WESTERN RESOURCE ADVOCATES

PROTECTING THE WEST'S LAND, AIR, AND WATER

February 17, 2022

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*

Re: Comments on Ashley National Forest Plan Revision (EIS No. 20210176, Draft, USFS, UT).

Dear Ashley National Forest Plan Revision Team,

Please accept these comments on the December 2021 Draft Environmental Impact Statement (Draft EIS) and Draft Ashley National Forest Plan Revision (Draft Forest Plan) 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.

Arizona
1429 North First Street
Suite 100
Phoenix, AZ 85004

Colorado - Boulder
2260 Baseline Road
Suite 200
Boulder, CO 80302

Colorado - Denver
1536 Wynkoop Street
Suite 210
Denver, CO 80202

Nevada
550 W. Musser Street
Suite G
Carson City, NV 89703

New Mexico
409 E. Palace Avenue
Unit 2
Santa Fe, NM 87501

Utah
307 West 200 South
Suite 2000
Salt Lake City, UT 84101

## I. Watershed and Aquatic Resources

### 1. America the Beautiful

For years, the best available science has confirmed that safeguarding half of our nation's land and water is necessary to the long-term viability of wildlife and key to addressing climate change. As science instructs, achieving the interim "30 by 30" goal – protecting 30 percent of the country's land and water by 2030 – is a vital mechanism for conserving biodiversity and an essential response to the global extinction crisis. 30 by 30 is also a critical marker on the road toward a carbon-free future because natural landscapes and seascapes are powerful carbon sinks, pulling $CO_2$ from the atmosphere and storing carbon in soil, grasses, shrubs, and trees, coral reefs, sea grasses, and ocean floor sediments.

30 by 30 is now the official policy of this administration. In January, the President issued an Executive Order directing the Secretaries of the Interior, Agriculture, and Commerce to "identif[y] strategies that will encourage broad participation in the goal of conserving 30 percent of our lands and waters by 2030."[1] On May 6, 2021, in a 24-page report, a quartet of federal agencies released a broad outline to achieve the President's vision. With the announcement, the White House and the federal agencies tasked with overseeing the 30 by 30 initiative – now called the "America the Beautiful" campaign – established a blue print for responding to significant threats to wildlife, water and climate and realizing 30 by 30 objectives:

> President Biden has challenged all of us as Americans to join together in pursuit of a goal of conserving at least 30 percent of our lands and waters by 2030. The ambition of this goal reflects the urgency of the challenges we face: the need to do more to safeguard the drinking water, clean air, food supplies, and wildlife upon which we all depend; the need to fight climate change with the natural solutions that our forests, agricultural lands, and the ocean provide; and the need to give every child in America the chance to experience the wonders of nature.[2]

Plainly, the 1.4 million acres of the Ashley National Forest represent lands and waters of incredibly high, untapped conservation potential and the Forest Plan revision will determine how these public lands are managed for the next twenty-five or more years. Management decisions will affect land and water designations, watershed and forest health, extractive industry use, grazing, and other resource consumptive practices and should contribute to the realization of 30 by 30 goals.

Given the scale and urgency of the dual crisis of climate change and mass species extinction and in keeping with the directives of this administration, it is necessary to adopt a Forest Plan that furthers the goals of 30 by 30 including by protecting and restoring watershed health, improving

[1] Exec. Order No. 14008, 86 Fed. Reg. 7,619 (Jan. 27, 2021).
[2] Conserving and Restoring America the Beautiful, 2021at 6.
https://www.doi.gov/sites/doi.gov/files/report-conserving-and-restoring-america-the-beautiful-

water quality and safeguarding water resources, including drinking water sources. The conservation and restoration of watersheds, water quality and water resources, along with other 30 by 30 aims will be further fostered by a Forest Plan that minimizes and reclaims surface disturbances and activities and maximizes meaningful wildlife habitat, wilderness, roadless and wild and scenic protections.

**2. The 2012 Planning Rule**

There is no question that restoration and maintenance of watersheds, water quality and water resources is a fundamental goal of Forest Planning. According to the Forest Service, the 2012 Planning Rule that dictates the development of a Forest Plan "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.

More specifically, a Forest Plan must include

> plan components, including standards or guidelines, to maintain or restore…[w]ater quality [and] [w]ater 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) and (iv); see also 36 C.F.R. § 219.8(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[.]").[3]

Further, the 2012 Planning Rule recognizes that providing both ecosystem services and multiple uses entails consideration of the unparalleled value of watersheds, water supplies and water quality to functioning and sustainable economies.

> When developing plan components, the Responsible Official shall take into account watersheds that contribute to local, regional, and national economies in a sustainable manner (§ 219.8(b)(3)) and consider surface and subsurface water quality (§ 219.10(a)(1)). Other required considerations in the development of plan components include public water supplies and associated water quality (§219.10(a)(9)).

[3] "Maintain" is defined "[i]n reference to an ecological condition" as "[t]o keep in existence or continuance of the desired ecological condition in terms of its desired composition, structure, and processes." 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." 36 C.F.R. § 219.19.

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.").

Ultimately, the Forest Service describes its obligation under the 2012 Planning Rules as the duty to safeguard the Nation's waters and to restore and maintain watershed health, water resources and water quality:

> The 2012 planning rule includes a strong set of requirements associated with maintaining and restoring watersheds and aquatic ecosystems, water resources, and riparian areas in the plan area. It…goes beyond the 1982 rule procedures in requiring a proactive approach for maintaining and restoring terrestrial and aquatic ecosystems, watersheds, water resources and riparian areas in the plan area. The increased focus on watersheds and water resources in the 2012 planning rule reflects the importance of this natural resource, and the Department and Agency's commitment to stewardship of our Nation's waters.
>
> The requirements of the 2012 planning rule recognize the importance of our water resources. The 2012 planning rule requires that plans identify watersheds that are a priority for restoration and maintenance. The 2012 planning rule requires all plans to include components to maintain or restore the structure, function, composition, and connectivity of aquatic ecosystems and watersheds in the plan area, taking into account potential stressors, including climate change, how they might affect ecosystem and watershed health and resilience. Plans are required to include components to maintain or restore water quality and water resources, including public water supplies, groundwater, lakes, streams, wetlands, and other bodies of water.[4]

**3. The Draft Forest Plan Falls Short of Safeguarding Watershed Health, Water Quality and Water Resources.**

As the Forest Service acknowledges, the watersheds, water quality and water resources of the Ashley are of significant value to the Forest's wildlife and ecosystems and to local and regional communities. The Forest's watersheds harbor native animals and plants, filter pollutants, control erosion, regulate temperature, attenuate floods, and buffer human activities from drinking water resources. Water resources on the Forest provides habitat, recreation, aesthetic beauty and irreplaceable water supplies. High water quality ensures that drinking and irrigation water is

[4] FAQ on 2012 Planning Rule, answer to question: "How will the 2012 planning rule help national forests and grasslands promote watershed health and clean water?" https://www.fs.usda.gov/detail/planningrule/faqs

clean, that habitats are healthy and that visitors can safely pursue recreational opportunities on their public lands.

Watershed health on the Ashley is seriously compromised. The Forest Service concludes that 47 percent of the 107 out of 147 6th-level watersheds that it analyzed are functioning at risk. Draft EIS at 58. The agency further concedes that

> The distribution of overall scores indicate that 70 percent of the watersheds scored near the break between properly functioning and functioning at-risk watershed condition. Changing one or more attributes could shift the classification one way or another, indicating opportunities to improve watershed condition, but also degrade watersheds through mismanagement (Forest Service 2017b).

Draft EIS at 58. These findings highlight the need for a Forest Plan that takes concrete steps toward protecting healthy watersheds and restoring ailing watersheds.

Water quality on the Ashley is also ailing. According to the Forest Service, 676 miles of perennial streams, representing 61 percent of the steams on the Forest are listed as impaired by the State of Utah. Draft EIS at 61. Further, "[h]armful algal blooms have been observed periodically in the upper reaches of Flaming Gorge Reservoir on or near the plan area." *Id.* Importantly, the Forest Service does not address whether surface waters governed by Wyoming law are meeting their designated uses or otherwise complying with Wyoming Water Quality Standards. Again, these data underscore that the Forest Plan must aggressively protect and restore water quality.

Given the significant value of watersheds and water resources, including as sources of clean water for downstream communities and as habitat for wildlife, the Draft Forest Plan falls short of requiring the requisite proactive approach for maintaining and restoring terrestrial and aquatic ecosystems, watersheds, water resources and riparian areas in the plan area as the plan requires.

**a. Watershed Prioritization and Restoration**

Although the 2012 Planning Rule requires the Forest Service to maintain or restore watersheds water resources and water quality and to prioritize watersheds for restoration, the Draft Forest Plan proposes the very modest goals of improving "the condition class of at least two priority watersheds, as defined by the National Watershed Condition Framework, every 10 years." FW-OB-WA-01. The Draft Forest Plan also sets as an objective to "[i]mprove or protect habitat conditions for at least five groundwater-dependent ecosystem features (springs, seeps, and other wetlands), every 5 years for the life of the plan." FW-OB-WA-03. These objectives and management approaches do not meet the Planning Rule's stated goal to maintain or restore water quality and water resources and to prevent or mitigate detrimental changes in quantity, quality, and availability.

Rather, to truly meet the goals of the 2012 Planning Rule and to reverse the impairment of water quality on the Ashley, the Draft Plan should require preparation of watershed plans and set periodic deadlines as part of a continual and achievable process for actually ensuring that all watersheds on the Ashley attain proper functioning condition over time. Rather than setting an unambitious proposal for improving conditions of two watersheds every ten year, the Forest Plan should adopt a methodical approach, envisaging the creation and updating of watershed restoration plans and the restoration of two impaired watersheds every five years. The Ashley should undertake this process with the full participation of local, state, and tribal governments, nongovernmental organizations, and other stakeholders. As part of its watershed restoration planning process, the agency should also develop plans to prioritize roads for decommissioning or maintenance. Given the value of the Forest's watersheds and the focus of the 2012 Planning Rule on protecting and restoring water resources, these provisions are both reasonable and appropriate. The adoption of the following Desired Conditions implement these goals:

> Restoration of any watersheds functioning at risk or as impaired to properly functioning condition is a management priority.
>
> Water quality, instream flows and water levels are adequate to maintain and restore riparian resources, channel conditions, fish and aquatic habitat, recreation and scenic values and other natural resources.
>
> Watersheds, including the rivers, streams, lakes, meadows, bogs, fens, wetlands, vernal pools, and springs they encompass and the ecosystems they support, function properly based on the features and processes that maintain the physical and biological integrity and resilience of watershed health, including water quality, in-stream flow regimes, physical and biological connectivity, robust riparian and aquatic habitat, stream channel stability, and biotic community structure.

To achieve these desired conditions, the following Objectives should be adopted:

> Within three years of plan approval and every subsequent five years, develop five and ten-year action plans for watershed restoration that will return Priority Class 2 or 3 watersheds to proper functioning condition including by stabilizing, rehabilitating, and restoring wetlands, lakes, meadows, vernal pools, springs and fens.
>
> Within seven years after plan approval and every five years thereafter, move at least two Priority Class 2 or 3 watersheds into a Class 1 watershed condition so that the restored watersheds are properly functioning.

The following Standard, necessary to impede efforts to protect and restore watershed health, should also be adopted:

> Before authorizing the initiation of an activity that may adversely impact watershed condition, collect sufficient data to represent and document baseline watershed condition.

> Through the life of the activity, monitor watershed condition with adequate frequency to determine if the activity is adversely impacting watershed function.

Finally, these Guidelines achieve the goals of the 2012 Planning Rule and the protection and restoration of Forest watersheds:

> Prioritizing routes in Class 2 and 3 watersheds and watersheds with impaired waters, decommission roads and reclaim user-created routes, focusing on roads that cross or parallel streams and other surface waters so that road densities do not exceed 1.5 miles per square mile.
>
> Manage activities so that they do not impact the proper function or classification of Class 1 watersheds. Where activities have the potential to impact watershed function in Class 2 or 3 watersheds, manage activities to restore watershed function and to move these watersheds to a properly functioning condition. Limited short term or site-scale effects from activities may be acceptable if they support watershed function improvements.

It is critical to the goal of protecting and improving watershed health that site-specific management activities also further the goal of safeguarding and restoring watershed values and function. Therefore, the Forest Service must ensure that none of its management activities adversely impacts functioning watersheds and that activities with the potential to effect impaired watersheds be managed so that they improve the condition of the watersheds. Acknowledging the adverse impact that roads have on watersheds and water quality, it is critical that the Forest Service decommission the most problematic routes and otherwise ensure road density does not exceed 1.5 miles per square mile.

**b. Attaining Utah Water Quality Standards**

Water quality on the Ashley is ailing. According to the Forest Service, 676 miles of perennial streams, representing 61 percent of the steams on the Forest are listed as impaired by the State of Utah. Draft EIS at 61. Further, "[h]armful algal blooms have been observed periodically in the upper reaches of Flaming Gorge Reservoir on or near the plan area." *Id.* The Forest Service does not, however, address whether surface waters governed by Wyoming law are meeting their designated uses or otherwise complying with Wyoming Water Quality Standards.

Similarly, the Forest Service mentions 303(d) listing as being a factor in determining watershed condition, September 2017 *Air, Soil and Watershed Resources Assessment Report* (ASWRR) 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. Without this information, the Ashley cannot make a well-informed decision as it revises its Forest Plan.

Further, 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.*[5] Thus, the Draft Forest Plan must ultimately ensure that Forest Service management activities and decisions comply with this Utah water quality standard.

Plainly, management practices on the Ashley can and do have a direct impact on water quality. The Forest Service can and must adopt management standards to increase shade, protect water quantity and reduce sedimentation. As with restoration of watersheds, addressing impaired streams, lakes, wetlands, fens and springs on the Forest should be accomplished by establishing a methodical approach toward attaining water quality standards. Therefore, the Forest Plan should set as objectives the prioritization of impaired waterbodies, the creation and updating of plans to restore water quality and the attainment of water quality standards in three waters during the first eight years and in three more waters every five subsequent years. These plans should focus on increasing shade, maintaining stream flows, reducing sedimentation and addressing any additional causes of impairment.

Further, the Forest Plan should prohibit activities that may have more than a temporary adverse impact on water quality in impaired waters. Protections must also be extended to groundwater because groundwater quality impacts surface water quality. Only by actively managing the Forest to improve water quality can the Ashley actually meet its obligation to "restore" water quality, comply with state water quality standards and achieve the desired condition that water quality across the Ashley National Forest meets or exceeds state water quality standards.

Further, all surface waters on the Ashley are designated as "Category 1" waters, water quality on these segments may not be degraded. Therefore, to comply with Utah Water Quality Standards, the Ashley must – in addition to restoring impaired waters – manage activities on the Forest in a manner that prevents any degradation of existing water quality. Again, while the Draft Forest Plan properly requires the implementation of BMPs to maintain and prevent degradation of water resources, applying BMPs alone will likely not be sufficient to prevent degradation to water quality, particularly on a Forest where already 61 percent of the waters are impaired.

Therefore, to meet the obligation to comply with Utah Water Quality Standards, the Forest Plan can best address impaired water quality and prevent degradation by requiring that activities be

[5] "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."

managed so that they do not degrade water quality or prevent the attainment of water quality standards. In contrast, the approach of the Draft Plan fails to restore impaired streams, prevent degradation of "Category 1" waters generally and particularly those that are currently impaired.

Initially, to further compliance with state water quality standards and the 2012 Planning Rule, the following Desired Conditions are appropriate:

> There are no Forest lands or areas that are delivering water, sediment, nutrients, or chemical pollutants that would result in conditions that violate Utah or Wyoming water quality standards, fail to comply with total maximum daily loads (TMDLs) or are repeatedly above natural or background levels.
>
> Water quality for those waters listed as impaired or potentially impaired on the Utah or Wyoming 303(d) lists moves toward meeting state water quality standards and fully supporting designated beneficial uses.
>
> Road densities in each watershed do not exceed 1.5 miles per square mile and the existing road density does not increase over time in any given watershed. New roads are not constructed unless they are replacing less ecologically sound roads and there is no net increase in mileage.

To establish a methodical way to meet state water quality standards, the following Objectives are necessary:

> Within three years of plan approval, identify and prioritize impaired surface waters for restoration.
>
> Within four years of plan approval and every subsequent five years, develop five and ten-year action plans for restoration of impaired waters so that the waters meet or exceed all state and federal water quality standards, meet the ecological needs of native aquatic and riparian-associated plant and animal species, and fully support designated beneficial uses.
>
> Within eight years of plan approval and every five years thereafter, restore three priority impaired waters so that the waters meet or exceed all state and federal water quality standards, fully support designated beneficial uses and meet the ecological needs of native aquatic and riparian-associated plant and animal species.

Similarly, this Standard appropriately helps achieve the aim of ensuring water quality on the Ashley meets state standards:

> Before authorizing the initiation of an activity that may adversely impact water quality, collect sufficient monitoring data to establish and document baseline water quality. Through the life of the activity, monitor water quality with adequate frequency to determine if the activity is adversely impacting water quality.

Finally, appropriate Guidelines to protect and restore water quality include:

> Manage activities (including by limiting livestock utilization to 30%) so that they do not degrade ground or surface water quality in any Forest waters, including rivers, streams, lakes, meadows, fens, wetlands, vernal pools, and springs. Limited short term or site-scale effects from activities may be acceptable if they support water quality improvements.
>
> Prioritizing routes in Class 2 and 3 watersheds and watersheds with impaired waters, decommission roads and reclaim user-created routes, focusing on roads that cross or parallel streams and other surface waters so that road densities do not exceed 1.5 miles per square mile.

**c. Protecting Water Quantity**

Sustaining and restoring watershed function, recreation, scenic values and viable native populations of aquatic species on the Ashley requires securing instream flows that fall within the range of natural variation. Indeed, the Forest Service admits that for

> the Ashley National Forest, watershed vulnerability to climate change is considered moderate to high. Increases are anticipated for drought, heat, flooding, greater evaporation, snowpack loss, and earlier snowmelt that would shift runoff timing, reduce streamflow, and increase the severity and intensity of wildfires.

Draft EIS at 59. Based on the need to protect water quantity, the Ashley should exercise its discretion to deny or condition access to state granted water rights or authorizations located on the lands under its jurisdiction as necessary to protect aquatic and aquatic-dependent resources, including scenic and aesthetic values, and protect fish and wildlife habitat on the Forest.[6] Therefore, the Forest Plan should establish minimum instream flows and water levels needed to maintain and restore riparian resources, and protect and restore these flows and levels, including by conditioning access to water rights.

More specifically, the following Desired Conditions acknowledge the importance of water quantity to protecting watersheds and water quality:

> Water quantity needs and trends (springs, streams, aquifers, wells) on Ashely are known and communicated to the public.

[6] National Forest Management Act (NFMA), the Multiple-Use Sustained Yield Act (MUSYA), and the Federal Land Policy and Management Act of 1976 (FLPMA). The Forest Service has discretion in providing access to water on NFS land unless granted by statutes prior to the enactment of FLPMA or granted pursuant to a repealed statute such as R.S. 2339 (43 U.S.C. 661, as amended) (see FSM 5520 and FSH 5509.11 Ch. 60 for other repealed statutes).

> Water quantity is being conserved to ensure favorable flows of water throughout the forest.

To achieve these conditions, the following Objective is appropriate:

> Within five years of plan approval, establish minimum instream flows and water levels needed to maintain and restore riparian resources, channel conditions, fish and aquatic habitat, recreation and scenic values and other natural resources.

These Guidelines further the goal of maintaining and restoring watersheds and water quality:

> Protect and restore minimum instream flows and water levels needed to maintain and restore riparian resources, channel conditions, fish and aquatic habitat, recreation and scenic values and other natural resources.
>
> Acknowledging valid existing rights, condition access to state- granted water rights or authorizations located on the Ashley as necessary to protect aquatic and aquatic-dependent resources, including scenic and aesthetic values, and protect fish and wildlife habitat on Forest land.

## II. Municipal Water Sources

The Draft Plan acknowledges that waters on the Ashley serve as critical sources of drinking water for several communities including City of Green River, Duchesne, Whiterocks, Tridell, Vernal, Manila, and Dutch John. Draft EIS at 63. "In addition, the Forest Service has designated the Ashley Karst National Recreation and Geographic Area with the purpose to conserve and protect the karst systems that provide drinking water and irrigation to Uintah County." Draft EIS at 63.

Ensuring a safe supply of drinking water is a national goal of the highest priority. The Safe Drinking Water Act requires States to create plans to protect all public drinking water sources. The Ashley is expected to participate in preparing and updating these plans and to work with the public to assure safe drinking water supplies. State law further establishes strict standards to safeguard the quality of drinking water sources. The Forest Service acknowledges that "many common practices on forests and grasslands can contaminate drinking water sources," including road use and maintenance, urban and wildland uses, recreation and other human activities, domestic animal use, fertilizer and pesticide use, air pollution, and utility corridors.[7]

In keeping with national law and policy and the 2012 Planning Rule and the reliance of communities on water supplies originating on the Ashley, the Forest Plan should set forth a

[7] USDA, Drinking Water from Forests and Grasslands: A Synthesis of the Scientific Literature, General Technical Report SRS-39 (Sept. 2000) at ix.

methodical and achievable planning and implementation process that prioritizes the prompt development of measures to ensure a safe supply of drinking water for the communities that rely on source watersheds encompassed by the Forest. Given that protecting and improving the quality of drinking water and safeguarding drinking water sources is a top national priority and critical to the health and interests of nearby communities, setting forth a collaborative and practical plan for actually maximizing forest cover, maintaining and restoring high water quality and ensuring that management activities do not adversely impact water quality is highly appropriate.

In contrast, the Draft Forest Plan proposes a very limited Guideline to accomplish these critical goals. To fill out this plan provision's goal of adequately protect drinking water supplies, the following Desired Conditions should be established:

> Drinking Water Source Protection (DWSP) Zones are properly delineated and activities in these zones are being managed to avoid any potential contamination of or threat to the quality of surface or ground water.
>
> Drinking Water Source Protection Plans cover all applicable watersheds and the terms and conditions of Drinking Water Source Protection Plans are being met.
>
> Restriction clauses are included in all permits, leases, or other documents authorizing use within municipal supply watersheds.
>
> All Forest Service projects or decisions are improving or maintaining and are not degrading drinking water sources.

As mentioned above, the Forest Plan must adopt a methodical and achievable planning and implementation process to prioritize the prompt development of measures to ensure a safe supply of drinking water. The following Standards set out these planning and implementation process:

> Within one year of plan approval and each subsequent year as necessary and in conjunction with the relevant public drinking water supplier, develop a management plan for each DWSP Zone to maintain and restore water quality and ensure that any Forest activities that have the potential to impact the Zone will not cause or contribute to any contamination of surface or ground water.
>
> In the year following the development of any DWSP Zone plan, implement the plan. At least every four years, evaluate and revise the plan to ensure that DWSP Zones are protected and restored.
>
> Within five years of plan implementation, achieve Class I watershed conditions in every watershed that serves as a source of drinking water.

> Within five years of plan implementation, undertake management actions necessary to ensure that water quality in any surface waters that serve as sources for drinking water and/or recharge sources of drinking water and/or flow through drinking water protection zones are meeting all relevant beneficial uses and are meeting water quality standards for every pollutant and parameter.
>
> Within one year of plan implementation and again after drinking water source assessments and protection plans are updated and completed, map the boundaries of all drinking water sources and recharge areas and drinking water protection zones and withdraw these areas from mineral entry and close them to mineral and/or energy leasing.
>
> Within two years of plan implementation and again after drinking water source assessments and protection plans are updated and completed, revise any existing permits and/or authorizations consistent with drinking water source protection plans to afford the highest protection to drinking water sources and protection zones.

According to the Forest Service, livestock grazing, construction and use of roads and routes and the development of minerals are likely to contaminate drinking water sources.[8] Contaminants introduced by these activities include sediment, nutrients, *e. coli*, *giardia*, other bacteria and protozoa, and toxic chemicals. Given the threat that grazing, road construction and mineral development pose to drinking water, the Forest Plan should ban these activities from any watersheds that serve as sources for drinking water. This approach protects sources of drinking water on the Forest and reflects the nation's goal of safeguarding drinking water supplies. The following Standards implement these aims:

> Close DWPS Zones to surface disturbing activities, including mineral leasing, the sale of mineral materials and locatable mineral entry.
>
> Immediately and in keeping with any updated or new drinking water source protection plans, manage all activities on the Ashley consistent with drinking water source protection plans and to afford the highest protection to drinking water sources and protection zones.

Similarly, this Guideline furthers the Ashley's duty to protect drinking water sources:

> Manage activities that may impact DWPS Zones, including road use and maintenance, urban and wildland uses, recreation and other human activities, wild and domestic animals use near source waters, fertilizer and pesticide use, air pollution, and utility corridors to prevent contamination of and any adverse impact to ground and surface waters and water quality.

[8] USDA, Drinking Water from Forests and Grasslands: A Synthesis of the Scientific Literature, General Technical Report SRS-39 (Sept. 2000) at 85-97, 153-157 and 179-194.

## III. Air Quality and Natural Soundscapes

Under the 2012 Planning Rule, a Forest Plan must include plan components, including standards or guidelines, to maintain or restore [] air quality[.]" 36 C.F.R. 219.8(a)(2)(i). As evidenced by 219.8(a)(2), the Planning Rule requires the Ashley to safeguard air resources to the same extent the agency is required to maintain and restore soil and water resources. Further, the Ashley must consider air quality when developing plan components, including standards and guidelines, that "must" provide for ecosystem services and multiple uses. 36 C.F.R. 219.10(a)(1).

### a. Air Quality

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). The Draft Forest Plan must specifically meet these requirements.

The Draft EIS confirms that air pollution is having an adverse impact on ecosystem values, soils and water quality on the Ashley National Forest. For example, the Forest Service admits that "critical load modeling suggests current levels of nitrate deposition in western portions of the forest could be at levels that represent an increased risk for eutrophication/acidification of high-elevation lakes inherently sensitive to changes in nutrient inputs." Draft EIS at 36; *see also id.* ("Air pollutants, either by themselves or after chemical transformations in the lower atmosphere, can cause negative impacts on ecosystems, including changes in soil and water chemistry from nitrogen and acid deposition, damage to sensitive vegetation due to chronic and elevated ozone exposure, and increased visibility impairment in scenic areas.").

The Forest Service also states that "initial results indicate that both surface water critical loads and the lichen critical loads may be exceeded in much of the Ashley National Forest." "Current nitrogen deposition rates indicate an increased risk for surface water acidification for 60 percent of the monitored lakes and an increased risk for early stages of eutrophication in surface waters across 60 percent of the forest." EIS at 35. Even tree species are suffering adverse impacts from air pollution. Draft EIS at 35 ("Deposition rates exceed critical loads across portions of the forest for tree species sensitive to increases in nitrogen.").

Particularly in light of these finding, changes to the Draft Forest Plan are necessary to meet the goals of the 2012 Planning Rule to maintain and restore air quality, as well as the other Forest values, such as water quality, plant communities and soils, that are impacted by air pollution.

To understand the impact of air pollution on natural resources, National Forests designate and monitor Wilderness Air Quality Values (WAQVs) or Air Quality Relate Values (AQRVs)[9] for

[9] WAQVs and AQRVs are resources, such as visibility or a specific scenic, cultural, physical, biological, ecological or recreational resource, that may be adversely affected by a change in air quality. Values are specific to each designated wilderness or sensitive area. A sensitive receptor is an element of an AQRV that is sensitive to air pollution. Monitoring of sensitive receptors

Class I Wilderness Areas and Wilderness Areas and other Class II areas.[10] The designation, monitoring and protection of WAQVs and AQRVs is a widely recognized means for informing agency decision making and method for protecting any Class I Wilderness Areas and Wilderness and other Class II areas from air pollution.[11] The Draft Forest Plan should adopt this approach and use monitoring and analysis of sensitive receptors to ensure its management decisions safeguard WAQVs and AQRVs and to influence other agency decision making with the aim of protecting Forest values from air pollution.

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."[12] 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."[13] 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.

While the Forest Service notes that it has identified sensitive receptors for two High Uinta WAQVs – water and flora – the scope of these receptors is limited and not clearly designed to identify and address the alarming air pollution impacts that the Draft EIS confirms. Further, the agency does not explain whether it has undertaken monitoring and analysis of these receptors or factored or will factor that monitoring and analysis into Forest Service management and decision making.

Importantly, by proposing as a Desired Condition that "[a]nnual deposition of air pollutants is below published critical loads or levels for targeted resources on the Ashley National Forest," FW-DC-AQ-03,[14] the Draft Forest Plan recognizes the importance of protecting ecosystem

---

will allow assessment of current air resource conditions and trends on the Forest, identify existing and future air quality impacts to these resources, and provide guidance for future air resource monitoring and management activities.

[10] *E.g. see* White River NF Forest Air Resource Management Plan; Shoshone National Forest Wilderness Air Quality Value Plan.

[11] *See* White River NF Forest Air Resource Management Plan; Shoshone National Forest Wilderness Air Quality Value Plan; BLM – Utah, Air Resource Management Strategy at 2 (stating as an objective "[e]nsur[ing] Air Quality Related Values in Class 1 and sensitive Class II areas in Utah and adjacent states are not adversely impacted by activities authorized by BLM.").

[12] 16 U.S.C. § 1131(a).

[13] 36 C.F.R. § 293.2.

[14] 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.

values from the deposition of air pollutants. However, the agency does not establish Objectives, Standards and Guidelines to secure this outcome.

To correct these oversights, we propose the following Objectives as necessary to meet the requirements of the 2012 Planning Rule and FW-DC-AQ-03:

> Within two years of plan approval, designate a full range of Wilderness Air Quality Values (WAQVs) and corresponding sensitive receptors for the High Uinta Wilderness Area, design and implement a protocol for monitoring the WAQV sensitive receptors and establish baseline conditions of the sensitive receptors.
>
> Within four years of plan approval, designate WAQVs and corresponding sensitive receptors for two additional representative Class II Forest areas, design and implement a protocol for monitoring the WAQV sensitive receptors and establish baseline conditions of the sensitive receptors.
>
> Within two years of identifying an adverse impact on an AQRV or WAQV, design and implement a plan to remediate the impairment and to restore the structure or function of an ecosystem value or the quality of the visitor experience.

The following Standard articulates the Forest Service's duty to protect ecosystem values from air pollution and should be adopted:

> The Forest will prevent and remediate human caused impairments to Forest AQRVs and WAQVs, visibility, flora, fauna, soils and aquatic resources.

The corresponding Desired Condition should be stated as follows:

> Air quality in Forest Class II airsheds fully support AQRVs, WAQVs, visibility, flora, fauna, soils and aquatic resources and air pollution, including ozone, particulate matter, and deposition of nutrients, acids and toxics, do not harm Forest ecosystem resources.

Further changes to the Draft Forest Plan are needed to eliminate and minimize emissions of air pollutants originating on the Ashley. Without citation or analysis, the Forest Service states:

> Air quality impacts from other resource management activities, such as dust from logging roads and recreational use of National Forest System roads, are generally small and inconsequential. The impacts are not a concern at the forest planning level.

Draft EIS at 36. In contrast, undisputed evidence indicates that roads on the Forest are a significant source of emissions. There are 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.[15] Therefore, the agency's board statement is unsupported and unconvincing and fugitive dust should be addressed in the Forest Plan.

Recognizing that there are available and proven controls, practices, designs, technologies and mitigation measures that effectively reduce air pollution, the Draft Forest Plan should also direct the Forest Service to eliminate or minimize emissions, including fugitive dust and greenhouse gases, from Forest activities. Eliminating or minimize emissions of air pollution appropriately protects values such as public health, wildlife, habitats, vegetation, soils and water quality and therefore meets the Planning Rule directive to maintain good air quality and restore impaired air quality. To this end, we suggest the following Guideline as necessary to meet the agency's legal obligations to protect and improve air quality:

> The Ashley National Forest will manage activities, actions and projects on the Forest to eliminate or minimize to the greatest extent possible emissions of air pollution, including fugitive emissions and greenhouse gases, including by requiring appropriate design features and best available mitigation and control measures and technology.

**b. Natural Soundscape**

Non-natural noise can adversely impact wildlife, recreation and the visitor experience. The development and implementation of best management practices and policies to preserve and restore natural soundscapes will help conserve and safeguard these values. Therefore, preserving natural soundscapes is necessary for a Forest Plan consistent with the 2012 Planning Rule directive's "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.

**IV. Minerals and Energy Resources**

Recognizing the critical importance and sensitivity of water supplies, clean water, hydrologic function, recreation and scenic values, many Forests and BLM Field Offices around the West have established buffers in and around wetlands and riparian areas that prohibit all surface disturbing activities associated with the development of energy resources.[16] Accordingly, the

---

[15] *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.

[16] For example, BLM Kremmling Field Office (Preliminary EA, May 11, 2017 Competitive Oil & Gas Lease Sale, KFO-NSO-4); Grand Junction Field Office Approved RMP at 10, NSO-2; BLM/USFS Final San Juan National Forest and Proposed Tres Rios Field Office Land and

Draft Forest Plan should include the following Standard that prevents the construction of infrastructure associated with mineral or energy resource activities, including roads, within 325 feet of the margin of a wetland or riparian area:

> Prevent the construction of infrastructure associated with mineral or energy resource activities, including roads, within a zone that consists of a wetland or riparian area and the uplands within 325 feet of the margin of a wetland or riparian area.

As with wetlands and riparian areas, Forests and BLM Field Offices have established no occupancy buffers around intermittent and ephemeral streams.[17] Similar protective measures are appropriate in the Ashley where water resources and the values they support are of central importance to Forest management goals, nearby communities and the people of the United States. Accordingly, the Draft Forest Plan should prohibit construction of infrastructure associated with mineral or energy resource activities, including roads, within 50 feet of the top of the stream bank of an intermittent or ephemeral stream. The adoption of the following Standard will achieve that goal:

> Prevent the construction of infrastructure associated with mineral or energy resource activities, including roads, within a zone that consists of an intermittent or ephemeral stream and the uplands within 50 feet of the top of the stream bank.

Further, to carry out the dictates of the 2012 Planning Rule and protect Forest resources, the Draft Forest Plan should mandate that the exploration, development, and production of mineral and energy resources be conducted in an environmentally and culturally sensitive manner to avoid, wherever possible, and otherwise minimize adverse effects on public health and safety, wildlife and wildlife habitat, soils and air and water quality. Such an approach will serve to protect water quality from degradation, as required by state water quality standards, and will maintain and restore watersheds and aquatic ecosystems, water resources, and riparian areas and provide ecological conditions to support the diversity of plant and animal communities.

The Forest Plan should also provide a specific process for identifying, prioritizing and reclaiming mineral and energy resource operations, sites and roads that are no longer in use, unapproved or noncompliant. Reclamation of these areas will help prevent adverse impacts to values such as water quality, wildlife habitat, soil stability, recreation and scenic beauty. To this end, we urge the adoption of the following Objective:

---

Resource Management Plan. Appendix H – Oil and Gas Leasing Stipulations, Volume III at H-11; *see also* 2006 Dillon Resource Management Plan, Appendix K at 148.

[17] For example, see BLM Kremmling Field Office (Preliminary EA, May 11, 2017 Competitive Oil & Gas Lease Sale KFO-NSO-5); Grand Junction Field Office Approved RMP at 10, NSO-2; BLM/USFS Final San Juan National Forest and Proposed Tres Rios Field Office Land and Resource Management Plan. Appendix H – Oil and Gas Leasing Stipulations, Volume III at H-13; *see also* BLM White River Field Office (Preliminary EA, May 11, 2017 Competitive Oil & Gas Lease Sale, WR-CSU-12).

> Within five years of plan approval, identify and prioritize mineral and energy resource operations and sites and associated roads that are no longer in use. Within 15 years, reclaim operations and sites and decommission roads no longer in use.

Because development of mineral and energy resources can be inconsistent with other land uses, including those that led to the designation of specific management areas or that are particularly important to conserve wildlife, recreation and scenic values, the Draft Forest Plan should close these areas to mineral and energy resource activities and facilities where development conflicts with the preservation and protection of these values. The following Desired Condition protects these land uses from mineral and energy development:

> Management areas, including Special Interest Areas, Research Natural Areas, corridors connecting core wildlife areas, areas needed to provide species protection, areas managed to preserve scenic values, and Limited Use Areas are closed to mineral leasing, the sale of mineral materials and locatable mineral entry where warranted to meet the objectives for which the area was proposed or established.

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.

Joro Walker
General Counsel
WESTERN RESOURCE ADVOCATES
307 West 200 South Street, Ste 2000
Salt Lake City, UT 84101
joro.walker@westernresources.org