

**TESTIMONY OF CHRIS IVERSON, DEPUTY REGIONAL FORESTER,
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U.S. DEPARTMENT OF AGRICULTURE**

**BEFORE THE
NATURAL RESOURCES INTERIM COMMITTEE,
IDAHO LEGISLATURE**

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Chairmen Pearce and Raybold, and Members of the Interim Committee, 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.

Congress authorized the Forest Service to administer National Forest System (NFS) lands and to manage the many uses of those lands, including uses that have the potential to affect water resources. Congress directed the Forest Service to manage NFS lands to secure favorable conditions of water flow in the 1897 Organic Administration Act , for navigable stream protection in the 1911 Weeks Law, and to mitigate floods, conserve surface and subsurface moisture, and protect watersheds in the Bankhead-Jones Act of 1935.

In addition, Congress has provided subsequent direction to the Forest Service regarding water, watersheds, and the management of those resources in a number of statutes, including 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. To implement these and other authorities, the Forest Service has discretion over the “formulation, direction, and execution of Forest Service policies, programs, and activities (36 CFR 200.1 (b)).” This is done in part

through the issuance and revision of Forest Service Manuals and Handbooks (together termed “directives”). These directives guide internal agency operations (7 CFR 2.7).

Last week Forest Service Chief Tom Tidwell testified before the House Agriculture committee on the proposed groundwater directive. The Chief pointed out that 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 NFS lands alone provide 18 percent of the Nation’s freshwater, and over half the freshwater in the West.² A 2008 study estimates in Idaho that 68 percent of the freshwater originates on National Forests.

The Chief pointed out that 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 the surface water, source water drinking areas, and groundwater reserves for that water, including major aquifers across a number of southern US states, and the Colorado Plateaus aquifers in Utah, Colorado, Arizona, and New Mexico.

The public has increasingly indicated that it expects the Forest Service to review and address potential impacts to groundwater resources as part of the analysis it performs to support its decisions and actions. Many court decisions have indicated that the Forest Service has a legal obligation to do so. Chief Tidwell pointed to recent examples including lawsuits in the States of Idaho and Washington claiming that the Forest Service conducted inadequate analysis of the potential impacts to groundwater from proposed activities and a court remand requiring the Forest Service to enhance its groundwater analysis.

More specifically in Idaho, two years ago US District Court Judge Edward Lodge decided the Boise National Forest’s Environmental Analysis produced for the CuMo Mine Exploration Project near Idaho City was inadequate. Judge Lodge said the Forest Service acted arbitrarily in concluding the expanded exploratory drilling does not significantly impact water. He was not

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

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

persuaded by our conclusion that sealing of wells after drilling would prevent any contamination to the groundwater. So Judge Lodge ordered the Forest Service to do additional research and analysis on the impacts drilling could have on groundwater; develop a strategy for monitoring water quality before, during and after drilling; and craft a plan to treat any waters contaminated during drilling.

Soon thereafter the Payette National Forest decision on the Golden Meadows Exploration Project near Yellowstone was challenged. The line officer's decision was withdrawn because additional information about closed well drilling systems was needed to verify our conclusions in the Environmental Analysis.

The Forest Service currently desires to be more consistent in evaluating the potential effects to groundwater from the multiple surface uses of NFS lands and the role that groundwater plays in ecosystem function on NFS land. Likewise, we would like to be more consistent in evaluating proposals for activities on NFS lands that could impact groundwater resources and that require Forest Service authorization. The Forest Service plans to develop a framework to comprehensively evaluate watersheds and water resources in order to carry out its responsibilities to administer the NFS.

On May 6 of this year, the Forest Service published for public comment a proposed directive on groundwater that will help the Forest Service to establish a more consistent approach to evaluating and monitoring the effects on groundwater from actions on NFS lands.³ The proposed directive does not specifically authorize or prohibit any uses, and is not an expansion of authority. Rather, it provides a framework that would allow the Forest Service to clarify existing policy and better meet existing requirements in a more consistent way across the National Forest System. Specifically, it would:

- Create a more consistent approach for gathering information about groundwater systems that influence and are influenced by surface uses on NFS land and for evaluating the potential effects on groundwater resources of proposed activities and uses on NFS lands;

³ 79 Fed. Reg. 25815.

- Bolster the ability of Forest Service land managers to make informed and legally defensible decisions, with a more complete understanding of the potential impacts resulting from activities on NFS lands to and from groundwater resources;
- Support management and authorization of various multiple uses by better allowing the Forest Service to meet its statutory responsibility to fully analyze and disclose the potential impacts of uses or activities; and
- Emphasize cooperation with State, Tribal and local agencies and compliance with their applicable requirements.

The Forest Service recognizes and specifically acknowledges in the proposed directives the role of States in the allocation of water use and protection of water quality. The proposed directive would not infringe on the States' authority, nor would it impose requirements on private landowners. The proposed directive does not change the long-standing relationship between the Forest Service and States and Tribes on water. The Forest Service currently evaluates effects on groundwater and surface water resources of activities on NFS lands by working closely with State and Tribal agencies that have the responsibility for the allocation and protection of water resources, and the Forest Service will continue to do so in the future.

The Forest Service already has directives related to surface water resources, riparian areas, water quality and these directives have existed for decades in many cases and have similar language about inventorying, protecting, and managing surface water resources.

The purpose of the proposed directive on groundwater is to clarify existing authorities and responsibilities and provide greater consistency and accountability in how the Forest Service carries out these obligations. By improving the agency's ability to understand groundwater resources and manage activities on NFS lands, 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. By restoring and maintaining healthy watersheds, the Forest Service helps sustain these vital water resources upon which communities depend.

The groundwater directive does not impose new restrictions on any uses, including oil and gas and other mineral development. The groundwater directive defers to existing Forest Service Manual Direction (Minerals and Geology Management - Chapter 2800) which contains the Forest Service procedures for approving minerals activities on NFS lands. Thus, we are incorporating by reference policies that have already been in place. States also have their own procedures for approving minerals activities within the State.

Proposals to access federally-owned minerals on NFS lands require approval from both the State and the federal government. The same is true for proposals to access water on NFS lands. Access and occupancy of NFS land is authorized and managed through our permit processes. The proposed groundwater directive does not change that; it just makes it clearer how the Forest Service plans to carry out that responsibility so the agency can be more systematic and predictable for applicants, State and local agencies, other users of water, and the public.

It is worth pointing out that in Idaho there are literally thousands of groundwater diversions and wells on National Forest System lands that are currently in use for a wide variety of activities on National Forests. The use of water, granted by the state, supports the multiple uses of the lands of the National Forest system. We have participated in state water proceedings as appropriate, either to seek water rights under state law for uses on NFS land, or to protest water rights of others that could potentially harm water uses or conditions on NFS land.

The proposed directive would 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. It would also clarify responsibilities for groundwater resource management at each level of the Forest Service.

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 improve the quality and consistency of our approach to understanding groundwater resources on National Forest System 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.

The proposed groundwater directive was published in the Federal Register on May 6, 2014. Because of the widespread interest in this proposal and our desire for active public input and feedback, the original comment period was extended from August 4, 2014, to September 4, and again until October 3, 2014, to allow more time to hear from States, Tribes, individuals, and groups.

We have received comments from the state of Idaho through the Idaho Department of Water Resources, and also a comment letter from the Idaho Mining Association, both of which I want to briefly highlight. The Idaho Water Users Association has yet to provide written comments as the comment period is still open.

One recurring comment topic from the Idaho Department of Water Resources is our use of the word "manage" as it pertains to groundwater management. Although the term 'manage groundwater' is used frequently in the directive, we specifically mean to inventory and evaluate data and to monitor the effects of Forest Service approved activities with a potential to impact groundwater resources on the national forests and grasslands. The proposed directive in no way was intended to suggest that the Forest Service will become involved in the allocation or appropriation of water for use. Rather, the proposed directives apply to Forest Service actions to engage in, authorize, or regulate activities on National Forest System lands that have the potential to affect groundwater resources.

Furthermore, at the September 10 hearing in Washington, D.C., Chief Tidwell said we "recognize without any question we need to clarify that," and to make very clear when we are discussing management we are talking about evaluating and inventorying information and that it has "nothing to do with the allocation of water."

The agency looks forward to reviewing all the input received on this important proposal. Once we have evaluated the comments, we will determine the path forward and the content of a final directive. This concludes my testimony, and I would be happy to answer any questions.