uses maintain water quality at natural or background levels.” PPR at 15.

This condition is misleading because unless a state undertakes a so-called use attainability analysis as described by 40 C.F.R. § 131.10(g), the state may **not** modify a water’s designated use. Therefore, unless and until a use attainability analysis is completed and serves to justify a decision, it must be assumed that a designated beneficial use is attainable. For the same reason, in the absence of a use attainability analysis, the beneficial use of a water is its designated use and not its existing use, to the extent the two differ. Further, there are also state water quality standards for aquifers that must be met independently of whether the aquifer “provide[s] designated beneficial uses.”

We suggest the following “**desired conditions:**”

All waters bodies, including aquifers, are meeting state and federal water quality standards and the water quality of these waters is fully supporting their designated uses. Water quality is maintained or improved as necessary to meet state and federal water quality standards.

The high quality of all surface waters (Category I waters) is maintained or restored. No surface waters (Category I waters) are degraded and the essential character or designated use that makes the water a Category I water is protected. No point source discharges are permitted.

We suggest the following “**objectives**” relating to water quality:

Protocols for monitoring all surface waters (Category I waters) are developed and implemented to provide baseline water quality data and to ensure that existing water quality is maintained or improved and is not degraded.

Degraded or impaired waters are identified and prioritized for the restoration and a schedule for restoration is adopted.

Within five years of the implementation of the Revised Forest Plan, plans are in place for half the water bodies currently listed as impaired. These plans will ensure significant progress toward water of sufficient quality to fully support beneficial uses and to meet water quality standards for all pollutants and parameters.

Within fifteen years of the implementation of the Revised Forest Plan, plans are in place for all the water bodies listed as impaired. These plans will ensure significant progress toward water of sufficient quality to fully support relevant beneficial uses and to meet water quality standards for all pollutants and parameters.

We suggest the following “**standards**” relating to water quality:

All Forest Service management activities and decisions result in restoration or maintenance of water quality and no management activities or decisions serve to degrade water quality.

Management activities with the potential to impact public water supplies, in drinking water source water protection areas or in recharge zones for aquifers that serve as drinking water sources are consistent with applicable source water protection plans, requirements and goals and ultimately protect, restore and eliminating risk to drinking water supplies and prevent detrimental changes in quantity, quality, and availability of drinking water.

Monitoring

We suggest the following **monitoring program** components to maintain and restore water quality:

Question:

Is the quality of surface waters meeting state water quality standards and fully supporting designated uses? Are drinking water sources being protected and restored?

Monitoring Requirements:

In coordination with state water quality agencies, a water quality monitoring plan with sufficient sampling frequencies to determine water quality baseline and water quality trends in all surface water bodies is developed and implemented.

Every subsequent year, report on monitoring as a means of establishing any trends in the condition of water quality on the Ashley.

Question:

Is significant progress toward achieving water of sufficient quality to fully support designated beneficial uses and to meet water quality standards for all pollutants and parameters being made for any impaired waters?

Monitoring Requirements:

In coordination with state water quality agencies, undertake a water quality monitoring plan with sufficient sampling frequencies to determine water quality trends for the surface waters for which plans designed to improve water quality have been developed and implemented.

Every subsequent year, report on monitoring as a means of establishing any trends in the water quality of the targeted waters on the Ashley.

III. Riparian Areas

In addition to the requirements listed above, the 2012 Planning Rule

adds specific requirements to the proposed rule to maintain or restore riparian areas. It provides that plan components must maintain or restore the ecological integrity of riparian areas, including 'structure, function, composition and connectivity,' to make clear that the plan must provide direction for proactive management of riparian areas.

77 Fed. Reg. at 21208.

As a result of this directive, we suggest the following “**desired conditions**” for riparian areas:

Riparian areas are maintained and restored, including by maintaining, protecting and restoring the ecological integrity and the structure, function, composition and connectivity of these areas.

The Proposed Plan Revision establishes the widths of riparian management zones. PPR at 17. In doing so, the Forest Service should acknowledge the connection between the protection of water quality and riparian areas. Therefore, where water quality is impaired or the high quality of surface waters on the Ashley has been degraded, the widths of riparian management zones should be increased as a means for maintaining and restoring water quality. Similarly, where an area is characterized by disturbed or erodible soils, widths of riparian zones should be increased as a means for maintaining and protecting riparian areas and water quality. This approach will further the requirement of the 2012 Planning Rule to maintain, protect and restore riparian areas and otherwise meet the goals of the rule relative to soils, water resources and water quality.

The Proposed Plan Revision also allows the widths of riparian zones to be decreased based on site-specific data. PPR at 16. Such a broad exception fails to comply with the 2012 Planning Rule mandate that a plan revision ensures that the ecological integrity of riparian areas, including their structure, function, composition and connectivity, are maintained, protected and restored.

In addressing the construction of roads, the Proposed Plan Revision states that construction of new roads, temporary roads, and motorized trails could occur in riparian management zones “where necessary for stream/riparian management zone crossings.” PPR at 17. It is unclear what this means. In any case, such a broad exception fails to comply with the 2012 Planning Rule mandate that a plan revision ensures that the ecological integrity of riparian areas, including their structure, function, composition and connectivity, are maintained, protected and restored.

Another exception would allow construction of roads in riparian management zones “where construction or relocation from another area would contribute to attainment of aquatic and riparian desired conditions[.]” PPR at 17. This exception would improperly allow the construction of a road in a riparian management zone that would threaten the riparian area simply because the construction in or relocation from another area would “contribute” to attainment of aquatic and riparian desired conditions. In such a case, the harm caused by the intrusion into the riparian management zone could far outweigh any benefits gained. Sacrificing the riparian area in such a way would be contrary to the 2012 Planning Rule.

Thank you for considering these comments as you undertake the next stages of the forest plan revision process for the Ashley National Forest. Please do not hesitate to contact me to discuss these comments or if you have questions concerning our concerns and suggestions.

A handwritten signature in black ink, appearing to read 'Joro Walker', with a large, stylized initial 'J'.

Joro Walker
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