

Mr. Travis Moseley
Forest Supervisor
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SUBJECT: High Altitude Mountain Environment Training Strategy (HAMETS) Helicopter Operations Project. Comment on HAMETS legality and appropriateness, DoD-USDA MOU Dated 1988.

July 8, 2016

Mr. Moseley,

Thank you for the opportunity to provide comments to the High Altitude Mountain Environment Training Strategy (HAMETS) Helicopter Operations Project.

Please refer to my comment letter of July 8, 2016 which contains the comment **“I believe, based on reading the related documents, that the proposed LNF-HAMETS project is not legal. It does not follow the current Forest Plan (1986 amended).”**. This letter is another facet of that letter, just under separate cover.

Here is my comments concerning the 1988 Master Agreement (MOU) as it relates to the LNF-HAMETS project, plus suggestions and requests for clarification.

In 1988 without Congressional approval and without public input the Department of Defense (hereafter referred to as “DoD”) and the Department of Agriculture decided to allow the military to use National Forest Lands. They entered into an “agreement” (see below and end). The authority for this deal between Federal Agencies was falsely cited as the (I quote) the “Act of June 4, 1897”. The Organic Act of 1897 provides, in part, that (I quote):

“No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the Act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes. “

No part of this Act approved military use of the National Forests (or “forest reserves” as they were known in the 1897 Act.). Nor were Congressional powers delegated to the two agencies involved in the MOU to make such a deal. In fact this law, as well as the following Congressional Acts that updated it, clearly exclude military use, as it is never mentioned, while other acceptable uses are specifically detailed.

Despite the extra legal nature of the deal between the Department of Defense and the Department of Agriculture the two agencies find it convenient. The agreement furnishes justification for what otherwise would clearly be illegal acts. I am including a copy of this 1988 “Master Agreement Between Department of Defense and Department of Agriculture” (hereafter referred to as “Master Agreement” or MOU) as part of this comment. Removing it, or moving it to an appendix will destroy my comment integrity. Leave this “Master Agreement” in my comment as it is an integral part of it.

I believe the Master Agreement is not legal and I do not wish to acknowledge it as legitimate. However, the DoD and United States Forest Service (hereafter referred to as “USFS”) often use this agreement as justification for the DoD taking (using) USFS holdings. Therefore I am forced to discuss it.

The quasi legal Master Agreement does not provide DoD with carte blanche to take whatever it wants from the

National Forests. Some (few) limitations include (I quote the Master Agreement):

a “Therefore, Training activities on National Forest System lands will be authorized when compatible with other uses and in conformity with applicable forest plan(s), provided the Department of Defense determines and **substantiates** that lands under its administration are unsuitable or unavailable.”

b “Availability of Department of Defense Lands - Prior to requesting use of National Forest System lands, the Department of Defense will determine if lands administered by the Department of Defense are available and suitable. In all cases where a special use authorization or supplemental agreement to use National Forest System lands is proposed, Department of Defense will forward its analysis and determination as to the unsuitability or unavailability of DoD land to the affected Forest Supervisor.”

c “Explore land interchange as an alternative or mitigating measure when military training activities are not in conformance with the affected Forest Plan.”

d (Special Use Permits) “Incorporate, develop, or reference a basic plan covering monitoring, fire protection and control, public health and safety, recreation, watershed, minerals, Timber, grazing, fish wildlife, public notification, and other appropriate features.”

Under limit “a” and “b” above, the LNF has not seen fit to share the DoD required “substantiation” that “lands under its administration are unsuitable or unavailable”. Note that the Master Agreement does not list economics as a reason to take Forest land. Nor is convenience listed as a reason to take Forest land. According to the Secretary of Defense the DoD already has control of 25 million acres of land (David Rubenson, Marc Dean Millot, Given Farnsworth, Jerry Aroesty. Rand contract No. MDA903-90-C-0004). That works out to about 55 acres for every one of the 450,000 DoD employees (DoD supplied numbers). DoD may legally take private land, if they need it. They only need to use eminent domain (and hopefully payment). Yet DoD apparently wants more land and airspace and they don't want to pay for it.

I know that the DoD already has HAMETS training areas (in Colorado for example) and carries out training there. There are also Army National Guard facilities available for HAMETS training. The Fort Bliss unit seeking to use the LNF has, in the past, trained in the Colorado DoD training locations. I believe that the DoD has land in inventory with the necessary attributes for HAMETS. I believe that DoD Fort Bliss wish to use the LNF because it is cheaper and it is convenient for them. In any case the project should be based in law.

I ask the LNF Forest Supervisor to make available the DoD report that substantiates that no DoD land is available per the Master Agreement. I ask that he specifically discuss why the existing USANG and Army training facilities can not be used for the 1st Armored Division Combat Aviation Brigade training.

Under limit “c”. I see no evidence that the DoD and LNF have explored the option of a land interchange. This interchange should include LZs and ingress / egress routes. The proposed DoD use is clearly not in the current Forest Plan. Clause “c” in the Master Agreement is short and clear. I quote it again: “Explore land interchange as an alternative or mitigating measure when military training activities **are not in conformance with the affected Forest Plan.**” I've added emphases.

Is either party honoring the Master Agreement clauses?

I ask the LNF Supervisor to address the land interchange discussions he has had with DoD. Explain how the decision was reached not to interchange land, given that the LNF Forest Plan does not support mechanized military operations.

Under Limit “d” I see several essential considerations listed as part of the Master Agreement, yet I can not find these discussed in the LNF-HAMETS project.

I ask the LNF Supervisor to address these needs per the Master Agreement.

The Master Agreement has not been approved by Congress. At the minimum the DoD and USFS should be transparent and show that the quasi legal MOU is being followed. Rightfully the LNF should honor the Forest Plan, the Organic Act, the Multiple Use and Sustained Yield Act (MUSYA) etc. and decline to allow mechanized military use of the LNF. That would be following the law and the Forest Plan.

Below is the 1988 “Master Agreement Between Department of Defense and Department of Agriculture”

MASTER AGREEMENT
BETWEEN
DEPARTMENT OF DEFENSE
AND
DEPARTMENT OF AGRICULTURE
CONCERNING

THE USE OF NATIONAL FOREST SYSTEM LANDS FOR MILITARY ACTIVITY

I. PREFACE

A. National Forest System lands provide for the use and enjoyment of the public and are managed under multiple use and sustained yield concepts. The use of these lands for military training activities is within the statutory authority of the Act of June 4, 1897.

B. The availability of National Forest System lands to the Department of Defense provides a variety of geographic and topographic settings to conduct training activities. This is an important resource for developing a strong National defense.

C. Therefore, training activities on National Forest System lands will be authorized when compatible with other uses and in conformity with applicable forest plan(s), provided the Department of Defense determines and substantiates that lands under its administration are unsuitable or unavailable.

D. This agreement does not apply to the use of airspace over National Forest System lands unless directly associated with the land based training.

II. PURPOSE

The purpose of this Master Agreement is to establish procedures for planning, scheduling and conducting authorized military activities on National Forest System lands. It also establishes policies and procedures for supplemental agreements and special use authorizations which are required for all Department of Defense activities (including National Guard and Reserve activities) using National Forest System lands. This agreement replaces the Joint Policy Statements between the Department of Agriculture and (a) the Department of the Army signed July 3, 1951; the Department of the Navy, signed February 19, 1952; and the Department of the Air Force, signed September 12, 1951, which are hereby rescinded.

III. COORDINATION AND COOPERATION

To facilitate the orderly development, management, and administration of National Forest System lands and to provide suitable and appropriate lands to further the National defense effort, the Department of Defense and the Department of Agriculture jointly agree:

A. Availability of Department of Defense Lands - Prior to requesting use of National Forest System lands, the Department of Defense will determine if lands administered by the Department of Defense are available and suitable. In all cases where a special use authorization or supplemental agreement to use National Forest System lands is proposed, Department of Defense will forward its analysis and determination as to the unsuitability or unavailability of DoD land to the affected Forest Supervisor.

B. Planning For the Use of National Forest System Lands - Military training activities on National Forest System lands are actions which require the analysis of environmental impact in conformance with the National Environmental Policy Act (NEPA) and other statutory and regulatory requirements. The Department of Defense and the Department of Agriculture, Forest Service, will cooperate to accomplish appropriate NEPA compliance. The lead agency concept in 40 CFR 1501.5 will be applied to the process except in cases involving classified activities. In such cases, the Department of Defense Component will be the lead agency.

C. Management

1. Periodically conduct joint reviews of selected activities for the purpose of: (a) determining the effectiveness of supplemental agreements so that the management and mission of both agencies are accomplished; (b) identifying and recommending solutions to existing and potential problems; and (c) monitoring the implementation and effectiveness of environmental mitigation measures.
2. Jointly identify rights-of-way or other authorizations required to implement supplemental agreements or special use authorizations.
3. Have their respective agents mutually refer unresolved points of disagreement to the next higher management level for resolution.

IV. DEPARTMENT RESPONSIBILITIES

IT IS AGREED THAT:

A. The Department of Defense Components will:

1. Provide to the affected Forest Supervisor the analysis and determination as to the unsuitability or unavailability of Department of Defense lands.
2. Involve the Forest Service designated representative in the initial planning stages of activities proposed on National Forest System lands.
3. During initial planning, provide an unclassified description of proposed activities to the affected Forest Supervisor and cooperate in fulfilling requirements of the National Environmental Policy Act and conducting appropriate environmental analyses.
4. For each training activity, identify a representative of the Department of Defense to serve as liaison to the Forest Service.

5. Cooperate with Forest Service representatives to comply with the terms of this Master Agreement, supplemental agreements, and special use authorizations.

6. Reimburse the Forest Service for costs directly attributable to military training activities, subject to the availability of appropriated funds. This may include, but is not limited to, the preparation and processing of applications, preparation of environmental documents, administration of special use authorizations, and Forest Service liaison officers' time.

7. Explore land interchange as an alternative or mitigating measure when military training activities are not in conformance with the affected Forest Plan.

8. Make every effort to avoid degradation of National Forests and provide for restoration as agreed in the special use authorization.

9. Provide for mitigation measures identified in the environmental analysis and agreed in the special use authorization.

B. The Department of Agriculture, Forest Service will:

1. Make National Forest System lands available for military training activities when such activities can be made compatible with other uses and conform with applicable forest management plans, provided the Department of Defense determines and substantiates that lands under its administration are unsuitable or unavailable.

2. Cooperate with the Department of Defense to expedite decisions associated with military training activities on National Forest System lands.

3. Fully consider all proposals and, when necessary, develop alternatives that may meet the needs of the Department of Defense and the Department of Agriculture, Forest Service.

4. Ensure that applicable forest management plans include military training activities. Requirements for these activities should be coordinated with the Department of Defense during formulation and development of those plans.

V. SPECIAL USE AUTHORIZATION

The special use authorization for a Department of Defense activity on National Forest System lands requires, but need not be limited to, the following:

1. Identification of National Forest System lands required for the activity.

2. Duties and responsibilities of each agency in the planning process.

3. Procedures for resolving issues, misunderstandings, or disputes.

4. Identification of rights-of-way and other authorizations which may be needed outside the activity area.

5. Incorporate, develop, or reference a basic plan covering monitoring, fire protection and control, public health and safety, recreation, watershed, minerals, timber, grazing, fish, wildlife, public notification, and other appropriate features.

6. Assign responsibilities for restoration of the site. Restoration shall be subject to the availability of appropriated funds.

7. Provide procedures for emergency cessation of military activities where necessary to protect public health, safety or the environment.

VI. SUPPLEMENTAL AGREEMENTS

For recurring Department of Defense activities on Forest Service lands, supplemental agreements to this master agreement may be developed. Within 12 months following the effective date of this agreement, representatives of the Departments of Defense and Agriculture, Forest Service, shall agree upon a schedule for the revision of any existing supplemental agreement which requires modification to conform with this master agreement.

VII. DELEGATION

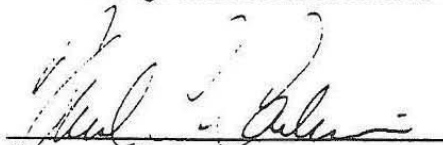
Authorized representatives of the Forest Service and the Department of Defense may execute special use authorizations and enter into supplemental agreements within the scope of this document.

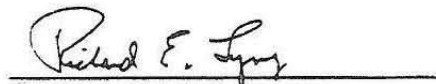
VIII. MODIFICATION AND TERMINATION

This agreement may be modified or amended upon request of either Department and the concurrence of the other. This agreement may be terminated with 60-day notice of either party.

IX. IMPLEMENTATION

This agreement becomes effective when signed by both parties.


Secretary of Defense


Secretary of Agriculture

Date: 22 SEP 1988

Date: Sept 30, 1988

I ask the LNF Forest Supervisor to divulge all of the agreement details between the LNF and DoD that concern the HAMETS project. I believe transparency is policy and is important for stakeholders to make informed comments. For example the MOU calls for the DoD to pay moneys per section IV (A) 6. Has money been paid or an agreement for money reached?

I believe this LNF-HAMETS project to be a poor idea for the Lincoln National Forest. It adversely affects all other users, poses risks to endangered species, migratory birds, risks from fire and on and on. It fails to meet the Forest Plan. It fails, period. I urge the Forest Supervisor to ask the Department of Defense to use some of their existing 25 million acres for this training. Or use their power of eminent domain. The Lincoln should not violate its rules, regulations and mandates to cater to another Federal Agency's whims. Lincoln Forest users: recreational, hunter, loggers, ranchers, hikers, residents, businesses, should not face risks, intrusion and takings by the military due to LNF Forest Supervisor bending the Forest's own rules.

Sincerely,

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“We have met the enemy and he is us” – Pogo