



November 21, 2014

Champe Green
Supervisory Forest Planner, Cibola National Forest
2113 Osuna Rd NE
Albuquerque, NM 87113

Via Email (cibolamtnsplanrevision@fs.fed.us)

Re: Cibola National Forest Preliminary Wilderness Inventory

Dear Champe,

Thank you for the opportunity to provide feedback on the Cibola National Forest's preliminary wilderness inventory and initial recommendations for designated areas. We appreciate the forest's rigorous effort in conducting its preliminary inventory of lands potentially suitable for inclusion in the National Wilderness Preservation System pursuant to the draft directives found in Chapter 70 of the Forest Service Handbook (FSH) 1909.12 (FACA-revised version) and ensuring meaningful opportunities for public participation in that effort. Overall, the forest has done a tremendous job of interacting with the public, providing timely information, and responding to concerns. However, as outlined below, we do have some concerns with the agency's methodology both in general and as applied to specific roadless areas.

Wilderness Inventory Methodology

A. The Forest Service Should Remedy Discrepancies between the Methodology Described on its Website and in its PowerPoint Presentation.

Overall, the Forest Service has done an excellent job of ensuring that its inventory process is transparent and publicly accessible, consistent with the collaborative and participatory spirit of Chapter 70 of the draft directives. The description of the inventory methodology on the forest's Wilderness Inventory and Evaluation Process webpage (<http://www.fs.usda.gov/detailfull/cibola/landmanagement/planning/?cid=stelprd3816114&wdth=full>), however, is inconsistent in certain respects with the information in agency's PowerPoint Presentation addressing the inventory process (https://fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3817253.pdf). For example, the

webpage does not list as a criterion exclusion of “[a]reas with substantially noticeable timber harvest, veg treatments, mining activities, or range or vertical structures.” See PPP Slide 23. Conversely, the PowerPoint does not reflect the exclusion of the Langmuir Research Site from the inventory. The descriptions of the agency’s treatment of roads are also inconsistent: the webpage states that Maintenance Level (ML) 2-5 roads were excluded from the inventory, while the PowerPoint (Slide 23) states that “[r]oads mechanically maintained or identified for continued public use” were excluded.

These discrepancies make it difficult for the public to understand what criteria the agency has applied and identify any problems with the agency’s methodology. Accordingly, the webpage should be updated to provide a complete and accurate description of the agency’s methodology, including all of the criteria applied in the inventory process. That description should also address and remedy the other methodological issues identified below.

B. The Forest Service Should Clarify What Roads Layer is Being Used for the Inventory Map.

It is unclear what roads layer is being used for the Forest Service’s preliminary inventory map. There appear to be many more roads depicted on the inventory map than on the forest’s Motor Vehicle Use Map (MVUM). As explained below, this discrepancy raises concerns regarding the agency’s treatment of ML2 roads in the inventory. But in any event, the agency should clarify what roads layer is being used, where that layer came from, and what types of roads (e.g., system, non-system, decommissioned, unauthorized, temporary, etc.) are and are not depicted in it. This clarification is necessary to ensure that the forest is accurately applying the roads criteria described in section 71.22a of the draft Chapter 70 directives, and it will provide additional transparency in terms of the agency’s methodology. This clarification will also help the public understand why the MVUM – the transportation map that forest visitors recognize and are familiar with – does not match the road system displayed on the online wilderness inventory map.

C. The Forest Service Improperly Excluded ML2 Roads from the Inventory.

Section 71.22a of the draft Chapter 70 directives provides detailed guidance on treatment of roads in the wilderness inventory process. The guidance is clear that the existence of an ML2 road does *not* exclude an area from the inventory, provided the road satisfies certain criteria. For example, ML2 roads that have been identified for decommissioning or reclassified as ML1 in a travel management plan or travel analysis should not exclude an area from the inventory. FSH 1909.12, ch. 70, § 71.22a(1)(b)-(c). In addition, the agency must assess whether ML2 roads meet one or more of the following criteria:

- (1) have been improved and are maintained by mechanical means to ensure relatively regular and continued use,
- (2) have cumulatively degraded wilderness character or precluded future preservation of the area as wilderness,

- (3) have been identified for continued public access and use in a project level or travel planning decision supported by NEPA, or
- (4) otherwise preclude evaluation and consideration of the area during the public participation and intergovernmental outreach processes as potentially suitable for wilderness, based on Assessment information or on-the-ground knowledge.

Id. § 71.22a(2)(c). If an ML2 road does not satisfy any of those criteria, then it does not disqualify the area from the inventory. *Id.* § 71.22a(1)(g). Conversely, if the ML2 road satisfies one or more of the criteria, then the area should be excluded from the inventory. *Id.* § 71.22a(2)(c).

Despite the requirement to assess ML2 roads pursuant to the criteria enumerated in section 71.22a, the forest's Wilderness Inventory and Evaluation Process webpage states that "[l]evel 2-5 roads . . . shown on the inventory map have been buffered by 30m on either side of centerline and removed from the inventory." In other words, it appears that the Forest Service categorically excluded all ML2 roads from the preliminary inventory. The agency may not circumvent the Chapter 70 process in that way. Instead, it must apply the relevant criteria to each ML2 road to determine whether to exclude the area from the inventory.

When we brought up this issue, you informed us that the exclusion of all ML2 roads was based on a determination that they are either mechanically maintained to ensure relatively regular and continuous use or have been identified for continued public use in a prior decision. *See also* PPP Slide 23 (list of "what not to consider" includes "[r]oads mechanically maintained or identified for continued public use"). This approach is problematic for a number of reasons. First, the draft directives do not permit the agency to make a blanket determination that all ML2 roads are mechanically maintained or have been identified for continued public use. Rather, the agency must assess *each* ML2 road to determine whether it satisfies the criteria enumerated in section 71.22a.

Second, that blanket determination is unsupported by the existing publicly available information. As explained above, the roads layer of the preliminary inventory map appears to include many ML2 roads that are not depicted on the MVUM and therefore were not identified for continued public use in the forest's travel management planning process. Moreover, given the forest's staggering road maintenance backlog, it currently lacks the budget to mechanically maintain the ML2 roads that *have* been identified for continued public use – much less the numerous additional ML2 roads depicted on the inventory map.¹ In any event, the agency must document and explain its application of the relevant criteria for each ML2 road, and may not circumvent that process by categorically excluding all ML2 roads.

¹ See USDA, Cibola National Forest Mountain Ranger Districts Assessment Report, Vol. II, at 210 (May 21, 2014), available at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3801467.pdf (average road maintenance budget approximately 19% of the \$3.9 million necessary to adequately maintain over 3,000 miles of system roads, including over 2,500 miles of ML2 roads).

D. The Forest Service Should Clarify its Methodology and Findings Regarding Substantially Noticeable Improvements.

Pursuant to section 71.22b of the draft Chapter 70 directives, the presence of certain improvements – such as vegetation treatments, timber harvest areas, mining activity, and grazing infrastructure – do not disqualify an area from the inventory, provided that they are “not substantially noticeable.” FSH 1909.12, ch. 70, § 71.22b. The “substantially noticeable” criterion comes directly from section 2(c) of the Wilderness Act, which defines wilderness as an area that, among other things, “generally *appears* to have been affected primarily by the forces of nature, with the imprint of man’s work *substantially unnoticeable*.” 16 U.S.C. § 1131(c)(1) (emphasis added). Based on the plain meaning of that language, it has long been understood that the proper inquiry is whether the area generally appears natural to the average, reasonable visitor who is unfamiliar with the its historical or ecological conditions. Thus, for inventory purposes under section 71.22b of the draft Chapter 70 directives, the Forest Service must assess whether an average, reasonable visitor who is unaware of existing vegetative treatments, timber harvest areas, historic mining activity, or other improvements would nevertheless notice those improvements because they make the area appear unnatural.

The forest’s PowerPoint (slide 23) (but not its Wilderness Inventory and Evaluation Process webpage) lists “[a]reas with substantially noticeable timber harvest, veg treatments, mining activities, or range or vertical structures” under “what not to consider” in the inventory. The forest has not, however, provided any additional information about its methodology for determining what improvements are substantially noticeable. To ensure that it is applying the correct, reasonable visitor standard, the agency should clarify its methodology and make publicly available any findings that particular improvements are substantially noticeable and therefore disqualify the area from the inventory.

E. The Forest Service Improperly Omitted Areas of Less than 5,000 Acres that Are Adjacent to Roadless Areas under Another Agency’s Jurisdiction.

Pursuant to the Wilderness Act, a wilderness area “has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition.” 16 U.S.C. § 1131(c)(4). To fulfill that size criteria, the draft Chapter 70 directives require the Forest Service to include in its inventory “[a]reas contiguous to existing wilderness, primitive areas, administratively recommended wilderness, or wilderness inventories of other Federal ownership, regardless of their size.” FSH 1909.12, ch. 70, § 71.21. In other words, areas adjacent to other wilderness-quality lands – regardless of the size, agency jurisdiction, or designation status of those adjacent lands – should be included in the inventory.

According to its Wilderness Inventory and Evaluation Process webpage, however, the Cibola improperly narrowed this criterion to include only “[a]rea[s] adjacent to existing Wilderness regardless of size.” *See also* PPP Slides 22 & 25 (stating that adjacent areas of less than 5,000

acres must be “contiguous to existing wilderness”).² The forest apparently failed to include in its inventory areas adjacent to wilderness-quality lands recognized by other federal agencies, but not designated by Congress. That approach conflicts with the clear direction provided in the draft directives. And in at least one situation, it meant that the agency excluded an area adjacent to a Bureau of Land Management Wilderness Study Area (WSA) from the preliminary inventory. See comment #24217 in Appendix II regarding a small area adjacent to the Sierra Ladrones WSA. To comply with the requirements of the Wilderness Act and the draft Chapter 70 directives, the Forest Service must correct its size criteria and re-inventory the area adjacent to the Sierra Ladrones WSA and any other areas adjacent to the categories of wilderness-quality land enumerated in section 71.21.

F. The Langmuir Research Site Should Not Have Been Excluded From the Inventory.

The Forest Service should not have excluded the entire 31,000-acre Langmuir Research Site from its inventory. The Wilderness Inventory and Evaluation Process webpage states that the site was excluded, but does not explain why. When we inquired, you informed us that the agency considers the research site to be “congressionally withdrawn.” As our attorney explained in an October 8, 2014 memo, which we transmitted to you and is attached as Appendix I to this letter, that rationale is faulty. Nothing in the New Mexico Wilderness Act, Public Law No. 96-550, suggests that Congress intended to preclude other uses of the site beyond scientific research or that its inclusion in a wilderness inventory would otherwise conflict with Congress’ intent in establishing the site. Indeed, scientific research is one of the public purposes and values of wilderness. In short, there are no apparent legal barriers to inclusion of the site in the wilderness inventory.

Moreover, any potential, limited conflicts between particular research activities and other wilderness values likely could be avoided by excluding from the inventory the 1,000-acre principle facility where research activities are concentrated (about 3% of the site). That reasonable approach would allow the Forest Service to inventory and evaluate the remaining 30,000 acres for wilderness characteristics, as is contemplated by Chapter 70 of the draft directives.

Comments on Specific Wilderness Inventory Polygons

TWS and our conservation partners conducted field inventories the summers of 2012-2014 to identify wilderness quality lands across the forest. Using the Cibola’s interactive online mapping tool, we submitted comments based on this field survey. The Forest Service must ensure that all of the comments that were submitted via the online mapping tool are included in the formal administrative record. Appendix II to this letter includes a subset of the comments that we or our partners submitted using the online tool; we provide comments only for those polygons

² Later, at slide 33, the PowerPoint states that the preliminary inventory results include areas “adjacent to existing wilderness or recommended wilderness study areas.” This statement is inconsistent with the webpage and slides 22 and 25 of the PowerPoint, and still does not accurately reflect the correct Chapter 70 criteria.

where we conducted a field survey. We are providing this appendix to make certain that the administrative record includes comments relevant to each polygon that we surveyed. The appendix also includes a printed version of the Forest Service's preliminary wilderness inventory maps on which we demarcated the inventory polygon to which our comments pertain.

Ecosystem Representation

As described in detail in Appendix III to this letter, the representation of different ecosystem types in the National Wilderness Preservation System (NWPS) and other protected areas (e.g., Research Natural Areas (RNAs), ecological or botanical areas, or other conservation designations) is critically important to conserving biological diversity and ecological integrity. Because protecting ecosystem integrity and diversity is a central goal and substantive requirement of the 2012 National Forest System Land Management Planning Rule, the Forest Service must evaluate and incorporate ecosystem representation information into its assessment and planning processes, including the wilderness evaluation process and consideration of designated areas pursuant to 36 C.F.R. § 219.7(c)(2)(v) & (vii).

To that end, we conducted an analysis of ecosystem representation in wilderness at the national- and forest-level scales to provide the Forest Service with the best available scientific information. The results of that analysis (which are included and described in detail in Appendix III) show that the Cibola National Forest hosts numerous ecosystem types that are poorly-represented in the NWPS both regionally and nationally. The ongoing wilderness inventory and evaluation and planning processes present the Forest Service with a crucial opportunity to begin to remedy that under-representation by prioritizing protection of diverse ecosystems through recommended wilderness and other conservation-oriented designations such as RNAs, ecological or botanical areas, etc. Only by utilizing ecosystem representation information to establish a network of recommended wilderness and other protected areas that represent the full expression of ecosystem diversity can the Forest Service satisfy the substantive mandates of the 2012 Planning Rule to provide for ecological sustainability, integrity, and diversity.

Conclusion

Thank you for your attention to these issues. Please include these comments in the administrative record for the forest planning process. And please do not hesitate to contact us with any questions or if you would like to discuss these comments further.

We appreciate all of the hard work that you and the plan revision team have put into the wilderness inventory process. We look forward to continuing to work with you throughout the rest of the plan revision process.

Sincerely,

Joshua Hicks
Assistant Director, National Forest Action Center
The Wilderness Society
303-650-1148
josh_hicks@twc.org