

U.S. House of Representatives

Committee on Natural Resources

Washington, DC 20515

October 15, 2018

Victoria Christiansen, Interim Chief
USDA Forest Service
201 14th Street, SW
Washington, DC 20250-1111

Dear Chief Christiansen,

We are writing to provide our comments on the advance notice of proposed rulemakings (ANPR) published in the Federal Register by the U.S. Forest Service on September 13, 2018.^{1,2} We are concerned that aspects of the ANPRs suggest the Forest Service's stewardship philosophy is shifting from championing the principles of multiple-use and sustained-yield to prioritizing oil, gas, and mineral development. Since enactment of the Multiple-Use Sustained-Yield Act of 1960 (MUSY),³ the Forest Service has managed all 193 million acres of National Forest System (NFS) lands for a variety of purposes, including outdoor recreation, livestock grazing, timber production, watershed protection, and wildlife and fish habitat. While the Forest Service cooperates with the Department of Interior's Bureau of Land Management (BLM) in coordinating access to and development of federal oil, gas, and mineral resources, these ANPRs raise the possibility that the agency's new priorities will be determined by the wishes of fossil fuel and mining executives, and not what is best for the American people and their public lands.

Oil and Gas ANPR

The National Forest Management Act of 1976 (NFMA) is the primary statute governing the administration of national forests and grasslands and requires the Forest Service to develop a management program based on multiple-use and sustained-yield principles. NFMA was modeled on the agency's original mission statement established by the founder of the Forest Service, Gifford Pinchot, who said, "when conflicting interests must be reconciled, the question shall always be answered from the standpoint of the greatest good of the greatest number in the long run."⁴ Inherently, managing for multiple-use means there will be conflicting interests, but we dispute the notion that prioritizing the development of oil and gas resources above other uses—a philosophy that underpins many of this Administration's public statements and policy documents, including Executive Order 13783, "Promoting Energy Independence and Economic Growth"—adheres to Pinchot's "greatest good" stewardship approach.

Agency regulations and policy documents emphasize that the primary responsibility of the Forest Service is to protect and manage the resources of the National Forests in line with the principles of

¹ 83 FR 46458

² 83 FR 46451

³ P.L. 86-517

⁴ Tidwell, Tom. *The Greatest Good*. U.S. Department of Agriculture. Mar 31, 2015.
<https://www.usda.gov/media/blog/2015/03/31/greatest-good>

multiple-use and sustained-yield. For example, the Forest Service Manual that addresses minerals and geology states an agency objective is to, “ensure that exploration, development, and production of mineral and energy resources are conducted in an environmentally sound manner and that these activities are integrated with the planning and management of other National Forest resources.”⁵ Officials are expected to evaluate oil and gas potential within the context of broader management plans while considering their environmental impacts on the land under the agency’s care.

It is therefore troubling that the oil and gas ANPR states that it seeks to update, clarify, and streamline the process used by the Forest Service for regulating oil and gas operations. While there is nothing wrong with these goals by themselves, they should not be used to provide cover simply to “reduce burdens” on oil and gas development, which is a direction in Executive Order 13783. Critically, existing requirements and procedures under the National Environmental Policy Act (NEPA) should not be weakened in any way, as they are essential in helping the agency strike the right balance between competing land uses and ensuring the public has a way to learn about and participate in oil and gas development decisions.

There are significant discrepancies between the agency’s current mission and practices and the agency’s priorities as described in the oil and gas ANPR. Throughout the planning process, the Forest Service works to guarantee oil and gas activities are carried out in a manner that protect NFS lands, surface resources, and other land uses. One of the most critical components of the Forest Service’s process is review of an applicant’s Surface Use Plan of Operations (SUPO). While underground oil and gas resources are the responsibility of the BLM, oil and gas operations can pose severe threats to the myriad of surface resources that are the responsibility of the Forest Service. A SUPO attempts to balance the protection of the forests, grasslands, rivers, wildlife, and vegetation the agency cares for with access to the oil and gas beneath these sensitive environments. Any attempts to “clarify” or “update” SUPO regulations should maintain or increase the level of care and protection afforded to Forest Service surface resources, not weaken them in order to simply minimize the time or expense required from the oil and gas industry.

Locatable Minerals ANPR

As is also the case in the oil and gas proposal, throughout the locatable minerals ANPR there are stark differences between the new objectives for the agency and the agency’s historic mission and successful approach to land management. Provisions in the locatable minerals ANPR suggest the Forest Service is initiating the rulemaking process with a predetermined decision to relax the limited environmental safeguards and public input requirements that currently exist for locatable mineral mining, also known as hardrock mining, on NFS lands. Unfortunately, the underlying problem with hardrock mining on public lands is that it is still governed by the antiquated Mining Law of 1872, which must be addressed by Congress, not the Forest Service. Nevertheless, the Forest Service has considerable latitude under existing law to strengthen its regulations to require that hardrock miners do a minimum of harm to National Forest lands.

We are particularly concerned that the ANPR uses Executive Order 13817, “A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals,” as the rationale for making regulatory changes to “increase exploration for, and mining of” critical minerals. According to the ANPR, “this

⁵ Forest Service Manual 2800, Chapter – Zero Code. https://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsm?2800!..

change should enhance operators' interest in, and willingness to, conduct exploratory operations on National Forest System lands and ultimately increase production of critical minerals," while adherence to a separate executive order on infrastructure will give, "public and private investors the confidence necessary to make funding decisions[.]" It is not the job of the Forest Service to "enhance operators' interest" in mining or provide more confidence to investors; it is the agency's job to provide stewardship over public forests and manage resources for multiple-use and sustained yield. When required by existing law to provide access for certain types of mineral development, the Forest Service has a responsibility to do so while protecting the lands and resources under its care, not to protect the interests of mining companies or investor confidence. In fact, if the Forest Service insists on giving executive orders priority over existing statutes, investor confidence will decrease due to the inevitability of successful lawsuits opposing mining approvals.

It is encouraging to learn the Forest Service agrees with much of the 2016 Government Accountability Office (GAO) report on hardrock mine permitting that concluded the low quality of information operators include in their plans often affects the expeditious review of those plans.⁶ The GAO report also revealed another hindrance to timely hardrock mine reviews is the agencies' "limited allocation of resources for their hardrock mining programs."⁷ It's surprising the Forest Service failed to cite this in their ANPR considering the agency has experienced chronic operational and organizational challenges related to funding, staffing, and training, caused in part by the necessary diversion of resources to fighting wildfires. Fully adopting the GAO recommendations and working to bolster agency staff and resources dedicated to hardrock mining programs will undoubtedly help achieve some of the goals outlined in the ANPR while still acting in accordance with statutory authorities and limitations.

In numerous instances in the oil and gas ANPR and the locatable minerals ANPR, the Forest Service outlines efforts the agency will take to "streamline" reviews and "improve efficiencies" when it comes to energy and mineral development on public forests and grasslands. Unfortunately, many of these actions appear to be outside the bounds of the agency's statutory authorities and seem to represent efforts to prioritize oil, gas, and mineral development over other public uses. The existing set of Forest Service regulations merit certain changes, but those changes should strengthen environmental standards and expand public participation, not curtail these provisions in the name of achieving energy dominance. As the Forest Service goes forward with the rulemakings, we urge agency leadership to adhere to Gifford Pinchot's stewardship philosophy and base their revisions on the guiding principles of multiple-use and sustained-yield that have served the agency and the public so well for decades.

Sincerely,



Raúl M. Grijalva
Ranking Member
Committee on Natural Resources



Alan Lowenthal
Ranking Member
Subcommittee on Energy and Mineral
Resources

⁶ GAO-16-165 (2016)

⁷ Id.