



November 2, 2020

USDA-Forest Service
ATTN: Director-MGM Staff
1617 Cole Boulevard, Building 17
Lakewood, CO 80401

Via electronic submission

Subject: Comment in Response to Proposed Rulemaking: Oil and Gas Resources, File No. FS-2020-0007-000, RIN 0596-AD33

Dear Acting Director Parker:

The Project On Government Oversight (POGO) submits the following comment in opposition to the proposed rule titled “Oil and Gas Resources,” submitted by the U.S. Forest Service and published in the Federal Register on September 1, 2020.¹ POGO urges the Forest Service to withdraw the proposed rule. As written, the rule would severely reduce public input and transparency, and would relinquish the Forest Service’s ability to hold extractive industries and federal agencies accountable for resources extracted from the nation’s public forests.

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

POGO is concerned that the proposed rule would erode transparency and accountability by significantly reducing public involvement in and environmental assessments of future leases in the nation’s national forests. Furthermore, the rule would essentially give up the Forest Service’s veto power over potentially harmful mineral leases proposed by the Bureau of Land Management. Removing the Forest Service’s ability to oversee mineral leases in the nation’s forests opens the door to giveaways to the extractive industries.

Public Input and Transparency

A critical component of the Forest Service’s proposed rule is the removal of the public comment periods for proposed mineral leases in our nation’s public forests. Specifically, the rule would eliminate the requirement that the Forest Service “give public notice of the decision on a surface use plan of operations and include in the notice that the decision is subject to appeal under 36

¹ Oil and Gas Resources, 85 Fed. Reg. 54,311 (proposed September 1, 2020).
<https://www.govinfo.gov/content/pkg/FR-2020-09-01/pdf/FR-2020-09-01.pdf>

CFR part 214 or 215.”² The Mineral Leasing Act requires a surface use plan of operations to be included in a drilling permit application. A surface use plan of operations describes the overall intended project, including construction methods, safety operations, planned access roads, and risk mitigation for environmental protections.³ Extractive companies must submit a permit application and a surface use plan to the Bureau of Land Management, which are then forwarded to the Forest Service for analysis and review. Without the public comment period, the Forest Service would lose an essential component of its ability to conduct a thorough analysis.

Public involvement allows individuals and local organizations—which often have valuable local expertise and knowledge—to provide critical insight on proposed projects and to suggest improvements. The Forest Service itself states that grassroots participation in its decision-making is a guiding principle for the agency.⁴ Public comment periods hold government agencies accountable by ensuring their decisions are made in a transparent way. Similarly, the process affords agencies like the Forest Service a chance to generate greater public support for a project by fully explaining to the public why particular choices were made and why alternatives were deemed unworkable. Cutting off all public involvement in project planning is undemocratic and threatens transparency and accountability.

Skipping the process of informing and gathering input from the public means the agency and the project will lose out on the public’s specialized knowledge. For example, local individuals may know of endangered species or waterways that may be harmed by a project. Inviting input from the public on every project takes time, but doing so helps ensure that projects are fully vetted and that as many problems as possible are identified and addressed before the project moves forward. The public comment period actually offers an opportunity to save time and money. Identifying potential problems and ways to mitigate them early reduces the likelihood of having to adjust plans mid-project, which would cost time and money.

If this proposed regulation moves forward, the only recourse for those opposed to a proposed project would be to appeal the agency’s decisions on projects after they have been approved or rejected. The public should be able to continue weighing in before the agency issues final decisions. The move to eliminate the public’s role is arbitrary because there does not appear to be strong evidence that the change is necessary or would result in significant savings worth making the change, especially since identifying potential problems upfront can save money down the road. The rule seems to only help the extractive industries and not the public. While speeding up the approval process has the potential to save the industries money, it would not provide any additional savings or revenue for the taxpayer and may actually increase the costs for taxpayers. The proposed rule would hamper the agency’s ability to fulfill its mission and its responsibility to the public.

² 36 C.F.R. § 228.107(c) (2020). <https://www.law.cornell.edu/cfr/text/36/228.107>

³ “Surface Use Plan of Operation (SUPO),” U.S. Forest Service. <https://www.fs.usda.gov/detail/dpg/landmanagement/resourcemanagement/?cid=fseprd497121> (accessed October 22, 2020)

⁴ “What We Believe,” U.S. Forest Service. <https://www.fs.usda.gov/about-agency/what-we-believe> (accessed October 22, 2020)

Rolling Back NEPA Regulations

POGO is concerned that the Forest Service is continuing to undermine and roll back National Environmental Policy Act (NEPA) regulations with this proposed rule. According to the notice of proposed rulemaking, “the proposed rule would remove references to other laws and regulatory requirements, particularly with respect to complying with NEPA and the Endangered Species Act and their implementing regulations.”⁵ Under current regulations, the Forest Service must verify that oil and gas leasing plans have been adequately addressed in a NEPA document, and if it finds they have not, it must order additional environmental analysis.

NEPA helps ensure that companies have conducted and considered scientific and environmental impact studies when formulating their leasing plans. Given the diversity of our nation’s forests, consideration of potential environmental impact is essential. By removing reference to NEPA, the agency is forgoing its oversight mission of reviewing planned leases. If the proposed rule is adopted, when submitting plans for leases, the extractive industries will essentially have no incentive to follow the law and protect the environment. The consequences of this could be profound as habitats are destroyed, species are eliminated, and local economies are forever changed.

This proposed rule is just the most recent attempt by the Forest Service and the Trump administration as a whole to roll back the half-century-old landmark law. Last year, the Forest Service proposed another rule that, if implemented, would undermine the intent and effectiveness of NEPA. The rule, which POGO opposed, would limit the types of projects that require a NEPA analysis and would limit the public’s ability to weigh in on potential projects in the nation’s forests.⁶ And in June 2019, the Trump administration released new guidance that significantly limited how federal agencies calculate projects’ long-term climate impact when assessing their effects on the environment.⁷ Under that guidance, agencies will not calculate likely greenhouse gas emissions for as many projects because there is now a higher threshold for when such a calculation must be included in the environmental impact assessment. Now agencies only have to calculate a project’s greenhouse gas emissions when “a sufficiently close cause relationship exists” between a project and greater carbon emissions. While there are certainly some reforms that could be made to improve the efficiency of NEPA analysis, the solution should not be for the Forest Service to skip the analysis process altogether, as the new proposed rulemaking would have it do.

Abdicating Its Approval Power

POGO is particularly concerned that the proposed rule would mean the Forest Service would give up its right to stop potentially harmful mineral lease sales in the nation’s public forests by deferring to the Bureau of Land Management for all approvals. The Forest Service’s mission is

⁵ Oil and Gas Resources, 85 Fed. Reg. 54,315 (proposed September 1, 2020).

<https://www.govinfo.gov/content/pkg/FR-2020-09-01/pdf/FR-2020-09-01.pdf>

⁶ Project On Government Oversight Executive Director Danielle Brian, Comment Letter on Proposed Rule on NEPA Compliance (August 26, 2019). <https://www.pogo.org/letter/2019/08/public-comment-on-the-forest-services-proposal-to-weaken-public-input/>

⁷ Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions 84 Fed. Reg. 30,097 (proposed June 26, 2019). <https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13576.pdf>

to “sustain the health, diversity, and productivity of the Nation’s forests and grasslands to meet the needs of present and future generations.”⁸ The Bureau of Land Management’s mandate, however, is to manage “public lands for a variety of uses such as energy development.”⁹ The goals of the two agencies may at times be in conflict, which is why the Bureau of Land Management may not currently issue these leases without the Forest Service’s approval.

The Forest Service’s check on the Bureau of Land Management is an important step in holding both the agency and the extractive industries accountable. The dual review process helps ensure that proposed leases represent the best interests of the American people, not only the shareholders of oil and gas companies. Just last year, the Forest Service rejected a Bureau of Land Management-proposed oil and gas project in Nevada’s Ruby Mountains because of local public comments, consideration of environmental effects, the impact on local tribes, and the economic impact.¹⁰ In 2016, the Forest Service rejected a renewed lease application to mine copper and nickel and other minerals in the Boundary Waters wilderness and Superior National Forest in northern Minnesota, citing the potential risk of environmental contamination of the surrounding watershed as a key concern.¹¹ Had the Forest Service not been involved, the Bureau of Land Management would have approved the leases and the companies behind the projects would have profited while the local economies and habitats would have been negatively impacted.

There is no doubt that duplication and inefficiencies arise when two agencies review the same lease application. The leasing application and approval process inevitably costs businesses time and money. However, consequential decisions that come from mining and harvesting resources from public lands require extra scrutiny. Millions of Americans depend on the nation’s forests for jobs and their way of life, and need the Forest Service to ensure these vital public resources are managed in a responsible way that benefits the American taxpayers. Rather than completely abdicating its responsibility to review and either approve or reject land lease applications submitted by the Bureau of Land Management, the Forest Service should be looking for ways to better streamline the process.

Giveaway to Industry

POGO is particularly concerned that the proposed rule appears to be designed to benefit the extractive industries rather than the forest owner—the American people. The industries should not be the biggest or only benefactor from the proposed rule. The extractive industries already benefit enormously at the taxpayers’ expense, and the Forest Service has a responsibility to make sure industry pays its fair share.

⁸ “About the Agency,” U.S. Forest Service. <https://www.fs.usda.gov/about-agency> (accessed October 22, 2020)

⁹ “Our Mission,” U.S. Bureau of Land Management. <https://www.blm.gov/about/our-mission> (accessed October 22, 2020)

¹⁰ U.S. Forest Service, Humboldt-Toiyabe National Forest, *Decision Notice and Finding of No Significant Impact for the Ruby Mountains Oil and Gas Leasing Availability Analysis*, May 2019, 3. https://www.fs.usda.gov/nfs/11558/www/nepa/107601_FSPLT3_4646040.pdf

¹¹ U.S. Department of Agriculture, “Obama Administration Takes Steps to Protect Watershed of the Boundary Waters Canoe Wilderness Area,” Press Release No. 0264.16, December 15, 2016. <https://www.usda.gov/media/press-releases/2016/12/15/obama-administration-takes-steps-protect-watershed-boundary-waters>

In 2019, mineral extraction from the nation's forests made the extractive industries billions of dollars.¹² As it stands now, those industries already pay the federal government a lower royalty rate for oil and gas drilling on public land than they do to state governments and to the federal government for offshore leases.¹³ Furthermore, under the General Mining Act of 1872, companies that mine underground, or "hard rock," minerals from federal lands are not required to pay royalties to the U.S. government.¹⁴ This represents valuable forgone royalties that agencies like the Forest Service could use to better manage the nation's forests and to prevent forest fires.

Given the savings the extractive industries already benefit from at the taxpayers' expense, federal agencies, including the Forest Service, should be making sure they are holding companies accountable while protecting the nation's forests. At the very least, the Forest Service should be listening to the public when making decisions regarding publicly owned land and ensuring that industry follows the law and respects science and the local environment.

Conclusion

The Forest Service manages more than 190 million acres of public land, and it is essential that adequate transparency and accountability mechanisms are in place. Central to this accountability is the role the public plays in influencing and educating the agency during the leasing decision-making process. Public comment periods hold government agencies accountable by ensuring their decisions are made in a transparent way. The Forest Service should also follow the law and comply with the National Environmental Policy Act and assess the economic impact leases would have on public land. Furthermore, rather than working with other agencies to streamline processes, with the proposed rule the Forest Service would simply abdicate its responsibility to another agency.

We urge the Forest Service to withdraw the proposed rule. Thank you for your consideration of this comment. Should you have any questions, please contact Tim Stretton at (202) 347-1122 or at tstretton@pogo.org.

Sincerely,



Danielle Brian
Executive Director

¹² U.S. Forest Service, "Forest Service Proposes Improvements to Oil and Gas Development Regulations," Press Release, September 1, 2020. <https://www.fs.usda.gov/news/releases/forest-service-proposes-improvements-oil-and-gas-development-regulations>

¹³ Nicole Gentile, Center for American Progress, *Federal Oil and Gas Royalty and Revenue Reform*, (June 19, 2015). <https://www.americanprogress.org/issues/green/reports/2015/06/19/115580/federal-oil-and-gas-royalty-and-revenue-reform/>

¹⁴ Mia Steinle, "Drilling and Mining on Public Lands: The State of Play," Project On Government Oversight, September 22, 2016. <https://www.pogo.org/analysis/2016/09/drilling-and-mining-on-public-lands-state-of-play/>