

TESTIMONY BY
**HONORABLE DEMAR DAHL, CHAIR
ELKO COUNTY BOARD OF COMMISSIONERS
ELKO, NEVADA
&
NATIONAL CATTLEMEN'S BEEF ASSOCIATION**

ON

***FOREST SERVICE REGULATORY ROADBLOCKS TO PRODUCTIVE LAND USE AND
RECREATION, PROPOSED PLANNING RULE, SPECIAL-USE PERMITS, AND TRAVEL
MANAGEMENT***

BEFORE THE

**SUBCOMMITTEE ON NATIONAL PARKS, FOREST AND PUBLIC LANDS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
NOVEMBER 15, 2011**

Honorable Chairman Bishop, Ranking Member Grijalva, and Members of the Subcommittee:

My name is Demar Dahl, and I am submitting these comments for the record on behalf of the Elko County Board of Commissioners regarding the Travel Management Plan and on behalf of the National Cattlemen's Beef Association on the matter of water rights.

Travel Management Plan

On behalf of the Elko County Board of Commissioners, of which I am the Chair, I would first like to relate to you our experiences in dealing with the United States Forest Service in the development of the Travel Management Plan (TMP) for Elko County. The Forest Service made their first presentation to the Elko County Commission to explain their TMP in January of 2009. Elko County has documented 104 incidences between January 8, 2009 and May 5, 2011 where the county has had meetings with state and local Forest personnel, County formal hearings, County strategy meetings, and one public meeting with seven hundred in attendance. We have also submitted Freedom of Information Act (FOIA) requests and written questions to the Forest Service. In other words, we have worked hard trying to get straight answers on their plan and trying to get them to take our County Land Use Plan into account, but with no success.

The final draft of the Environmental Impact Statement has been signed by the Forest Service and they are preparing to sign the Record of Decision (ROD). Before the ROD is signed there will be one last meeting, set for December 7, 2011. Included in that meeting will be the local Indian Tribes and at least three other Counties from in Nevada. Two of the Counties included will be

Eureka and Nye, which, along with all the other Counties in Nevada that have forests within their boundaries, have had their Travel Management Plans completed by the Forest Service. In a letter from Eureka County asking to participate in the joint meeting with Forest Service, they wrote, “Eureka County was involved in a TMP for the USFS land located within Eureka, Lander, and Nye counties in 2009 (Austin Tonopah Ranger Districts). We have been following the process that USFS is taking with Elko County and we have seen a distinct, disingenuous pattern by USFS related to our experience and what Elko County is currently going through.”

The letter continued, “Additionally when Eureka submitted substantive comments on the USFS Notice of Proposed Action (NOPA) that listed specific roads that have been omitted, removed, or misrepresented, the USFS responded to our comments with perfunctory, disingenuous statements that made it clear that they were not going to properly coordinate with Eureka County on inclusion of roads even if they were justified. We found that many roads we were concerned about were basically just omitted (i.e. not recognized at all). Many of the responses by USFS on the omitted roads (that in reality do exist) read ‘this road was not on the Forest road inventory and was not included in the proposed action.’ What this really meant was ‘regardless of your comment on the real existence of and need for the road, we are plodding ahead with our decision’. None of the 30 plus omitted roads that we pointed out were included. Also, we documented roads that were closed by USFS due to being considered ‘redundant.’ We documented a few of these roads were in existence and used in the late 1890’s (through historic plat maps) and were still in existence and used quite heavily in 2009. The fact these roads were used and kept open by use for 120 years should have been evidence enough of the need and importance of the road. You may find it interesting that none of the comments by Eureka County resulted in any changes in the proposed decision.”

Such has been our experience in Elko County. In 104 encounters with the USFS in less than three years, we have seen no change in their plan as a result of our input.

In a letter from the Vice Chairman of Nye County we were told, “Nye, Lander and Eureka Counties share the belief that the Austin Ranger District Travel Management Plan is substandard in many ways, but most profoundly in the lack of nearly 3,000 commonly used roads. I attended the Public Scoping meetings and witnessed the vast public input to the process only to realize the tiniest portion of the public input was incorporated into the final plan.”

These are some of the specific objections Elko County has to the Forest Service Travel Management Plan as now proposed:

- Elko County commissioned an economic impact study by economist Dr. George Leaming, PhD. of the Western Economic Analysis Center. His study determined the potential direct and indirect economic losses to minerals, recreation and ranching in Elko County to be as much as one hundred thirty two million dollars.
- Elko County has not been able to obtain an accurate inventory from USFS of exactly which roads and how many miles of roads will be closed because they have a “system” of roads and all roads outside the “system” are closed even though they are not inventoried. There is no monitoring or good science to justify the closures.

- There will be no big game retrieval by motorized vehicle except for elk and then only within one half mile of a road. There will be no retrieval of deer. This is one of the parts of the TMP also opposed by Nevada Department of Wildlife.
- Roads that are marked “open” will be open; however, those that are closed will not be marked “closed.” Elko County believes this will make criminals of inadvertent trespassers. When, if sited, someone wants to contest the citation, it will be necessary for them to travel to Reno (about 300 miles away) twice: once to plea and once to settle.
- Roads crossing or off of private lands will be closed unless the land owner is willing to grant a public easement across the private property. It is estimated that ninety percent of property owners will allow someone to cross their land if asked to do so. If USFS closes these roads it will be the Forest Service, not the landowner, who locks up the public land. Also, there is a health and safety issue with roads off private lands being closed. In cases of a fire, roads that have disappeared over time without use will prove a threat to life and property when their closure prevents early containment.
- As proposed in the current TMP, dispersed camping will, for the most part, be limited to two car lengths from an approved road. This will make many campsites off limits, even if they have been used for many years.

Elko County has taken every step available to it under law to assist in the development of a TMP that is acceptable to both local citizens and the Forest Service. We appreciate the opportunity to voice our frustration with the roadblocks we have met, and hope that this hearing may help to alleviate the problem by improving the spirit of cooperation within the agency.

Water Rights

On behalf of the National Cattlemen’s Beef Association (NCBA), of which I am a member, I would also like to submit to the record comments regarding the Forest Service’s recent policy on special use permits as they relate to rancher-owned stockwater improvements.

I am a member of NCBA, the nation’s oldest and largest national trade association for cattlemen which represents more than 140,000 cattle producers through direct membership and their state affiliates. NCBA is producer-directed and works to preserve the heritage and strength of the industry by providing a stable business environment for their members. In the west, where roughly forty percent of the cow herd spends some time on federal lands, the policies held by the Forest Service are of great importance to NCBA.

The ranching industry is very concerned with the recent efforts by the Forest Service to acquire ownership of water rights in return for the continuance of permitted activities on National Forest System lands. We have seen examples of this with the ski industry, with water districts, and, recently, with permitted ranching activities in the west. In Wyoming, ranchers report the Forest Service has recently become more aggressive about acquiring ownership of stock water rights. In Nevada, the agency has delayed action on ranchers’ requests for permits for maintenance of rancher-owned stockwater because of the agency’s disagreement with Nevada’s state water law.

This has resulted in an under-utilization of the ranges by livestock due to a lack of full distribution of water resources on Forest Service permits. While the Forest Service generally has not formally rejected use permits, they have delayed issuing those permits in order to pursue their policy of obtaining stockwater rights. This delay has, in my opinion, prevented the full use of the range by wildlife as well as livestock.

Thanks to improvements largely accomplished by ranchers' investments of their own time and resources on Forest Service lands, abundant wildlife habitat has sprung out of landscapes formerly lacking a large number of water resources. Not only that, but many private stockwater owners on National Forest System lands have memorandums of understanding, (or MOUs) with the Forest Service, where they voluntarily allow the agency to put a designated amount of water to use on agency initiatives. Now, the agency's demand for partial ownership of water rights is threatening these MOUs and the spirit of cooperation that has long existed on the range.

The Forest Service's demand flies in the face of federalism and the prior appropriation doctrine for water rights which exists in much of the west. The federal government, except in narrow cases, continues to give primacy over the waters within individual states to those states' laws, regulations, and agencies. For the benefit of the resource, which ranchers are striving every day to improve, and which the Forest Service is mandated to care for, the current Forest Service policy of delaying maintenance and establishment of stockwater resources needs to be reevaluated and discarded.

Along with this testimony, I am submitting for the record two official Forest Service documents outlining their water rights policy. One is a letter from Intermountain Regional Director Harv Forsgren, dated August 29, 2008, informing Forest Supervisors that "It is FS policy (FSM 2541.03 & FSM 2541.32) to obtain and maintain water rights needed for National Forest purposes under State and Federal law in the name of the United States." He recognized that "the United States cannot obtain livestock water rights via Federal law" and that "compliance with the State law process is mandatory." Director Forsgren's letter continued with a statement that dismayed ranchers: "The Intermountain Region will not invest in livestock water improvements, nor will the agency authorize water improvements to be constructed or reconstructed with private funds where the water right is held solely by a livestock owner."

The second document, an August 15, 2008 Forest Service briefing paper on Nevada State Water Law, made the agency's stance clear: "it is the policy of the Intermountain Region that livestock water rights used on national forest grazing allotments should be held in the name of the United States...The United States must have a water right recognized by the State before federal funds are expended for construction or reconstruction of any livestock water development or facility." The agency's goal, and means of achieving it, is evident. Ranchers, unfortunately, are caught in the crosshairs.

In closing, should your subcommittee see fit to hold a field hearing on the TMP and water permit issues in Elko, Nevada, it would be greatly appreciated by the citizens there. We have seen a slow but constant erosion of our rights to utilize the natural resources of our county as a result of the actions by the federal agencies. We are now asking you to help us protect our economy and way of life for our benefit and for the benefit of generations yet to come.