



SECURITY STATE BANK  
BASIN • GILLETTE • SHERIDAN • WORLAND

*Regional Forester,  
Just thought you  
should know that the  
Shoshone NF is sponsoring  
the Legation members of the  
11990 for the protection  
of the elk herds.  
367-347-33*

CASPER WY 826

17 MAR 2014 PM 2 T



*Daniel Quinn, Regional Forester  
Rocky Mountain Region  
740 Lemmas Street  
Lakewood, CO 80401*

5040184720



609 North Road 11  
Worland, WY 82401  
March 14, 2014

Forest Supervisor  
Shoshone National Forest  
808 Meadow Lane Avenue  
Cody, Wyoming 82414

FINAL EIS & LAND MANAGEMENT PLAN COMMENTS AND  
OFFICIAL NOTICE OF OBJECTION/APPEAL

Given that my comments of 23 November 2012 (attached) on the Draft Plan/EIS were totally ignored, I have no other recourse but to officially initiate a PROTEST/APPEAL process because Shoshone National Forest (SNF) continues to only give insincere lip-service to its clearly stated legal mandates under Executive Order 11990 for the Protection of Wetlands. As you well know, Executive Orders carry the weight of Law for all Federal Agencies.

I was working on wetland protection issues with the U.S. Fish and Wildlife Service from 1974 - 1979 and know that EO 11990 was specifically drafted at that time to mainly curtail the destruction of wetlands on the hundreds of millions of Public Land acres being mismanaged by the U. S. Forest Service (USFS) and Bureau of Land Management. The EO was specifically worded to set the bar high for Federal Agencies responsible for wetland protection and management. This was done to remove any wiggle room that might be used by an agency, such as the USFS, to continue their neglect of wetlands (including riparian areas) on our Public Lands. The EO of 1977 was signed and published in the Federal Register and issued to each Federal Agencies for mandatory promulgation of regulations, rules, policies, and procedures for implementing it within each agency's program areas. It was signed and issued by President Carter and has been continuously upheld for 34 years by the following five Presidents.

Not only is the USFS paying insincere lip-service to EO 11990 legal mandates with its water-downed definitions of the agency's requirements under the EO, but also within the FEIS and Land Management Plan (LMP) that totally excluded all inventory data for wetlands and also by the total lack of any data on the current condition and trend under the past and current SNF management schemes. This total failure is made clear in Table 1 (page 1099) of the FEIS and Tables 1 and 2 (page 31) of the LMP, which present the acres of all cover types on the SNF, except for wetlands.

How can the total failure to provide any wetland inventory and habitat condition data for the SNF be considered as, providing leadership and taking actions to minimize destruction of wetlands (paraphrased from EO 11990), when the agency does not even know where and how much wetland habitat exists on the Forest? Simply providing general meaningless statements on Page 33 of the LMP just adds to the insincerity shown to EO11990 legal mandates by the USFS. Likewise, bringing forth the exact same general mealy-mouthed language of page 609 in the DEIS into the FEIS, when no wetland inventory or condition data are presented, is purely and simply ignoring the legal mandate of EO11990 to, show leadership in the proper management of wetlands on our Public Lands. The USFS and its Civil Servants have clearly violated the Public Trust given

to them by the citizens of this country through EO11990 to improve the condition of wetlands, our most valuable habitat on an acre for acre basis, on our Public Lands.

I have read dozens of definitions over the last five decades of what wetlands are, but none as bad as the one on Page 654 of the FEIS. I suggest you replace this grossly inadequate definition with the one on Page 795 of the FEIS, which was taken directly from EO 11990 for the Protection of Wetlands. That should be the USFS's first easy step in recognizing its legal mandates under the EO and that then leads into taking actions to meet wetland mandates in the FEIS and LMP.

I have chosen to file an official Protest/Appeal because it appears obvious that the SNF and USFS have chosen to continue to ignore regulations, rules, policies, and guidelines which were required to be promulgated by every Federal Agency to specifically meet their EO 11990 legal mandates. The need for EO 11990 has been made abundantly clear by the continued support of it for 37 years by six Presidents of the United States of America.

As stated in my Draft Plan Comments, an Administrative Law Judge made it clear to Worland BLM that they were required to inventory and determine the condition and values of every wetland type in a grazing allotment where the lease was up for renewal. I am prepared to also take this Protest/Appeal through the upper echelons of the FS bureaucracy. I believe that the SNF staff are not just outliers in the neglect of wetlands on our National Forest Public Lands, but that the entire USFS is complicit in ignoring the legal mandates of EO 11990. Assuming the entire agency believes it can continue to ignore the clearly stated stringent legal requirements placed on it by EO 11990 mandates, I am confident that legal actions through the courts will be effective in requiring the SNF and the USFS to bring the SNF FEIS and LMP into compliance with the legal mandates of Executive Order 11990 for the Protection of Wetlands.

The need for this entire legal process can be eliminated if the USFS modifies the FEIS and LMP to clearly describe the full legal mandates placed on the SNF and USFS by EO 11990. Further, the USFS must delineate in the FEIS and LMP how they will systematically inventory (in a timely manner) all the wetland types, assess their condition, and describe how those in poor/fair condition and/or others with a declining trend will be improved through changes in management practices.

During the 1980s, I used EO 11990 mandates to guide me in the inventory and condition assessment of aquatic and wetland habitat on 3.2-million acres of BLM Public Lands in the Bighorn Basin and in the writing of the aquatic/wetland sections in three LMPs and EISs. Based on this experience, I believe a competent/committed USFS Biologist, experienced in aquatic/wetland biology and familiar with USFS legal mandates under EO 11990, could make the required changes and additions to the FEIS and LMP, as outlined above, in less than a day.

Sincerely,

Richard (Dick) Kroger

CC: DOI Office of Environmental Policy and Compliance, Denver

USFWS, Cheyenne

Regional Forester, Denver

Chief Forester, D.C.

609 North Road 11  
Worland, WY 82401  
November 23, 2012

Forest Supervisor  
Shoshone National Forest  
808 Meadow Lane Avenue  
Cody, Wyoming 82414

DRAFT PLAN COMMENTS

Dear Forest Supervisor:

I want to reiterate that the Shoshone National Forest (SNF) is not only the first National Forest in the United States of America, but it remains first in importance in maintaining the largest intact natural ecosystem in the lower 48 states and probably even in Alaska. The Greater Yellowstone Ecosystem (GYE) still represents the best there is in natural wildlife, lands, and waters as seen by the first native Americans some 15,000 years ago and by the first European explorers over 200 years ago. The natural diversity of wildlife and scenic beauty of the SNF and the surrounding GYE should be protected at all costs from the impacts of commercialized and industrial (including motorized recreation) development so that current and all future generations of Americans and foreign visitors to the area have the same opportunities to enjoy its natural wonders as I have had.

SNF and the GYE have too great of natural values to allow ANY commercial degradation caused by oil and gas development, mining, logging, livestock grazing, motorized recreation, etc. The only allowable commercial activities should be those that help visitors to explore SNF, understand its natural wonders, and to enjoy its solitude and the unique outdoor recreational opportunities. I have participated in many hunting trips on the SNF, dozens of extended hikes to observe wildlife and bathe in its natural beauty, fished in its streams, and in general sight seeing from the roads. There are more combined fond memories of the SNF stored in my memory bank than for all the dozens of other National Forests I have visited in the East, West, Mid West, Southwest, and Inter-Mountain West.

I urge you, with all my heart, to develop a Final Forest Plan which provides FULL PROTECTION of all the natural resources which are so vital to the enjoyment and understanding of a large intact ecosystem by current and all future generations of Americans. I am told that the Bighorn Basin BLM Plan includes significant protection measures for their Public Lands which are contiguous with the SNF and lie within the GYE. I certainly don't expect less from the U. S. National Forest Service. This is your opportunity as a career Forest Service employee and current Forest Supervisor to leave a lasting natural legacy by fulfilling your Public Trust Responsibility to the American people.

ALTERNATIVE C IS THE ONLY ALTERNATIVE THAT WILL PROVIDE THE FUTURE MANAGEMENT WHICH WILL ENSURE THAT THE SHOSHONE NATIONAL FOREST HAS A CHANCE TO PROVIDE THE MOST LASTING NATURAL BENEFITS FOR ALL FUTURE GENERATIONS OF AMERICANS.

## SPECIFIC COMMENTS

On pages 64 and 304, the Draft Plan is entirely inadequate in how it addresses the legal responsibilities for what the U.S. Forest Service is required to do in the management of all wetland and riparian areas and floodplains on Forest Service lands as is mandated under Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). These two Executive Orders, especially for Protection of Wetlands, were specifically enacted to stop land management agencies, such as the USFS and BLM, from treating these most valuable ecosystem habitats as SACRIFICE AREAS.

Your attempts to water-down these strongly stated EOs cannot be tolerated and in the current Draft Plan language is clear grounds for support of a valid and winnable appeal, if the existing language is carried into the Final Plan.

To make the power of these EO 11990 clear to the reader, you must include the quote from Section 1, "Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for ... (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities."

The above language is much stronger and more direct than the mealy-mouthed statement, "Executive Order 11990 requires Federal agencies exercising STATUTORY AUTHORITY AND LEADERSHIP (emphasis added) over Federal lands to avoid ...." Certainly the statement, "Where it is practicable, new construction in wetlands should be avoided." is entirely inappropriate because it is totally out-of-line with the EO mandate to SHOW LEADERSHIP TO MINIMIZE IMPACTS. This same weak-kneed language is included on page 304.

Also on Page 304, you state, "Executive Order 11990, AS AMENDED (emphasis added) requires Federal agencies exercising statutory authority and leadership over Federal lands to avoid to the extent possible, the long- and short-term adverse impacts associated with the destruction or modification of wetlands." I cannot find any documented evidence that EO 11990 was ever amended. If it has been amended, show how it was changed from the original EO. If it has not been amended, then remove this false statement.

In summary, SHOWING LEADERSHIP TO MINIMIZE IMPACTS TO WETLANDS TO THE EXTENT POSSIBLE basically takes precedence over all human uses of wetlands that cause them to be degraded on Forest Service lands. These current "illegal" uses of wetlands include the human activities such as livestock grazing, logging, fire suppression, mineral development, motorized recreation, etc. that currently result in a loss of natural wetland values. This includes reconstruction and/or maintenance of roads and motorized recreation trails in riparian zones and/or through other types of wetlands.

Also, each type of wetlands, not just those associated with streams and lakes, must be inventoried and their current condition determined in order for the U.S. Forest Service to meet their

specific Federal mandate. Some of those not specifically addressed in the Plan include springs, seeps, wet meadows, small natural water catchments, and man-made livestock/wildlife reservoirs.

Recently the Worland BLM Field Office tried to ignore Federally mandated EO 11990 requirements for addressing all wetlands, including man-made ones for livestock/wildlife use. The Administrative Law Judge made it clear that BLM was required to inventory and determine the wetland values associated with each wetland in the grazing allotment. The Shoshone National Forest has the same responsibility for all wetlands existing on the Forest.

Sincerely,

Richard (Dick) Kroger  
Private Citizen and Recreational User of the SNF