



California

Public Employees for Environmental Responsibility

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Gaylon Lee

State Water Quality Control Board

By email: ForestPlan_Comments@waterboards.ca.gov

Barry Hill

USFS Region 5

By email: Bhill@fs.fed.us

Dear Gaylon and Barry,

Thank you for the opportunity to review your proposed changes to the USFS's BMPs for Rangeland Management. Below are some comments on the draft Rangeland BMP revisions (dated 03/12/2010), as well as comments regarding the Water Quality Management Plan (WQMP) process and the proposed Water Board waiver/permit for USFS discharges. All of these are preliminary comments and should not be interpreted or construed as comprehensive or as PEER's final comments on these matters.

While we are happy to provide comments on specific BMP proposals, I cannot over-emphasize the point I and many other Stakeholders made at the initial meeting; that it is dangerous and unacceptable to rely on the USFS's BMPs to protect water quality. Our collective experiences over cumulative decades of monitoring the results of Forest Service projects and management practices lead to this conclusion, and we view the WQMP revision as an opportunity to create a plan that goes beyond reliance on BMPs in order to ensure that Forest Service projects comply with water quality standards.

Three "big picture" problems we see with relying on BMPs include:

1) BMPs are generic concepts that don't provide any specifics about how the practices would be applied on the ground. Therefore, a mandatory process is needed that: a) specifies when and how the proposed site-specific practices for each project will be provided to the public and the affected Regional Water Board(s); and b) specifies that the affected Regional Water Board(s) will have an opportunity to review the proposed measures for each project and exclude the project from coverage under the proposed statewide waiver/permit if Regional Water Board staff determines that the project may affect water quality.

2) BMPs have NO demonstrated linkage to compliance with state water quality standards (i.e., have never been shown to result in compliance with state standards), and it has in fact been shown that grazing under these BMPs violates state standards. Therefore, there is no basis upon which to conclude that the proposed BMPs for grazing can avoid significant effects or avoid violations of state water quality standards. There can be no reasonable conclusion that these BMPs alone will attain compliance with state water quality standards, because the Water Boards' own data show that grazing under these BMPs results in numerous violations.¹ Independent scientists have confirmed the Water Boards' own findings. For example, Derlet, et al., document water pollution caused by grazing on National Forest Lands in California and propose that livestock grazing in mountain watersheds be substantially reduced.²

While BMPs may be one useful tool for the USFS to apply as it strives to comply with state water quality standards, the BMPs must not be accepted in lieu of requiring compliance with all relevant narrative & numeric water quality objectives, prohibitions, anti-degradation requirements, and implementation measures contained in the water quality control plans adopted by the Regional Water Boards and the State Water Board.

3) BMPs lack any hard requirements for water quality monitoring; Given all of the above, there needs to be mandatory water quality monitoring at all USFS grazing allotments that pose the potential to violate state standards.

Specific comments on proposed Rangeland BMPs:

1. Rangeland Management Planning - The addition of a requirement for analysis of "Properly Functioning Condition" (PFC) is fine; we agree that PFC can be useful for identifying certain types of problems if the people doing it are properly trained and unbiased. But: 1) there is no demonstrated link between PFC and compliance with state water quality standards; 2) PFC is a completely qualitative and subjective evaluation³; and 3) PFC was not designed or ever intended to supplant quantitative monitoring protocols such as actual water quality testing to verify compliance with state water quality standards.⁴

In addition to the above basic facts about PFC, it is important to acknowledge

¹ See, for example, "Notice of Violation – Discharges of Wastes in Excess of Lahontan Basin Plan Water Quality Objectives for Fecal Coliform on USFS/LTBMU Grazing Allotments," from Lahontan RWQCB to Ed Gee, Forest Supervisor, 8/25/99, 5 pp. plus attachments

² See, for example: 1) Robert W. Derlet, K.A. Ger, J.R. Richards, and J.R. Carlson. 2008. "Risk Factors for Coliform Bacteria in Backcountry Lakes and Streams in the Sierra Nevada Mountains: A 5-Year Study." *Wilderness and Environmental Medicine* 19:82-90, and 2) Robert W. Derlet, Charles R. Goldman and Michael J. Connor. Reducing the impact of summer cattle grazing on water quality in the Sierra Nevada Mountains of California: a proposal.

³ See, for example, "Using PFC Riparian Assessment Protocols in Forest Plan Implementation," memo to Forest Supervisors from USFS Regional Office, SF, CA. 10/16/97.

⁴ See, for example, "PFC: What it is – What it isn't," National Riparian Service Team, 7/17/97.

that different people who apply the PFC method look at the land and come up with different answers. PFC can be easily twisted. It is therefore no panacea, and all three of the "big-picture" points above apply just as much to PFC.

2. Rangeland Permit Administration

Monitoring: The USFS's BMPEP and PFC monitoring should be performed by qualified Forest Service subject-matter experts who are properly trained to do such assessments (i.e., college-educated hydrologists and/or other earth scientists). In no case should BMPEP or PFC monitoring be left to the permittee; nor should BMPEP or PFC monitoring be performed by the USFS's range employees. (For obvious reasons of potential bias, the persons in charge of a project or program should not be the same persons that perform the BMPEP or PFC evaluations.) Further, BMPEP and PFC monitoring should be scheduled in order to most accurately ascertain impacts of ranching activities on water quality, vegetation, and riparian habitat. Finally, it is very important that all parties involved in this process acknowledge that both the BMPEP and PFC methods rely on qualitative visual observations. While these monitoring methods may help to identify obvious problems and foster better communication, neither method has any demonstrated link to state water quality standards. A robust program of actual water quality sampling and measurements is needed to validate the USFS's unsubstantiated (and incorrect) claims that its discharges comply with state water quality standards.

Livestock number and distribution – Consistent non-compliance with permit provisions should trigger serious consequences, such as cancellation of the permit, not merely "band-aid" adjustments such as alteration of livestock distribution. It is one thing for permit provisions to fail to protect water quality; it is another for a permittee to engage in consistent non-compliance.

Season of use – Same as above, if monitoring and periodic assessments show consistent non-compliance, the permit should be suspended or cancelled.

Permit Administration – Here the potential for suspension and cancellation of the permit are proposed in cases of "intentional non-compliance." If a permittee fails to comply with the terms of an allotment permit, it must be assumed the non-compliance is either intentional, or the permittee is unable to comply. In either case, the permit should be suspended or cancelled. There must be serious consequences for irresponsible behavior. Given the very real potential for ranching activities to cause harm to public resources, the USFS should not tolerate non-compliance with permit conditions.

I hope and trust that these comments will be helpful to you. PEER desires to work with all parties to seek a mutually agreeable approach to the issues discussed herein. I assume that you possess copies of all of the documents cited in the footnotes. If you do not, please contact me and we will provide

additional copies.

It is a pleasure working with both of you. Thank you for the opportunity to comment on the 03/12/2010 draft proposed changes to the Rangeland BMPs. Please contact me at the letterhead address if you have any questions regarding these comments.

Sincerely,

A handwritten signature in blue ink that reads "Karen Schambach". The signature is written in a cursive, flowing style.

Karen Schambach
California Field Director