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Dedicated to protecting our nation's ground water

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To: fsm2500@fs.fed.us

Attn: Elizabeth Berger—WFWARP, 201 14th Street SW., Washington, DC, 20250

Subject: Comments on Proposed USDA Forest Service Directive on Groundwater Resource Management

The Ground Water Protection Council (GWPC) appreciates the opportunity to review the National Forest Service Proposed Directive on Groundwater Resource Management, Forest Service Manual 2560. Our organization's membership consists of representatives of state groundwater and underground injection control regulatory agencies that have come together to mutually work toward the protection of the nation's groundwater supplies. Our focus is specifically on protecting the nation's groundwater supplies, conserving groundwater resources for all beneficial uses, and recognizing groundwater as a critical component of the ecosystem. The GWPC is unique among state associations in that its members are the state officials who set and enforce regulations on groundwater protection and underground injection.

GWPC offers the following comments on the Underground Injection Control (UIC) aspects of the Draft Directive.

General Comments:

GWPC recognizes the emphasis in this document on working with states. We feel that collaboration and cooperation with the States is necessary for US Forest Service (USFS) to achieve the vision, goals, strategies, and actions set out within the Groundwater Directive for UIC activities. Recognizing that USFS is not authorized to implement the UIC program under the Safe Drinking Water Act and thus does not have the regulatory authority necessary to carry out some of the provision of the directive, our specific comments provide information on how and when USFS can work within the existing UIC regulatory framework administered by US Environment Protection Agency (USEPA) and the delegated states to ensure all applicable UIC authorizations and permits have been issued by the appropriate regulatory authority.

Due to the very broad scope of activities covered under this directive, as USFS staff implement this guidance, we recommend that they be granted some flexibility to decide what issues they will focus upon. Some of the permitting processes under the UIC program proceed quickly and have relatively short review and comment periods. To be effective and timely in the commenting process, we recommend that USFS staff develop a general timetable for the review and comment on various Classes

of UIC permitting activities. These timetables should be based upon existing regulatory program timeframes contained within USEPA and delegated state UIC regulations. As part of this review timetable, if an established MOU or MOA exist between the USFS and USEPA regarding UIC activities under the Safe Drinking Water Act, it should be posted on the USFS web page and made an addendum to this directive.

There are many existing aquifer exemptions (which allow for injection into less than 10,000 TDS water) that have been approved by the USEPA and are part of the state delegated UIC program. Some of these are very broad in scope. If USFS staff will be reviewing applications for injection into an underground source of drinking water (USDW) as defined by the Safe Drinking Water Act, we recommend that this directive include information that would allow staff to familiarize themselves with the existing aquifer exemptions within USFS lands and with the requirements for issuing new aquifer exemptions under 40 CFR 146.4.

Specific Recommendations

2560.03—Policy

Paragraph 6. Cooperation with Other Governmental Entities

To facilitate communication between the USFS and the governmental entities with regulatory authority over various UIC activities, additions to the following subparagraphs are suggested:

b. – the USEPA UIC program or the delegated UIC program entity should be added to the list of experts that should be consulted when locating, investigating, or assessing the potential impacts of UIC activities to underground sources of drinking water on USFS lands.

c. – the USFS should provide comments on activities through the established comment process and within the time periods that are contained within the delegated state’s UIC programs.

Paragraph 8. Measurement of Groundwater Withdrawals and Injections on USFS Lands.

c. Require measurement and reporting to the Forest Service -- If USFS is not the authorized regulatory agent, then it may not have the authority to compel the measurement and reporting of the injection of fluids (including water and waste water) as part of an initial permit or renewed permit or an authorization by rule under the Safe Drinking Water Act UIC program, regardless of the Class of injection well. Recommend USFS rely on the reports submitted to the UIC regulatory agencies rather than requiring a separate reporting protocol.

Paragraph 9. Compliance with Groundwater Requirements.

h. Regarding the subparagraph on complying with applicable Federal, State, Tribal, and local requirements:

Recommend adding Class IV injection wells to the list of wells on USFS land that would be required to be inventoried with the appropriate State agency or USEPA.

If USFS staff are required to ensure that all applicable UIC groundwater program requirements are met at all UIC operations on USFS Land, this is probably beyond the capability of USFS existing personnel. Compliance oversight involves obtaining and maintaining all of the permits or authorizations (with applicable site specific provisions) and operational data for UIC wells, and would require USFS to conduct individual inspections on the UIC wells. The USFS would need to increase and train staff on UIC technical operational aspects and may not have the authority to address any deficiencies found. This

level of compliance oversight is more properly left to the UIC program staff at either USEPA or with the authorized state program who have access to the records, appropriate training, and authority under the Safe Drinking Water Act to act on any compliance issues found.

2560.04 – Responsibility

2560.04c – Washington Office, Director of Engineering

Since many of the Class V injection operations are authorized by rule, by either USEPA or the delegated state program, the appropriate time to review and formulate/maintain policy and procedures is through the comment period at the state level when the rules are being proposed, prior to adoption, or when statewide general permits are proposed for adoption. It should be the responsibility of the Director of Engineering to coordinate groundwater policy and management efforts with other Forest Service staff, when these comment periods are available.

2560.04h – Forest and Grassland Supervisors

7.b. It is unclear what activities the supervisor is responsible for when safeguarding drinking water by complying with the UIC regulations of Federal, State, and local governmental agencies. If a supervisor is required to implement 2560.03.9.h, then the GWPC's comments regarding implementation of that policy are also applicable here. Or, if the supervisor is responsible for the operation of any USFS UIC facilities, permitted or authorized by either USEPA or the state delegated UIC program, appropriate training on the correct operation of the UIC facility will be necessary and should be included as part of the responsibilities.

2561.1 – Conjunctive Uses of Groundwater and Surface Water

Recommend that the term “aquifer storage and recovery (ASR)” be clearly defined. There are other injection activities beyond ASR that are based on conjunctive uses of water, such as managed aquifer recharge, where the water is not recovered within the same well field, but used for a different purpose such as control of undesirable water, habitat restoration, or to enhance natural stream base flow.

2561.2 – Minerals and Energy Development

GWPC agrees that USFS should work with appropriate State agencies or USEPA, depending on whether the State has received delegated UIC authority from USEPA under the SDWA. A process for consultation with appropriate state agencies regarding groundwater-related UIC issues on USFS lands should be developed. When issues arise regarding compliance with USEPA's Underground Injection Control Program (40 CFR parts 144 and 146) or State equivalent to protect underground sources of drinking water (USDW), they can be addressed by the appropriate regulatory authority.

This paragraph should be revised to inform the user of provisions under the Safe Drinking Water Act that allow for injection (all classes of wells) into an aquifer containing less than 10,000 parts per million (ppm) total dissolved solids. USEPA can grant to the permittee or, in the case of a delegated program, modify the state's authorized program to grant an aquifer exemption to allow for injection into an USDW under 40 CFR 146.4. Within the UIC program, there are provisions for notification to affected parties, which allow for the review and comment upon the requests for a new or expanded aquifer

exemption. Once an aquifer exemption has been granted, the aquifer or portion of an aquifer is no longer considered to be an underground source of drinking water.

2561.24 – Oil and Gas Operations

7. As stated in the comments on 2561.2 – Minerals and Energy Development, this paragraph should be revised to inform the user of provisions under the Safe Drinking Water Act that allow for an aquifer exemption for injection activities into as USDW. If a new aquifer exemption is requested, the information relevant to the determination under 40 CFR 146.4 should be part of the information provided by USFS under the assistance to BLM and the USEPA and the state, depending on whether the state has received delegated authority for the UIC program from USEPA. It should be noted that regardless of state primacy status, aquifer exemptions may only be granted by the USEPA.

2564 – MEASURING AND REPORTING VOLUME OF EXTRACTED OR INJECTED WATER

Provisions 4 and 5. These provisions appear to require reporting of information that is already reported to state and federal UIC agencies. Rather than requiring a duplicative reporting burden on the permit holder and the expense to USFS of developing a new database, it may be easier and more cost effective to rely on existing state or federal reporting and databases.

2567 – Legal Considerations in Managing Groundwater Resources

2. USFS is not authorized to implement the UIC program under the Safe Drinking Water Act and thus may not have the regulatory authority necessary to carry out some of the provisions of this sub-paragraph. For the UIC program, this provision should be reworded to encourage the USFS to work cooperatively with USEPA and appropriate State agencies to ensure that applicable State and Federal laws and regulations related to underground injection are implemented on USFS lands to protect groundwater resources. Whenever possible, USFS staff should establish a process for consultation with appropriate State agencies regarding groundwater-related UIC issues on NFS lands.

In conclusion, the GWPC agrees with USFS that collaboration and cooperation with the State UIC programs is necessary for USFS to achieve the intent of the Groundwater Directive for UIC activities on forest service lands. The GWPC would gladly assist USFS in that effort by providing communications to and collecting feedback from state UIC Programs. In addition, regular GWPC events and/or special subject webinars could provide USFS with additional opportunities to communicate directly with state UIC programs.

Thank you,



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