

From: [REDACTED]
To: [FS-Northern NM Riparian and Aquatic Watershed Restoration](#)
Subject: Northern New Mexico Riparian, Aquatic and Wetland Restoration Project--Comments on the Draft EA
Date: Saturday, May 23, 2020 7:08:46 AM

As a thirty-year resident of northern New Mexico, a resident of a city whose water supply relies on the health of the watersheds in these Forests, an angler and birder and naturalist who is a frequent visitor to the backcountry of all three of these Forests, and the inhabitant of a residence immediately adjacent to the Santa Fe National Forest, I submit the comments below on the Northern New Mexico Riparian, Aquatic, and Wetland Restoration Project EA:

1. I applaud this frank acknowledgement by the three Northern New Mexico National Forests of their longstanding non-compliance with their legal mandates for water quality and resource protection and riparian and aquatic species habitat protections under the Organic Act, the NFMA, the Clean Water Act, and the ESA, and I applaud this initiative as a significant step towards correcting this.

2. On page 6, under "Santa Fe National Forest—Goals and Desired Condition", the first paragraph reads: "Achieve satisfactory condition in riparian ecosystems. Maintain areas that are currently in good condition."

Whereas the Carson National Forest presents both a detailed "vision" and a "desired future condition" incorporating substantive numerical goals and parameters, and the Cibola refers explicitly to the percentages of riparian areas that will see treatments and what those treatments will be, and the Kiowa presents two full pages of detailed desired conditions, down to the species-specific level, the Santa Fe National Forest's desired condition is functionally meaningless. What exactly is the measure of "satisfactory condition" on this context? Or of "good condition"? Is "satisfactory" condition the same as "good" condition, or something different? And "satisfactory" to whom and by what standard? These token phrases are scientifically and administratively meaningless, with no reference at all to any actual substantive goals and future conditions and providing absolutely no operational measure of direction, commitment, obligation, or accountability for the projects proposed under this EA.

To quote directly from the Santa Fe National Forest's own Forest Plan Revision *Final Assessment Report Volume I. Ecological Resources*: (2016) "Riparian systems have been degraded and are at risk across the Forest.... The impact on wildlife is significant; an endangered species that is a riparian obligate and fifteen species of conservation concern are dependent on the riparian area for their habitat." (p. 120) Also worth noting are the tables on page 26 of this proposed EA showing all too clearly that, of the three pertinent northern New Mexico Forests and the Kiowa Grassland, the Santa Fe National Forest has the lowest percentage of properly functioning watersheds (a dismal 6%), the highest percentage of functioning at risk watersheds (88%), the highest percentage of impaired function watersheds (6%), and the highest number of miles of water quality impaired streams (266 miles).

It would thus stand to reason that the Santa Fe National Forest, which in these numbers stands out strikingly as the worst-performing of the three Forests and one Grassland included here, would have far more ambitious, precise, and explicit goals to strive for than a mere generic "satisfactory". As is the case with the recent Forest Plan Revision documents for the Carson and the Cibola, the above-mentioned SFNF Plan Revision document *Final Assessment Report Volume I. Ecological Resources* contains recent and detailed field assessments of the existing and ongoing damage wrought by an acknowledged Forest history of poorly managed livestock grazing and an excessive and poorly managed road system. The Santa Fe National Forest thus has no excuse for failing to provide in this section qualitatively and numerically explicit goals and desired conditions for the projects that particular Forest envisions and proposes under this EA, to the standard the Carson and Cibola have. Furthermore, to accurately and assess the environmental effects of this project on the Santa Fe National Forest, the public requires exactly that.

Given the above, the Santa Fe National Forest portion of this EA's formulation of "Goals and Desired

Conditions” is insufficient and needs substantial and explicit qualitative and numerical amplification.

3. Pursuant to the above, I and numerous others have over the last several years regularly documented and reported to the Santa Fe National Forest repeated instances of cattle outside their permitted allotments, and more often than not in sensitive watershed and riparian areas. This includes SFNF-permitted cattle in the closed Santa Fe Municipal watershed, SFNF-permitted cattle trespassing in the NPS Valle Caldera National Preserve, SFNF-permitted cattle trespassing on Bandelier National Monument land along the Rio Grande in White Rock Canyon, SFNF-permitted cattle well outside of their assigned allotments all the way to tree-line at the Santa Fe Ski Basin in the headwaters of the Rio En Media and at Aspen Vista and Big Tesuque in the headwaters of Tesuque Creek, SFNF-permitted cattle trespassing on State of New Mexico land in Hyde Memorial State Park, SFNF-permitted cattle trespassing on Cochiti and Tesuque Tribal lands, and on and on and on. This clear pattern of administrative negligence and non-enforcement by the SFNF of the explicit provisions of the grazing permits and AOI's it issues, and a failure by this Forest to exact any penalties on permittees whose cattle persistently leave their assigned allotments (as supported by the failure of this Forest to provide any substantive documents responsive to FOIA requests for evidence of such penalties) speaks to a long-standing institutional failure on the part of the SFNF Grazing program, District Rangers, and Forest Supervisors to ensure that permittees are meeting the terms of their permits and AOI's. There is thus a continuing and seriously problematic human element of non-compliant permittees and non-enforcing Forest Service grazing program staff and upper-level Administrators who have created and continue to perpetuate a culture of negligence privileging permittees while failing to take seriously the Forest Service's legal mandates for aquatic and riparian resource protection, which culture of negligence has contributed significantly to the aquatic and riparian resource degradation that has created the need for this initiative.

On page 9, under the heading "Issue 1—Livestock Grazing" and the sub-heading "How Issue 1 is Addressed", all reference is to fencing and infrastructure. But additional fencing is essentially worthless if current fencing is not compliant with USFS standards, not checked and monitored consistently by both permittees and Forest Service staff, not repaired immediately, and if cattle are consistently on the wrong side of it for days and weeks on end, all of which is regularly the case on the SFNF. This is ultimately not a fencing failure at all, but a management failure--a gross and persisting failure by SFNF personnel to follow their own Federally mandated institutional policies regarding both monitoring and exacting penalties for non-compliant permittees, including financial penalties and forfeiture of permits. Both the breadth and the persistence of these issues have demonstrated all too clearly that the Santa Fe National Forest continually fails to comply with written Forest Service policy and fails to hold permittees responsible for cattle that leave their assigned allotments and congregate in areas in which they are not permitted, including and most often, in riparian areas where they are not permitted. The effect of this is ongoing cattle-related resource damage outside of assigned allotments not only on the Forest's own lands, but also on the lands of the neighboring Park Service, State Park Land, and Pueblos, which means that the full extent of damages to water and riparian resources by SFNF-permitted cattle actually exceed what has been measured by the the Forest, since additional damage is occurring outside of National Forest land proper.

Widespread systemic failure by the Regional Forester, the relevant Forest Supervisors, and the individual District Rangers to correct the longstanding Northern New Mexico Forest Service grazing program's culture of wink-and-a-nod non-enforcement of already existing policies on all of these Forests, which itself—and not simply fencing—is the root of most of the existing off-allotment trespass problems --will otherwise doom from the very start much of what this initiative seeks to accomplish. Failure to fully recalibrate both Forest staff monitoring expectations and permittee expectations from the Regional Forester and Supervisor levels on down will, no matter how many well-intended projects occur under this initiative, continue to keep all of these Region 3 Forests the target of continuing expensive and time consuming FOIA requests and litigation by the Center for Biological Diversity, the WildEarth Guardians, Caldera Action, and individuals like myself to correct the ongoing monitoring failures these three Forests have all been either witness or party to with respect to the Mexican Spotted Owl, the Southwestern Willow Flycatcher, and the New Mexico Meadow Jumping Mouse, among many other species. Infrastructure alone is simply insufficient and in and of itself does not count as a correction, and will not correct, the existing problems wrought by

livestock on these Forests.

Given the above, this EA needs a far more explicit and stringent monitoring and enforcement component with an explicit commitment by all three National Forests to actually upholding the terms of their own issued grazing permits, AOIs, and Allotment Plans.

4. On page 38 the draft EA, referring to the native Rio Grande Cutthroat Trout, states: "The USFWS determined in 2015 that listing under the ESA was not warranted." This assertion fails to acknowledge that in September of 2019, a federal court found that the USFWS Service's denial of ESA protections for the Rio Grande Cutthroat was arbitrary and unlawful, and that the Agency must reconsider listing under the Act.

This EA must therefore be amended to correct its current inaccurate characterization of the Rio Grande Cutthroat's ESA status, which in fact remains in process and is not in any way settled, as the draft EA implies. Furthermore, projects undertaken under this EA should be prioritized, designed, and implemented with an expectation that this ESA listing is in fact likely to occur.

5. On page 52, in reference to the Southwestern Willow Flycatcher (*Empidonax trailii extimus*), the EA refers to SWFL presence and habitat only on the Carson National Forest. However, the Bureau of Reclamation's *2017 Middle Rio Grande Southwestern Willow Flycatcher Study Results* explicitly identifies the Frijoles Reach, a section of the riparian corridor of White Rock Canyon whose east bank is included within the Santa Fe National Forest's Espanola District, as high quality SWFL habitat, as follows:

Reclamation personnel have conducted surveys in this reach, which consists of one site, annually since 2011; the reach was surveyed, in part, by other entities in 2008 and 2009. Only five territories including four unpaired males and one pair have been documented in the eight years of surveys (Table 8) and no breeding has been confirmed. Large patches of high quality SWFL habitat that receive regular flooding during higher river flows occur within this reach. Some of these patches were partially scoured during high flows recorded in 2013. While initially detrimental to habitat, this scouring event ultimately benefited habitat as deposited sediments became colonized by dense growths of native vegetation. Barring a major setback, within the next year or two, this habitat will become suitable for SWFLs and should replace suitable habitat that has begun to decline due to age. Given the abundance of suitable habitat within the Frijoles Reach, it is unknown why this reach has not become occupied by a SWFL population. Reclamation personnel have documented large numbers of migrant SWFLs within this site on early surveys only to find them gone once the resident breeding period begins. If a small number of these migrants were to establish territories within this site and breed successfully, it is likely that this reach could eventually contain a sizeable population that could act as a much needed refuge and source population.

(p. 49, Moore, D. and D. Ahlers. 2018. 2017 Middle Rio Grande Southwestern Willow Flycatcher Study Results – Selected Sites Along the Rio Grande from Bandelier National Monument to Elephant Butte Reservoir, New Mexico. Bureau of Reclamation, Technical Service Center, Fisheries and Wildlife Resources. Denver, CO)

The EA should must therefore be amended to include the Santa Fe National Forest as additional Southwestern Willow Flycatcher habitat within the proposed project area. Furthermore, since this sensitive riparian location has seen incursions and damage from cattle from the Caja del Rio allotments, from which it is not currently protected by fencing, including SFNF-permitted cattle trespassing onto the Bandelier National Monument side of the river, which is part of this same Frijoles Reach, there is a clear need for the SFNF, in cooperation with the BOR and Bandelier National Monument, to address the pressing issue of current cattle access to this SWFL habitat as part of this project.

Thank you for your attention to these details and for undertaking this vital initiative in support of aquatic and riparian-dependent species on these Forests.

Craig D. Jolly
Santa Fe, NM