

**Statement of
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Senate Committee on Energy and Natural Resources
Hearing on the President’s Memorandum on Mitigation
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Chairman Murkowski, Ranking Member Cantwell, and Members of the Committee:

Thank you for the opportunity to discuss the efforts of the Department of Agriculture, specifically the Forest Service, to facilitate responsible economic development on National Forest System (NFS) lands while protecting the natural and cultural resources that Americans enjoy. The Forest Service has sought for many years to avoid or minimize impacts of projects on NFS land through careful siting and innovative design features. These steps include measures to reduce and compensate for the effects of hydropower projects on fish and wildlife and clearing agreements with electric utilities to reduce the risk of fires within utility corridors. Our best practices incorporate criteria to avoid and minimize adverse impacts, to the extent possible, and consider compensation to address residual impacts to provide certainty and transparency to our partners. The Forest Service is working to develop a science-based agency policy to provide a consistent approach to mitigation. A mitigation policy following established and consistent principles and standards throughout our programs will continue to enhance responsible economic development on public lands in accordance with our multiple use mandate.

Background

The Forest Service manages 193 million acres of national forests and grasslands in 44 States and Puerto Rico. The Forest Service manages occupancy and use of the NFS lands. In so doing, NFS lands support the production of goods and services that create jobs and promote economic development in communities across most of the 50 States. Activities on Forest Service lands contribute more than \$36 billion to America’s economy and support nearly 450,000 jobs¹.

Under the Organic Administration Act of 1897 and the Multiple-Use Sustained-Yield Act of 1960, the Secretary of Agriculture has the authority and responsibility to protect and manage the renewable surface resources of the National Forest System for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. In defining multiple use and sustained yield, Congress called for “harmonious and coordinated management of the various resources, each with the other without permanent impairment of the productivity of the land” and for “achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the National Forests without impairment of the productivity

¹ USDA Forest Service, March 2013. Chief Tidwell comments before the House Committee on Agriculture, Subcommittee on Conservation, Energy and Forestry, March 13, 2013; and National Visitor Use Monitoring Results USDA Forest Service National Summary Report (data collected FY 2007 through FY 2011).

of the land².” In the National Forest Management Act, Congress required the Forest Service to develop land management plans, which provide for multiple uses and the diversity of plant and animal communities, and that permits and contracts for the use of National Forest System lands be consistent with those land management plans.³ These laws and associated regulations authorize the agency to minimize effects on surface resources, as appropriate, for occupancy and use of NFS lands.

Executive Order 13604 (March 28, 2012), titled Improving Performance of Federal Permitting and Review of Infrastructure Projects, requires all federal agencies to take all steps within their authority, consistent with available resources, to execute Federal permitting and review processes with maximum efficiency and effectiveness, ensuring the health, safety, and security of communities and the environment while supporting vital economic growth. Mitigating impacts on natural resources is an integral part of this streamlining process.

On November 3, 2015, President Obama issued a Presidential Memorandum titled “Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment.” The Memorandum set a national policy to avoid and then minimize harmful effects to land, water, wildlife, and other ecological resources (natural resources) caused by land- or water-disturbing activities, and to ensure that any remaining harmful effects are effectively addressed, consistent with existing mission and legal authorities. The Memorandum will be implemented through agency policies addressing adverse impacts on natural resources by avoiding and minimizing impact, and then compensating for those impacts that do occur. The objective of these efforts is to ensure clarity, improved transparency, and consistency for proposed activities affecting landscapes. The Forest Service intends to promote uniform mitigation practices. Those efforts include improving information sharing and mitigation support tools by working with other Federal agencies, States, Tribes, and partners to identify and share information in order to define natural resources baselines and monitor the effectiveness of mitigation actions.

Building on past experience with mitigation, in June the Chief of the Forest Service directed agency staff to develop a working group and explore a Forest Service mitigation framework, consistent with other agencies.

The Forest Service currently works with project proponents and the public to identify and mitigate impacts to the broad range of resources on NFS lands. Where Congress has issued explicit direction for the protection of certain resources, including wetlands, endangered species, cultural resources, national parks, and air quality, the Forest Service works closely with partner agencies to ensure that appropriate mitigation is identified and implemented. For proposed projects on NFS lands, the Forest Service identifies appropriate mitigation actions during project design based on agency policy, applicable land management plans, and through review and engagement with States, Tribes, and the public. When assessing appropriate mitigation options, the Forest Service first seeks to avoid impacts, then minimize them, and then compensate for such impacts where avoidance is not practicable. The Forest Service seeks compensation for unavoidable impacts that could impair the productivity of the land and the values it sustains. The Forest Service works proactively with proponents in designing and siting projects in order to

² Multiple-Use and Sustained Yield Act of 1960, Public Law 86-517

³ National Forest Management Act, 16 U.S.C. § 1604(g)(3), (i).

propose projects with reduced adverse impacts to resources. If adverse impacts can be avoided, no further actions to minimize or compensate are necessary. At times, it is not practical or possible to avoid adverse impacts altogether. In these cases, the Forest Service works with project proponents to minimize impacts by modifying project design features. Finally, the Forest Service may consider compensatory mitigation. Proactive work with the project proponent and affected communities, and the implementation of the mitigation hierarchy, can lead to the implementation of successful development projects where the priorities of all citizens are considered.

Implementing Effective Mitigation

For decades the Forest Service has used mitigation to allow responsible development to proceed while minimizing damage to resources. For example, the Agency worked cooperatively with Washington State Department of Transportation, Federal Highways, and a number of other federal and State agencies and Tribes to mitigate the redevelopment of Interstate 90 through the Okanogan-Wenatchee National Forest. The goals of the project were to improve safety, reduce avalanche closures, stabilize slopes, increase capacity, replace pavement, and enhance wildlife connectivity. Through collaborative efforts with the agencies, Tribes, and the public, mitigation was incorporated into the project design. This included wildlife and aquatic crossings, minimizing the highway footprint, preserving habitat through acquisition of land in critical wildlife corridors, restoring wetland, floodplain, and upland forest, and long-term wildlife monitoring.

Similarly, the Forest Service has worked with the Boeing Company, the City of Charleston (SC), the U.S. Army Corps of Engineers, the Nature Conservancy and the Open Space Institute to purchase and restore a large inholding in the Francis Marion-Sumter National Forest. This purchase and restoration will compensate for wetlands filled by Boeing at the Charleston airport in order to construct an airplane painting plant. This is an example of how compensatory mitigation can produce jobs as well improve the health and resiliency of natural resources.

The Forest Service is currently working to create a mitigation policy that incorporates best practices and is compatible with similar policies developed by other federal agencies and States. We intend to issue initial direction as described in the Presidential Memorandum this year with the goal of refining it in subsequent years.

Conclusion

The Forest Service has a proven track record of using sound science and data in applying mitigation to support responsible development, conserve and restore important resources, and move forward with efforts to make our implementation of the full suite of mitigation options more consistent, predictable, and effective. Thank you for the opportunity to present this testimony, and I would be glad to answer any questions.