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Working to protect and restore Western Watersheds and Wildlife

October 28, 2019

Neil Bosworth
Tonto National Forest Supervisor
2324 E. McDowell Rd.
Phoenix, AZ 85006
objections-southwestern-tonto@usda.gov

Sent this date via email:

RE: Objection to the Draft Decision Notice and Finding of No Significant Impact for the Bar X and Driveway Grazing Authorization in the Tonto National Forest

Dear Mr. Bosworth,

The following Objection to the Bar X and Driveway Grazing Authorization Draft Decision Notice and Finding of No Significant Impact (DDN/FONSI) is being submitted on behalf of the staff, members, and supporters of Western Watersheds Project and Sierra Club – Grand Canyon Chapter, who are concerned with the management of our public lands within the Tonto National Forest and in the project area.

In addition to being an inappropriate level of National Environmental Policy Act (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 Tonto National Forest 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 this allotment and in the driveway 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 Sierra Club – Grand Canyon Chapter are the Objectors. Cyndi Tuell is the Lead Objector for purposes of communication regarding the Objection.

Western Watersheds Project
Cyndi Tuell
738 N. 5th Ave, Suite 200
Tucson, AZ 85705
4. The project that is subject to this Objection is “Bar X and Driveway Grazing Authorization.” The Responsible Official is Debbie Cress, District Ranger on the Payson and Pleasant Valley Ranger Districts for the Tonto National Forest.
5. Objector submitted, timely, specific, and substantive comments during the Public Comment Period on July 23, 2019.¹ 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 Sierra Club – Grand Canyon Chapter are filing an Objection regarding the Draft DN/FONSI for the Bar X and Driveway Grazing Authorization in the Tonto National Forest.

INTRODUCTION

As stated in the Decision Notice (DN), the “purpose of this action is to consider livestock grazing opportunities on public lands where consistent with management objectives. The Forest Plan identifies both Bar X and Driveway as suitable for domestic livestock. In addition, per FSH 2209.13, Chapter 90, section 92.22, the purpose of this action is to authorize livestock grazing in a manner consistent with direction to move ecosystems towards their desired conditions as described in the Forest Plan.”

Unfortunately, the Forest Plan upon which this project is premised is more than 30 years old. The EA for this project makes clear that this area is unsuitable for livestock, as evidenced by the proposal to authorize 83 new range “improvements” that would bring water to allotments. This plan to artificially prop up the livestock grazing industry in an area determined as “suitable” for livestock grazing in the mid-1980s is poorly conceived. In light of the ongoing Forest Plan Revision process, this is a clearly pre-emptive process to predetermination as to where livestock grazing should continue beyond the 10-year time frame of these permits.

In addition to the pre-emptive, pre-decisional nature of this decision, the project will have significant negative impacts on threatened and endangered species, including the Mexican gray wolf and Mexican

¹ Attached as Appendix A.

spotted owl, as well as native fish species protected by the Endangered Species Act. The scope, intensity, and controversial nature of this project raise the level of analysis necessary for this project above that found in an EA.

For these reasons, and all the other reasons we have raised in our prior comments, which we detail more fully below, the Forest Service was precluding from a Finding of No Significant Impact and this Decision Notice must be withdrawn.

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 2019 EA states that the proposed water developments will minimize wolf-livestock conflicts and provide a level of management flexibility that “will be responsive to wolf and livestock interactions in a timely manner through an AOI amendment[,]” implying a reduced likelihood of conflicts. 2019 EA at 106. However, there is no explanation as to *how* the water developments will reduce such conflicts other than a circuitous statement that “having more water dispersal will allow greater control of grazing activities within a specific pasture.” *Id.* This is followed by another circuitous assertion that “proposed pasture division fences, existing traps and corrals will provide greater management flexibility and control of livestock to help minimize” conflict. *Id.*

The Forest Service should remove the management action that would provide livestock grazing permittees with telemetry tracking devices to track collared wolves. The telemetry devices provided to other permittees in Region 3 have not been well tracked. The Forest Service has not analyzed the impacts of livestock permittees’ use of tracking devices on the wolves themselves.

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.

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 107. 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.

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 as related to infrastructure associated with livestock grazing are significant and have not been adequately disclosed or analyzed.

For this project, the Forest Service is proposing industrial scale grazing “improvements” to create an area that will be suitable for livestock grazing only after extensive installation of artificial waters, pipelines, and fencing. There are more than 83 “improvement” projects planned, the cumulative impacts of which require the preclude the use of an EA or a FONSI.

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. 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 fails to explain how pumping water through pipelines will impact the streams, springs, or other areas these waters are pumped *from*. Quantification of the water pumped is missing from the EA. The noise impacts from pumps associated with the many miles of pipeline are not adequately disclosed, addressed, or analyzed.

B. Fencing

The EA indicates that the impacts of future fencing projects are “tiered to” and analyzed in this EA. However, the miles of fencing, location of fencing, and any other information related to how fencing fragments wildlife habitat or how fencing projects are financed is not included in this EA. For example, the direct effects of fencing are characterized generally, with no site specific analysis: “Range improvements (e.g. fencing, water developments, etc.) can have slight, localized, short-term impacts to soils during construction.” 2019 EA at 67. Similarly vague analysis is found at page 128: “Fencing is generally intended to restrict movements of livestock, but incidentally may impede wildlife access to critical resources...or restrict escape or migratory routes essential to the wellbeing of individuals and populations.” 2019 EA at 128. The Forest Service acknowledges that fencing can be a concern for wildlife due to entanglement, impalement, and is dependent on the species impacted. *Id.*

However, the species that move or migrate through where fences are planned are not specifically identified and the impacts are not specific to the fencing locations.

But for the fencing planned as part of this project, areas that have remained ungrazed for many years are now planned for grazing. This is a significant impact on ungrazed areas that could better be used as a comparison to grazed pastures and allotments in scientific research, or as (one of the few) places wildlife can dominate. The significance of this change has been artificially minimized in the EA, rendering the analysis invalid.

III. 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. The proximity to and overlap with habitat for threatened and endangered species which are impacted by livestock grazing requires a higher level of analysis in light of the intensity and context of this specific project 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:

The length of this EA alone is a clear indication that the Forest Service is precluded from a FONSI. At 154 pages, not including relevant reports and assessments, this document is a far cry from the concise document described by the CEQ that is required for an EA:

Generally, the EA includes a brief discussion of:

- The need for the proposal
- Alternatives (when there is an unresolved conflict concerning alternative uses of available resources)
- The environmental impacts of the proposed action and alternatives
- A listing of agencies and persons consulted.

The CEQ identifies the components an EIS should include and we have provided a checklist for this EA that clearly shows the EA is really an EIS in disguise:

An EIS includes:

- Cover Sheet
- Summary
- Table of Contents
- Purpose and Need Statement
- Alternatives
- Affected Environment
- Environmental Consequences
- List of Preparers
- List of Agencies, Organizations, and persons to whom the EIS was sent
- Index
- Appendices (if required)

This EA Includes:

- ✓
- ✓ (several)
- ✓
- ✓
- ✓
- ✓
- ✓
- ✓
- ✓
- ✓

The only thing missing from this EA that is normally found in an EIS is the Index. What the Forest Service has done for this project is attempt to toe the line between EA and EIS, using the shortened time frames and reduced public involvement requirements required by EAs for a project that clearly requires the more in-depth analysis and public oversight and public engagement opportunities found in an EIS.

There are additional problems with this EA/FONSI. As we have stated repeatedly, 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).

The impacts of newly authorized livestock grazing on areas that have remained ungrazed for decades is significant. Livestock grazing throughout the project area on watersheds now classified as Functioning at Risk will continue to degrade those watersheds, another significant impact. The increase in the number of AUMs is another significant impact that has not been adequately considered.

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

The Forest Service has been unable to determine whether livestock are contributing to *E. coli* contamination in the project area. 2019 EA at 53. Additional testing is necessary but the Forest Service acknowledges that livestock deposit a greater amount of waste closer to water sources than in other parts of the range. Yet, the impacts of bacterial contamination on recreational users of the area have not been adequately disclosed or analyzed. The EA indicates that both recreational users and livestock may be contributing to bacterial contamination, but there is no quantification of these uses –

how many cows are pooping in the creek, versus how many people? What is the more likely source of contamination? Which will be more negatively impacted by the bacterial contamination – human recreational users or livestock? These questions should have been answered in the EA.

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).

There are hundreds of cultural sites in the project area, designated and undesignated habitat for threatened and endangered species, Mexican spotted owl Protected Activity Centers, and the project area includes the Hellsgate Wilderness area. Therefore, there are unique characteristics of the project area, as well as ecologically critical areas.

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.² 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.

Additionally, for this project area, local residents have had to resort to litigation as recently as 2018, asking the courts to ensure the Forest Service complies with federal regulations. Trespass livestock are the key issue in the 2018 litigation and this is a controversial issue, and one which the Forest Service has neglected to analyze as “outside the scope” of this analysis and framed the trespass and violation of federal regulation issue as one of a private property owner complaint, which is not accurate. This is also controversial scientifically – the failure to analyze the impacts of trespass or unauthorized livestock, which are a known and common occurrence on all livestock allotments, artificially minimizes the impacts of livestock operations in practice and this is something WWP and others have repeatedly asked the Forest Service to both acknowledge and address. The Government Accounting Office 2016 report WWP provided with our prior comments (as Appendix C) specifically identifies the lack of information on the impacts of trespass or unauthorized livestock use because federal agencies fail to collect such information. This renders the analysis of impacts suspect, to say the least, and scientifically controversial.

² Fleischer, T.L. 1994.

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).

We have identified several areas of uncertainty or involve unique risks in our comments above and below, including the Forest Service’s failure to analyze the impacts of trespass livestock and the negative impacts associated with that trespass, as well as the cumulative impacts from unauthorized or illegal actions.

In our prior comments, we noted that for impacts to soils in the project area, including the Bar X allotment and the sheep driveway, the Forest Service, in the Preliminary EA, provided the public with data from 2011 in the form of two tables (Tables 3 and 4 on page 13 and 14 of the Preliminary EA). As we noted in our prior comments, this data was 1) outdated, and 2) filled with data gaps. In the Draft EA these tables were modified to remove the reference to the 2011 date and the pastures without data were removed. In our prior comments we noted that this was misleading, and while the Forest Service admits that “limited on-site data is available[.]” the Forest Service then makes an assumption regarding the condition of soils where data is missing by projecting “from similar sites across the landscape and based on theoretical approaches and methods generally accepted in the scientific community.” Draft and Final EA at 21. The approaches and methods were not disclosed nor cited in the Draft EA, we pointed this out in our comments, yet the Final EA maintains the same language and analysis without explanation or disclosure of methodology, and therefore the public has had no opportunity to verify whether the Forest Service has conducted an appropriate analysis.

In our prior comments we expressed concern that nearly half of the 33,774 acres analyzed for soil condition of the sheep driveway remained unassessed. Two pastures (Potato Butte and Walnut) had no acres assessed and two pastures (Cline Mesa and McInturff) had just a small percentage of the acres assessed. We asked the Forest Service to acknowledge that the impacts to soils on nearly half of the project area are uncertain and/or unknown. Given that the Tonto National Forest was established to provide water for nearby cities and towns, the protection of the soils and watersheds is of paramount importance and we informed the Forest Service of these concerns in our prior comments.

It appears the Forest Service’s solution to addressing our concerns was to remove the table documenting the unassessed acres of soils in the driveway as we are unable to find this table, which was available in the Draft EA, in the Final EA:

The tables below show an evaluation of soil condition data collected on the Bar X and Driveway in 2011.

Table 3: Driveway Soil Condition by Acre

Pasture	Satisfactory	Impaired	Impaired - Unsatisfactory	Satisfactory - Impaired	Satisfactory - Unstable	No Condition Assessed	Analyzed	Total
Brady Canyon	No Data	No Data	No Data	No Data	1366	1571	1366	2937
Cline Mesa	No Data	No Data	No Data	No Data	624	3450	624	4074
Lost Salt	5227	336	No Data	No Data	1425	No Data	6988	6988
McInturff	74	No Data	161	21	500	4476	756	5232
Naegelin	3499	40	No Data	178	757	No Data	4474	4474
Potato Butte	No Data	No Data	No Data	No Data	No Data	637	0	637
Valentine	4128	45	No Data	No Data	61	No Data	4234	4234
Walnut	No Data	No Data	No Data	No Data	No Data	5198	0	5198
Total	12928	421	161	199	4733	15332	18442	33774

Table 4: Bar X Soil Condition by Acre

Pasture	Satisfactory	Impaired	Impaired - Unsatisfactory	Satisfactory - Impaired	Satisfactory - Unstable	No Condition Assessed	Analyzed	Total
Bar X	487		156	No Data	44	No Data	687	687
Colcord	8540	36		No Data	2325	No Data	10901	10901
Cross Y	507		95	No Data	94	No Data	696	696
Glasscock	No Data	No Data	No Data	No Data	No Data	145	0	145
Grasshopper	21		17	No Data	No Data	1070	38	1108
Haigler	54		22	No Data	953	150	1029	1179
Heifer	No Data	No Data	No Data	No Data	No Data	68	0	68
Horse	No Data	No Data	No Data	No Data	No Data	97	0	97
Hospital	No Data	No Data	No Data	No Data	No Data	48	0	48
House	No Data	No Data	No Data	No Data	No Data	60	0	60
Lower Dry Creek	No Data	No Data	No Data	No Data	No Data	1401	0	1401
Mare	No Data	No Data	No Data	No Data	No Data	63	0	63
Oxbow	358	No Data	147	68	1294	1231	1867	3098
Pine	No Data	No Data	No Data	No Data	No Data	196	0	196
Roscoe	No Data	No Data	No Data	No Data	No Data	0	0	0
Round Mountain	314	No Data	94	0	1592	468	2000	2468
Steer	No Data	No Data	No Data	No Data	No Data	582	0	582
Upper Dry Creek	589	No Data	101	No Data	458	289	1148	1437
Westhole	57	No Data	39	No Data	243	843	339	1182
Windmill	No Data	No Data	No Data	No Data	No Data	1774	0	1774
Total	10927	36	671	68	7003	8485	18705	27190

While we appreciate the Forest Service's attempt to eliminate a NEPA problem identified in the Draft EA by simply deleting the information from the Final EA, the issue of unassessed soil conditions does appear to remain a problem. Deleting the evidence of that problem does not relieve the Forest Service from addressing our concerns and instead, further supports our concerns about the lack of certainty regarding existing conditions, much less the impacts of the proposed project.

The large (and growing) data gaps and antiquated data have created the uncertain and unknown impacts of this project which now require an EIS and preclude a Finding of No Significant Impact. This acknowledgment of the missing data has been removed from the EA and the three tables mentioned above no longer exist in the EA.

6. "The degree to which the action may establish a precedent for future actions with 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. The authorization of range infrastructure also ensures that livestock grazing will be, or is at least far more likely to be, reauthorized. Furthermore, public lands ranching provides an economic boon to livestock operators and entrenches the concept of welfare ranching.

As we noted in our prior comments, because the Tonto National Forest is in the midst of revising its 1985 Forest Plan, the forest must take care to avoid making irretrievable commitments of resources that will foreclose or pre-empt management decisions yet to be made, specifically as to the suitability of this management area to support livestock grazing. If dozens and dozens of livestock "improvements" are installed prior to the Forest's determination that this area is suitable for livestock at this time (and in light of ongoing drought, climate change impacts, and increased fragmentation that has occurred since the 1980s), this can and will artificially skew any suitability or capability determination that is most properly done via the Forest Plan Revision process.

Proving our point, the Forest Service uses the fact that "the proposed action has been generally implemented on much of the Tonto National Forest and other national forest [sic] across the nation" to claim the action that is the subject of this objection is not controversial. 2019 DN at 6.

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.

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. This is ironic given the statement in the Final EA that “[u]nauthorized motorized cross-country travel can impact streams and riparian areas...” and that “[e]nforcement of the Travel Management decision is imperative to ensure compliance.” 2019 FEA at 72.

In our prior comments we asked the Forest Service to analyze the impacts of the 8,000 sheep authorized to use the driveway and how adding AUMs for cattle would cumulative impact the natural resources found in the project area. This has not been done. Because the sheep were authorized via a 2011 Categorical Exclusion, the impacts of that use of the project area have not been analyzed. Now the Forest Service is choosing to ignore the impacts of that authorization in light of the proposed authorization, and turning a blind eye to the impacts of this project on bighorn sheep. This intentional oversight, the Forest Service is acting in violation of NEPA, as well as the Administrative Procedures Act.

Additionally, the Forest Service states that the impacts of this project on bighorn sheep, which it acknowledges are intolerant of livestock, are not anticipated because bighorn are extremely rare in the project area. 2019 EA at 130. The Forest Service has failed to ask or answer the question as to whether the bighorn are rare in the project area *because* of the presence of livestock, or are they rare in the project area because domestic sheep using the driveway are transmitting disease to native sheep. Furthermore, this analysis utterly fails to acknowledge the well-known plan by the Arizona Game and Fish Department to repatriate native bighorn sheep throughout the Tonto National Forest. This is a significant oversight. We provided a lengthy discussion about our concerns regarding bighorn sheep in the project area which have unfortunately been ignored. WWP et al 2019 Comments at 16-19 and appendix D. In our prior comments we specifically noted the fact that bighorn sheep do not show exclusive home range

fidelity, they are prone to wandering, and the co-mingling of domestic and native sheep is a vector for the spread of disease and die-offs in the wild population.

Finally, in our prior comments we noted that nearly the entire project area is composed of watersheds functioning at risk or impaired. Had the Forest Service adequately and accurately analyzed the cumulative impacts of generations of livestock grazing within the project area, the Forest Service would have made the obvious connection between livestock grazing and the degraded watersheds.

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).

The EA, DN and FONSI for this project gloss over the negative and well-known impacts of livestock grazing to historical and cultural resources. Instead, the Forest Service relies on “monitoring, mitigation measures, and management practices” that it is clearly unable to implement or pay for to artificially minimize the impacts of grazing on historic and cultural sites.

The area has been used by humans since the Archaic Period and there are well over 100 archaeological sites located within the Heber-Reno sheep driveway, though the EA indicates that the “Heber-Reno Sheep Driveway encompasses an area which has had very little formal archaeological investigation. EA at 137. There are historic habitat structures, roomblocks, storage caves, petroglyphs, artifact scatters, homestead remains, log cabins, pictograph sites, Basque “stone boys” and more, all located within the sheep driveway. These important cultural resources are not identified while the “historic” nature of the sheep driveway itself is emphasized and described at length. EA at 137.

The Forest Service has documented that livestock have direct and indirect impacts on cultural and historic sites, yet has failed to adequately address these impacts in the current EA.

Because the project area is rich with archaeological, historic, and cultural sites, the use of an EA is inappropriate. Because the current EA dismisses the importance of these sites and because the public has not had an opportunity to review and comment on this project in light of the existence of those sites, the Forest Service cannot proceed, must revise the current environmental analysis, and allow another opportunity for review and comment. 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. In light of the well-documented ongoing inability of livestock operators and Forest Service personnel to prevent trespass livestock in the project area, the Forest Service cannot rely upon “well managed” livestock operations to artificially minimize the impacts of this project.

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).

There are issues with trespass/errant livestock on this allotment. This information is not adequately disclosed in the EA, but the Forest Service was made aware of this information during the prior comment 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 NEPA, FLMPA, or other violations related to trespass livestock.

By utilizing an EA instead of the clearly necessary EIS, the Forest Service has reduced opportunities for public input, glossed over the significant impacts of livestock grazing on the myriad natural resources found in the project area, and is simply forging ahead with a livestock grazing authorization despite the obvious significant negative impacts to wildlife. The Forest Service has violated not only NEPA, but also the Administrative Procedures Act, the Federal Land Policy Management Act, and possibly violated other regulations, including the Endangered Species Act.

IV. The Decision Will Violate the Existing Forest Plan (which is woefully outdated)

As we noted in our prior comments, the Forest Service is relying upon a 1985 Forest Plan to determine the suitability of livestock grazing in the project area, while at the same time ignoring prior studies conducted by the Forest Service on the Bar X allotment indicate that livestock grazing will harm natural resources and will move ecosystems away from desired conditions. As we noted in our prior comments, this will result in a violation of the Forest Plan, can result in predeterminations on land use allocations, and is a violation of NEPA. While the Forest Service is relying on this outdated plan, possibly pre-empting pending Forest Plan decision, and includes a variety of studies from as far back as the 1920s, U.S. Forest Service studies conducted in the 1970s and 1980s on the Bar X allotment are mysteriously absent. We are aware that the Forest Service was provided information about the importance and relevance of these studies to the current project analysis and we asked that the following studies be included in the project record and the information contained therein utilized to inform the analysis and decision-making process for this project:

- Bar X Range Allotment Analysis (1978)
- Environmental Analysis Report – Placement of the Bar X, Colcord, Young, and Haigler Creek
- Allotments under Management (1978)

- Allotment Analysis Acreage and Grazing Capacity Summary
- Bar X, Haigler Creek, and Young Allotment Management Plans (1981-1985)
- Environmental Assessment (1985)
- Wildlife Habitat Analysis of the Bar X Allotment and Sheep Driveway (1977)
- Effects of Domestic Livestock Grazing on Water and Soils Resources of the Bar X Allotment (1977)
- Bar X Soils Report (1977 and 1978)

It is unclear whether these reports have been included in the project record. The bottom line is that the Forest Service is inconsistent in its use of outdated or historic information when it comes to utilizing information to make decisions about current management. While we continue to support the use of the best available science in agency decision-making, where an agency has chosen to rely upon a decades old document to base a current management decision, that same agency should at the very least incorporate contemporaneous information – especially when that request was specifically made during the previous comment periods.

We note above (and noted in our prior comments) the problem with the watersheds in the entire project area classified as functioning at risk or impaired. Because of this, the decision here will violate the existing Forest Plan. The 1985 Forest Plan for the Tonto National Forest requires that watersheds should only support multiple uses such as livestock grazing when there is no long-term decline in ecological conditions and when they provide high-quality water for downstream communities dependent on them. Here, the Forest Service is proposing to increase livestock grazing in watersheds that are already degraded in violation of the Forest Plan Desired Conditions. This is especially curious when the attributes most frequently assessed that contribute to watershed condition ratings of other than properly functioning include road maintenance, aquatic invasive species, riparian vegetation condition, road density and proximity to water, soil condition, and loss of forest cover and can largely be attributed to the negative impacts associated with livestock grazing. See Appendix E, previously submitted.

As we stated previously, increasing the number of AUMs for the project area as well as adding livestock to previously ungrazed riparian areas and to the sheep driveway will further degrade the watersheds in the project area. Degrading these important watersheds is a significant effect that must be analyzed in an EIS, precluding a Finding of No Significant Impact.

V. Miscellaneous

In the DN/FONSI, at page 2, the following statement is confusing and seems very circular: “The Potato Butte Pasture is currently authorized for use by cattle by the Potato Butte allotment.” The footnote accompanying this sentence does not offer clarification: “When this pasture was authorized in the 2011 Heber-Reno Sheep Driveway EA capacity was not evaluated. This pasture was included for this analysis to determine the number of permitted cattle to graze the area.”

Is the first sentence supposed to say the pasture is currently authorized for use by cattle *from* the Potato allotment? Please clarify and explain. The footnote associated with this sentence implies that the analysis for livestock use on the Potato Butte has never had a capacity evaluation.

The EA does not address the important issue of range suitability at all. There is no analysis of suitable range in the EA for each of the allotments and any verification of determinations made in the Forest Plans regarding livestock suitability.

The EA indicates that monitoring is going to occur for a variety of things, but does not provide for monitoring of trespass livestock. Nor does the EA provide information regarding how monitoring will be financed.

VI. Riparian

In our prior comments we expressed our concerns that, 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 on those critical areas. Ten of the 11 watersheds in or adjacent to the project area are classified as “Functioning at Risk.” 2019 FEA at 69. The Gruwell Canyon – Cherry Creek watershed and the Haigler Creek watershed have not been grazed since 1989. *Id.* There are 36 miles of perennial and intermittent stream channels within the project area that support riparian vegetation, with the majority found in the area of the sheep driveway. EA at 28. The riparian vegetation within the project area has been reduced from historic conditions. *Id.* at 29. Unfortunately, and unwisely, the Forest Service does not appear to be excluding livestock from the rare and fragile riparian areas found in the project area and instead will increase the areas where cattle may graze in riparian or previously ungrazed areas and focus on providing developed water sources to lessen the amount of time cattle may spend in riparian areas, which may or may not be effective.

In our prior comments we detailed the extensive literature documenting the significant negative impacts livestock have to riparian areas and provided information on the significant benefits of excluding livestock from riparian areas. *See* our prior comments, including Appendix E, Annotated bibliography of scientific research specific to livestock exclusion in riparian areas.

In our prior comments we strongly recommended that if the Forest Service authorizes livestock grazing and the use of the sheep driveway, livestock must be prohibited and excluded from all riparian areas. The Forest Service only analyzed this as part of the No Action alternative, wherein livestock grazing is prohibited entirely. The Forest Service should have also analyzed an alternative that would have prohibited livestock from riparian areas while authorizing grazing in other areas. This would help the Forest Service move these areas toward the desired conditions identified in the current Forest Plan, prevent further degradation of these areas, and ensure that the native species reliant upon these areas will be supported. This can help with compliance with the proposed Forest Plan as well.

Trespass livestock is an additional concern regarding riparian impacts associated with, but not analyzed as part of this project, despite our repeated requests that this important and ongoing issue be analyzed. The Forest Service believes that because trespass livestock or unauthorized use is not being “authorized” as part of this project, there is no duty to analyze the impacts of that trespass use as part of this NEPA process. That is incorrect. Because there is a well-known and well-documented history of unauthorized grazing associated with the allotment and sheep driveway that are a part of this proposal, this known and expected impact must be analyzed.

As we noted in our prior comments, the issue of trespass livestock was raised in recent litigation regarding the unauthorized use of the sheep driveway. The Forest Service must adequately disclose, analyze and address these issues before this project can move forward. Trespass or unauthorized livestock grazing is an indirect, reasonably foreseeable, and cumulative impact of authorizing livestock grazing and therefore clearly falls within the requirements found in NEPA.

VII. Climate Change

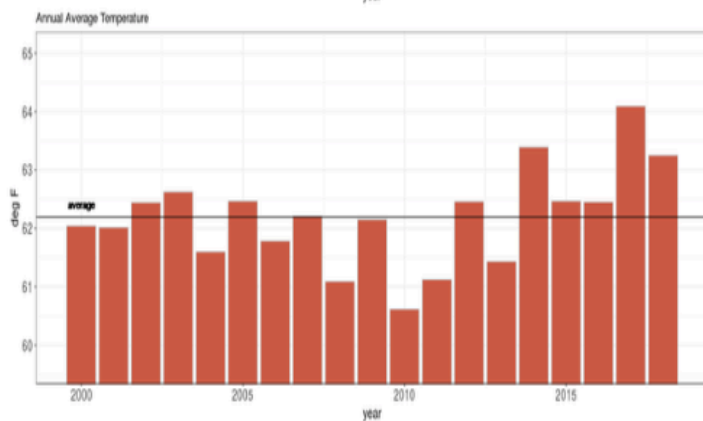
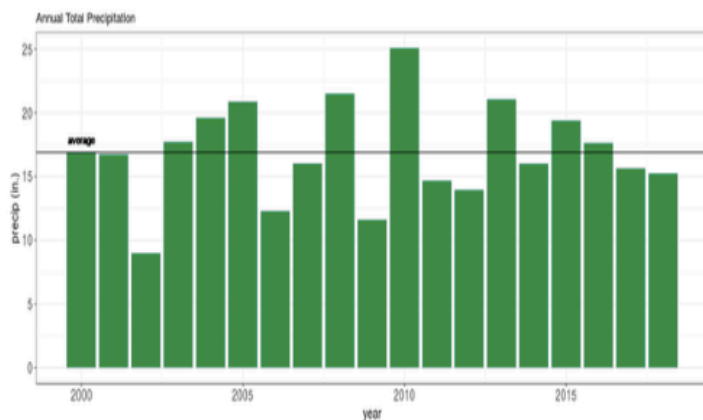
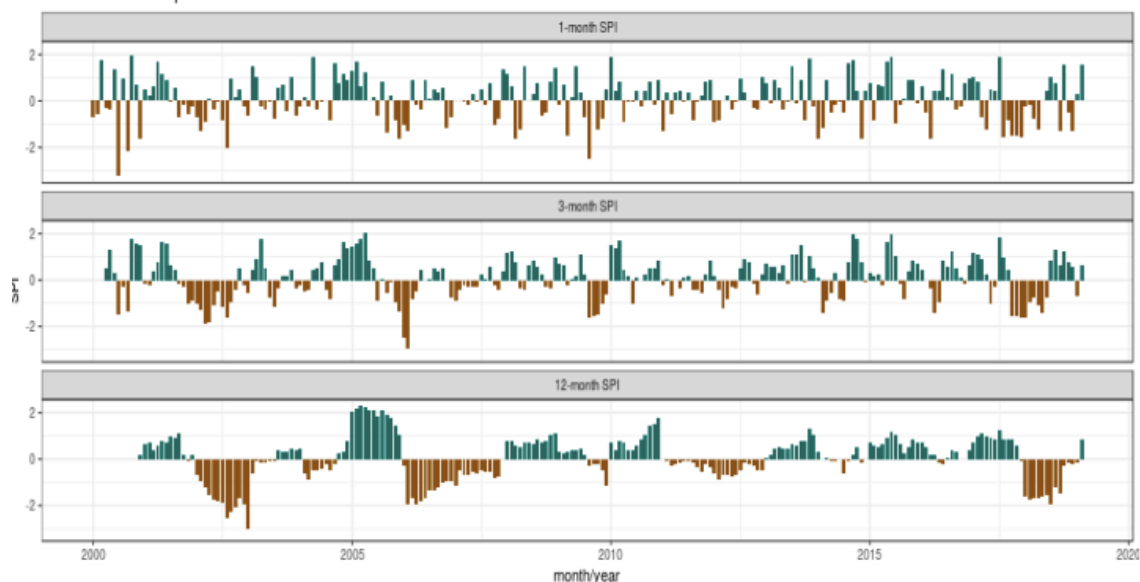
There is insufficient analysis of the impacts of the project on the environment *in light of the compounding impacts of climate change*. For example, given the likelihood of hotter and dryer conditions in the southwest, how will this project exacerbate the already alarming impacts associated with the impacts of climate change on game species, threatened and endangered species, 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? These questions have not been asked nor answered, though we did raise these issues in our prior comments more than once. Again, this precludes a Finding of No Significant Impact and has prevented adequate public review and comment.

VIII. Drought

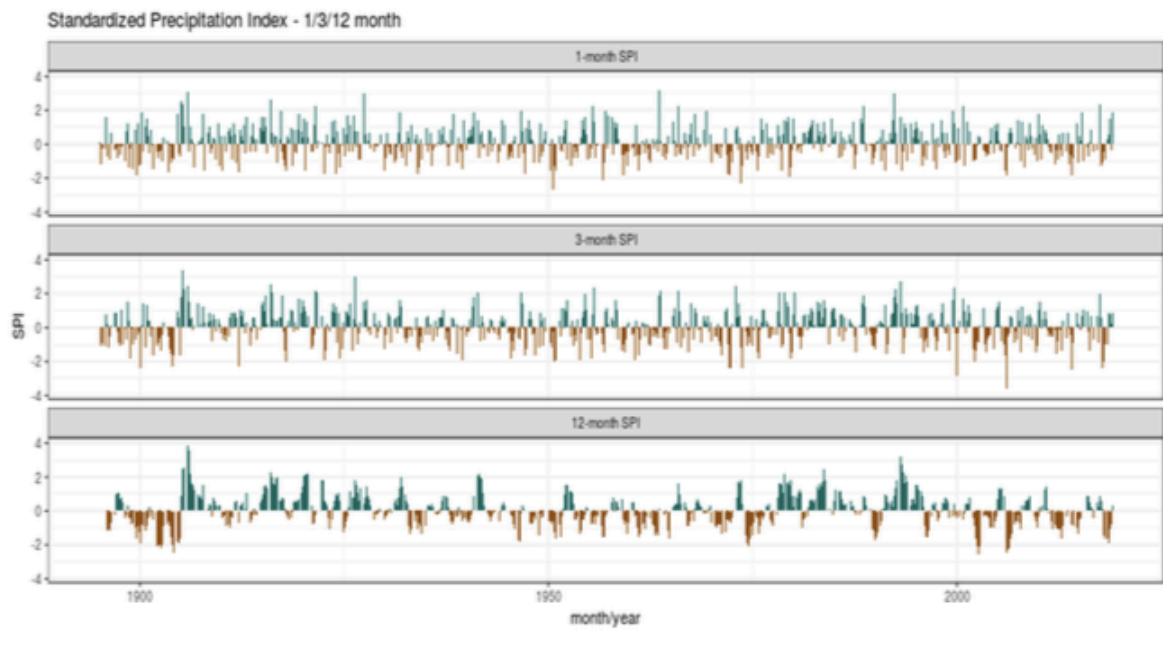
Information in the EA indicates that the project area is experiencing drought. 2019 EA at 28. Unfortunately, the EA indicates that *at some point in the future* the Tonto National Forest will work with the permittee to develop drought preparedness guidelines to be included in the Allotment Management Plan to “help frame initial communications related to the first signs of management impacts due to drought.” EA at 55. Unfortunately, and as we indicated in our prior comments, this has a two-fold negative impact. First, the public will have had no opportunity to help frame and flesh out the drought plans; and second, the impacts of the drought are already evident and therefore the Forest Service should be taking action now to prevent further management impacts exacerbated by the drought.

To characterize drought on a range of timescales the Forest Service uses the Standardized Precipitation Index (SPI). EA at 54. SPI estimates for Pleasant Valley indicate the community has been experiencing drought conditions twelve of the last eighteen years since the year 2000. WWP utilized the SPI tool referenced in the EA (at page 28) on March 25, 2019. In addition to the precipitation data indicating drought conditions, the data indicate an increase in average temperatures.

Standardized Precipitation Index - 1/3/12 month



In our prior comments we asked the Forest Service to explain the rationale for increasing the number of livestock using the project area, including the sheep driveway, during a period of increasing drought and higher temperatures. It is clear that the project area is getting hotter and drier, but also that the precipitation variability is getting more extreme and the period of wet cycles is decreasing and the amount of precipitation during the wet cycles is dropping.



Given the apparent and clear trajectory, we asked the Forest Service to plan now, as part of this project, to protect federal public lands from the impacts of livestock grazing on lands already impacted by drought conditions. However, this was not done.

IX. Conclusion

As we note above, and as we noted in our prior comments, the length of the EA, along with the scope and impacts 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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REFERENCES (all cited in our prior comments)