

**TESTIMONY of
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**BEFORE THE
UNITED STATES HOUSE of REPRESENTATIVES
COMMITTEE on NATURAL RESOURCES
SUBCOMMITTEE on WATER, POWER AND OCEANS**

April 14, 2015

Chairman Flemming, Ranking Member Huffman, and Members of the Subcommittee, thank you for the opportunity to provide perspective on the role of the U.S. Department of Agriculture (USDA) in the stewardship of water resources on National Forest System (NFS) lands. Specifically, USDA has been asked to respond to concerns related to proposed ski area water clauses and a proposed groundwater directive, neither of which has any relationship to the proposed rule under the Clean Water Act by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency.

Ski Area Water Clauses:

On June 23, 2014, notice of proposed ski area water clauses for the agency's Special Uses Handbook was published in the Federal Register. These clauses are intended to ensure the long-term availability of water for ski area operations without requiring federal ownership of the water rights associated with ski areas operating on NFS lands. The Forest Service received nearly 13,000 comments in response to the proposal, of which 35 were unique. We are evaluating the comments and considering proposed revisions to the clauses. We believe the final clauses will provide for sufficiency of water, while addressing the concern of not inhibiting market forces associated with water resources. The intent will be to make sufficiency of water a requirement of the permit holder. We believe that the final clauses will ensure that ski areas have sufficient water to continue to be able to provide recreation opportunities to the public and economic support to the communities that depend on their revenue.

Proposed Groundwater Directive:

Since publishing our proposed groundwater directive for notice and comment on May 6, 2014, we have heard from a number of States and other parties concerns about the intent of and language in the proposal. By the end of the comment period, we had received two hundred sixty unique comment submittals from elected officials, States, Tribes, organizations, and individuals from across the country. This Committee, as well as several States, asked us to not proceed with the proposed draft and to consult with them before moving forward. We have listened and are actively having those conversations now. We will continue to work cooperatively with this Committee and the States and will not move forward until we can address the concerns raised. In fact, in recent hearings the Chief of the Forest Service stated that the proposed directive has been put on hold. We will publish a new draft for a new round of public comment before any direction is finalized. It is the intent of the Forest Service that nothing in the implementation of our stewardship responsibilities for National Forests and Grasslands infringes on State authority for water allocation and State and Tribal authority for water quality protection.

The proposed directive on groundwater is intended to help the Agency establish a more consistent approach to evaluating and monitoring the effects on groundwater from actions on National Forest System (NFS) lands.

The proposed directive did not specifically authorize or prohibit any uses and did not represent an expansion of authority. The Forest Service recognized and specifically acknowledged in the proposed directives, the role of States in the allocation of water use and protection of water quality. The proposed directive would not and was not intended to infringe in any way on State authority, nor would it impose requirements on private landowners or change the long-standing relationship between the Forest Service and States and Tribes on water.

Rather, it proposed a framework that would allow the Forest Service to clarify existing policy and better meet existing requirements in a more consistent way across NFS lands. Specifically, it was intended to:

- Improve our understanding of groundwater systems that influence and are influenced by surface uses on NFS land by creating a more consistent approach for gathering information;
- Support management and authorization of various multiple uses by creating a more consistent approach to evaluating, disclosing and monitoring the potential effects on groundwater resources of proposed activities on and uses of NFS lands in a way that supports informed and legally defensible decisions;
- Provide transparent and consistent direction for evaluating proposed Forest Service activities affecting groundwater resources on NFS lands and for quantifying the nature and extent of large groundwater withdrawals; and
- Emphasize cooperation with State, Tribal and local agencies, recognizing all existing roles and responsibilities.

In many instances, the Forest Service has a legal obligation to analyze and disclose the impacts that activities it authorizes, funds, or undertakes directly may have on natural resources, including groundwater. In a number of examples around the country, multiple use decisions made by the Agency have been challenged in court, with plaintiffs arguing that such impacts were not fully analyzed or disclosed. This responsibility stems from direction in the Forest Service's Organic Act of 1897 (directing the Forest Service to manage NFS lands to secure favorable conditions of water flow); the Weeks Act of 1911 (for navigable stream protection); the Bankhead-Jones Act of 1935 (to mitigate floods, conserve surface and subsurface moisture, and protect watersheds); and the Multiple-Use Sustained-Yield Act of 1960, the National Forest Management Act of 1976, and the Federal Land Policy and Management Act of 1976 (all providing direction to the Forest Service regarding water, watersheds, and the management of natural resources including water).

Water on NFS lands is important for many reasons, including resource stewardship, domestic use, and public recreation. Today, water from national forests and grasslands contributes to the

economic and ecological vitality of rural and urban communities across the nation, and those lands supply more than 60 million Americans with clean drinking water.¹

This role is increasingly important as drought conditions worsen in many parts of the country. On Wednesday, April 1, 2015, Governor Jerry Brown issued an executive order announcing a mandatory 25% reduction in water consumption in cities and towns across the State, following his previous declarations in January and April of 2014 of a state of emergency throughout California due to severe and ongoing drought conditions. Other parts of the country also face drought conditions: for example, 13 counties in Oregon and 11 counties in Washington State have received drought emergency declarations. Persistence and intensification of drought conditions is anticipated across the West.

NFS lands provide 18 percent of the Nation's freshwater and over half the freshwater in the West.² Groundwater plays a critical role in providing that freshwater, serving as a reservoir supplying cold, clean water to springs, streams, and wetlands, as well as water for human uses. Activities on national forests and grasslands can impact surface water, drinking water source areas, and groundwater reserves, including major aquifers (United States Geological Survey Principal Aquifers).

Through this proposed directive, the Forest Service would be better positioned to respond to changing conditions, such as drought, climate change, land use changes and needs for additional water supplies, in an informed manner, while sustaining the health and productivity of NFS lands and meeting new societal demands for resources in a responsible way. Our goal is to improve the quality and consistency of our approach to understanding groundwater resources on NFS lands and to better incorporate consideration of those resources to inform agency decision-making. Establishing a consistent framework for evaluating groundwater resources will also help to ensure that the Forest Service's decisions are well informed and can withstand legal challenge.

¹ <http://www.fs.fed.us/publications/policy-analysis/water.pdf>.

² www.fs.fed.us/pnw/pubs/pnw_gtr812.pdf.

By improving the agency's ability to understand groundwater resources and have a more consistent, informed and legally defensible approach to evaluate, make decisions about, and monitor activities on NFS lands that could impact groundwater resources, the proposed directive would make the agency a better and more consistent partner to States, Tribes, and project proponents, as well as to the downstream communities that depend on NFS lands for their drinking water. We look forward to continuing the productive conversations we are currently having with the Committee, States, and other partners, as well as to receiving additional feedback through another formal comment period.

This concludes my testimony and I would be happy to answer any questions.