

September 5, 2008

Mr. John Bunyak
Air Resources Division
National Park Service
P.O. Box 25287
Denver, CO 80225

Re: Comments on Federal Land Managers' Air Quality Related Values Workgroup (FLAG) Phase I Report—Revised (6/27/08)

Dear Mr. Bunyak;

Please accept these comments submitted on behalf of the Wyoming Outdoor Council and Biodiversity Conservation Alliance regarding the above-referenced report (hereinafter, FLAG 2008).

The Q/D Criterion Should Be Eliminated.

FLAG 2008 introduces the concept of the “Q/D” criterion being the first step in determining whether an adverse impact determination to Air Quality Related Values (AQRV) will be made by a Federal Land Manager (FLM). Q/D is determined by dividing the total annual emissions of SO₂, NO_x, PM₁₀, and H₂SO₄ expressed in tons per year (Q) by the distance in kilometers that an emissions source is from a Class I area (D). If Q/D is less than or equal to 10 there would be a “presumptive no adverse impact” determination made for visibility impacts, ozone effects, and deposition effects.

We believe the Q/D ratio should be eliminated from the FLAG 2008 guidance. This number could easily be inappropriately manipulated to avoid adverse impact determinations. For example, a source that emits 1000 tons per year that is located 99 kilometers from a Class I area would have a Q/D greater than 10 and consequently require further analysis to determine if impacts were adverse while a source that emits 1000 tons per year that is located 101 kilometers from a Class I area would not be subject to further analysis because the Q/D would be less than 10. We feel that it is inappropriate to presumptively determine that a source that is located only two kilometers further from a Class I area would not potentially have adverse impacts on AQRV. The potential for “gaming” is evident—a proposed source of emissions that could negatively affect a Class I area might be able to, and desire to, “play with these numbers” in order to avoid an adverse impacts determination.

Using another example, a source of emissions that emits 999 tons per year and which is located 100 kilometers away from a Class I area would presumptively escape an adverse impact determination while a source that emits 1001 tons per year that is located 100 kilometers away would be subject to

further analysis. Lowering emissions a minor (even trivial) amount is an even more obvious way to “game” the proposed analysis and the FLAG 2008 should not allow for this kind of simple manipulation. It would be quite easy for proposed sources of emissions to reduce emissions just enough to escape a more thorough review, with no real reduction in impacts to AQRV being likely.

We believe the Q/D ratio is contrary to FLMs “affirmative responsibility” to protect AQRV in Class I areas. The FLAG 2008 report repeatedly notes the significance of this obligation and its unwavering command. As the report notes with approval, “the FLM should assume an aggressive role in protecting the air quality values of land areas under their jurisdiction. In cases of doubt the land manager should err on the side of protecting the air quality-related values for future generations.” FLAG 2008 at 5 (quoting Senate Report No. 95-127, 95th Congress, 1st Session, 1977). Given this obligation, we feel it is inappropriate to presumptively eliminate a potentially large number of sources from more careful analysis of their impacts on AQRV. An adverse impacts determination should not be presumptively cut off before it has even begun. An adverse impacts determination should be based on professional analysis not rote application of a predetermined threshold.

Second Tier Determinations of Adverse Impacts.

If the Q/D ratio is greater than 10, the FLAG 2008 guidance proposes a second level of consideration for making adverse impact determinations for visibility, ozone, and deposition of pollutants. For visibility, the second tier analysis is a determination of whether atmospheric light extinction will change by less than 5 percent; if the change is less than 5 percent there will be a “presumptive no adverse impact” determination. For ozone, the second tier determination is whether ozone exposure will be below phytotoxic levels; if they are there is a presumptive no adverse impact conclusion. And for deposition, if emissions are less than the Deposition Analysis Threshold (DAT), there will be a presumptive no adverse impacts determination.

With respect to visibility we urge the FLMs to not adopt a “hard” rule that impacts to visibility of less than 5 percent light extinction are presumptively not adverse. We think such a hard rule is too inflexible and might lead to substantial impacts being overlooked. In particular, we would note that according to the Bureau of Land Management’s (BLM) recent Final Supplemental Environmental Impact Statement for the Pinedale Anticline natural gas field outside of Pinedale, Wyoming, based on 2005 actual emissions from natural gas activities in the area there were 45 days of significant impacts to visibility in the Bridger Wilderness Class I area, and that even with mitigation of emissions from the increased natural gas development there will be at least 10 days of residual significant impacts to the Class I area (cumulative impacts are substantially greater). Given this already existing impairment and the likelihood of continuing impairment, we think it would be a mistake to presumptively assume that a further impact of less than 5 percent was presumptively not adverse. Even this relatively small further impact might make it difficult or impossible to reach the goal of the regional haze rule to reach natural visibility conditions in Class I areas by 2064 and make it less likely that the national goal established by the Clean Air Act of no visibility impairment in Class I areas can be achieved. “Reasonable progress” toward the national goal might be difficult or impossible. At a minimum it would represent a further contribution to an already adversely impacted situation, which we do not believe should be presumptively assumed to not be adverse. We urge the FLMs to make a full consideration of the significance of visibility impacts, even if they seem to be relatively small standing alone. In particular, if an area is already adversely impacted or is predicted to suffer from adverse impacts in the future, the less than 5 percent change in light extinction standard should not presumptively cause a determination that an emissions source does not cause adverse impacts.

We believe the view that a change of less than 5 percent should not be given the presumptive weight proposed in FLAG 2008 is supported by EPA rules. An “adverse impact on visibility” means visibility impairment “which interferes with the management, protection, preservation, or enjoyment of the visitors visual experience of the Federal Class I area.” 40 C.F.R. § 51.301. “Significant impairment” means “visibility impairment which . . . interferes with the management, protection, preservation, or enjoyment of the visitor’s visual experience of the mandatory Class I Federal area.” *Id.* And “visibility impairment” means “any humanly perceptible change in visibility . . . from that which would have existed under natural conditions.” *Id.* (emphasis added). We feel these definitions make it clear that a change in light extinction of less than 5 percent should not presumptively, in all cases, lead to a no adverse impact determination. Furthermore, EPA’s guidance regarding setting “contributes” thresholds for purposes of its regional haze rule and “subject to BART” determinations states only that “[a]s a general matter” thresholds “should not be set higher than 0.5 deciviews”; the guidance does not say that impacts less than 0.5 dv presumptively do not contribute to visibility impairment in Class I areas. See 40 C.F.R. Pt. 51, App. Y § III.A.1. Consequently, we urge the FLMs to retain more flexibility where they can exercise their professional judgment and not bind themselves with a presumptive determination that a less than 5 percent change in light extinction is not adverse to Class I areas.

With respect to the ozone phytotoxicity standard, we encourage the FLMs to replace reference for there to be a need for “phytotoxic” levels of ozone to trigger a more intense review with a requirement that there be no more than damaging levels of ozone. We do not believe that “levels toxic to plants” (FLAG 2008 at 80, footnote) should be required to trigger a potential adverse impact determination. Simple harm or damage might constitute a significant impact to AQRV.

We appreciate that quantitative DAT have now been established for nitrogen and sulfur, these being 0.01 and 0.005 kg/ha/yr, respectively, and encourage “codification” of these standards in FLAG.

Process for Adverse Impact Determination.

The FLAG 2008 report states that if the above-discussed thresholds are not exceeded, the FLAG 2008 “provides criteria as to when the FLM’s will definitively not object to, or declare an adverse impact for, a proposed new source.” FLAG 2008 at 106. If extinction or deposition levels “fall[] below the specified thresholds, the FLMs will not raise concerns regarding the project.” *Id.* We urge the FLMs to abandon this absolutist approach. As discussed above, we feel the FLMs should carefully analyze the level of the proposed impact when considered in light of actual existing conditions in the affected Class I area and then make a decision as to whether there will be an adverse impact on that basis, not based on preselected, absolute criteria. Furthermore, FLAG 2008 states that if the thresholds are exceeded, “the converse does not necessarily apply—a FLAG threshold exceedance does not mean the FLM will certainly find that a project will adversely affect air quality related values.” *Id.* We think what is good for the goose should be good for the gander—if exceedance of the thresholds will not absolutely lead to an adverse impact determination, a lack of exceedance of the thresholds should not mean with certainty that a no adverse impacts determination is warranted. At a minimum, we feel a careful justification for this differential approach must be presented, and the justification should recognize the goals of the Clean Air Act mentioned above that “In cases of doubt the land manager should err on the side of protecting the air quality related values for future generations.”

Thank you for considering these comments.

Sincerely,

Bruce Pendery
And on behalf of

Erik Molvar
Biodiversity Conservation Alliancy

cc: Governor Dave Freudenthal
Callie Videtich, EPA
Bud Rolofson, USFS