

July 8th, 2019

Adam Mendonca, Forest Supervisor  
Emily Irwin, District Ranger  
Quemado Ranger District, Gila National Forest  
3005 E Camino del Bosque, Silver City, NM 88061

Submitted via email to: objections-[southwestern-regional-office@fs.fed.us](mailto:southwestern-regional-office@fs.fed.us)

**Re: Objection to the Luna Restoration Project Final Environmental Impact Statement and Record of Decision**

To Supervisor Mendonca:

Pursuant to CFR 218.8(d), WildEarth Guardians, files this Objection to the FEIS and proposed ROD (including proposed amendments to the Gila National Forest Plan) issued by Adam Mendonca for the Luna Restoration Project. WildEarth Guardians filed comments on the Draft EIS on June 25th, 2018 and is listed in the Section of the FEIS identifying “agencies, tribes, groups, and individuals who provided substantive comments to the DEIS.”

Pursuant to CFR 218.8(d), WildEarth Guardians hereby states that the following content of this Objection demonstrates the connections between the June 25th, 2018 comments (or “DEIS comments”) for all issues raised herein, unless the issue or statement in the ROD or FEIS arose or was made after the opportunity for comment on the DEIS closed, as detailed herein.

WildEarth Guardians’ DEIS comments are incorporated and referenced herein. Pursuant to the Administrative Procedure Act, 5 U.S.C 553-706, and USFS requirements, the Regional Forester’s Office must provide a detailed response to each of the issues/objections raised in this document.

**WildEarth Guardians**

WildEarth Guardians is a nonprofit conservation organization with offices in New Mexico and five other states. We have more than 238,000 members and supporters across the United States and the world. Guardians’ mission is to protect and restore wildlife, wild places, wild rivers, and the health of the American West. WildEarth Guardians has organizational interests in the proper and lawful management of the Gila National Forest, its wildlife, wild places and watersheds.

WildEarth Guardians’ comments on the DEIS are incorporated herein in their entirety, as the FEIS wholly fails to respond to our comments and concerns. As did the DEIS, the FEIS and the Luna Project violated NEPA, NFMA and the ESA in numerous respects.

**I. The FEIS Violates NEPA in Numerous Respects**

**A. The Forest Service failed to analyze a reasonable range of alternatives**

As we explained in our DEIS comments, the “heart” of an EIS is the analysis of reasonable alternatives. 40 C.F.R. § 1502.14. An agency “should present the environmental impacts of the

proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis of choice among options by the decision-maker and public. *Id.* To comply with the regulations implementing NEPA, an agency must “rigorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a). “Without substantive, comparative environmental impact information regarding other possible courses of action, the ability of an EIS to inform agency deliberation and facilitate public involvement would be greatly degraded. *New Mexico ex rel. Richardson v. Bureau of Land Mgt.*, 565 F.3d 683, 708 (1<sup>st</sup> Cir. 2009) (citing *Baltimore Gas and Elec. Co. v. Nat. Resources Def. Council, Inc.*, 462 U.S. 87 (1983)). See DEIS Comments, p. 7.

The FEIS does not resolve our concerns regarding the lack of an adequate range of alternatives. Indeed, the same issues are present. Similar to the DEIS, “[t]here are no differences in the location, acres, or proposed treatments between alternatives.” FEIS, p. 19; See DEIS Comments, p. 7. In the Response to Comments, the Forest Service states that “an alternative was considered but eliminated from detailed study and added to the final EIS.” FEIS, p. 194. This does not suffice, and the FEIS suffers the same flawed alternatives analysis as the DEIS.

In our DEIS comments we provided a number of actions suitable for inclusion in a more diverse range of alternatives. DEIS Comments, p. 7.

These alternatives are reasonable based on: 1. the lack of scientific evidence to support the use of logging and other mechanical treatments to “restore” departed conditions; 2. the fact that many areas of the forest are not “departed” as the Forest Service claims; 3. the impacts that logging and roads have on MSO, Mexican Wolf and other wildlife species, watersheds, water quality and forest health and ecology; 4. the current degraded conditions of a number of riparian areas, streams and watersheds within the Project area.

*Id.*

The Forest Service failed to incorporate any of our suggestions, and did not address our concerns in its response to comments.

**Suggested Remedy:** Revise the EIS with an adequate range of alternatives that incorporates WildEarth Guardians’ suggestions. Including, but not limited to:

- A genuine forest health alternative that would close roads, restore watersheds and riparian areas, and promote natural regeneration
- An alternative that only uses mechanical treatments in areas within a reasonably defined Wildland Urban Interface (WUI)
- An alternative that requires no road construction or reconstruction
- An alternative that proposes treatments on substantially fewer acres

- An alternative that does not propose treatments within areas historically subject to high-severity or mixed-severity fires

See DEIS Comments, pp. 7-8.

B. The DEIS does not provide a sufficient analysis of baseline conditions and fails to take a “hard look” at the direct, indirect, and cumulative impacts of the Luna Restoration Project

*i. The Forest Service failed to establish baseline conditions*

In our DEIS Comments, we explained the importance of including adequate, site-specific baseline data. DEIS Comments, pp. 8-9. The Forest Service failed to include this baseline data in the FEIS and did not sufficiently respond to our comments on this issue. The FEIS is far too broad and vague, and lacks the necessary site-specific detail to comply with NEPA. Site-specific baseline conditions for the current transportation system, grazing allotments, vegetation, watersheds, riparian areas and wildlife habitat are not disclosed.

As we explained in our DEIS comments, “[i]t is well known that livestock grazing and travel management impact habitat conditions for all of [wildlife] species. These impacts must be analyzed as part of the baseline conditions.” DEIS Comments p. 14. The FEIS does not resolve our concerns and contains no site-specific information on how grazing and roads are impacting habitat conditions at the site-specific level. There is no information concerning livestock impacts by pasture, or whether and how livestock grazing is currently impacting wildlife, soil, water quality, recreation or other resources in a particular area. Similarly, there is no information concerning the impacts of specific roads on wildlife habitat, streams and riparian areas.

The FEIS is similarly vague regarding habitat conditions for Mexican wolves, Mexican spotted owl, Northern Goshawks, Southwestern willow flycatcher, and other threatened, endangered, sensitive and management indicator species. See DEIS Comments, pp. 14-17. There is simply no data or analysis in the FEIS on the current status of these species and their habitats forest-wide or within the project area. What data has the Forest Service collected (whether in conjunction with the U.S. Fish and Wildlife Service, state agencies, or otherwise) on these species, and what does that data show about habitat conditions and the status of each species? If this information is contained in the Biological Assessment and/or Biological Opinion, neither have been made available to Guardians or the public for review. Accordingly, we are not sufficiently informed of existing baseline conditions and are not able to sufficiently comment on the impacts to threatened, endangered, and other sensitive and management indicator species.

Without the data and analysis of baseline conditions for each species and their habitats, how will the Forest Service determine the impacts of the proposed treatments and range projects? Further, there are no specifics in the FEIS on what type of monitoring data will be collected and when it will be collected. Since the Forest Service fails to provide existing monitoring data, it’s

is impossible to know whether any monitoring has actually occurred, and whether future monitoring will, in fact, take place.

The Forest Service also failed to address our concerns regarding the lack of site-specific baseline data for areas where there have been previous treatments or wildfires, such as the Wallow fire. *See* DEIS Comments, pp. 13-14. As in the DEIS, the FEIS provides no site-specific information on where previous treatments occurred, what these treatments were, where they occurred, or the resulting conditions. There is also no information on the existing condition of lands that previously burned by wildfires. This information is essential to determining current conditions and the effectiveness of these previous management activities and natural fires. The FEIS (p. 80) lists treatments that have occurred in the past 12 years but does not provide site-specific information on their impacts (whether beneficial or harmful), and whether they achieved their management objectives.

**Suggested Remedy:** Revise the EIS to include site-specific baseline data and analysis of the existing conditions of the project area.

- ii. *The Forest Service failed to take a hard look at the direct, indirect and cumulative impacts of the Luna Restoration Project*

NEPA requires the Forest Service to disclose and analyze the direct, indirect, and cumulative impacts and consequences of its activities. 40 C.F.R. §§ 1502.16(a), 1502.16(b), 1508.25(c), 1508.27(b)(7). Direct effects include that “which are caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a). Indirect effects are those “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Cumulative impacts include “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. Importantly, “[c]umulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.* *See* DEIS comments pp. 9-10 The FEIS fails to comply with these NEPA requirements in numerous respects.

One overarching issue is the Forest Service’s repeated use of the terms “short-term” and “long-term” throughout the FEIS to describe potential impacts and beneficial effects. In our DEIS comments we requested the Forest Service define these terms and what they mean with respect to impacts on wildlife, vegetative conditions, soils, riparian areas and other resources. The FEIS fails to do so. Accordingly, the FEIS perpetuates the same problems as the DEIS regarding the failure of the Forest Service to analyze the direct, indirect and cumulative impacts of Luna project on wildlife, vegetation, soils, streams and riparian areas, and other resources.

- a. Fire regime and vegetative conditions

In our DEIS comments we highlight that “[i]n order to achieve a mixed-severity fire regime, the landscape must have a mosaic of low, moderate, and high severity burn areas. Fuel density and type are not the sole, nor the dominant indicators of fire severity. Topography and weather, as well as the adaptation of present species to fire all play a factor in determining fire severity.” DEIS Comments, p. 13. We also explained that “[t]he Forest must take a hard look at the site-specific objectives and proposed outcomes of fuel treatments and analyze if the type and location of treatment are meeting specific objectives.” *Id.*, pp. 13-14.

The FEIS fails to do this. The Forest Service relies on unsupported assumptions of positive impacts, and ignores the most recent science and data showing that agencies cannot manage (log, thin, burn, spray) their way to so-called “forest health.” The FEIS fails to analyze the direct, indirect and cumulative impacts of the logging, burning and use of herbicides on vegetative conditions or any other resources.

Further, in our DEIS comments we specifically stated that the Forest Service must analyze the existing conditions of areas burned by wildfires, and the cumulative impacts that the proposed treatments will have in conjunction with those fires. The FEIS fails to do so.

In the FEIS the Forest Service states that “[a]reas that burned with low-severity fire resulted in little or no change to the density of trees or amount of fuel on the ground” in reference to the impact of the Wallow Fire on vegetative conditions. FEIS p. 5. When describing prescribed fire treatments on p. 25, the Forest Service states “ Desired results would be reduction of surface and canopy fuels. The end state would be areas treated with prescribed would eventually merge and breakup the fuel continuity across a larger area” when discussing the use of prescribed fire-low severity.

**Suggested Remedy:** Revise the EIS and ROD that includes the required hard look at direct, indirect and cumulative impacts of the proposed vegetative treatments in the project area.

#### b. Wildlife

The FEIS fails to address our concerns raised in our DEIS comments regarding the lack of baseline data and direct, indirect and cumulative impacts analysis on wildlife species, including sensitive and management indicator species. Broad discussions of general habitat requirements do not suffice. Nor do general claims of some short-term disturbances and long-term habitat improvements. Such vague and general terms do not suffice and do not comply with NEPA’s requirements to analyze the direct, indirect and cumulative impacts of the project.

#### Mexican Gray Wolf

In the FEIS the Forest Service relies heavily on the 10(j) experimental non-essential Mexican gray wolf rule as cause for not analyzing the impacts of various project activities. FEIS p.82. The Gila National Forest Land and Resource Management Plan (“GNFP”) is the governing

Forest Plan on the Gila National Forest. The GNFP contains objectives for the protection of various resources within the Gila National Forest. Among them, the GNFP states that the Forest Service will: “Maintain and/or improve habitat for threatened and endangered species and work toward the eventual recovery and delisting of species through recovery plans.” GNFP at 12. Thus, pursuant to your own Forest Plan, the Gila National Forest cannot ignore or exclude the impacts of the project on Mexican wolves.

Further, the 2015 Mexican Wolf Rule, including the 10(j) non-essential determination, was overturned and remanded to the United State Fish and Wildlife Service in April of 2018 for revision (*WildEarth Guardians v U.S. DOJ*). The FWS was specifically directed to review the 10(j) non-essential determination. Accordingly, the Forest Service can no longer rely on the non-essential determination for Mexican wolf and cannot claim that it doesn’t have to analyze the impacts of certain activities because they are specifically excluded under the 2015 rule.

The Luna project has the potential to significantly impact threatened and endangered species including, but not limited to, the Mexican gray wolf. The Mexican gray wolf and its prey species are especially vulnerable to impacts from grazing. In addition, logging, burning, herbicides, roads and motorized recreation may also impact wolf habitat and prey species and their habitats. The Forest Service must analyze the direct, indirect and cumulative impacts of all activities under the Luna Restoration Project on Mexican wolves individually and the population as a whole.

**Suggested Remedy:** Revise the EIS to analyze the direct, indirect and cumulative impacts of current and proposed activities in the project area on Mexican gray wolves, including impacts to their prey species.

## Mule Deer

In our Comments we highlighted the agency’s failure to analyze the cumulative impacts of the Luna Project along with the Escudilla West Project “which will each displace deer from a significant amount of their habitat over the next 8-20 years.” DEIS Comments p. 16. In the FEIS the Forest Service routinely states there will be increased short-term disturbances to foraging mule deer across the project area from mechanical and hand thinning, prescribed burning, sediment control, road and all-terrain vehicle trail, and fences and water improvements. In our comments, we specifically requested the Forest Service define “short-term” since the projected timeframe for this project is 8-20 years. (FEIS 92-94)

The FEIS fails to respond to our comments. We are still in the dark about what the agency means by “short-term” impacts (as explained above, this is applicable not only to mule deer, but to all species and resources), and there is no cumulative impacts analysis of the Luna project in conjunction with the Escudilla West project (or any other ongoing or proposed future project) on mule deer (or any other species or resource).

**Suggested Remedy:** Revise the EIS to define and analyze what constitutes a “short-term” and “long-term” impacts to indicator species from mechanical and hand thinning, prescribed burning,

sediment control, road and all-terrain vehicle trail, and fences and water improvements. Revise the EIS to include a comprehensive cumulative impacts analysis that includes the impacts of other nearby projects such as the Escudilla West Project.

a. Mexican spotted owl

In our DEIS Comments we cited a report that shows MSO appear to be resilient to wildland fire, including high and mixed severity fires. DEIS Comments, p. 15. We also commented on the lack of any monitoring of the impacts of previous management activities, in particular logging, on MSO and their habitats. *Id.* The FEIS fails to respond to our comments on this issue. As we stated in our DEIS comments, “Without this data, the impacts of such projects cannot be adequately predicted and thus the DEIS’s claim that MSO habitat will improve and that the project will have only beneficial long-term impacts on MSO or their habitat is unfounded and unsupported by any scientific evidence.” *Id.*

iii. *The FEIS fails to analyze the impacts of Climate Change*

In its Response to Comments, the Forest Service states that Climate Change “is addressed in the EIS on pages 150, 156, 162 and in cultural, fuels, recreation, vegetation, and watershed/soils reports. However, a review of these sections reveals that there is minimal information, much less site-specific, scientifically based analysis, on the impacts of climate change on the project area. This is unacceptable given that the overarching purpose of the project is to reduce the likelihood of high intensity fire, ostensibly due to the changing climate. “It is expected that climate change effects would increase the length of fire season and increase likelihood of high-severity fire.” FEIS, p. 156. And, one of the stated needs for the project is to “implement vegetative treatments to restore departed landscapes that are, overstocked, encroached, and at risk to fire, disease, insects, and climate stressors.” *Id.*, p. The FEIS admits that climate change influences environmental factors including the weather, vegetation, habitat, water, and wildlife across the landscape. *Id.*, p. 150. Indeed, “current watershed conditions are the culmination of historical activities since the late 1800s and early 1900s, ongoing management activities, climate fluctuations, roads, and recent wildfire.” FEIS, p. 110. Numerous watersheds are functioning at risk, and two are “impaired function.” *Id.*, p. 111.

The EIS must consider the cumulative impacts related to climate change. *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1215 (9th Cir. 2008) (impact of greenhouse gas (“GHG”) emissions on climate is precisely the kind of cumulative impacts that NEPA requires agencies to analyze); *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520 (8th Cir. 2003) (EIS was required to consider GHG emissions from project upgrading existing and new rail lines serving coal mines); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41 (D.D.C. 2019) (BLM violated NEPA by not adequately considering climate change when authorizing oil and gas leasing on federal land).

Here, there is no site-specific or cumulative impacts analysis of how climate change has affected, and is expected to further impact, vegetation, habitat, watersheds and other resources on the Gila National Forest, or within the project area. Nor is there any analysis on how this project will improve conditions in light of a changing climate. What specific on-the-ground changes have occurred due to changing climatic conditions? More importantly, how have human-caused stressors such as roads, motorized use, livestock grazing, development and logging magnified the impact of climate change on forest resources? This must be analyzed in the EIS.

Further, we request the scientific justification for the Forest Service's assumptions. Instead of assuming that historic structure and composition will result in reduced risk of high intensity fire and restore watershed conditions, the Forest Service must analyze the impacts of climate change and all other human influences on ecological functions, species composition, etc... to determine what is needed for the ecological resilience of the Forest's different ecosystems, watersheds and species.

**Suggested Remedy:** Revise the EIS and ROD to identify and provide site-specific analysis of the baseline conditions in the project area due to climate change and human-caused stressors, analyze the cumulative impacts of the proposed project along with all human-caused stressors, and on climate change related risks and vulnerabilities in the project area. Provide scientific justification for the assumptions made in the DEIS.

iv. *The FEIS fails to include adequate mitigation, monitoring and enforcement*

In our DEIS comments we stated

“Leaving the identification and analysis of mitigation measures to some future time without any additional environmental analysis in a site-specific EA or EIS violates NEPA. DEIS p. 25

NEPA requires that an EIS discuss mitigation measures, with "sufficient detail to ensure that environmental consequences have been fairly evaluated." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989). An essential component of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be effective. Compare *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1381 (9th Cir.1998) (disapproving an EIS that lacked such an assessment) with *Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 477 (9th Cir.2000) (upholding an EIS where "[e]ach mitigating process was evaluated separately and given an effectiveness rating"). The Supreme Court has required a mitigation discussion precisely for the purpose of evaluating whether anticipated environmental impacts can be avoided. *Methow Valley*, 490 U.S. at 351-52, 109 S.Ct. 1835(citing 42 U.S.C. § 4332(C)(ii)). A mitigation discussion without at least some evaluation of effectiveness is useless in making that determination." *S. Fork Band Council of W. Shoshone v. United States DOI*, 588 F.3d 718, 727 (9th Cir. 2009) (per curiam) (citation omitted) (internal quotation marks omitted). The Court in *South Fork Band*, found an EIS inadequate where it stated that "[f]easibility and success of mitigation would depend on site-specific conditions and details of the mitigation plan," but the EIS omitted any discussion of "whether the anticipated harms could be avoided by any of the listed mitigation measures." *Id.* The Court



rejected BLM's claim "that an effectiveness discussion was not required because it is impossible to predict the precise location and extent of groundwater reduction, and that problems should instead be identified and addressed as they arise." *South Fork Band*, at 727. To the contrary, the Court held that "NEPA requires that a hard look be taken, if possible, before the environmentally harmful actions are put into effect. *National Parks & Conservation Association v. Babbitt*, 241 F.3d 722, 733 (9th Cir.2001)." *Id.*

In the Response to Comments the Forest Service states that it will conduct monitoring on most of the Project activities, but it does not provide details about frequency, methods, or opportunity for public review. *See* FEIS, p. 38. Further, the FEIS does not include how results from monitoring, if available during the project timeframe, will trigger adaptive management of subsequent project activities.

The FEIS does not discuss how the Forest Service will monitor and enforce changes to the travel management decision.

This does not resolve our concerns that the Project will be implemented in a way that will be responsive to on-the-ground conditions or that Project activities will be monitored in compliance with NEPA, the Gila Forest Plan, and specific species recovery plans. We are very concerned about the lack of discussion of enforcement of changes to the travel management decision.

**Suggested Remedy:** Revise the EIS and ROD that is compliant with NEPA, the Gila Forest Plan and the ESA's requirements for monitoring, mitigation, and enforcement.

v. The FEIS articulates a flawed statement of purpose and need

In our DEIS comments we stated "An agency may not "define a project so narrowly that it forecloses a reasonable consideration of alternatives." *Fuel Safe Washington v. Fed. Energy Regulatory Comm'n*, 389 F.3d 1313, 1324 (10th Cir. 2004); *Citizens' Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1030 (10th Cir. 2002)." DEIS Comments pp. 5-7

In the Response to Comments, the Forest Service states "We feel that the purpose and need frames up what the Gila National Forest is trying to accomplish and why the project is necessary, which is reflected in the proposed action and subsequent alternatives developed from public comments" (FEIS p. 194)

This reasoning does not suffice to rectify the flawed statement of purpose and need because it continues to limit the range of alternatives and does not meet the needs of the landscape, watershed health, or the Gila Forest Plan.

## II. The FEIS fails to adequately analyze the travel management system

### A. The Forest Service fails to consider or identify the minimum road system

In our DEIS Comments we stated: "The Forest Service must consider its Travel Analysis Report

(TAR) for the Gila National Forest, and identify the minimum road system. Meeting this minimum road system, not adding additional roads, should be the stated need. We urge the Forest Service to carefully evaluate the Luna Restoration Project and its alternatives through this lens.” DEIS Comments, p. 6.

In our DEIS Comments we

urged the Forest Service to include in its statement of purpose and need the agency’s substantive duty under 36 C.F.R. § 212.5 (Subpart A) to identify the minimum road system. *See Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853, 866 (9th Cir. 2004) (explaining that when an agency takes an action “pursuant to a specific statute, the statutory objectives of the project serve as a guide by which to determine the reasonableness of objectives outlined in an EIS”).

DEIS Comments, p. 18.

As we explained in our DEIS comments, the Forest Service has a substantive duty to identify the minimum road system it determines is needed to, inter alia, ensure the “identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.” 36 C.F.R. § 212.5(b). Under NEPA, it also has a duty to consider the effects of its proposed action when added to the existing road and trail system. *Wilderness Society v. U.S. Forest Service*, 850 F. Supp. 2d 1144, 1157-58 (D. Idaho 2012) (holding the Forest Service was arbitrary and capricious to conclude that designating 94 miles of user-created routes as non-system routes would have no significant impact). DEIS Comments, p. 20.

In response to our comments, the FEIS states the travel analysis process is not a decision process but rather provides a framework that may be considered in the environmental analysis process and that the minimum road system may be changed to address other issues and opportunities. FEIS, p. 191. In the substantive portions of the FEIS, the Forest Service fails to use, or even mention, the travel analysis process or reports and the minimum road system when justifying or analyzing changes to the travel management system. The intention of the travel analysis reports is to inform future decisions on how and where to invest limited resources on building new roads, managing current roads, or decommissioning old roads (fs.usda.gov) and therefore is a critical aspect of any EIS decision involving changes to the travel management system.

**Suggested Remedy:** Revise the EIS and ROD to include the travel analysis framework in the analysis and justification of changes to the travel management system. Use the travel analysis framework to identify the minimum road system and what impacts changes to the minimum road system will have on the project area and if additions to the minimum road system continue to meet applicable statutory and regulatory requirements.

- a. *The Forest Service fails to address our comments on methods for decommissioning selected roads.*

Our DEIS Comments request

“that as part of the Project the Forest Service close these routes with fixed barriers and that any unnecessary roads be decommissioned. There is obviously a lack of funding for adequate maintenance of roads and erosion control structures and there are issues with unauthorized motorized use on closed roads and user-created roads.

DEIS Comments, p. 19.

The FEIS does not address our concerns or our specific request. The FEIS fails to address the actions that will be taken to decommission roads and their effectiveness.

**Suggested Remedy:** Revise the EIS and ROD to include the use of barriers, ripping, and recontouring at the mouths and intersections of all roads to be decommissioned within the project area.

b. *The Forest Service does not identify the need for additional roads.*

In our DEIS Comments we state that

The DEIS does not adequately identify the need for these additional roads, or analyze their environmental consequences. The DEIS fails to analyze how these roads and the increased motorized use in the area will impact riparian areas, water quality, wildlife habitat, or the experiences of non-motorized recreational users who wish to avoid and escape the noise, smell and reduced air quality caused by motorized vehicles.”

DEIS Comments p.19

The Forest Service justifies its decision to increase the number of roads by citing 36 CFR 212.54 which states “Designations of National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to § 212.51 may be revised as needed to meet changing conditions. Revisions of designations shall be made in accordance with the requirements for public involvement in § 212.52, the requirements for coordination with governmental entities in § 212.53, and the criteria in § 212.55, and shall be reflected on a motor vehicle use map pursuant to § 212.56.” FEIS, p. 14. However, the Forest Service fails to comply with this regulation or NEPA because the FEIS fails to demonstrate that conditions have changed in the area since the travel management decision was signed in May of 2014 or since it was implemented on the Quemado Ranger District in July of 2016. There is no evidence in the FEIS that the proposed roads are needed to meet changing conditions.

The FEIS does not sufficiently analyze the environmental consequences of adding additional and, specifically, user created routes to the system. In the Response to Comments the Forest Service admits there would be increased habitat fragmentation in mule deer habitat. FEIS, p. 207. The FEIS must analyze this in detail, and the Forest Service should not be further fragmenting mule deer habitat in this already fragmented landscape.

**Suggested Remedy:** Revise the EIS and ROD to comply with the minimum road system and travel analysis report and to prioritize the reduction of habitat fragmentation. Analyze the impacts of adding additional motorized routes, specifically the potential for increased

sedimentation, erosion, harassment of wildlife by motorized users, wildlife habitat fragmentation, and potential for human-caused wildfire. Demonstrate effectiveness of proposed mitigation, design criteria and best management practices at reducing identified impacts given funding and enforcement resources.

### **III. The FEIS is inconsistent with the Gila Forest Plan**

#### **a. Water Rights**

In our DEIS comments p. 4, we state “The 1986 Forest Plan includes a standard directing the Forest to “Acquire additional water rights when the opportunity exists, or before new appropriable waters are developed.” (GFP, F04). The DEIS fails to discuss whether the proposed water developments will be utilizing newly, or legally, appropriable waters.”

The FEIS states: “In the event the Gila National Forest is unable to obtain a license, an alternative water source could be considered provided the effect of using that water source does not differ from the effects disclosed in this analysis.” FEIS, pp. 28-29. In response to concerns brought forward by the Center for Biological Diversity and WildEarth Guardians the Forest Service says “[s]hould other types of water developments be needed if wells are not feasible, separate environmental analysis would be required.” FEIS, p. 199. It is unclear which outcome the Forest Service will pursue and what the opportunities for public comment will be.

**Suggested Remedy:** Revise the EIS and ROD to clarify that if wells are not feasible and other types of water developments are needed, a separate environmental analysis will be required and cite the appropriate regulations and statutes that govern the public input and decision making process of the analysis.

#### **b. Wild Turkey**

In our DEIS comments p. 4, we observe “The 1986 Forest Plan includes a standard requiring the Forest to manage for wild turkey habitat (GFP, C02). The DEIS fails to analyze the impacts of the Project on wild turkey habitat.”

The FEIS does not analyze the impacts of the Project on wild turkey habitat. In responding to our comments (FEIS p. 196) the Forest states “There are additional species in the Gila forest plan to manage habitat for, which include deer, elk, squirrel, etc. Planning area is within management areas 3B, 3C and 3D of the Gila forest plan. The forest plan provides direction to support populations of these species and integrate habitats to provide primary components (nesting, roosting, foraging 3B (page 102), 3C (page 108) and 3D (page 114)).”

**Suggested Remedy:** Revise the EIS and ROD that analyzes the impacts of the Project on wild turkey habitat.

#### **c. Sensitive Soils**

DEIS p. 4 The 1986 Forest Plan includes a standard directing the Forest to “provide for the management of sensitive soils in all surface disturbing activities to minimize or control erosion.” (Gila, F04) The DEIS fails to give site-specific information about the Project’s impacts on sensitive soils or to analyze the direct, indirect or cumulative impacts of the Project on sensitive soils within the project area.

In our comments we requested an alternative that foregoes road building on steep slopes and sensitive, erodible soils (DEIS Comments pp. 3-4)

In the FEIS response to comments (p. 197) the Forest Service states that the Luna Water-Air-Soils Report includes a map of the sensitive soils and discusses that the Draft Terrestrial Ecosystem Survey was used to identify sensitive Datil soils and used in the early stages of project development for consideration during restoration activity development. . Temporary and new route construction would follow best management practices to mitigate soil erosion concerns.”

**Suggested Remedy:** Revise the EIS and ROD that does not construct temporary or new roads in areas with sensitive soils or where erosion and sedimentation will impact sensitive soils.

#### **IV. The Forest Service misquotes and misunderstands our comments about wildlife exclosures.**

In our DEIS comments (p.14) we state “While we support riparian restoration projects, we question the need to exclude wildlife from these essential areas. The DEIS must include a discussion of the reason for excluding wildlife and the impacts that such exclusions will have, especially in drought years.”

This is not stating that we are “opposed to all exclosures due to limiting ability of elk to roam” as the Forest Service quoted us in the FEIS comments (p. 200). We simply asked for the Forest Service to analyze the impacts of building exclosures on the ecosystem as a whole and to take into account their impact on habitat connectivity, particularly in drought years. Instead of excluding all wildlife from riparian areas, FS should consider excluding grazing from these pastures or allotments (or something like that).

How will the water developments impact water levels of streams, wetlands, springs...?

**Suggested Remedy:** Revise the FEIS to include an analysis of the reasons for excluding wildlife and the impacts that such exclusions will have on all wildlife, including threatened, endangered and sensitive species, especially in drought years.

#### **V. The FEIS does not demonstrate compliance with the Endangered Species Act.**

We included a lengthy section documenting the Forest Service’s failure to comply with the

Endangered Species Act in our DEIS comments (p. 23-25) Specifically we requested that  
“the Forest Service provide the public with the documents related to Threatened and  
Endangered species’ habitats and occupancy that the agency is using as the basis for its  
conclusions.”

Later , we highlighted the Forest Service’s duty to comply with Section 7 of the ESA:

“Section 7 of the ESA imposes a substantive obligation on federal agencies to “insure  
that any action authorized, funded, or carried out by such agency . . . is not likely to  
jeopardize the continued existence of any endangered or threatened species or result in  
the destruction or adverse modification of” habitat that has been designated as critical for  
the species. 16 U.S.C. § 1536(a)(2); Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.,  
524 F.3d 917, 924 (9th Cir. 2008).

DEIS Comments p. 24-25

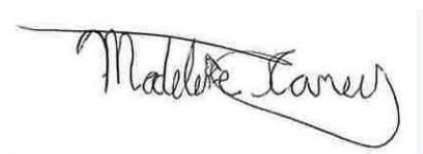
In its Response to Comments, the agency states that it is still awaiting a final biological opinion  
in consultation with the U.S. Fish and Wildlife Service but incorporates the Biological Opinion  
by reference in numerous places in the FEIS. FEIS, p. 209. In doing so it uses the Biological  
Assessment and Biological Opinion for demonstration of analysis of impacts without providing  
the documents to allow for meaningful public comment.

**Suggested Remedy:** The Forest Service should provide the public, in the project file on the  
Agency website, with all of the ESA consultation documentation supporting this decision,  
including the Biological Assessment, any correspondence from the Fish and Wildlife Service,  
and the Biological Opinion. We request a copy of the BA and the BiOp, and an extension of the  
objection period so that we may incorporate comments on those documents.

### Conclusion

Thank you for considering our comments. If you have questions or wish to discuss our concerns  
further, please reach out to us at the information provided below. Finally, please add our name  
and organization to the contact list to receive any future public notices regarding this action.

Sincerely,

A handwritten signature in black ink, reading "Madeleine Carey". The signature is written in a cursive, flowing style. The first name "Madeleine" is written in a larger, more prominent script, and "Carey" is written in a slightly smaller, more compact script. The signature is enclosed within a thin, light-colored rectangular border.

Madeleine Carey  
Greater Gila Guardian

WildEarth Guardians  
mcarey@wildearthguardians.org