

SANTA CLARA

POST OFFICE BOX 580
(505) 753-7330
(505) 753-5375 Fax



INDIAN PUEBLO

ESPANOLA, NEW MEXICO
87532
OFFICE OF GOVERNOR

July 3, 2013

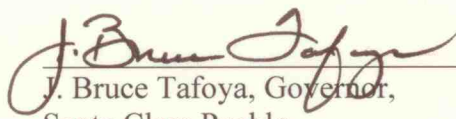
United States Forest Service
Attn: Anne Zimmerman -
Director of Watershed, Fish,
Wildlife, Air, and Rare Plants
Mail Stop 1121
1400 Independence Ave., SW
Washington, DC 20250-1121

**Re: *Comments on Forest Service, Notice of Interim Directive No. 2520-213-1
Regarding Burned Area Emergency Response (BAER) Procedures***

Dear Director Zimmerman:

On behalf of the Santa Clara Pueblo, and in coordination with the Pueblo de Cochiti, we offer the attached comments in response to the *U.S. Department of Agriculture - U.S. Forest Service Notice of interim directive; request for public comment*. 78 Fed. Reg. 34031-34 (June 6, 2013).

Sincerely,


J. Bruce Tafoya, Governor,
Santa Clara Pueblo

Enclosure



2120 L Street, NW, Suite 700
Washington, DC 20037

T 202.822.8282
F 202.296.8834

HOBBSSTRAUS.COM

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Filed via www.regulations.gov

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**Re: *Comments on Forest Service, Notice of Interim Directive No. 2520-213-1
Regarding Burned Area Emergency Response (BAER) Procedures***

Dear Director Zimmerman:

On behalf of the Pueblo de Cochiti and Santa Clara Pueblo (the "Pueblos"), we offer the following comments in response to the *U.S. Department of Agriculture - U.S. Forest Service Notice of interim directive; request for public comment*. 78 Fed. Reg. 34031-34 (June 6, 2013). As the U.S. Forest Service is aware, very dangerous wildfires in the southwest United States are currently burning, and each year they are increasing in scope and severity. We appreciate the opportunity to provide comments on the interim directive on Burned Area Emergency Response (BAER) procedures. Throughout our comments, our revisions will be indicated as follows: proposed insertions will be underlined and proposed deletions will appear as ~~striketrough~~.

1. Timing and Effectiveness of Tribal Consultation Effort

The Pueblos are pleased that the U.S. Forest Service (the "Forest Service") "considers tribal consultation as an ongoing, iterative process that runs from development of the proposed directives through issuance of final directives." 78 Fed. Reg. at 34033. Accordingly, we provide these comments as part of this process.

However the Pueblos are concerned that the 2011 tribal consultation effort referenced in the Federal Register notice simply was not effective. We understand that many tribes were wholly unaware that a tribal consultation had occurred. This concern is supported by the fact that the Forest Service only received a total of four comments from **two** tribes. Currently there are 566 federally recognized tribes in the United States. 78 Fed. Reg. 26384 (May 6, 2013). In our opinion, the fact that only two responses were received indicates that there was insufficient outreach to concerned tribes.

We note that one of the stated goals of the U.S. Department of Agriculture Tribal Consultation policy is to "systematically, efficiently, and effectively provide an opportunity for Tribal consultation and focus the USDA on Tribal issues to continue to enhance the government-to-government relationship between Tribes and the United States Government." USDA Departmental Regulation 1350-002, Tribal Consultation, Coordination, and Collaboration, January 18, 2013.

In 2011, the Pueblos received a letter from the Regional Forester stating that "If you would like to consult on these policy changes; you can request a meeting with the local Forest you normally work with." *See* attached Letter from Regional Forester to Santa Clara Governor, August 4, 2011. Pursuant to U.S.D.A., Departmental Regulation 1350-002, "[n]otification - the distribution of information from a USDA office or agency to one or more Tribes - is not consultation." The Departmental Regulation further provides that "[a]s a general principle, consultation only occurs when the office or agency and Tribal officials mutually agree that consultation is taking place." If the Forest Service is not receiving tribal responses to general questions or mass mailings concerning tribal interest in consultation, the parties could not have mutually agreed that a consultation had occurred.

The Federal Register notice indicates Forest Service contact was made with tribes from May 2011 to October 2011. As the Forest Service is well aware, in the Southwest the Wallow fire, Las Conchas fire, and the Pacheco fire had been recently burning during this time, or were still burning. Scarce tribal staff and resources were being used deal with suppression of those fires and mitigating the post-fire effects of monsoonal rains which prevented adequate response to the letter. The Pueblos are still trying to address dangerous post-fire flooding risks that they live with everyday because the watersheds on Forest Service lands that flow into their tribal lands were severely burned. We believe that the current Forest Service request for comments is also poorly timed, because it is occurring during what is already a record-breaking fire season and the start of monsoonal rains that will bring more dangerous flooding.

In light of the above discussion, we request additional time for all federally recognized Indian tribes to submit comments. We understand that the USDA, Departmental Regulation 1350-002 only requires a minimum of 30 days for the public to a request for comments. This is only a baseline minimum requirement. The Departmental Regulation 1350-002 provides USDA agencies with flexibility to shape their own policies, including policy for tribal consultation.¹ The Forest Service Handbook (FSH) at 1509.13, specifically states that during consultation with tribes, "[w]idely applicable national issues must provide a consultation period of at least 120 days from the date the Tribe or ANC likely received the information on which they are

¹ "The minimum standard notice period should be 30 business days, but in some instances involving complex policies or multiple policies, the notice period may extend for up to 120 days." USDA, Departmental Regulation 1350-002, p. 16.

being invited to consult."² We believe that this interim directive on the BAER procedure is a "widely applicable national issue" that warrants more consultation time.

Accordingly we request that the time period for tribal comments be extended from 30 days (ending on July 8, 2013) to 120 days (ending on October 7, 2013) to comply with the Forest Service Handbook, and to ensure that all federally recognized Indian tribes have an opportunity to provide substantive comments.

We also note that the Federal Register notice only contains a summary of the BAER interim directive. It would be much more helpful to tribes if the Forest Service provided the actual text of the BAER interim directive No. 2520-213-1 in the Federal Register notice, or indicated where the interim directive may be publicly available. We had to contact the Forest Service and request a copy so that we could provide these comments.

2. Interim Directive, FSM 2523.02 – Objectives

We appreciate the Forest Service recognition that tribal cultural resources are a very important part of tribal communities. We agree that the Forest Service needs to consult with affected tribes to identify critical cultural resources and ensure that emergency stabilization actions do not negatively affect those cultural resources.

However, the post-fire affects on the natural resources on tribal trust lands and the people living in tribal communities are also very important. We ask that the Forest Service consult tribes on any BAER process implementation which might affect tribal natural resources and communities – even though the burn area may be adjacent to tribal lands or located up-watershed from tribal trust lands.

The stated Objective of the BAER Interim Directive at 2523.02 is:

To identify imminent post-wildfire threats to human life and safety, property, and critical natural or cultural resources on National Forest System lands and take immediate actions, as appropriate, to manage unacceptable risks.

Tribal lands and communities are not on "National Forest Systems lands." However, they have been devastated by flooding caused by wildfires in nearby, or adjacent, watersheds that are on National Forest System lands. The objective stated here at 2523.02 should be revised to reflect threats to nearby or adjacent tribal lands which are also federal lands. We propose the following revisions.

To identify imminent post-wildfire threats to human life and safety, property, critical natural or cultural resources on National Forest System

² See FSH1509.13-2012-1, July 12, 2012. (Expires January 17, 2014).

lands, or lands held in trust or restricted fee status by the United States for the benefit of Indian tribes, and take immediate actions, as appropriate, to manage unacceptable risks.

Much of the tribal land base is surrounded by lands under the jurisdiction of different federal agencies, *e.g.* BLM, BIA, USACE, and the Forest Service. Limiting this objective to only identifying and acting on threats to resources located on National Forest Systems lands leaves post-wildfire threats to tribal lands unaddressed. The Forest Service must be the responsible party when a watershed located on Forest Service land is destroyed by fire causing flooding downstream on tribal land. The BAER interim directive must be revised to recognize this risk and authorize Forest Service action to manage and alleviate that risk. Federal agencies have a responsibility to Indian tribes to act as trustee and protector of tribal lands and resources. Protecting tribal trust land from post-fire threats is part of that trust responsibility.

3. Interim Directive, FSM 2523.03 – Policy

The interim directive at 2523.03.1 includes a new sentence which states that "[c]ritical values addressed by the BAER program are limited to those listed in section 2523.1, exhibit 01." Exhibit 01 is a list of "*Critical Values to be Considered During Burned-Area Emergency Response*." We ask that the Exhibit 01 be revised to include a new category called "Tribal Trust Resources Adjacent to, or Affected by, Fire-Damaged National Forest System (NSF) Lands." If every decision in the BAER procedures is going to be determined using the list of Critical Values contained in Exhibit 01, the Forest Service cannot exclude tribal communities living everyday with the after effects of wild-fires occurring off-reservation -- but on nearby or adjacent Forest Service lands.

At 2523.03.6, the interim directive authorizes the Forest Service to "[m]aintain, repair, or replace emergency treatments for up to three years from containment of the fire where failure to do so would result in unacceptable risk to critical values (sec. 2523.1, ex. 01 and ex. 02)." This underscores the importance of our requested revision to Exhibit 01, above. We also ask that Exhibit 02, entitled "BAER Risk Assessment" be revised as follows. The language in Exhibit 02 describing the *Magnitude of Consequences* should be revised as follows:

- Major. Loss of life or injury to humans; substantial property damage; irreversible damage to tribal trust resources, and critical natural or cultural resources.
- Moderate. Injury or illness to humans; moderate property damage; damage to tribal trust resources, and critical natural or cultural resources resulting in considerable or long term effects.
- Minor. Property damage is limited in economic value and/or to few investments; damage to tribal trust resources, and critical natural or cultural resources resulting in minimal, recoverable or localized effects.

Again, any consideration of BAER Risk Assessment critical values must include tribal trust resources and tribal communities that are threatened by post-fire risks, whether or not they are located on Forest Service lands. This is particularly true when the root of the threat to a tribal community arises on Forest Service lands.

4. Interim Directive, FSM 2523.04 – Responsibility

The Federal Register notice states that the revisions to this section have "Added forest supervisor responsibility for initiating and ensuring communication with appropriate Federal Tribal, State, county, and local emergency response agencies regarding the potential threats that may exist downstream of National Forest system lands and clearly communicating to those agencies the limits of Forest Service authorities." 78 Fed. Reg. at 34032. In our experience Forest Supervisors in New Mexico have been communicating the limits of Forest Service authority since the 2011 wildfires. We believe that Forest Supervisors should be empowered with the authority and flexibility to protect and restore fire ravaged National Forest lands which affect tribal communities, economies, lands and resources via post-fire flooding. Repeatedly communicating to tribes what the Forest Service cannot do to protect tribal trust resources, demonstrates a policy failure that must be addressed. We propose that the language of the 2523.04c.4 be revised giving the Forest Supervisor the responsibility to:

Ensure early and continued communication with appropriate Federal, Tribal, State, county, and local emergency response agencies, regarding potential threats off National Forest System land and Forest Service authorities-; and where potential threats exist to tribal trust lands the Forest Supervisor will coordinate with other federal agencies and the tribal government to explore how to efficiently and adequately address those threats using authority provided in the Tribal Forest Protection Act, and other applicable federal authorities.

As explained below in our comments on interim directive section 2523.52, we believe that adding this responsibility will strengthen the new language 2523.52, and will better carry out the intention of the interagency agreement between the United States Department of the Interior, Bureau of Land Management, Bureau of Indian Affairs, National Park Service, U.S. Fish and Wildlife Service, and the United States Department of Agriculture, Forest Service, FS Agreement No. 10-1A-11130206-32.

The interim directive at section 2523.04c.1–2 noted below, includes our suggested revisions, and provides that the Forest Supervisor has the responsibility to:

1. Identify Forest BAER personnel before the start of each fire season and provide the appropriate fire, safety, and BAER training.
2. Designate a BAER team, staffed appropriately for the fire size and anticipated risks, to perform a BAER assessment on all wildfires larger than 500 acres, and on smaller fires when threats to life and safety,

property, adjacent or affected tribal trust resources, and ~~or~~ critical natural or cultural resources are likely to exist.

We ask that the procedures referenced in this section of the interim directive, which dictate how BAER teams are identified and designated, are re-examined so that tribal government representatives are more involved from beginning-to-end, when tribal trust resources are threatened.

We request that the cost benefit analysis requirements referenced in the interim directive at section 2523.04c.6 be either removed, or revised to be less stringent, specifically when conducting an analysis of planned BAER actions to protect tribal trust lands.

5. Interim Directive, FSM 2523.05 – Definitions

The interim directive definition section has been significantly revised, and we believe it is much improved. We suggest that the definitions be further revised as follows:

Burned-Area Emergency. A situation when human life or safety, property, tribal trust resources, or critical natural or cultural resources are at an imminent and unacceptable risk due to post-wildfire related threats.

Emergency Stabilization. Planned actions to stabilize and prevent unacceptable degradation to tribal trust resources, or natural and cultural resources, to minimize threats to life or property resulting from the effects of a fire, or to repair/replace/construct physical improvements necessary to prevent degradation of land or resources. Emergency stabilization actions must be taken within 1 year of containment of the fire, unless the Director of WFW, or the Regional Forester has granted an extension. (Wildland Fire Leadership Council. January, 2002).

We suggest the revision to the definition of *Burned-Area Emergency* so that it is clear that tribal trust resources are given equal consideration throughout this BAER interim directive. Our proposed revision to *Emergency Stabilization* is meant to create agency flexibility in situations where, for example: 1) the delay in taking Emergency Stabilization actions are caused by Forest Service action or inaction, 2) an emergency arising from the burned area (like flooding) does not arise until more than 1 year after the fire is contained, or 3) the Forest Service leadership in its discretion allows an exception. This type of flexibility and discretion is crucial to enable Forest Service officials, on the ground, to take needed action that otherwise would be prohibited.

6. Interim Directive, FSM 2523.1 – Burned Area Emergency Assessment

The Federal Register notice summary of the changes in this section indicate that it is been "[c]larified ... to encourage consultation with Tribes for assistance in identifying

critical cultural resources values." 78 Fed. Reg. at 34032. We note that the actual language of the interim directive requires more than *encouraging* consultation with Indian tribes. The last sentence of the first step in the assessment process requires consultation "with Tribes for assistance in identifying sensitive cultural resource values." However, tribal consultation should be mandated to identify more than "cultural resource values." The goal of the required tribal consultation must also include determining whether critical tribal trust resources, lands, and watersheds are at risk from post-fire affects, and then to prioritize BAER treatments in a way that meets the Forest Service trust responsibility.

This is why we assert above, in our discussion of FSM 2523.03 – Policy, that Exhibit 01 must be revised to include a new category called "Tribal Trust Resources Adjacent to, or Affected by, fire-damaged National Forest System (NSF) Lands." One might argue that our concern for *tribal* human life and safety, *tribal* lands and property and *tribal* natural resources is already included in one of the identified Critical Values in Exhibit 01. However, in our experience many BAER teams and others implementing BAER procedures have no understanding of the federal government's trust responsibility towards federally recognized Indian tribes. This new stand-alone category must be included to ensure tribal considerations are not overlooked, when BAER procedures are implemented. We believe that these Critical Values, as drafted in the interim directive, will cause tribal communities and tribal trust resources to be ignored during the BAER assessment process. The list of Critical Values includes *Indian Sacred Sites on NFS Lands*, and *Cultural resources which are listed on or potentially eligible for the National Register of Historic Places*. However, there is no Critical Value assigned for the actual tribal members and communities living on federal tribal trust land, often surrounded by NFS lands or other federal lands. This must be revised. Protecting tribal trust resources and communities from post-fire sediment erosion, watershed degradation, re-burn of dead or dying fuels on NFS lands, and severe flooding must be a priority. If the Forest Service cannot expend funds to implement BAER treatments beyond NFS lands, then our hope is that adding this new Critical Value category to Exhibit 1 will at least allow BAER activity at the boundaries between tribal trust lands and NFS lands in order to protect tribal trust resources, and uphold the federal trust responsibility.

In Exhibit 01, the Cultural and Heritage Resources category includes "*Cultural resources on NFS lands which are listed or potentially eligible for the National Register of Historic Places.*" This statement is far too limiting. Many sites on NFS lands that have cultural significance to tribes have neither been surveyed, nor identified – and often this is intentional. Additionally, these sites are generally not evaluated for eligibility to the National Register until some type of project implementation is being undertaken at or near the site, and funding is made available to complete the evaluation.

The Federal Register notice states that the new interim directive "... provides guidance to authorized officers to consult with affected tribes to assist in identifying critical cultural resources, to ensure emergency stabilization actions do not negatively affect cultural resources." 78 Fed. Reg. at 34034. However, the *Cultural and Heritage*

Resources category in Exhibit 01 is much narrower than this statement suggests. Exhibit 01 should be revised as follows to clarify that cultural resources identified as critical to a tribe during tribal consultation should receive BAER treatment. BAER treatment should not be limited to only sites that are eligible, or potentially eligible, for the National Register. The Forest Service could agree to treat properties identified as critical to a federally recognized Indian tribe as National Register eligible, upon request by the affected tribe.

Cultural resources identified as critical to a federally recognized Indian tribe, and cultural resources which are listed on or potentially eligible for the National Register of Historic Places.

Also as noted above, we suggest the revision of section 2523.1 - Exhibit 02 describing the *Magnitude of Consequences*. The revisions we have suggested to Exhibit 02 are consistent with our suggested revisions to Exhibit 01.

We ask that the requirement for a "cost/benefit analysis" at interim directive 2523.1.5 be removed, or the requirements lessened significantly when the BAER action being considered is to protect tribal trust resources.

The BAER interim directive references form FS-2500-8 at section 2523.1.6. We ask that this form be modified to include a check box (or other indicator) reflecting whether or not tribal trust lands are threatened or will be affected by implementing the BAER assessment. The form should also indicate whether (and when) a Forest Service official has discussed the BAER assessment with a tribal government official.

7. Interim Directive, FSM 2523.2 – Emergency Response Actions

We request that interim directive at 2523.2 be revised as follows to reflect that coordination and cooperation to address flooding downstream of NFS Lands should include tribal governments and not be limited to "appropriate response agencies."

For potential flooding or other threats that may continue downstream of NFS lands, coordinate and cooperate with the appropriate response agencies, and tribal governments with jurisdiction over threatened tribal trust lands.

As noted above, many reservations are adjacent to federal wilderness areas. In our experience Forest Service, and other federal officials, regularly communicate that they cannot implement BAER treatments beyond the limits of NFS lands, or because the fires are located in the wilderness. The interim directive at 2523.2.2.e – *Wilderness*, should be revised as follows:

Response actions in wilderness may be appropriate if there is an unacceptable risk to the wilderness resource or if conducting emergency

stabilization in wilderness would provide the best option for protection of life, property, or other critical resources outside of wilderness (FSM 2323.43). Response actions in wilderness may be appropriate if location treatments in wilderness would provide an option to protect tribal trust lands, resources, tribal economies and communities.

8. Interim Directive, FSM 2523.3 – Monitoring

The Pueblos have no comments on this section.

9. Interim Directive, FSM 2523.4 – Suppression-Damaged Areas

The Pueblos have no comments on this section, except to the extent that the language in this section references FSH 6509.11g, as noted in the comments below regarding section FSM 2523.5 – *Use of Funds*.

10. Interim Directive, FSM 2523.5 – Use of Funds

We suggest that the language below be clarified to ensure that if the burned lands are beyond Forest Service jurisdiction, but have created a threat to tribal trust resources, there is no obstacle to accessing funds to protect tribal trust resources.

Comply with the Service-wide Appropriation Use Handbook (FSH 6509.11g) and the following direction in determining the appropriate use of emergency fire suppression funds for burned area emergency stabilization based on jurisdiction of the burned lands.

The language here, and in the Service-wide Appropriation Use Handbook FSH 6509.11g, should be revised to ensure that threatened, or adversely affected tribal trust resources, are eligible for emergency fire suppression funding.

11. Interim Directive, FSM 2523.51– National Forest System Lands

The Pueblos have no comments on this section.

12. Interim Directive, FSM 2523.52– Other Federal Lands

For other federal lands, the language in this section allows "when appropriate" the coordination of "BAER assessment and implementation with other Federal agencies, Tribal governments, and State and local agencies." It also requires the clear identification of the "responsibilities of each entity and fiscal arrangements for coordination, assessment, and implementation."

This section also references the "interagency agreement between the United States Department of the Interior, Bureau of Land Management, Bureau of Indian Affairs,

National Park Service, U.S. Fish and Wildlife Service, and the United States Department of Agriculture, Forest Service, effective May 6, 2010, (FS Agreement No. 10-1A-11130206-32) [which] provides the basis for cooperation among the agencies on all aspects of wildland fire management, and governs the financial arrangements for cooperative BAER planning and implementation."

As noted in the interagency agreement "Because fire recognizes no boundaries, the agencies continually strive to provide interagency cooperation to achieve more productive, cost effective and efficient operations among these partnering agencies." Indian tribes should be active partners in this interagency cooperation and coordination.

On May 3, 2013, the United States Department of Agriculture conducted a "Fire and Disaster Assistance" consultation session at the United States Forest Service, Albuquerque Service Center hosted by Mr. Arthur "Butch" Blazer, Deputy Under Secretary-NRE. Our Pueblos sent representatives to this consultation, which was also attended by representatives from the BIA, BLM, and the U.S. Army Corps of Engineers. During this consultation session it was specifically noted that for multi-jurisdictional fires:

- (1) There is no inter-agency resource available to tribes to provide an explanation regarding funding and programs available to tribes attempting to respond to a fire, and dealing with post-fire disaster; and
- (2) There is no federal point of contact to specifically provide administrative assistance or information to tribes that lack internal administrative capacity, and expertise in disaster relief.

During this consultation Mr. Blazer stated that a "true interagency" BAER team needs to be developed with a component that allows tribes to have direct representation on that BAER team. He also stated that the Forest Service and the entire federal family "needs policy addressing wildfires in the way that these fires are happening today." Mr. Blazer added that "if policies are holding back efficiency in the way the federal government is able to respond to fire and post-fire disaster, then the policy must change." We agree with Mr. Blazer's assessment.

We request that when BAER coordination, assessment, and implementation impacts tribal trust lands and involves more than one agency the affected tribal government must be included in these BAER activities. For a multi-jurisdictional fire disaster, a single federal point of contact with expertise in fire response activities for all cooperating agencies must be provided for tribal governments to utilize. This will allow tribal governments to focus on the fire response effort rather than coordinating communication with multiple federal agencies. Tribes often do not have staff with the experience required to coordinate such a complex effort.

Accordingly, the BAER interim directive, and the FS Agreement No. 10-1A-11130206-32, should be revised to ensure this type of coordination with federally recognized Indian tribes, and not only for federal agencies.

13. Interim Directive, FSM 2523.53– Non-Federal Lands.

We suggest the following revision to FSM 2523.53 to ensure that coordination occurs with tribal governments, and the intended scope of the Wyden authority is accurately reflected.

As appropriate, include consideration of non-Federal intermingled or adjacent, burned lands in burned-area surveys and reports to determine post-fire risks. Coordinate with other affected government agencies and tribal governments to identify shared risk management responsibilities.

Under the Wyden Watershed Restoration and Enhancement Agreement authority (Pub. L. No. 105-277), Forest Service funding may be used to accomplish work on non-NFS lands if the work is essential to protect NFS lands, NFS roads, or safety of NFS visitors. Use of BAER funding to implement emergency stabilization on non-Federal burned lands is appropriate when there is a clear benefit to safety or critical resources on NFS lands, when actions conducted on NFS lands would otherwise not be effective, when the public safety is threatened, and when appropriate Wyden authority agreements ~~with the affected landowners~~ with the affected landowners, or the affected State, local, or tribal government or other public entity, educational institution, or private nonprofit organization. See applicable provisions in FSM 1580 and FSH 1509.11 for specific guidance on provisions under these agreements.

14. Interim Directive, FSM 2523.6 – Human Resources; FSM 2523.7 – Reporting; FSM 2523.8 – Controls

The Pueblos have no comments on sections FSM 2523.6 - .8.

15. Interim Directive, FSM 2523.9 – Coordination Between BAER and Other Post-Fire Recovery Programs

The language of FSM 2523.9 should be revised to mandate, and not simply encourage, coordination between BAER and other post-fire recovery programs. We suggest the following revisions to FSM 2523.9.

The BAER program and these programs have different objectives, processes, reports, and timelines. Despite their differences, these programs have similar, and often overlapping, assessment needs. To the extent that the assessment needs of the BAER program and these other

programs overlap. Every effort should be made to cross-program coordination will be carried out ~~coordinate the BAER program with these other programs to the extent that they overlap, provided in a manner that the coordination~~ maintains the integrity and timelines of the BAER program.

On behalf of the Pueblo de Cochiti and the Santa Clara Pueblo we appreciate the opportunity to comment on the Forest Service's Interim Directive No. 2520-213-1 regarding Burned Area Emergency Response (BAER) procedures. Please feel free to contact me at (202) 822-8282 with questions regarding these comments.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER, LLP



By: John T. Plata

cc: J. Leroy Arquero, Governor, Pueblo de Cochiti
J. Bruce Tafoya, Governor, Santa Clara Pueblo



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Wildland Fire Coordination
Washington, DC 20240

JUL 02 2013

U.S. Forest Service
Attn: Director, Watershed, Fish, Wildlife,
Air and Rare Plants
1400 Independence Ave SW, (Mail Stop 1121)
Washington, DC 20250-1121

This letter contains comments on the U.S. Forest Service interim directive for revised procedures for Burned Area Emergency Response (Federal Register, Vol. 78, No. 109, June 6, 2013) from the Office of Wildland Fire (OWF) at the Department of the Interior (DOI).

There are some key topical areas where the U.S. Forest Service has made commendable progress in developing or refining BAER program direction, to the benefit of both departments.

In general, the DOI and U.S. Forest Service have similar program policies, although policy implementation varies, in part due to differences in land characteristics and agency missions. The interim directive contains some innovative concepts and processes that DOI may adopt as it continues to refine its wildland fire manual system.

The logical steps of the BAER assessment (outlined in section 2523.1) are stated clearly and concisely and may be incorporated into future DOI policy updates. The integration of a risk-based approach to BAER issues and treatment performance is also a concept that DOI should explore as improvements to its current post fire programs policies.

There are, however, a few critical differences between the BAER program management areas in the two departments that should be improved collaboratively by our two offices:

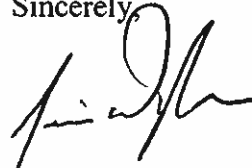
1. There may be inconsistencies in the use of the Wyden Amendment between our agencies. We would like to see this issue resolved and propose further discussion of these differences as soon as practicable. DOI is much more specific on what is allowable with BAER funding using the Wyden authority on non-federal lands.
2. It also appears that the prerequisites for Watershed Restoration and Enhancement agreements are different between the departments. The critical values identified are analogous to the DOI "allowable actions," although they could be interpreted more broadly than what is identified in DOI, and is another topical area for discussion between our offices.
3. The language used to identify the appropriate BAER value of plant communities needs a common definition of what qualifies as a "minor amount." Understanding that each plant community would have different levels of resiliency after suffering damages due to

wildfires, this could be a challenge when engaging the BAER risk assessment process outlined in the policy.

4. The two departments need to address the Government Accountability Office recommendations for sharing the results of post fire treatments. This information should be made available, at minimum, to those implementing the BAER program at the unit level, but also to the public (with the exception of any proprietary or privacy protected information).

The Office of Wildland Fire looks forward to further coordination of policies and practices for managing resources following wildfires. The OWF and the US Forest Service have a history of collaborative policy review and development for the management of burned lands.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Douglas", written over a horizontal line.

Jim Douglas
Acting Director
Office of Wildland Fire