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*Working to protect and restore Western Watersheds and Wildlife*

August 19, 2019

Mr. Adam Mendonca  
Forest Supervisor  
Gila National Forest  
3005 E. Camino del Bosque  
Silver City, New Mexico 88061

Mr. Steve Best  
Forest Supervisor  
Apache-Sitgreaves National Forests  
30 S. Chiricahua Drive  
Springerville, Arizona 85938

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

**Objection to the Stateline Range NEPA Project  
Draft Decision Notice and Finding of No Significant Impact  
in the Gila and Apache-Sitgreaves National Forests**

Dear Mr. Mendonca and Mr. Best,

The following Objection to the Stateline Range NEPA Draft Decision Notice and Finding of No Significant Impact (DDN/FONSI) is being submitted on behalf of the members of Western Watersheds Project who are concerned with the management of our public lands, and on behalf of the members of Wilderness Watch, a national nonprofit wilderness conservation organization dedicated to the protection and proper stewardship and administration of the National Wilderness Preservation System.

In addition to being an inappropriate level of NEPA analysis for a project this size and in this particular area, the DDN/FONSI here is insufficiently critical of the need for grazing in the Gila and Apache-Sitgreaves National Forests within important habitat for wildlife species, especially the Mexican gray wolf. Wildlife habitat is a precious resource on these allotments and this fact is not adequately considered nor are the impacts of grazing to wildlife habitat adequately analyzed. The alternatives did not adequately reflect the fact that livestock grazing on these allotments is not an activity the permittees are assured of engaging in.

This Objection is filed pursuant to, and in compliance with, 36 C.F.R. Part 218, Subparts A and B. All parties to this objection have filed timely, specific and substantive written comments in accordance with 36 C.F.R. 218(a).

As required by 36 C.F.R. § 218.8(d), Objectors provide the following information:

1. The name and contact information for the Objector is listed below.
2. This Objection was written on behalf of Objectors by Cyndi Tuell whose signature and contact information is listed below.
3. Western Watersheds Project and Wilderness Watch are the Objectors. Cyndi Tuell is the Lead Objector for purposes of communication regarding the Objection.

Western Watersheds Project  
Cyndi Tuell  
738 N. 5<sup>th</sup> Ave  
Tucson, AZ 85705

4. The project that is subject to this Objection is “Stateline Range NEPA Project.” The Responsible Official is Adam Mendonca in the Gila National Forest and Steve Best in the Apache-Sitgreaves National Forests.
5. Objector submitted, timely, specific, and substantive comments during the Public Comment Period on November 30, 2018.<sup>1</sup> All points and issues raised in this objection refer to issues raised in that comment letter or new information.
6. In the following Statement of Reasons, Objector provides the specific reasons why the decision is being appealed and the specific changes or suggested remedies that he seeks, along with the related evidence and rationale on why the decision violates applicable laws and regulations.

### **NOTICE OF OBJECTION**

Pursuant to 36 C.F.R. § 218, Western Watersheds Project and Wilderness Watch are filing an Objection regarding the Draft DN/FONSI for the Stateline Range NEPA Project in the Gila and Apache-Sitgreaves National Forests.

### **INTRODUCTION**

As stated in the EA, the project is needed to “meet the requirements of the Rescissions Act of 1995 (Public Law 104-19), section 504, which requires that all range allotments undergo National Environmental Policy Act analysis...maintain or improve current satisfactory resource conditions and to improve those areas in unsatisfactory conditions to move toward desired conditions[,] and incorporate management flexibility through an adaptive management strategy consistent with Forest Service policy (Forest Service Handbook 2209.13, chapter 90) to adapt management to changing

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<sup>1</sup> Attached as Appendix A.

resource conditions or management objectives.” EA at 4. However, the Forest Service cannot violate other federal regulations in an attempt to comply with the Rescissions Act, which it has apparently attempted to do here.

For the proposed action, the Forest Service proposes to authorize ten years of livestock grazing on 14 allotments in two states in three National Forests, including the Alma Mesa, Blackjack, Copperas, Hickey, Keller Canyon, Lop Ear, Pleasant Valley allotments in the Apache-Sitgreaves National Forests and the Alma, Citizen, Dry Creek, Holt Gulch, Pleasanton, Potholes, and Sacaton allotments in the Gila National Forest. The proposed project covers 271,665 acres and ranges in elevation from 4,400 feet to 10,491 feet. EA at 1. A total of 45,462 Animal Unit Months (AUMs) will be authorized through this single EA. *Id.*

The Forest Service has not explained why these allotments covering such a vast and ecologically important area have been lumped together into a single project, other than a “need to comply with the Rescissions Act.” Despite our specific request, the Forest Service has not explained why these particular allotments are a priority at this time. Even if all of these allotments are on the same time schedule and of the same priority for analysis, that does not explain why the Forest Service is choosing to tackle all of these allotments, scattered over such a vast and ecologically critical area, in a single EA. There is no explanation why other allotments in and around the project area that have a similar NEPA schedule under the Rescissions Act are *not* included as part of this project. For example, the Lower Plaza, Black Bob, and Wildbunch. The grouping of these allotments is clearly arbitrary and capricious and clearly in violation of the National Environmental Policy Act (NEPA).

Currently, 3,686 cows, 76 horses, and 45,867 AUMs are permitted on these allotments. EA at 1. Three are used seasonally, eleven are used year round. The proposed changes would alter the timing, duration and season of use to year-round for all allotments except for the Sacaton (which would be grazed from December 1 through June 30), Alma Mesa (which would be used during the dormant season), and Blackjack (two Coal Creek pastures would be available for winter dormant season use between November 1 and March 1 and the Mesquite Flat pasture which is currently in the Pleasant Valley allotment would be used in the fall) allotments. This project would change most of the allotments from seasonal use to year-long and would increase the number of AUMs on the allotments.

Vegetation types in the project area include pinyon woodlands, juniper, grasslands, Ponderosa pine and Douglas fir. EA at 1. The San Francisco River runs through or adjacent to 10 of the 14 allotments. EA at 1. Given the well-known and well documented impacts of livestock grazing to riparian areas in the southwest, it is critical that the Forest Service take a hard look at the impacts of this project. In our prior comments we pointed out the myriad NEPA violations and potential violations of other federal regulations, yet the Forest Service has unwisely chosen to forge ahead with this massive project spanning vast areas of land and time.

The project area includes the Blue Range Primitive Area, Gila Wilderness, Blue Range Wilderness, 79,990 acres of Inventoried Roadless Area (IRA) including the Hell Hole, Lower San Francisco, Mitchell Peak, and Sunset IRAs. EA at 1. The project area also includes 121 miles of National Forest Service hiking trail, 90 recorded cultural sites in Arizona, 261 recorded cultural sites in New Mexico, 5 endangered and 6 threatened species, and 26 sensitive species. EA at 2-3.

Clearly, this project area is incredibly rich in natural and cultural resources and ecological diversity. The project area also includes lands protected by federal regulations to ensure the Wilderness quality of those lands is not impaired. This is especially important at this time because, as you are aware, the Gila National Forest is in the midst of revising their Forest Plan and recommended wilderness is a part of the forthcoming Forest Plan decision. The Forest Service's decision for this project must not include any actions that would impair Wilderness character or preclude an area for recommended Wilderness.

The Finding of No Significant Impact cannot be signed by anyone with a straight face or even a basic understanding of environmental regulations or the impacts of livestock grazing on southwestern public lands and the species that call those lands home. Yet here, we have to Forest Service officials signing off on this project.

We describe our concerns more specifically below and hope that clearer heads will prevail in the next steps of this decision-making process.

### **STATEMENT OF REASONS**

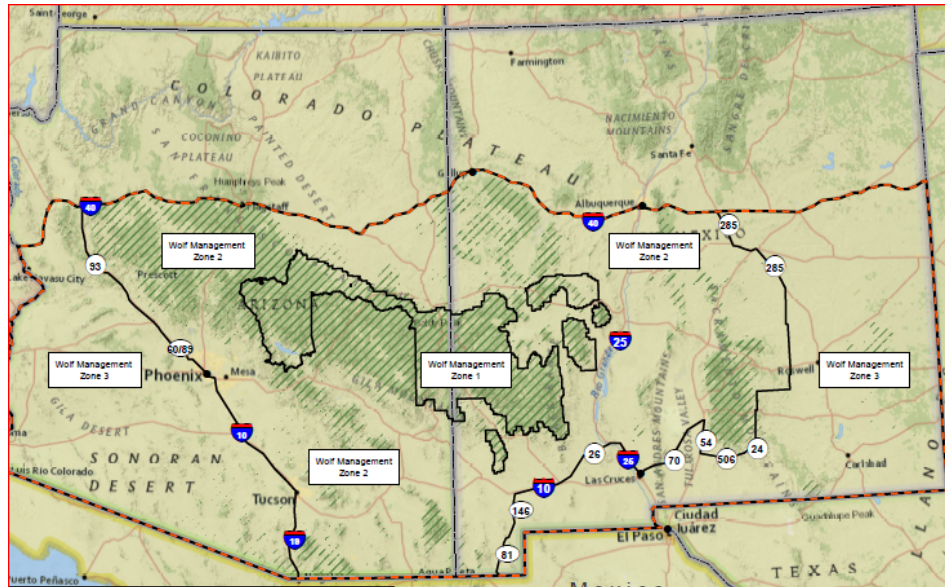
#### **I. The impacts of this project on the Mexican gray wolf are significant and have not been adequately disclosed or analyzed.**

The analysis of impacts to the Mexican gray wolf remains insufficient and is contained on approximately ½ page of the EA split over pages 57 and 58. The majority of the “analysis” is recitation of the legal status of the Mexican gray wolf and a brief description of which agency manages the wolf as well as a few bullet points on that topic with possible actions that *may* be taken by the interagency field team *if* wolves establish a territory within an allotment or depredation occurs, a statement that no critical habitat exists for this species, followed by an unsupported statement about the preliminary determination that this project is not likely to jeopardize the species.

The analysis of impacts to the Mexican gray wolf includes an inaccurate statement that livestock grazing is specifically excluded from the list of activities that can adversely affect the wolf in the 2015 10(j) rule. EA at 57. More accurately, the list of activities specifically excluded includes “lawfully present livestock and use of water sources by livestock.” There is no exception for trespass livestock (which are well documented in the project record within the project area but not adequately addressed in the EA), the installation of new livestock infrastructure, and the maintenance of livestock infrastructure. All of these activities are included as part of this project and are present in the project area. The impacts of these activities on the Mexican gray wolf have not been disclosed nor analyzed, in violation of both NEPA, the Administrative Procedures Act, and the Endangered Species Act.

This project area is in the very heart of Zone 1 of the Mexican Wolf Experimental Management Area. The impacts of this project on this imperiled species cannot be minimized, yet the Forest Service has attempted to do just that. Still notably missing from the EA is an acknowledgment of locations where wolves have already established territories in and around the project area, despite our request for this information. There is no direction to permittees about preventing their livestock from impacting the Mexican gray wolf.

Also missing from the analysis for this project is any information regarding depredation reports for the allotments covered by this decision, the number of wolves administratively “removed” (killed) from the project area for the benefit of livestock permittees, and the known number of planned administrative removals. This information is critical to understanding the impacts of livestock grazing on the federal public lands in the project area. Depredations and removals are not activities excluded from the list of activities that adversely affect the Mexican gray wolf.



Because recent location data from the U.S. Fish and Wildlife Service indicates the wolves’ occupied range covers a large portion of the project area, the impacts of livestock grazing on this species should have been accurately analyzed, including the impacts of depredation reports and related removal actions or plans, planned infrastructure installation and maintenance, trespass livestock activities, and any other known illegal activities that cause harm to the wolves. There have been high rates of human-

wolf conflict during the nearly two-decades long reintroduction program. The population dropped by 12 percent, from 110 to 97, in 2015 with over a dozen dead adult wolves found during this time. While investigations by law enforcement continue, the majority of these losses were the result of illegal killing, one of the primary factors the USFWS cited in its determination that the species warranted listing under the ESA (80 Fed. Reg. 2488). The EA for this project does not include any information regarding a recent wolf killing confession by a rancher in an adjacent allotment – again, key information that would illuminate the impacts of livestock grazing activities on an endangered species.

To put it simply, the Forest Service failed to consider, analyze, and disclose the impacts of livestock grazing on the prey species of Mexican wolves, despite our recommendation that this be completed. There is no explanation as to why this analysis is missing.

Additionally, the Forest Service has not addressed our concerns about Desired Conditions for Livestock Grazing as related to the ongoing Forest Plan revision process on the Gila National Forest.

We recommended the Forest Service provide strategic and proactive management and guidance to reduce wolf mortality with a greater emphasis on livestock management strategies that emphasize wildlife protection to reduce wolf losses. This management and guidance remains a key, and yet still missing, part of the analysis for this project.

The determination that this project is not likely to jeopardize the Mexican gray wolf is unsupported in the record and based on the false premise that the species is “non-essential” and “therefore the preliminary determination is not likely to jeopardize the Mexican gray wolf. EA at 58. As the Forest Service is aware, whether a population is designated “essential” or “nonessential” affects whether federal agencies have a duty to consult with Fish and Wildlife Service (FWS) on certain federal actions under ESA Section 7(a)(2), not whether or not a project is likely to jeopardize a species. Where a population is designated “nonessential,” federal agencies are not required to formally consult with FWS on actions likely to jeopardize the continued existence of the species. 16 U.S.C. § 1536(a)(2). Instead, federal agencies must engage in a conferral process that results in conservation recommendations that are not binding upon the agency. Id. § 1536(a)(4). It is still not clear from the EA whether this legal requirement has been met.

The statement in the EA that the Mexican gray wolf is “non-essential” is erroneous and our concerns regarding this error have not been addressed. While the FWS made a non-essential determination in 2015, that decision was challenged in court and in April of 2018, the court concluded that “because the effect of the 2015 rulemaking was to authorize the release of an experimental population outside its current range, a new essentiality determination was required and the agency’s decision to maintain the population’s nonessential status without consideration of the best available information was arbitrary and capricious. Therefore, the essential or non-essential status of the Mexican gray wolf is not as described by the Forest Service in the EA, the Forest Service cannot make a determination that the project poses no jeopardy to the species based only on the “non-essential” status of that species and may in fact need to consult with the FWS regarding this project and the impacts to the Mexican gray wolf, and all analysis that flows from these errors must be reconsidered. We pointed out this error in our prior comments and the Forest Service has not addressed our concerns.

In short, the analysis and conclusions regarding the impacts of this project to the Mexican gray wolf are inaccurate, inadequate and must be revisited, and the FONSI must be withdrawn.

## **II. The impacts of this project on the riparian areas are significant and have not been adequately disclosed or analyzed.**

Trespass livestock is an additional concern regarding riparian impacts associated with this project and acknowledged by the Forest Service (in a very minimal way), but not adequately analyzed as part of this project. As we and others noted in our prior comments, there is a long history of unauthorized grazing associated with the allotments that are a part of this proposal that is undisclosed and unanalyzed despite the fact that this was clearly raised during the scoping period and during the Draft EA comment period, and specifically identified for the Alma, Dry Creek, and Citizen allotments. The information submitted during prior comment periods identified issues with downed fences as contributing to the problem of trespass cattle, yet in this EA the Forest Service has identified additional fencing as a mitigation for trespass cattle. EA at 15 and 80. The issue of trespass cattle especially in the riparian areas and the San Francisco River was inadequately identified and analyzed, and there is woefully insufficient management direction to prevent further violations of court decisions and the Endangered Species Act. The Forest Service's failure to adequately disclose, analyze and address these issues render the analysis and FONSI invalid.

Further, the analysis of riparian areas suffers from the lack of site-specificity that plagues many of the other analyses in the EA. For example, the various reports that accompany the EA were not readily available during the previous comment periods because they are not posted on the website. WWP submitted a Freedom of Information Act (FOIA) request for monitoring reports related to the allotments that are included in this project and receive the reports after the deadline for submitting comments. In WWP's recent review of some of these reports we find information such as "low plant vigor within the [Big Dry] pasture...grass growth is still low. There is forage available in the upper slopes of the allotment, but due to lack of water cattle are remaining in the lower country near water[.]" and presumably in a riparian area. Range Monitoring Form July 8, 2013, Dry Creek Allotment, Big Dry Pasture. From this same report we find that several stock tanks are dry, likely contributing to livestock remaining where they should not be. It is unclear why the Forest Service expects the public to believe that the addition of more fencing or livestock waters will lead to better management when the record is replete with information about the lack of effectiveness of either measure for keeping livestock where they are supposed to be.

From our review of just some of the documents (received *after* the close of the official comment periods for this project) we can see that trespass livestock is a regular occurrence, low plant vigor is common, and most of the monitoring reports are outdated. We cannot understand how the Forest Service justifies a Finding of No Significant Impact for this massive livestock grazing authorization project in the face of actual evidence indicating livestock are harming riparian and other resources, and without current data for all allotments subject to this decision. The analysis for this decision is not based on the reality of the situation on the ground and the Forest Service is openly turning a blind eye to the significant impacts livestock are having on water, soil, vegetation and wildlife resources in the Gila and Apache-Sitgreaves National Forests. This failure to actual use information that was available,

along with the failure to obtain more recent and relevant information, renders the analysis and FONSI invalid.

This is the extent of the riparian analysis for the existing condition:

Riparian areas found within the Stateline project area were evaluated from 2016 into early 2018 using the proper functioning condition protocol (USDI Bureau of Land Management 2015) to determine both riparian potential and functionality. Stream reaches receiving either a proper functioning condition rating or a functional at risk – upward trend rating are considered to be in satisfactory condition and meeting or moving towards forest plan standards and guidelines. Reaches receiving either a functional at risk – stable or downward trend or nonfunctional rating are considered to be in unsatisfactory condition.

Of the 51 surveyed reaches, 43 were determined to be functioning properly. Two reaches (Lower Coalson on the Copperas allotment and Little Whitewater on the Holt Gulch allotment) were functioning at risk with an upward trend. Six were functioning at risk with no trend and no reaches were rated as impaired function.

The six reaches functioning at risk with static trend include:

- Alma Mesa Allotment - Dutch Blue Creek.
- Blackjack Allotment - Rattlesnake Canyon and Rustler Canyon.
- Copperas Allotment – Upper Coalson and Lower Bullard.
- Citizen Allotment – Webster Spring.

EA at 43-44. Aside from the lack of specificity of analysis for the 51 reaches, there is no indication how many miles of riparian areas or reaches are actually within the allotments. We asked for clarification on specific aspects of this analysis, but have not found answers in the revised EA. Specifically, we asked: Do the 51 reaches encompass the totality of riparian areas? If not, are they representative of the rest of the riparian areas? How does the Forest Service's riparian protocol for grazing correlate with the requirements of the Gila and Apache-Sitgreaves National Forests' Forest Plans? In other words, can it be ascertained whether the results of the surveys clearly meet the goals, objectives, standards, guidelines, or monitoring and evaluation to protect riparian areas in those Forest Plans? Also, the one-time proper functioning condition survey does not give adequate information to determine trend. Trend analysis requires consistent monitoring. Yet, the above quoted statement leads one to believe that one-time survey also determined trend.

This lack of response to our concerns and lack of information renders the analysis in the EA inadequate, precludes a FONSI, and prevented adequate public review.

### **III. The impacts of this project as related to climate change are significant and have not been adequately disclosed or analyzed.**

While we appreciate that the Forest Service does acknowledge and discuss climate change in the EA, the analysis is inadequate and the focus of the analysis is misplaced. The majority of the analysis



related to climate change discusses how livestock operators/permittees will need to adapt their livestock practices to respond to changes in precipitation and forage production. EA at 88-89. There is a significant lack of analysis of the impacts of the project on the environment *in light of the compounding impacts of climate change*. For example, given the likelihood of hotter and dryer conditions in the southwest, how will removing water from the already rare and rapidly disappearing areas where water is now found naturally on the landscape impact species dependent on those natural water sources? How will this project exacerbate the already alarming impacts associated with the impacts of climate change on game species, threatened and endangered species, and on Management Indicator or Special Status species? How will fencing and other related infrastructure associated with this project further fragment the landscape and how will this impact species already harmed by the rapid on-the-ground changes associated with climate change? How will this affect what the agency considers suitable range for livestock? We asked these questions in our prior comments but they remain unanswered. Again, this precludes a FONSI and has prevented adequate public review and comment.

#### **IV. Information regarding Suitability, Condition, and Trend have not been adequately disclosed or analyzed.**

The EA still does not address the important issue of range suitability at all. Rather, it proposes 16.7 miles of fence, 28 storage tanks, 52 troughs, 46.5 miles of pipeline, 5 wells, 3 cattleguards, 3 solar panels, 1 trick tank, and 4 corrals. This suggests that because of lack of water, or other reasons, portions of what are considered suitable range actually are not suitable. There is no analysis of suitable range in the EA for each of the allotments nor any verification of determinations made in the Forest Plans regarding livestock suitability.

There is inadequate site-specific analysis as to the current condition or trend of the allotments. The EA does not disclose whether each pasture in the allotment has been monitored and the response to our FOIA request makes clear that many of the allotments have not been monitored since 2007.

The condition of the allotments is not reported. An allotment in poor condition may have a static or slightly upward trend, but it would never reach the desired conditions in a reasonable time frame. The EA provides no information on how close to desired conditions the various transects are at the current time or whether individual transects could ever meet the desired condition. We are only told, in general terms, that some places are in such a condition as they won't be able to improve.

Again, this precludes a FONSI and has prevented adequate public review and comment.

#### **V. The impacts of this project as related to infrastructure associated with livestock grazing are significant and have not been adequately disclosed or analyzed.**

There are significant amounts of livestock grazing infrastructure proposed as a required part of this project – 16.7 miles of fence, 28 storage tanks, 52 troughs, 46.5 miles of pipeline, 5 wells, 3 cattleguards, 3 solar panels, 1 trick tank, and 4 corrals. We still see no justification for the use of an EA for this level of infrastructure that will impact Wilderness, Inventoried Roadless Areas, Primitive Areas, and hundreds of thousands of acres of federal public lands.

The EA still minimizes the impacts of improvements by noting that they will be removed when no longer needed. However, the timeline for removing these unneeded improvements is very unclear. For example, and despite our comment seeking clarification on this point, there is no explanation about how long the improvements (8 miles of fence, 2 dirt stock tanks, and 2 corrals) identified as unneeded on the Blackjack and Pleasant Valley allotments have been unneeded, how long it will be until these improvement are actually removed, nor any indication as to what the impacts of “removing” dirt stock tanks might be. EA at 14.

Again, this precludes a FONSI and has prevented adequate public review and comment.

#### **A. Livestock waters**

There is still inadequate analysis of the impacts associated with livestock waters. The EA does not identify the area of disturbance associated with the existing and proposed waters, nor does the EA adequately address or analyze the direct and indirect impacts of livestock waters on species in the project area, including species listed as threatened or endangered. From our initial review of monitoring reports obtain through our FOIA request after the comment deadline for this project we have discovered photos of several livestock waters that clearly show the significant impact livestock have on areas immediately surrounding livestock waters. These areas are devoid of vegetation in a large area surrounding the water developments. The Forest Service has not analyzed how these new waters will impact vegetation, soil erosion, or wildlife.

For the 46.5 miles of pipelines and associated pumping, the EA fails to explain how pumping water through pipelines will impact the streams, springs, or other areas these waters are pumped *from*. EA at 13-14. There is no discussion of how the 4 miles of pipeline proposed for the Blue Range Primitive Area will impact the primitive resources found there. The minimum requirements analysis did not provide the public with an adequate opportunity to review and comment upon those impacts and is still not publicly available. There is no explanation of when water will be pumped, nor how much water will be pumped, nor what actions will be taken if permittees are found to have pumped more water than authorized or outside the prescribed pumping dates.

Dewatering a stream or spring can have devastating and long-lasting impacts, especially on threatened and endangered species and this issue is still not adequately addressed in the EA. For each allotment, the EA should have disclosed the volume of water to be pumped, the dates pumping is allowed, and actions to be taken if the dates or volumes are exceeded. The EA should also have disclosed the anticipated noise impacts from pumping equipment, and the potential for hazardous materials spills. Statements found in the EA such as “impacts may occur” without any specific information on the location or intensity of those impacts are inadequate. The public has a right to know and comment upon how many gallons of water (this specific phrase does not exist in the EA) will be removed from streams and springs, what impact that will have on those streams and springs and the associated vegetation and wildlife. Despite our comment on this exact issue, this information remains missing from the EA.

The noise impacts from pumps associated with the many miles of pipeline are not adequately disclosed, addressed, or analyzed. Noise is only mentioned three times in the entire EA, at page 57 and 86 in regards to the Alma Mesa Allotment’s Cabin Well power generator and at page 58, but only in

the context of hazing wolves with non-lethal methods. The Forest Service is well aware that the noise associated with pumps can negatively impact wildlife and where threatened and endangered species or their habitat are present, these impacts can require a formal consultation with U.S. Fish and Wildlife Service and noise levels above a certain point or for extended periods of time or above a certain frequency (how often, not megahertz) will preclude a “not likely to adversely affect” finding, thereby precluding a Finding of No Significant Impact. Therefore, all existing generator-driven pumps must be analyzed for noise impacts to all threatened, endangered and sensitive species. Where these noise impacts have been analyzed in the past, they must be revisited in light of the impacts of climate change, extended drought, and increasingly fragmented wildlife habitat.

The EA fails to fully analyze the impacts of solar panel powered wells on springs and streams. Solar panel powered wells allow for continuous operation of the well and require fewer maintenance trips. This continuous operation of wells can have far greater impacts to water levels. This issue must be disclosed and analyzed in the EA. Additionally, the gas powered generator will apparently remain in place, thus the impacts of the solar powered well will be *supplementing*, not replacing or minimizing, the impacts of the existing generator. EA at 86.

## **B. Fencing**

The EA states that “[r]ange improvements (for example, fencing) within or upstream of narrow-headed garter snake critical habitat minimize effects to the extent that they are insignificant and discountable or do not result in adverse effects during construction.” EA at 66. This circular statement that fencing minimizes effects and is therefore insignificant fails to consider the effects of the fencing itself on habitat.

Fencing is possibly required along the sensitive, ecologically important, and legally protected San Francisco River corridor to prevent the ongoing problem of trespass livestock, but the length, location, and type of fencing is undisclosed. More than a mile of new fencing is proposed within the Blue Range Primitive area on the Alma Mesa Allotment. Additional, but undisclosed fencing will be installed around a storage tank and trough within the Blue Range Primitive Area on the West Trap pasture. Several other water lot fences are proposed and it appears as if the length of these fences was not included in the total miles of fencing reported in the EA.

The Forest Service failure to disclose specific information regarding fencing, along with the failure to analyze the impacts of this fencing on wildlife, renders the FONSI invalid.

## **C. Roads**

As just one example of the inadequate analysis of roads as part of this EA, we note that for the Blackjack allotment this project will add “existing routes” as ML 2 roads open to the public and on the Motor Vehicle Use Map (MVUM). The Forest Service seems to ignore the on-the-ground impacts of these new roads because the roads have “existed for a number of years.” EA at 19. The roads may have been on the landscape for a number of years, but the impacts of those roads has never been analyzed or disclosed and through this project they will be swept under the proverbial NEPA rug. It is unclear what is meant by the statement “the roads exist in a General Forest Management Area.” EA at 19. We asked for clarification on this point, specifically asking if this meant the roads exist in an area of the

Forest not specially protected by the Forest Plan and therefore the impacts of those roads have not been analyzed? If so, this is erroneous because if the Forest Service plans to add these roads to the designated system and the MVUM, the impacts of those roads must be analyzed now, and the Forest Service has failed to respond to our concerns on this point.

Another example of a failure to conduct adequate analysis, and just as an example of routes that must be analyzed, there is a two track “road” along Coal Creek, north of Highway 78 and connecting to a two track approximately .8 miles long to Line Tank #7035. If these “roads” are added to the system they must be analyzed as new construction. The same is true of the two track “road” to Junipers Mesa which starts at Martinez Ranch Rd. 212 and Highway 78 and continues north to Junipers Mesa. This route apparently goes to Juniper Corral which was once a Forest Service administrative site. We noted these routes in our prior comments and can see no response to our concerns.

As we noted in our prior comments, when analyzing the impacts of these and other proposed roads, they should be treated as new construction which requires surveys and clearances for archaeological resources, threatened and endangered species, and watershed impacts analysis. The Forest Service failed to disclose how adding these roads to the designated system, or the administrative system would impact road density in the 6HUC watershed for the allotment.

These failures to respond to comments and conduct the proper analysis render this FONSI invalid.

**VI. The impacts of this project as related to Wilderness Areas, Primitive Areas, and Inventoried Roadless Areas are significant and have not been adequately disclosed and analyzed.**

Our comments raised several issues related to designated Wilderness, the Blue Range Primitive Area, and Inventoried Roadless Areas (IRA). A summary of the overall (as opposed to site-specific) concerns appears in the bullet points below:

- Grazing in Wilderness is recognized as a nonconforming use. The language in the Wilderness Act and the subsequent grazing guidelines do not mean livestock grazing must occur at any cost, rather, decisions about livestock grazing won't rest *solely* on whether an area is designated as Wilderness.
- The EA treats the Blue Range Primitive Area as Wilderness for purposes of the analysis. However, the EA does not address the question we raised about the applicability of the grazing guidelines.
- This EA fails to adequately analyze the impacts to Wilderness, Wilderness Study Areas (WSAs), or IRAs individually. For example, the general description of impacts such as to wildlife and riparian areas apply to all the allotments. As such, the analysis of and impacts to Wilderness, WSAs and IRAs is not fully disclosed.
- The absence of range reports (in the project record) were raised as a problem.

Without a response to comments section, it is hard to see how our concerns were addressed, if at all. It appears nothing has changed.

Regarding site specific issues in the Gila Wilderness, we noted:

The EA states, “[t]he wilderness portions of the Dry Creek and Holt Gulch allotments are in the upper, steeper elevations of the allotments where minimal livestock grazing occurs.” If there is minimal grazing, would it be a simple matter of removing the facilities and adjusting the allotment boundaries to keep out livestock? Given the minimal nature of grazing of these allotments, are the portions of the two allotments, which are in the Gila Wilderness, really suitable for livestock grazing? The Sacaton allotment also has some acreage in the Gila Wilderness. Do the same issues apply to that allotment?

Similar questions were asked regarding the Blue Range Wilderness, WSAs, roadless areas, and the Blue Range Primitive Area. Simply put, the site-specific impacts to Wilderness and other areas have not been quantified, in violation of NEPA.

For example, our comments noted:

The lack of site-specific analysis is also an issue for the WSAs and IRAs. WSAs have language that provides statutory protection. The EA fails to disclose whether the wilderness character of the WSAs being maintained as it was in 1980. This must be disclosed. Will the proposed action meet the statutory standard for each of the WSAs? For example, the grazing exclusion for the San Francisco River is to continue with additional fencing possible (due to extreme levels of trespass or unauthorized livestock). Will new fences be constructed in the WSA? How will that affect the wilderness character of the area and will it lead to increased grazing in part of the WSA? A Finding of No Significant Impact for this project is not possible without at least a discussion of these issues and it is highly likely that these special designations preclude the use of an EA for this project.

There remain serious site-specific concerns with the Blue Range Primitive Area. In reference to the reasons for further motorized and developing the Blue Range Primitive Area, the EA states, “the January 28, 2019 minimum requirements analysis [is] in the project record. EA at 16. However, we could not find that document on the website. Such an important document dealing with motorizations and development in an area managed as Wilderness should have been available to the public. For this reason alone, the draft decision should be withdrawn and a new comment period initiated, with the project record available on the website.

The EA does not reveal whether the livestock distribution issue could be solved through other means, as we asked in our prior comments:

The EA does not explain whether the distribution problem (EA at 13 and 76) could be solved by better herding rather than fencing/trough construction/pipeline construction, whether adjustments in numbers would solve the perceived problem (over-allocation), whether changes in timing or season of use may solve distribution, and whether the allocation of livestock AUMs is based upon an erroneous calculation that more of the range is suitable for livestock

grazing than is actually the case.<sup>2</sup> In other words, there is no showing that the proposal meets the congressional grazing guidelines. Further, it is unclear whether the agency felt compelled by the congressional grazing guidelines to add facilities like fences, troughs and pipelines rather reducing livestock numbers.<sup>3</sup> Lastly, the question of whether the allocation of livestock is based on unsuitable range (for example areas without water) is not addressed.

Regarding new facilities, the grazing guidelines state: “the construction of new improvements should be primarily for the purpose of resource protection and the more effective management of these resources rather than to accommodate increased numbers of livestock.” Further, the guidelines do not provide for the use of motorized equipment in the construction of new facilities, as they do in limited circumstances for existing facilities. Thus, motorized use cannot be permitted to accommodate the construction of new facilities in the Blue Range Primitive Area.

To avoid violations of NEPA, the Administrative Procedures Act, the Wilderness Act, the Roadless Rule, and possibly other federal regulations, the Forest Service should withdraw this FONSI, prepare an EIS, and provide adequate information and analysis for public review and input.

## **VII. The impacts of this project as related to monitoring are significant and have not been adequately disclosed or analyzed.**

The EA indicates that several adaptive management protocols will be based on monitoring:

- water “improvements will be installed in phases based on monitoring” (EA at 27);
- “[a]dditional improvements are proposed for the other allotments in accordance with monitoring, funding, and priorities. If monitoring shows conditions moving away from desired, the adaptive management component of the proposed action allows for management changes to correct the trend[;]” (EA at 38)
- “[t]he authorized animal unit months would increase commensurate with the increased size of the allotment after two identified water developments and the fence along Dix Creek are installed and based on monitoring[;]” (EA at 38)
- “[c]ontinued monitoring and treatment of noxious weeds would help maintain the current plant communities[;]” (EA at 41)
- “[i]mplementation of adaptive management and the described range improvements where riparian conditions are not satisfactory in Rattlesnake and Rustler Canyons on the Blackjack allotment, Dutch Blue Creek on the Alma Mesa allotment, Lower and Upper Coalson and Lower Bullard on the Copperas allotment, and Webster Spring on the Citizen allotment would move water quality and riparian resources toward satisfactory conditions. This would be done in conjunction with monitoring, adaptive management strategies and best management practices[;]” (EA at 49)
- regarding mule deer, “[t]he adaptive management proposed for these allotments emphasizes utilization monitoring to identify when action is needed to ensure overgrazing doesn’t occur

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<sup>2</sup> The EA at 13 does admit one fence segment is to maintain current satisfactory condition. Is there an unreported downward trend for this area of the allotment?

<sup>3</sup> One can’t logically read the grazing guidelines as constraining needed livestock reductions in Wilderness where such a decision could be made absent designation.

which tends to shift domestic livestock grazing from grasses to browse species that mule deer are more dependent upon, particularly in winter[;]” (EA at 72)

Monitoring information is important because it appears to be the basis for utilizing an EA and FONSI for this project instead of an EIS, which is clearly the most appropriate level of analysis for a project of this size and in such ecologically important areas. This FONSI appears to be based on monitoring to ensure impacts are minimal, yet that monitoring is not adequately described or even required, but just mentioned as a hopeful act: “[d]irect and indirect effects for all resource indicators for alternative 2 proposed for the Stateline Project show that minor effects to riparian, water quality, and soils conditions are anticipated. With implementation of best management practices, mitigation measures, monitoring, and adaptive management effects would be minimal and within State and Federal laws and forest plan guidance.” EA at 53. As we see from the delayed FOIA response, monitoring is more aspirational than practical, yet this is not reflected in the analysis.

Because the monitoring analysis is based on an inaccurate representation, the FONSI is invalid.

#### **VIII. Western Watershed Project’s Recommended Alternative was not analyzed and no explanation is provided why it was excluded.**

There is still no explanation as to why the alternative presented by Western Watersheds Project was not considered. We recommended the following: “The forthcoming alternatives should not be “all or nothing;” where the Scoping Notice admits that a “No Grazing” alternative will be considered, this should be considered at an allotment-by-allotment basis. The Pleasant Valley allotment should remain vacant and in non-use under all alternatives... The forthcoming EA should analyze a range of alternatives for this allotment, including withdrawing the allotment from grazing use based on suitability and other resource needs. ASNF Plan at 98... Whereas the Scoping Notice discusses problematic livestock effects on the Alma Mesa, Blackjack, Citizen, and Holt Gulch allotments (Notice at 4-5), the range of alternatives should include actions that address the recovery and restoration of these areas.” WWP 2018 Scoping comments at 1, 2, and 4.

Instead of considering our proposed alternatives, the Forest Service appears to have ignored our prior comments regarding this issue, in violation of NEPA for 1) failing to analyze a range of alternatives, and 2) failing to respond to substantive comments. Therefore the FONSI is invalid.

#### **IX. There is a general lack of analysis for several issues.**

There are several issues that were not analyzed in the Draft EA that WWP and Wilderness Watch asked specifically for analysis on. There remains no analysis of these topics and we again contend that this is in error and a violation of NEPA.

- Air Quality – while the words do now appear in the EA, the complete lack of actual analysis and failure to acknowledge that livestock grazing removes vegetation from large swaths of the landscape, hoof action disturbs desert soil crusts, and the potential for fugitive dust related to livestock grazing covers the entire allotment acreage, renders the FONSI invalid.<sup>4</sup>

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<sup>4</sup> Belsky and Blumenthal 1997; Kerns et al. 2011: 1; Donahue 1999; Kie et. al 1991.

- Fuels/Fire Management – this issue was not analyzed in the EA. The Forest Service should analyze the impacts of livestock grazing on fuel loads such as invasive or fire-prone grasses.<sup>5</sup>
- Visual Quality – other than the generalized discussion of range improvements and the use of a solar panel within a designated Wilderness area, this issue was not adequately discussed in the EA, which fails to acknowledge that removal of vegetation on thousands of acres of land by livestock, as well as the concomitant tanks, pipelines, generators, fencing and roads/two tracks, do have an impact on visual resources.
- Soils - The analysis of impacts to soils is woefully inadequate and contained entirely in a chart (starting on page 44) and two short paragraphs on another page (43), despite the project's wide-ranging impacts on over 271,000 acres of public lands.

These impacts should have been analyzed in the EA, we asked that the analysis be done, and the failure to do so precludes a FONSI.

Additionally, there is inadequate information about, or analysis of, the conflicts between livestock and game animals for all allotments in the project area and no site specific information on where fencing does not meet standards nor any site specific information on where forage production is impacting fawn production or whether or where forage production is impacted by livestock grazing. There is no analysis of the impacts of livestock grazing operations on predators. This analysis must be included.<sup>6</sup> The Forest Service must analyze the impacts of this proposed livestock grazing regime covering hundreds of thousands of acres on predators such as (but not limited to) coyote, black bear, mountain lion and the Mexican gray wolf, as well as the prey species associated with those predators. We asked that this analysis be done, but our request was apparently ignored.

## **X. The Economic Impacts Analysis is flawed and raises new information not subject to public review and comment**

We have noticed a new economic analysis section in the EA. While we appreciate that this analysis was included, and is apparently in response to our prior comments, this analysis is one-sided, inaccurate, and incomplete.

This new analysis, at page 93 of the EA, uses a grazing fee of \$1.52 per AUM to calculate how much revenue could possibly be generated from livestock grazing for this project, stating that it is the average for the past 10 years. However, as the Forest Service is aware, the grazing fee is currently set at \$1.35 per AUM and there is no indication that this fee will be increased over the next 10 years.

The EA notes that livestock grazing throughout the project area will result in a loss, even at this artificially inflated fee rate, of \$2,044 over past fee receipts. It is not clear whether this analysis takes into account the costs to the U.S. taxpayer for managing livestock grazing leases. This information must be disclosed.

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<sup>5</sup> Brooks et al. 2004; Mack and Thompson 1982; Melgoza et al. 1990; Belsky and Gelbard 2000.

<sup>6</sup> Berger 2006.



The “value” of livestock production to the economy is stated as over \$3 million dollars at full production and between \$1.8 million and \$2.5 million at estimated actual uses. EA at 93. There is no basis for this economic information, no citation is provided, and this number seems incredibly inflated. Because this information was not provided in the preliminary EA, the public has not had the opportunity to review and comment upon this information, in violation of NEPA.

The economic analysis strangely discusses how much beef people eat and how many people in the project area could be fed on the beef produced in the project area. Beyond the fact this information was not disclosed in the preliminary EA, the analysis does not recognize the fact that many people are moving away from a meat-based diet, ignores the dire ecological costs of meat consumption (specifically beef), and fails to address the health costs associated with beef consumption. If the Forest Service is going to tout the economic “benefits” of beef production, it must also analyze the well-known economic costs of beef production. The Forest Service must analyze the economic drain on local economies that is associated with livestock production – the loss of eco-tourism and recreational tourism dollars when visitors to National Forests are repelled by rivers filled with cow dung and e. coli, campgrounds are overrun by livestock, native plants and wildlife are displaced by livestock grazing impacts, and hunting is disrupted and displaced by livestock grazing impacts.

Furthermore, the Forest Service fails to disclose whether or not the livestock grazing in the project area is actually consumed in the local region. Without this information, the paragraph discussing the number of people who can be feed in Greenlee and Catron counties is without context and is meaningless propaganda. The Forest Service cannot take a one-sided look at the economic impacts of livestock grazing, presenting a biased view of how livestock impact the local area.

We have not had the opportunity to review and comment upon, or verify the validity of, the citations used in the economic impacts section of the EA.

For all of the foregoing reasons, the analysis is rendered invalid and the FONSI must be withdrawn.

## **XI. This project requires an Environmental Impact Statement (EIS)**

The use of an EA for this project fails to comply with National Environmental Policy Act requirements. The scope of this project alone is enough to require the preparation of an EIS. Please note that other livestock grazing projects for a single allotment can include between 50 to 100 pages of analysis and information (*see*, for example, the Bureau of Land Management’s EA for the Mt. Logan allotment (October 2018), or the Forest Service’s Gardner Allotment EA which is over 40 pages.) There is no explanation as to how, or why, this EA, covering 14 allotments, two National Forests, spanning two states and over 271,000 acres, has such cursory information about the allotments and so little analysis included in the EA. Furthermore, these allotments are adjacent to, or overlapping with, important areas such as the Blue Range Primitive Area, Gila Wilderness, Blue Range Wilderness, 79,990 acres of Inventoried Roadless Area (IRA) including the Hell Hole, Lower San Francisco, Mitchell Peak, and Sunset IRAs. EA at 1. The project area includes a section of the San Francisco River that has a long history of controversy surrounding the issue of livestock grazing and is currently under court ordered livestock grazing exclusion.

As we've stated, repeatedly above and in our prior comments, the analysis for this project is inadequate. It took the Forest Service nearly 30 pages *just to describe the project*. The analysis is largely charts of changes with little actual analysis and the analysis ends on page 95, for approximately 60 pages of "analysis" for a project that took ½ that many pages just to describe.

The proximity to and overlap with specially designated areas require a higher level of analysis in light of the intensity and context of this specific project. Similarly, the presence of threatened and endangered species and designated critical habitat covering vast swaths of the project area raise the level of analysis necessary to ensure compliance with federal regulations. *See* 40 C.F.R. §§ 1508.27(a) (context), b (intensity)). In assessing "context," agencies must look at different geographic scales and the short- and long-term impacts of the proposed action within those different geographic scales (40 C.F.R. § 1508.27(a)). In assessing "intensity," agencies must look at the severity of the impact based on several factors:

1. The fact that impacts "may be both beneficial and adverse" and that "[a] significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial." 40 C.F.R. § 1508.27b(1).

For all allotments in the project area, and from our review of the EA, there appear to be significant long-term negative impacts associated with livestock grazing that have been minimized in the analysis, resulting in an inadequate analysis of the intensity of these impacts to threatened and endangered species as well as specially designated areas.

For example, in the 2012 U.S. Fish and Wildlife Service's final rule for spinedace and loach minnow livestock are noted repeatedly as having impacts to these listed species. "Livestock grazing has been one of the most widespread and long-term causes of adverse impacts to native fishes and their habitat (Miller 1961, pp. 394–395, 399), but is one of the few threats where adverse effects to species such as spinedace and loach minnow are decreasing, due to improved management on Federal lands (Service 1997c, pp. 121–129, 137–141; Service 2001, pp. 50–67). This improvement occurred primarily by discontinuing grazing in the riparian and stream corridors. However, although adverse effects are less than in the past, livestock grazing within watersheds where spinedace and loach minnow and their habitats are located continues to cause adverse effects. These adverse effects occur through watershed alteration and subsequent changes in the natural flow regime, sediment production, and stream channel morphology (Platts 1990, pp. I–9—I–11; Belsky et al. 1999, pp. 1–3, 8–10; Service 2001, pp. 50–67)." 2012 Fed. Reg. 77, 36:10817. Clearly, the impacts of livestock grazing management can be beneficial or adverse, but in no case can they be classified as insignificant. Furthermore, "there can be an increased threat from exposure to toxins in streams that have also undergone alterations such as...improper livestock grazing." 2012 Fed. Reg. 77, 36:10815. Because improper livestock grazing is particularly harmful to spinedace and loach minnow, and because there is a well-documented history of trespass livestock grazing in the project's riparian areas, these impacts should not have been minimized.

The Chiricahua leopard frog has disappeared from more than 80 percent of its historical localities due to threats including... livestock management that has or continues to degrade frog habitats. 2007 Fed. Reg. 72:106, 30821. Note that the threats listed above, beyond the direct impacts of livestock grazing, are indirect effects associated with livestock grazing that can be exacerbated by the presence of livestock waters.

2. “The degree to which the proposed action affects public health and safety.” 40 C.F.R § 1508.27b (2).

This issue has not been addressed in the EA at all. Water quality impacts from *E. coli* haven’t been adequately disclosed, nor have air quality issues.

3. “Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.” 40 C.F.R § 1508.27b (3).

As mentioned above, the allotment is adjacent or overlapping with multiple designated Wilderness areas, IRAs, primitive areas, critical habitat for threatened and endangered species, and culturally significant lands. This alone is enough to require an EIS for this project. In context with the designated critical habitat in and adjacent to the project area, it is clear that a Finding of No Significant Impact is not possible.

4. “The degree to which the effects on the quality of the human environment are likely to be highly controversial.” 40 C.F.R § 1508.27b (4).

Unfortunately, the environmental impacts associated with livestock grazing are not scientifically controversial because they are well studied and the impacts are well-known to be highly detrimental to wildlife and watersheds.<sup>7</sup> However, livestock grazing on federal public lands is a highly controversial issue, especially in recent years with ranchers taking over a wildlife refuge in Oregon, failing to remove their errant livestock from federal public lands in Arizona and Utah, among other states, and with livestock ranching “advocates” threatening violence against federal employees for trying to enforce livestock grazing regulations designed to protect those federal lands. In areas where Mexican gray wolf reintroductions have occurred, livestock grazing is even more controversial because grave concessions to livestock ranchers are often made to the detriment of the wolf. This controversy over how federal public lands should be used and managed has not been addressed in the EA.

5. “The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.” 40 C.F.R § 1508.27b (5).

See above. We have identified several areas of uncertainty or involve unique risks in our comments above.

6. “The degree to which the action may establish a precedent for future actions with

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<sup>7</sup> Fleischner, T.L. 1994.

significant effects or represents a decision in principle about a future consideration.” 40 C.F.R § 1508.27b (6).

The authorization of livestock grazing by federal land managers does appear to ensure that future livestock grazing will continue. There is a never-ending series of widely-spaced land health evaluations that identify allotments that are continuously in the “Improve” classification yet somehow also meeting land health standards. If lands never improve, but are also never identified as “unhealthy,” it is clear that authorizing livestock grazing on an allotment almost inevitably ensures livestock grazing will be entrenched on that allotment in perpetuity. Furthermore, public lands ranching provides an economic boon to livestock operators and entrenches the concept of welfare ranching.

7. “Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.” 40 C.F.R § 1508.27b (7).

The Forest Service’s usual policy of authorizing livestock grazing on an allotment-by-allotment basis using EAs is a clear example of breaking down an action into small parts or determining it is temporary in order to render the impacts individually insignificant. Here however, rather than breaking this project up into small parts and analyzing impacts on an allotment-by-allotment basis to artificially minimize the impacts of livestock grazing on federal public lands, the Forest Service has lumped together a large number of allotments then failed to analyze the impacts of each allotment individually, thereby artificially minimizing the impacts of livestock grazing on federal public lands to a degree which is unprecedented in Region 3. Just as the Forest Service cannot break a project down into small component parts to avoid a finding of significant impacts, nor can the Forest Service simply ignore the significant impacts of a large collection of allotment authorizations.

Because livestock grazing is occurring on multiple allotments covering generations of livestock ranchers, the Forest Service has an obligation to analyze the impacts of livestock grazing on each allotment, to look at those impacts holistically to identify, disclose, and allow public comment upon, the actual, widespread, long-term, and significant impacts livestock grazing has on lands management by federal agencies for the public.

In the face of threatened and endangered species listing rules that identify the direct and indirect impacts of livestock grazing as significantly effecting those listed species, the Forest Service has, without support in the record, classified the effects of livestock grazing as insignificant. This is a violation of NEPA, as well as the Endangered Species Act due to the failure of the Forest Service to properly consult with the U.S. Fish and Wildlife Service for this project on multiple species.

Further, the cumulative impacts associated with the unauthorized and/or illegal actions of government officials and/or permittees or landowners in and around the project area have not been disclosed at all. As just two examples that are known to either the Gila or Apache-Sitgreaves National Forests (or both): in the Sunflower allotment, just west of the project area, a local rancher bulldozed over 20 miles of “road” into an IRA without any authorization and Catron County residents and officials illegally bulldozed a “road” in an IRA crossing the San Francisco River 47 times.<sup>8</sup> These impacts to IRAs and riparian areas within or adjacent to the project area must be disclosed and analyzed.

8. “The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.” 40 C.F.R § 1508.27b (8).

There are dozens of known historic sites within the project area in Arizona alone and many of these are within 100 meters of proposed improvements. There are 261 sites in New Mexico that require monitoring and at least one that requires protective fencing to prevent damage from livestock trampling. There remain an unknown number of additional historic sites within the project area. Only “if treatment and management recommendations are followed” are these important cultural resources anticipated to be protected. However, there is significant evidence of a lack of compliance with management recommendations in the project area and therefore the Forest Service cannot rely upon compliance to minimize the impacts to these resources and therefore, the Forest Service cannot proceed on the basis of an EA and a Finding of No Significant Impact is precluded.

9. “The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.” 40 C.F.R § 1508.27b (9).

There are several federally listed threatened or endangered species within this project area. While the EA minimizes the impacts of livestock grazing on these species, the U.S. Fish and Wildlife Service has identified livestock grazing as having significant impacts on listed species and even identified livestock grazing as a potential cause for the need to list species. (See above.) In light of the well-documented ongoing inability of livestock operators and Forest Service personnel to prevent trespass livestock in riparian areas with the project area, the Forest Service cannot rely upon “well managed” livestock operations to artificially minimize the impacts of this project.<sup>9</sup>

10. “Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” 40 C.F.R § 1508.27b (10).

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<sup>8</sup> See Appendix D, 2011 NOI for Clean Water Act violations. *See also* <https://archive.nytimes.com/www.nytimes.com/gwire/2011/10/04/04greenwire-enviros-blame-rep-pearce-for-inciting-nm-county-1907.html?pagewanted=all>

<sup>9</sup> See Appendix E, CBD scoping comments and Appendix E.1, CBD scoping appendix.

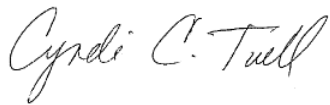
There are issues with trespass/errant livestock on this allotment.<sup>10</sup> This information is not adequately disclosed in the EA, but the Forest Service was made aware of this information during the scoping period. Because trespass livestock are not adequately disclosed or discussed in the EA, the public is not able to review or comment upon violations of the grazing permits, nor on potential Wilderness Act, NEPA, FLMPA, or other violations related to trespass livestock. Similarly, it is unclear whether the changes to the number and location of AUMs in this project will have the effect of increasing livestock grazing (authorized or unauthorized) in the adjacent Wilderness areas.

As we note above, and as we noted in our prior comments, the sheer scope of this project clearly precludes the use of an EA and there are many reasons that a Finding of No Significant Impact is inappropriate.

**Relief Requested:** The Forest Service must withdraw the Draft FONSI/DN and prepare a supplemental analysis, including an EIS for this project.

Thank you for your consideration of this Objection. If you have any questions, or wish to discuss the issues raised in this objection letter in greater detail, please do not hesitate to contact me.

Sincerely,



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## **ATTACHMENTS**

Appendix A Western Watersheds Project, Wilderness Watch Comments Submitted November 30, 2018.

## **REFERENCES (all cited in our prior comments)**

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<sup>10</sup> *Id.*