

Forest Service Manual 2532
Emergency Stabilization - Burned Area Emergency Response (BAER)
Response to Comments

- **How many comments were received and from whom?**

Two comment letters were received:

1. U.S. Department of Interior, Office of Wildland Fire Coordination
2. Santa Clara Pueblo, on behalf of themselves and the Pueblo de Cochiti

- **Nature of the comments**

Department of Interior -- supportive of the interim directive.

Santa Clara Pueblo – supportive of several changes incorporated in the interim directive but made comments and suggestions for both additional policy changes and clarifying language.

- **Summary of comments and agency responses:**

U.S. Department of Interior, Office of Wildland Fire Coordination

Department of Interior is supportive of the innovative concepts and processes contained in the interim directive but identified two minor areas where inconsistencies may exist between Forest Service and Department of Interior BAER program management.

Response: These potential inconsistencies are not policy-related and are being collaboratively explored and resolved by staff at the programmatic level. Since the interim directive has been in place, the inconsistencies have been resolved through collaboration between the departments.

Santa Clara Pueblo and Pueblo de Cochiti

1. Tribal consultation effort

- a. Tribal consultation effort in 2011 was not effective, based on the low number of responses received.
- b. The consultation period coincided with a period of fires in the Southwest that required Pueblo staff attention which limited availability to participation in the consultation process.
- c. Federal Register comment period should have been more than 30 days.

Response: The Forest Service considers tribal consultation to be an ongoing iterative process that occurred not only during the formal consultation period (in this case, from May through October 2011) but also during the additional directive development period in 2012, and the formal comment period later in 2013. We believe the low number of responses reflects the overall support by tribal governments of the policy and procedures. Based on the request from the Pueblos, the Federal Register comment period was extended another 30 days. No additional comments were received during the second 30-day period.

2. Tribal lands and Tribal trust resources

- a. Protection of tribal lands and tribal trust resources should be included as a specific

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objective in the Forest Service BAER program and be given consideration equal to that given to protection of NFS lands and resources.

- b. Provided proposed language changes to the objective, policy, responsibility, and definitions sections in the interim directive to institute this change.

Response: Appropriation language that accompanies the funding provided to the Forest Service for BAER activities, provides for the use of Wildland Fire Management funds for necessary expenses for “emergency rehabilitation of burned-over National Forest System lands and water”, which limits expenditures to work on National Forest System lands, and for the purpose of protection of National Forest resources. The BAER program objective, policy, definition and resource protection considerations in the Interim Directive reflect this legislative intent.

Although legislative intent limits the Forest Service use of BAER, we realize that sometimes treatments on National Forest may provide positive benefits to safety and property downstream of National Forest System lands. In recognition of this, every attempt is made to place Forest Service BAER treatments in areas where others, including tribes, might benefit. In addition, when downstream risks are possible, we communicate with the affected entities and coordinate/cooperate with the emergency response agencies that have risk management authorities off National Forest System lands.

3. One-year time frame for BAER

- a. Provide for flexibility to utilize BAER funding after the first year in situations including where flooding occurs more than one year later.

Response: The BAER program is an emergency response program intended to manage post-fire risks and take necessary actions before damages occur. The urgency of needed actions dictates that any needed work is done immediately. The one-year period is provided only as an administratively documentable cut-off date—it is expected that most BAER work will be accomplished months before that date. Providing extensions beyond one-year is counter to the emergency nature of the program.

4. BAER cultural resource critical value

- a. Expand description of critical cultural resources to include those identified as critical to a Federally recognized Indian tribe.

Response: “Critical” cultural resources are described in the interim directive as “Cultural resources which are listed on or potentially eligible for the National Register of Historic Places, Traditional Cultural Properties, or Indian Sacred Sites on National Forest System lands.” The description includes sites that have not been evaluated for National Register of Historic Places eligibility and captures those cultural sites that tribes consider critical.

5. Shared risk management responsibilities

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- a. Change language in the section on coordination and identification of shared risk management responsibilities to include tribal governments.

Response: We will make that change in section 2523.53 in the final directive.

6. Other recommendations

- a. Allow treatments in Wilderness if they protect tribal lands or resources

Response: The language in the interim directive describes the rationale for when treatments are allowed in Wilderness. Regardless of special considerations due to wilderness designation, BAER treatments must still follow the legislative intent of the appropriation that limits protection to National Forest System lands and resources.

- b. Change language in the Appropriation Use Handbook to allow use of Forest Service BAER funds on lands outside of Forest Service jurisdiction.

Response: The Appropriation Use Handbook (Forest Service Handbook 6509.11g) reflects the current legislative intent for Forest Service BAER expenditure. Expanding the use of these funds to areas outside of National Forest System lands requires legislative approval and is outside the scope of BAER direction.

- c. Provide a single Federal point of contact regarding post-fire assistance available to tribes.

Response: That recommendation is outside the scope of BAER direction; however, the suggestion was shared with the appropriate entities and the Department of Interior Bureau of Indian Affairs has a designated post-fire program leader.

- d. Indian tribes should be included as signatories to the Interagency Agreement of Fire Management Cooperation and Financial Planning.

Response: That recommendation is outside the scope of BAER direction; however, the suggestion will be shared with the appropriate entities.

- e. Require coordination between BAER and long-term post fire rehabilitation.

Response: That recommendation is outside the scope of BAER direction; however, the suggestion will be shared with the appropriate entities.