June 20, 2024

Reviewing Official: Michiko Martin, Regional Forester
333 Broadway Blvd SE, Albuquerque, NM, 87102

Submitted by email to objections-southwestern-regional-office@usda.gov and via the Public Comment Form at: https://cara.fs2c.usda.gov/Public//CommentInput?Project=22692

Re: OBJECTION: Apache-Sitgreaves National Forests Public Motorized Travel Management Plan, Project #22692

Dear Ms. Martin:

The following organizations respectfully submit this objection to the May 2024 Draft Record of Decision ("ROD") for Public Motorized Travel Management Plan for the Apache-Sitgreaves National Forests. The objecting entities provided the Forest Service with substantive, specific, and timely comments regarding the Apache-Sitgreaves National Forests' Travel Management Project—including extensive comments on the Revised Draft Environmental Impact Statement (EIS), submitted on October 19, 2019—and have standing to object per 36 C.F.R. § 218.5(a). Formal notice of the objection period was published in the newspaper of record, the White Mountain Independent, on May 7, 2024, initiating a 45-day objection period ending on June 21, 2024, making this objection timely.

For the purposes of this objection, and in accordance with 36 C.F.R. § 218.5(d), the lead objector should be identified as Brian Nowicki on behalf of Center for Biological Diversity.

Project Objected To: Public Motorized Travel Management Plan for the Apache-Sitgreaves National Forest

Responsible Official and Forest/Ranger District: Robert Lever, Forest Supervisor, Apache-Sitgreaves National Forests

Interests and Participation of the Objectors

The Center for Biological Diversity is a non-profit environmental organization with more than 1.7 million members and online activists who value wilderness, biodiversity, old growth forests, and the threatened and endangered species which occur on America's spectacular public lands and waters. Our members and supporters use and enjoy the Apache-Sitgreaves National Forests for, among other things, recreation, photography, wildlife viewing, nature study, and spiritual renewal.

WildEarth Guardians is a non-profit corporation, incorporated in New Mexico, with over 179,000 members nationwide, including many members who regularly recreate on the Apache-Sitgreaves National Forests. WildEarth Guardians' primary goals include protection and restoration of endangered species and riparian and other sensitive ecosystems in the southwestern United States that have been impaired as a result of public and private actions and projects,

including excessive off-road vehicle use and other harmful recreational activities. Many members and staff of WildEarth Guardians live and/or recreate in Arizona and frequently use and enjoy, and intend to continue using and enjoying, the Apache-Sitgreaves National Forests for recreational, aesthetic, and scientific activities.

The Sierra Club is one of the oldest and most influential grassroots environmental organizations in the country. The Sierra Club's mission is "to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments." The Grand Canyon (Arizona) Chapter has more than 30,000 members and supporters in the State of Arizona who value quiet recreation and protection of the wildlife, plants, water, and soils of the Apache-Sitgreaves National Forests. Our members enjoy hiking, camping, backpacking, wildlife viewing and other activities in the Apache-Sitgreaves National Forest.

Defenders of Wildlife is a national, non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities. Defenders has a Southwest Office, located in Santa Fe, New Mexico, with staff also in Tucson, Arizona. Defenders has over a million members and supporters nationwide, including over 12,200 members and supporters in Arizona and New Mexico.

Wild Arizona's mission is to protect, unite, and restore wild lands and waters across Arizona and beyond, for the enrichment and health of all generations, and to ensure Arizona's native plants and animals a lasting home in wild nature. With our 3000 supporters, members, and volunteers, we advocate for enduring protections, special designations and conservation science-based environmental policy and planning, while cultivating stewardship, social/environmental awareness, and well-being through outdoor volunteerism, science, and education. Since 1979 through today, our organization, supporters and volunteers regularly recreate on and engage directly in conservation efforts and stewardship activities to protect and steward public lands of the Apache-Sitgreaves National Forest.

The **White Mountain Conservation League** represents over 225 local and regional members that work together to conserve our natural resources, promote a sustainable economy while protecting the White Mountains of Arizona for future generations.

INTRODUCTION AND SUMMARY

We strongly support the components of the proposed action that would reduce the impacts to sensitive and imperiled species, waterways, riparian areas, and habitat connectivity, and reduce conflicts between motorized recreation and quiet uses. We commend the obvious effort and consideration that went into the development of this FEIS, and it is apparent that the Forest Service gave serious attention to many of the issues that we identified in our previous comments. We support the proposal to limit the total number of roads open for public access and we particularly support the decision not to open roads along the San Francisco River and Blue River.

We must, however, respectfully object to the decision not to include conservation measures that would reduce impacts to important species habitat. We also must express our opposition to the opening of 158 miles of roads and 81 miles of user-created motorized trails in such an already densely roaded landscape.

Alternative 3 includes many provisions that would more effectively reduce the impacts to sensitive and imperiled species, waterways, riparian areas, and habitat connectivity, and reduce conflicts between motorized recreation and quiet uses. However, Alternative 3 is constructed in such a way that it was predetermined that the Forest Service would not select Alternative 3 as the preferred alternative and, as such, the proposed action failed to adequately consider certain components that would strengthen the Travel Management Plan and reduce its impacts in key areas. As Alternative 3 was developed explicitly to *minimize* access to dispersed camping locations and eliminate *all* motorized access for big game retrieval, it failed to adequately consider options that would substantially *reduce* these impacts with minimal reductions in access.

Specifically, the FEIS fails to adequately consider options to exclude dispersed camping in designated critical habitat and occupied habitat for protected species, to close roads within New Mexico meadow jumping mouse habitat during the summer season, to limit roads that cross waterways with impacts to Apache trout and Gila chub habitat, and to limit impacts to waterways and riparian areas within areas open to motorized big game retrieval.

The following objections are raised in this letter. All of the substantive issues raised in these objections were raised and discussed in detail in our October 29, 2019, comments to the Revised DEIS.

I. By consolidating multiple objectives into a single, combined alternative that would substantially reduce access to dispersed camping and completely eliminate motorized big game retrieval, the FEIS inappropriately constrains the analysis of individual conservation measures and, in so doing, fails to consider a reasonable range of alternatives.

II. The draft decision fails to comply with Subpart A of the Travel Management Rule that would identify a minimum road system.

III. The draft decision fails to use a proper existing condition and legal baseline in its comparison of alternatives and disclosure of impacts.

IV. The draft decision fails to comply with Subpart C of the Travel Management Rule that would designate specific areas and trails appropriate for over-snow vehicle use.

V. The FEIS fails to provide analysis sufficient to demonstrate compliance with the Travel Management Rule or meaningfully apply minimization criteria to minimize impacts to natural resources and wildlife, and to minimize conflicts among recreational uses.

    A. The Forest Service fails to minimize damage to soil, watershed, vegetation, and other forest resources.

    B. The Forest Service fails to minimize harassment of wildlife and significant disruption of wildlife habitats, including to federally protected species; and fails

to consider conservation measures that would minimize impacts to Mexican wolf, New Mexico meadow jumping mouse, Mexican spotted owl, Apache trout and Gila chub.

C. The Forest Service fails to minimize conflicts among existing and proposed recreational uses, including in designated Wilderness areas, primitive and semi-primitive non-motorized areas classified under the recreation opportunity spectrum (ROS), eligible Wild and Scenic Rivers, and specific Inventoried Roadless Area.

VI. The FEIS fails to consider measures that would mitigate the impacts of motorized big game retrieval.

VII. The draft decision violates the Roadless Rule by allowing dispersed camping in areas where it will result in the creation of unauthorized roads within Inventoried Roadless Areas.

VIII. The FEIS fails to disclose and analyze the potential impacts of the Alpine Trail OHV route currently under development, which would result in substantial cumulative effects on the trail system and national forests.

IX. Objections related to specific roads and trails.

X. The draft decision fails to adhere to the 2015 Land Management Plan for the Apache-Sitgreaves National Forests, and thereby violates the 1976 National Forest Management Act.

OBJECTIONS

I. By consolidating multiple objectives into a single, combined alternative that would substantially reduce access to dispersed camping and completely eliminate motorized big game retrieval, the FEIS inappropriately constrains the analysis of individual conservation measures and, in so doing, fails to consider a reasonable range of alternatives.

The FEIS presents Alternative 3 as a "resource protection" alternative that was developed to address three issues: 1) restricting motorized access for dispersed camping, 2) restricting motorized big game retrieval, and 3) impacts to resources from motorized use.[1] Alternative 3 would designate dispersed camping corridors along 79 miles of roads, compared to 970 miles under Alternative 2.[2] Alternative 3 would allow for motorized big game retrieval along 0 miles of roads, compared to 2,684 miles under Alternative 2. These reductions in dispersed camping corridors and motorized big game retrieval weigh heavily against the Forest Service selecting Alternative 3, completely independent of measures specifically intended to reduce the impacts to resources from motorized use.

[1] FEIS at 143.

[2] "Under alternative 3, it is estimated that approximately 1 percent of existing regularly used dispersed campsites would be accessible to motor vehicles. In other words, approximately 99 percent of those inventoried campsites would no longer be accessible using a motor vehicle." FEIS at 80.

Alternative 3 is presented as reducing roads, in part, to reduce impacts to protected species.[3] Nonetheless, Alternative 3 includes more than 2,175 miles of roads within suitable and occupied habitat for Mexican wolf, New Mexico meadow jumping mouse, Mexican spotted owl, Southwestern willow flycatcher, and yellow-billed cuckoo.[4] It is entirely unclear whether and how the route reductions are related to listed species protections. In fact, compared to Alternative 2, Alternative 3 includes *more* miles of open route within suitable or occupied habitat for Mexican spotted owl and Southwestern willow flycatcher; compared to Alternative 1—the existing condition—Alternative 3 contains exactly the same number of miles of open route within suitable or occupied habitat for New Mexico meadow jumping mouse and yellow-billed cuckoo, and only 0.1 miles less of open route within suitable or occupied habitat for southwestern willow flycatcher.

The FEIS does not disclose the total number of open road miles impacting aquatic species, nor does it disclose the total number of road-stream crossings impacting aquatic species. The FEIS discusses the number of road miles affecting *each species separately*, but does not indicate how many of these road miles are redundant among species, although the overlap is certainly great.[5] Similarly, the FEIS discusses the number of stream crossings affecting each species separately, but does not indicate how many of these stream crossings are redundant among species, although the overlap is certainly great.[6] Neither the FEIS nor the Fisheries Report identifies the total number of road miles that would need to be closed to reduce impacts to aquatic species.

By combining multiple objectives in Alternative 3, the FEIS fails to provide a meaningful analysis of potential conservation measures. Measures like closing roads in occupied habitats of threatened, endangered and sensitive species are overwhelmed and obscured by expansive closures for other reasons. As such, the FEIS inappropriately constrains the analysis of individual conservation measures and, in so doing, fails to consider a reasonable range of alternatives.

The discussion of alternatives is intended to provide a "clear basis for choice among options by the decisionmaker and the public."[7] In determining what constitutes a reasonable range of alternatives, NEPA requires that agencies "take into proper account all possible approaches to a particular project … which would alter the environmental impact and the cost-benefits balance."[8] Agencies need not prepare supplemental NEPA analysis where they select an alternative that is "qualitatively within the spectrum of alternatives that were discussed in the draft [EIS].[9]

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[3] "Alternative 3 proposes route reductions that would reduce the current level of direct impacts to these species habitats relative to the existing condition (alternative 1)." FEIS at 143.

[4] Alternative 3 contains 2201 miles of total open roads, compared to 2881 miles under Alternative 2, a difference of 24%.

[5] FEIS at 232.

[6] FEIS at 233.

[7] 40 C.F.R. § 1502.14.

[8] Alaska Wilderness Recreation & Tourism Ass'n v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995) (internal citation omitted).

[9] *Russell Country Sportsmen v. United States Forest Serv.*, 668 F.3d 1037 (9th Cir. 2011), quoting Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,035 (Mar. 23, 1981) (emphasis added).

Measures designed specifically to reduce impacts to endangered species occupied habitat and critical habitat would be much more focused than the expansive restrictions included in Alternative 3, with much more limited reductions in total miles of open road, motorized access to dispersed camping, and motorized big game retrieval. Alternative 2 includes 102 miles of open route within designated critical habitat and protected activity centers for New Mexico meadow jumping mouse, Mexican spotted owl, southwestern willow flycatcher, and yellow-billed cuckoo.[10] Closing these routes would reduce the total miles of open route in Alternative 2, the proposed action, by just 4%. Alternative 2 includes 746 acres of dispersed camping within designated critical habitat and protected activity centers for New Mexico meadow jumping mouse, Mexican spotted owl, southwestern willow flycatcher, and yellow-billed cuckoo.[11] Closing these areas to dispersed camping would reduce the total acres of dispersed camping in Alternative 2, the proposed action, by about 1%.[12] Similarly, closing routes that have the greatest impacts on aquatic species—such as stream crossings with the greatest existing impacts to aquatic habitat—would certainly involve far fewer than 680 miles of roads, the difference in total roads open in Alternative 2 versus Alternative 3.

A Ninth Circuit case, *Russell Country Sportsmen v. United States Forest Service*, provides some useful discussion of the Forest Service's authority.[13] There, the appeals court reviewed a Forest Service decision that the lower court stated adopted an alternative that "reduced total mileage open for motorized travel by nearly thirty percent beyond the most restrictive DEIS alternative."[14] The Ninth Circuit found that the district court had made a mathematical error in adding up the total mileage, and concluded instead that the "total motorized route miles permitted in the final decision fall *within* the range of alternatives discussed in the DEIS."[15] The DEIS analyzed four alternatives that designated between 1287, 1441, and 2262 miles open for motorized use, and approved an action that authorized 1366 miles of open routes.[16] The appeals court thus declined to set aside the Forest Service's choice of an alternative that selected total open road mileage that lay between several alternatives the EIS analyzed.

Similarly, here the EIS analyzed alternatives that would authorize 746 acres of dispersed camping corridor within designated critical habitat and protected activity centers (Alternative 2) or 5 acres (Alternative 3), and an action that protected critical habitat for imperiled species would authorize road mileage somewhere in between those alternatives. The Forest Service thus has the authority to choose an action that protects imperiled wildlife, and we urge it to do so.

Suggested Resolution

[10] FEIS at 141, Table 57. The number of open route miles within these critical habitat and protected activity centers may be less than 127 miles, as there may be overlap among these areas.
[11] *Id*.
[12] The FEIS does not report the total acres of dispersed camping included in Alternative 2, but it is at least 63,138 acres per the Wildlife Specialist Report at 22.
[13] 668 F.3d 1037 (9th Cir. 2011).
[14] *Id*. at 1045 (quoting district court).
[15] *Id*. at 1046 (emphasis in original).
[16] *Id*.

The FEIS should analyze an alternative that focuses on protection of threatened, endangered, and sensitive species and their habitats, reducing miles of open routes and stream crossings in critical habitat and sensitive areas with an optimal reduction in miles of open routes. In the alternative, the Forest Service should adopt in its Record of Decision, a modified version of Alternative 2 that closes routes and dispersed camping within designated critical habitat for New Mexico meadow jumping mouse, southwestern willow flycatcher, and yellow-billed cuckoo, and within protected activity centers for Mexican spotted owl, and closes routes that have stream crossings that impact aquatic habitat for listed species.

II. The draft decision fails to comply with Subpart A of the Travel Management Rule that would identify a minimum road system.

Our previous comments urged the Forest Service to include as part of the project's purpose and need the identification of the minimum road system and unneeded roads in order to comply with subpart A of the Travel Management Rule. We explained, the goal of subpart A is "to maintain an appropriately sized and environmentally sustainable road system that is responsive to ecological, economic, and social concerns."[17] We also explained that completing the Travel Analysis Process and producing the 2008 Travel Analysis Report (TAR) is not sufficient to meet subpart A mandates. Yet, the Forest Service replied to our comment stating, "The travel analysis process (TAP) was completed in 2008, and in part, identified the minimum road system needed to manage the forests."[18] Here we again remind the agency that its own internal direction clarifies that a NEPA-level decision is required to comply with subpart A.

As we explained in our comments, the Forest Service's Washington Office issued a series of directive memoranda that outline how the agency expects forests to comply with subpart A.[19] First, each forest was required to submit its TAR by September 30, 2015.[20] Next, pursuant to its own regulations and directive memoranda, the Forest Service must consider the valid portions of its TAR and begin to determine the MRS in its analysis of projects of the appropriate geographic size, subject to review under NEPA.[21] By analyzing whether a proposed project is consistent with the relevant portions of the TAR, and considering the minimum road system (MRS) factors

[17] 2012 Weldon Memo at 1 ("The national forest road system of the future must continue to provide needed access for recreation and resource management, as well as support watershed restoration and resource protection to sustain healthy ecosystems."). Exhibit 1. *See also* 66 Fed. Reg. 3206, 3207 (Jan. 12, 2001) (noting the 2001 rules "signal the shift away from development and construction of new roads to maintaining needed roads and decommissioning unneeded roads."); Memorandum from Joel Holtrop, U.S. Forest Service Washington Office, to Regional Foresters et al. (Nov. 10, 2010) (hereafter, 2010 Holtrop Memo) ("Though this process points to a smaller road system than our current one, the national forest road system of the future must provide needed access for recreation and resource management and support watershed restoration and resource protection to sustain healthy ecosystems and ecological connectivity."). Exhibit 2.

[18] FEIS Vol. 1, Appendix A at 37.

[19] 2010 Holtrop Memo; 2012 Weldon Memo; Memorandum from Leslie Weldon, U.S. Forest Service Washington Office, to Regional Foresters et al. (Dec. 17, 2013) (hereafter, 2013 Weldon Memo) (supplementing and reaffirming the 2012 Weldon Memo).

[20] *See* 2012 Weldon Memo

[21] *See* 2012 Weldon Memo at 2 (directing forests to "analyze the proposed action and alternatives in terms of whether, per 36 CFR 212.5(b)(1), the resulting [road] system is needed").

under 36 CFR 212.5(b)(1), the Forest Service expects each forest to identify the MRS for particular forest segments.[22] The ASNF cannot continue to ignore its obligations under the TMR, especially given the agency's ability to maintain its current road system.

Suggested Resolution

The Forest Service should complete a new forest-wide Travel Analysis Report to inform the identification of the minimum road system and unneeded roads, and commit to issuing a NEPA-supported decision that complies with subpart A of the Travel Management Rule, and authorizes decommissioning unneeded roads. Failure to properly disclose the direct, indirect and cumulative impacts to comply with the National Environmental Policy Act.

III. The draft decision fails to use a proper existing condition and legal baseline in its comparison of alternatives and disclosure of impacts.

The FEIS uses Alternative 1, the existing condition, as the basis of comparison of alternatives and the disclosure of impacts. The existing condition includes 3,421 of roads open to the public, dispersed camping along all open routes, and cross-country travel across all Forest Service lands outside of wilderness areas. This condition is out of compliance with the requirements of the Travel Management Rule. Furthermore, Alternative 1 does not accurately reflect the actual impacts of the existing condition, as Alternative 1 assumes impacts based on a hypothetical maximal use scenario—cross-country travel across all National Forest lands and dispersed camping along all open roads when, in reality, impacts from the existing condition differ among locations and some areas are largely inaccessible for cross-country travel and dispersed camping.

The comparison of dispersed camping corridors under Alternative 2 to cross-country travel under Alternative 1 is particularly inaccurate and misleading. Dispersed camping corridors concentrate impacts in specific areas and increase certain impacts as a result of that concentration, as various locations experience high levels of use and over an extended period of time. Cross-country travel across all open forest lands in the existing condition do not result in the same concentration of disturbance. However, by comparing the impacts of dispersed camping under Alternative 2 to the impacts of cross-country travel under Alternative 1 would have the public believe that cross-country travel results in dispersed camping at a uniform extent and intensity across the entire landscape. In such a comparison any level of dispersed camping under Alternative 2 would be a dramatic decrease from the existing condition baseline. In reality, the impacts of cross-country travel are site-specific and variable across the landscape, with some areas largely inaccessible to vehicles or undesirable for camping.

Therefore, using the existing condition as the baseline for the comparison of alternatives serves to understate and obscure the impacts of the action alternatives, by comparing the action alternatives to a maximal impact scenario that is not compliant with the Travel Management Rule. In such a comparison, even options that would significantly expand and increase impacts in

[22] *See* 2012 Weldon Memo at 2 ("The resulting decision [in a site-specific project] identifies the MRS and unneeded roads for each subwatershed or larger scale").

some areas would nonetheless appear to be a decrease in impact, as compared to the total impacts of a hypothetical maximal use scenario.

A more meaningful analysis would differentiate the legal baseline from the existing condition. In other words, to fully disclose the environmental consequences between alternatives as NEPA requires, the Forest Service must differentiate between the existing condition in its No Action Alternative and the legal baseline of system roads and trails. The CEQ recognizes the baseline and no-action alternative can, and sometimes do differ.[23] As such the analysis of the transportation system and related impacts in this project area should recognize and build on this distinction. Specifically, the agency must differentiate between the miles of national forest system roads and trails, and the network of non-system or unauthorized routes within the agency's jurisdiction. The baseline should only include the legal system and be separate from the no action that retains the existing condition with all the known unauthorized routes. Such an approach is necessary in order to fully disclose the environmental consequences of the no action alternative. Yet, by failing to include a baseline of only system roads and trails in its analysis, the Forest Service risks not properly disclosing the effects of the no-action alternative, which then skews the analysis for any action alternative.

Adding unauthorized roads and trails to the National Forest System is not a simple administrative action, and the agency cannot just assign system numbers in INFRA with the claim there are no immediate on-the-ground actions or direct effects from expanding the transportation system. While there may be no immediate effects because the unauthorized roads are part of the existing condition, the fact remains that the Forest Service must account for their potential environmental consequences separately from system roads and trails. Without differentiating between system and unauthorized roads and trails in the analysis, the Forest Service fails to adequately disclose the direct, indirect and cumulative effects to lands, water, and wildlife from adding non-system roads and trails to the system and designating them for public motorized use.

In addition, by not distinguishing between system and unauthorized roads and trails, the agency cannot properly disclose the environmental consequences from those unauthorized routes not proposed for designation, but that will still persist on the ground. Where the draft decision does not authorize their physical removal or effectively prevent motorized use, the analysis must assume these unauthorized roads and trails will continue to result in harmful environmental impacts. Here, the Forest Service failed to account for these consequences in its analysis.

The 2008 TAR recommended approximately 1,180 miles of roads designated open to motor vehicles. Compared to the recommended minimal road system alternative, Alternative 2 represents an increase of 1,701 total miles of open routes and Alternative 3 represents an increase of 1021 total miles of open routes. Furthermore, a meaningful comparison of Alternative 1 would be based on an evaluation of the actual impacts by location rather than a hypothetical maximal

[23] *See*, e.g. , Forest Service Handbook 1909.15, 14.2; Council on Environmental Quality's (CEQ) Forty Most Asked Questions (1981), #3 (explaining "[t]here are two distinct interpretations of 'no action'"; one is "'no change' from current management direction or level of management intensity," and the other is if "the proposed activity would not take place").

use scenario. Overall, by not distinguishing the legal baseline from the existing condition, the agency cannot demonstrate compliance with NEPA or the TMR's minimization criteria.

Suggested Resolution

The Forest Service should issue a revised FEIS that differentiates the existing condition from the baseline condition (using current system roads and trails or the recommended minimum road system). Such an analysis would properly disclose the direct, indirect and cumulative effects of each alternative and the baseline condition, which is necessary to demonstrate compliance with the Travel Management Rule.

IV. The draft decision fails to comply with Subpart C of the Travel Management Rule that would designate specific areas and trails appropriate for over-snow vehicle use.

In our comments to the DEIS in 2019, we recommended that the FEIS include an analysis of the use of over-snow vehicles, and that the Travel Management Plan designate specific areas and trails for over-snow vehicle use. Such analysis and designation would comply with Subpart C of the Travel Management Rule and would reduce inadvertent and unnecessary impacts to forest resources.

The FEIS declined to address this comment directly in the Response to Comments, other than stating that Subpart C of the Travel Management Rule is outside the scope of this analysis.[24] However, the EIS explicitly raises this issue and cites 36 CFR 261.13, indicating that the Travel Management Rule does not require restrictions on over-snow vehicle use.[25]

> Regulation 36 CFR 212.51(a) states that roads, motorized trails, and areas shall be designated by vehicle class and, if appropriate, by time of year by the responsible official, provided that the following vehicles and uses are exempted from these designations: (1) aircraft; (2) watercraft; (3) over-snow vehicles; (4) limited administrative use by the Forest Service; (5) use of any fire, military, emergency, or law enforcement vehicle for emergency purposes; (6) authorized use of any combat or combat support vehicle for national defense purposes; (7) law enforcement response to violations of law, including pursuit; and (8) motor vehicle use specifically authorized under a written authorization issued under Federal law or regulations...[26]

The implication here is that consideration of over-snow vehicles is specifically exempted by 36 CFR 212.51 and will be addressed in a separate planning process. However, the exemption that the Forest Service has cited (36 CFR 212.51) was superseded by a later regulatory change, which is codified at 36 CFR 212.81. As we explained in detail in our previous comments to the RDEIS, the Travel Management Rule requires each national forest unit with adequate snowfall to designate and display on an OSV use map a system of areas and routes where OSVs are

[24] FEIS, Volume 2, Response to Comments, at 38.
[25] FEIS at 2.
[26] FEIS at 2 (emphasis added).

permitted to travel, and OSV use outside the designated system is prohibited.[27] Thus, rather than allowing OSV use largely by default wherever that use is not specifically prohibited, the rule changes the paradigm to a "closed unless designated open" management regime. Forests must apply and implement the minimization criteria when designating each area and trail where OSV use is permitted.[28] Any areas where cross-country OSV use is permitted must be "discrete, specifically delineated space[s] that [are] smaller…than a Ranger District" and located to minimize resource damage and conflicts with other recreational uses.[29]

Our previous comments demonstrate the need to incorporate Subpart C compliance into this travel planning process. Specifically, improper management of OSV use continues to persist on the forest, specifically in the Alpine, Black Mesa and Springerville Ranger Districts where recreational use conflicts are common. By not including winter travel planning to generate an OSV use map, the Forest Service will:

1. continue to allow resource damage from unanalyzed and unregulated OSV use, including negative impacts to wildlife and on vegetation in low-snow areas;

2. encourage recreational use conflicts by allowing OSV use in adjacent areas meant for quiet, non-motorized winter recreation; and

3. continue delaying compliance with the TMR Subpart C.

Suggested Resolution

The Forest Service should issue a revised FEIS that discloses the impacts of over-snow vehicle use and analyze measures to mitigate those impacts.

The Travel Management Plan should include specific restrictions to over-snow vehicle use where such restrictions would mitigate impacts to wildlife, vegetation and streams.

V. The FEIS fails to provide analysis sufficient to demonstrate compliance with the Travel Management Rule or meaningfully apply minimization criteria to minimize impacts to natural resources and wildlife, and minimize conflicts among recreational uses.

In our comments to the Revised DEIS, we discussed in detail that the Forest Service must meaningfully apply the minimization criteria to show how the proposed rule located each distinct, specifically designated area and trail with the objective of minimizing impacts.[30] Proper application of the minimization criteria requires site-specific information, applied with explicit criteria to minimize resource damage and recreational use conflicts associated with each

[27] 36 C.F.R. §§ 212.81, 261.14.
[28] 36 C.F.R. §§ 212.81(d), 212.55(b).
[29] 36 C.F.R. §§ 212.1, 212.81(d), 212.55(b).
[30] Center for Biological Diversity, et al., October 29, 2019 comments to the Revised DEIS, at 14-22, 36-41.

designated trail and area.[31] Importantly, NEPA's hard look mandate requires that this information and analysis be provided to the public for review and comment prior to any decision.

In the response to our comments, the FEIS responds that the proposed rule does apply the minimization criteria.

> The Travel Management Rule provides general criteria for designating roads, trails, and areas for motorized use as well as specific criteria for designating trails, areas, and roads in 36 CFR 212.55. Section 212.55(b) outlines the minimization criteria that must be considered when designated trails and areas. These criteria were used throughout the analysis of these alternatives for each resource area. The criteria include: (1) Damage to soil, watershed, vegetation, and other forest resources; (2) Harassment of wildlife and significant disruption of wildlife habitats; (3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and (4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands...[32]

This response indicates that the FEIS uses the same approach as did the Revised DEIS with respect to the application of minimization criteria. The FEIS does not disclose how these criteria were evaluated with site-specific information to reduce site-specific impacts and user conflicts.

The Forest Service must, but failed to, "take a 'hard look' at environmental consequences" of its proposed actions.[33] The required hard look encompasses effects that are "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative."[34] This "hard look" should be explained, and the information relied upon disclosed within the FEIS. It requires a "full and fair discussion of significant environmental impacts."[35] To satisfy its substantive duty to minimize impacts, the Forest Service must apply a transparent and common-sense methodology for meaningful application of each minimization criterion to each area and trail being considered for designation. Flaws with the agency's analysis preclude its ability to demonstrate compliance with the minimization criteria. In addition, the Forest Service makes numerous assertions that the proposed action reduces the miles and areas available for motorized use throughout its analysis, implying that such reductions are sufficient to comply with the TMR. However, generalized analysis showing such reductions does not equate to compliance with the regulation. The 9th Circuit Court of Appeals address this point in its ruling regarding the 2009 Beaverhead-Deerlodge Revised Plan analysis:

> The EIS's reference to plan-wide data and general decision-making principles is inadequate under the TMR. There is nothing in the TMR, or anywhere else, that allows the Forest Service to designate multiple areas for snowmobile use on the basis of a single

[31] Center for Biological Diversity, et al., October 29, 2019, comments to the Revised DEIS, at 12-16.

[32] FEIS, Volume 2, Response to Comments, at 38.

[33] Earth Island Inst. v. U.S. Forest Serv., 351 F.3d 1291, 1300 (9th Cir. 2003); Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 348 (1989); 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.16, 1508.7, 1508.8.

[34] 40 C.F.R. § 1508.8.

[35] 40 C.F.R. § 1502.1.

> forest-wide analysis and general decisionmaking principles. Instead, the TMR requires the Forest Service to apply the minimization criteria to each area it designated for snowmobile use.[36]

Similarly, the Apache-Sitgreaves designates numerous areas for dispersed camping access and motorized big game retrieval based on a forest-wide analysis that fails to apply the minimization criteria to each of those areas. Numerous other examples exist that we detail throughout these comments demonstrating the Forest Service's analysis fails to demonstrate compliance with the TMR's minimization criteria under 36 CFR 212.55(b). The center of this failure rests with the fact that the agency failed to distinguish between roads and trails in much of its analysis, or differentiate between different motorized trail classes,[37] or separate system trails from unauthorized trails. Additionally, the Forest Service omitted any of the minimization criteria as resource indicators or measures throughout its analysis. As such, the agency cannot support its statement that "that the selected alternative is fully consistent with the Travel Management Rule, including the minimization criteria and designation of motorized access for dispersed camping and big game retrieval.

A. The Forest Service fails to minimize damage to soil, watershed, vegetation, and other forest resources.

Flaws with the agency's analysis preclude it from demonstrating specific trail and areas designations minimize damage to soils, riparian areas and watersheds in particular. In regards to soils, the Forest Service explains that "the primary soil functions evaluated are soil hydrology, soil stability and nutrient cycling, all of which are interrelated," and that "soil condition is categorized by four classes: satisfactory, impaired, unsatisfactory and inherently unstable.[38] The agency also states that "Erosion hazard is predicted on the bases of relative susceptibility to erosion up removal of vegetation and litter. Three classes are used Slight, Moderate, and Severe."[39] Yet, looking at the resource indicators for soil conditions, the Forest Service failed to calculate the miles of motorized trails that would be designated under each alternative that occur within the four soil condition classes. In other words, the analysis fails to disclose how many miles of system trails are designated in areas with inherently unstable soils, or the miles of unauthorized trails designated in areas with moderate or severe erosion hazard ratings. Rather, the agency simply states "the effects of motorized routes are described in the Effects of Existing Routes Common to All Alternatives section, and they apply to this alternative."[40] We do note that the Forest discloses acres under the proposed action that would be designated in these areas, but that fails to address the specific trail designations. Further, the Forest Service provides these acres separately from those designated for dispersed camping access and motorized big game retrieval. In other words, the section dedicated to disclosing soil impacts from motorized trails is

[36] WildEarth Guardians, 790 F.3d at 930.
[37] *See* FSH 2309.18 – TRAILS MANAGEMENT HANDBOOK CHAPTER 20 – TRAIL DEVELOPMENT
[38] FEIS, Soils, Riparian and Water Resources Report at 8.
[39] *Id.* at 9.
[40] *Id.* at 27.

measured in acres, not miles. And those acres are in addition to the other area designations. Here we must remind the agency that simply disclosing information fails to demonstrate how the proposed action actually minimizes soil damage. This is especially problematic since the Forest Service explains that Alternative 3 has fewer acres with designated routes than the other alternatives, but omits how the proposed action is the better choice for complying with the TMR.

The lack of analysis is further compounded by the fact that "Existing roads and trails serve as a conduit by capturing and delivering sediment into connected stream courses, and pairing water quality from a suspended sediment standpoint. Soils with moderate erosion are also at risk for accelerated erosion and sediment delivery but to a lesser magnitude than soils with severe erosion hazard." [41] Yet, the Forest Service never attempted to quantify the amount of stream sedimentation that could occur from the motorized designations, even though it has tools such as the Watershed Erosion Prediction Project and GRAIP-lite models that it routinely uses for this analysis.[42]

The lack of analysis is especially problematic when considering the impacts motorized use will have on fish-occupied streams, particularly for threatened and endangered species. The Forest Service provided a specific Aquatics/Fisheries Report meant to disclose impacts to fish and riparian-dependent species, but here the agency failed to provide sufficient analysis to demonstrate how selection of Alternative 2 complies with the minimization criteria. Although this report did differentiate between roads and motorized trails, it did so only for the action alternatives, and not for the existing condition. Specifically, the agency disclosed that "Currently, there are 3,484 miles of open roads and motorized trails on the ASNFs. There are approximately an additional 3,344 miles of closed roads, and many miles of user-created roads that have not been inventoried."[43] Combining open roads and motorized trails into one category precludes the public's ability to compare the total miles of roads and motorized trails among each alternative.

Additionally, the Forest Service failed to distinguish between roads and trails in its actual analysis, rather it simply combined them into "routes."[44] The agency further compounds its inadequate analysis by only disclosing changes to the existing condition, which fails to account for the total miles of roads and trails. For example, looking at the endangered LCR spinedace, the proposed action would result in 8.4 miles of open routes directly affecting its habitat, a decrease of 1.6 miles representing a 16% fewer miles compared to the existing condition.[45] The analysis fails to disclose if any routes are actually motorized trails, a distinction necessary to show compliance with the TMR. Further, the analysis fails to explain if the decrease will actually contribute to the recovery of the endangered species. Most glaringly, the Forest Service fails to include the total miles of road and trails that could be affecting the LCR spinedance habitat, instead only disclosing the open routes. The omission is significant given the agency's own acknowledgement:

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[41] FEIS, Soils, Riparian and Water Resources Report at 21.

[42] *See* https://www.fs.usda.gov/rm/boise/AWAE/projects/water_erosion_prediction_project.shtml, and https://www.fs.usda.gov/research/rmrs/projects/graiplite (last accessed 6/17/2024).

[43] FEIS, Aquatics/Fisheries Report at 9.

[44] *Id.* at 16-17, Tables 8 and 9.

[45] *Id*. at 16, Table 8.

> For most roads, the removal of motorized vehicle use will result in less fine sediment delivered to the stream and aquatic habitat. However, a closed road will continue to have impacts on the stream and aquatic ecosystem; and total road densities and impacts will not decrease until routes are decommissioned, allowing vegetation to establish and the restoration of hydrologic features.[46]

Further, the analysis fails to disclose the miles of road and trails or their densities within stream buffer zones of fish occupied streams or the amount of sediment that could be delivered to those streams. Rather, the Forest Service asserts that stream crossings serve as a proxy for sedimentation: " High levels of fine sediments in streams are highly correlated with road crossings."[47] The agency then continues to only disclose changes to the number of stream crossing under each action alternative without explaining how this correlation adequately accounts for indirect sedimentation of each aquatic species' habitat. The Forest Service explains that "Indirect impacts occur similarly to the way direct impacts occur, although they occur on tributaries and drainages that flow into aquatic habitats; primarily resulting in increases in sedimentation and alterations of water quality downstream into occupied habitat."[48] Here the agency seems to assert that drainageways that flow into aquatic habitats only occur where routes cross streams, yet, every time it rains, sediment from the road surface and from cut-and fill-slopes is picked up by rainwater that flows into and on roads (fluvial erosion). The sediment that is entrained in surface flows are often concentrated into road ditches and culverts and directed into streams, which do not always occur where the road or motorized trail directly cross the stream.[49] Drainageways can direct surface flows away from the road and still reach streams separate from crossings. Further, indirect sedimentation can result within close proximity to streams, especially where the riparian zone lacks sufficient vegetation. "While indirect impacts may not be distinguishable from other impacts across the landscape, they cannot be discounted; as they are both short and long term, and chronic sources of sediment and altered hydrologic conditions that will remain as long as roads and motorized travel continues."[50]

The flaws we note above for soils and aquatic/fisheries also extend to the watersheds analysis, which are even more egregious. The agency relied on the 2011 Watershed Condition Framework (WCF) to conduct its analysis, and specifically select indicators described in the Watershed Condition Class Technical Guide (WCC).[51] We provide a detailed review of the WCF and WCC to explain some benefits and limitations of this approach.[52] Used properly, the WCF and WCC can provide sufficient information and a basis for detailed analysis, but as it stands, the Forest Service must better utilize these tools and provide more detailed information as we explained above. Fundamentally, the Forest Service selected inadequate measures to analyze impacts to watershed conditions. Notably, the agency selected three resource indicators to determine direct and indirect impacts resulting from each alternative: road density, proximity to water, and the

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[46] *Id.* at 16.
[47] *Id.* at 17.
[48] *Id.*
[49] Environmental Consequences of Forest Roads - WildEarth Guardians - March 2020. Exhibit 3.
[50] FEIS, Aquatics/Fisheries Report at 10.
[51] FEIS, Watershed Report at 10.
[52] *See* WCPR 2011 Policy Primer Watershed Condition Framework Synopsis and Review. Exhibit 4.

road and trail indicator, which includes the previous two indicators.[53] The Forest Service explains, "Only a few indicators with the WCF are directly relevant to this analysis. These include the Road Density and Proximity to Water Indicators which are included within the Terrestrial Physical Roads and Trails Attribute rating."[54] It appears there is some confusion with this statement as the Road and Trail Indicator consists of rankings from four specific attributes: open road density, proximity to water, road and trail maintenance and mass wasting.[55] We recognize the Forest Service acknowledges these attributes as part of the Road and Trail Indicator later in its report,[56] yet other misunderstandings persist throughout the analysis. Specifically, the agency fails to incorporate the full definition of open roads stating, "The WCF framework Road and Trail Indicator only includes evaluation of open road density. Therefore, road density calculations do not include system roads that are closed and in storage, or administratively closed roads."[57] In actuality, the WCC uses a much more expansive definition of open roads that should have been adopted in the FEIS:

> the term "road" is broadly defined to include roads and all lineal features on the landscape that typically influence watershed processes and conditions in a manner similar to roads. Roads, therefore, include Forest Service system roads (paved or nonpaved) and any temporary roads (skid trails, legacy roads) not closed or decommissioned, including private roads in these categories. Other linear features that might be included based on their prevalence or impact in a local area are motorized (off-road vehicle, all-terrain vehicle) and nonmotorized (recreational) trails and linear features, such as railroads. Properly closed roads should be hydrologically disconnected from the stream network. If roads have a closure order but are still contributing to hydrological damage they should be considered open for the purposes of road density calculations.[58]

As we already explained, the Forest Service must differentiate between different types of trails, and consider both open and closed roads and trails in its watershed analysis, especially where unauthorized motorized use persists on closed, stored and non-system roads and trails. In addition, it is important to note that though the Forest Service included the Road and Trail Indicator as a Resource Indicator, the analysis omitted mass wasting and maintenance attributes. The agency offers no rationale for omitting road and trail maintenance, and arbitrarily dismissed mass wasting as significant asserting that

> The 2010 Watershed Condition Classification effort yielded very few watersheds where mass wasting played a major role in influencing watershed condition as very little of it occurs on the Apache-Sitgreaves National Forests because the majority of the landforms and geology on the forest are not prone to mass wasting processes.[59]

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[53] FEIS, Watershed Report at 8, Table 1.
[54] *Id.* at 11.
[55] WCC at 26
[56] FEIS, Watershed Report at 17.
[57] *Id.* at 19.
[58] WCC at 26.
[59] FEIS, Watershed Report at 19.

Yet, under the proposed action where specific roads and trails would be designated for motorized use, "there are a total of 4,546 acres of disturbed ground associated with the proposed motorized routes. Of these total acres, 1,588 acres are located on soils with moderate or severe erosion hazard ratings and 134 acres are located on soils with unsatisfactory or inherently unstable soil condition ratings."[60] In other words, there is an apparent contradiction between the claim that the forest is not prone to mass wasting and the presence of inherently unstable soil conditions on specific roads and trails.

Looking again at how the Forest Service utilized the WCF, it is clear that only two Road and Trail indicators were used to analyze watershed conditions under each alternative: the arbitrarily narrowed definition of open road density and proximity to water. And the agency showed it used these two attributes to measure the "# of watersheds with good, fair and poor attribute class."[61] Yet, the Forest Service did not actually disclose the number of watersheds, instead disclosing only percents: "The Road and Trail Indicator class which is partially dependent on the Road Density and Proximity to Water Attributes was found to be 'poor', 'fair', and 'good' in 5%, 83%, and 12%, of all subwatersheds, respectively."[62] Worth noting is the fact that the analysis never actually discloses how the WCC scores would change for the Road and Trail Indicator under each action alternative. We recognize that the Forest Service does list the overall densities of open road and ATV trails for each category of watershed function (properly, at risk and impaired), but the agency failed to explain how the change in these densities will comply with the minimization criteria under the TMR.[63] The omission is glaring when looking at the ATV trails where under the proposed action the density of designated trails in impaired watersheds actually increases from 0.04 to 0.14 mi/mi^2. Further, this number includes all impaired subwatersheds so it is impossible to know if there are certain ones where the density increases above the averaged calculation. Additionally, the Forest Service fails to disclose the miles or density of road and motorized trail within 300 ft of water (proximity to water attribute). Rather, the agency only reports overall percentages: "For the road proximity to streams attribute, twenty two percent of subwatersheds received a 'good' rating, 78 percent of a 'fair' rating, and zero percent of watersheds a poor rating."[64] Again, this does little to disclose how the proposed action would actually affect this important attribute, and omits any discussion of how the trail designations within the 300 ft zone complies with the minimization criteria. In fact, the agency discloses that under the existing condition 85 percent of watersheds received a 'fair' rating, and there were no watersheds with a 'poor' rating.[65] Comparing this with the proposed action, there would be an overall increase in the number of roads and trails designated within subwatersheds with only a "fair" rating for this attribute, and there is no discussion about how this affects the overall Road and Trail Indicator score, let alone how increasing the designations minimizes damage to within the 300 ft stream proximity.

[60] FEIS, Soils, Riparian and Water Resources Report at 27.
[61] FEIS, Watershed Report at 8, Table 1.
[62] *Id.* at 24.
[63] *Id.* at Appendix C.
[64] *Id.* at 24.
[65] *Id.* at 22.

In addition to these fatal flaws with the analysis methods and disclosures, the Forest Service relegated numerous indirect impacts to its cumulative effects analysis. These include open road density where the measure is actual density, instead of percent, or the number of acres designated for motorized dispersed camping access and big game retrieval, among others.[66] These are not cumulative effects to watershed conditions, but rather direct impacts with indirect effects as well. Moreover, we noted above that there is no actual sedimentation modeling for the total motorized trails and roads under each alternative, and therefore the agency cannot assert compliance with the Clean Water Act for those streams that have TMDLs for turbidity, (which sediment pulses can exacerbate). This includes the 8.1 miles along the Little Colorado River and the 5.9 miles along Nutrioso Creek.[67] We mention this omission here since the WCF includes a water quality indicator that is not considered as a direct or indirect effect, and only mentioned as a cumulative impact. But even here, the agency arbitrarily considers stream crossings as potential sediment sources.

The above discussion is hardly exhaustive, with numerous other examples of where the agency failed to properly analyze soils, watershed, vegetation, and other forest resources, which precludes its ability to demonstrate compliance with the TMR's minimization criteria. Further, the analysis failures also preclude any assertion that biological assessments for fish and aquatic species are sufficient to demonstrate compliance with the Endangered Species Act, or to show how the agency will comply with Arizona water quality standards and antidegradation rules necessary to comply with the Clean Water Act.

B. The FEIS Fails to minimize impacts to federally protected species, and fails to consider conservation measures that would minimize impacts to Mexican wolf, New Mexico meadow jumping mouse, Mexican spotted owl, Apache trout and Gila chub.

Mexican wolf.

In our previous comments to the Revised DEIS, we discussed the need for the FEIS to ensure that specific trail and area designations minimize harassment of wildlife and significant disruption of wildlife habitats, including for Mexican wolf, as an additional substantive duty separate from the agency's obligation to ensure compliance with the Endangered Species Act.[68] With respect to wolves, this would involve a route-specific analysis of potential impacts to wolf habitat, movement corridors, existing and potential denning sites.

Alternative 2 includes 2,428 miles of open route and 63,138 acres open to dispersed camping in wolf habitat.[69] There is no indication that the FEIS or Wildlife Report included an analysis of trail-specific impacts to minimize harassment of wolves.

New Mexico meadow jumping mouse.

[66] FEIS, Watershed Report at 8, Table 1.

[67] FEIS, Soils, Riparian and Water Resources Report at 19, Table 5.

[68] Center for Biological Diversity, et al., October 29, 2019 comments to the Revised DEIS, at 17.

[69] Wildlife specialist report at 18.

In our previous comments to the Revised DEIS, we recommended that the Travel Management Plan avoid opening any new roads or designating trails in New Mexico meadow jumping mouse critical habitat, as well as designating areas for dispersed camping and motorized big-game retrieval. [70] The FEIS declined to respond directly to our previous comments regarding impacts to New Mexico meadow jumping mouse, but Alternative 2, the proposed action, would include dispersed camping on 34 acres of occupied habitat, and motorized big game retrieval on 1,656 acres of occupied habitat.[71]

Mexican spotted owl.

In our comments to the Revised DEIS, we recommended that, to mitigate impacts to Mexican spotted owl, the Travel Management Plan should implement seasonal closures during the breeding and nesting season (March 1 through August 31) for roads and trails within occupied PACs; in the absence of seasonal closures, the proposed action should not designate any new roads and trails within PACs.[72] In addition, the Forest Service must better explain how the proposed trail and area designations within PACs adhere to the TMR's requirement to minimize wildlife harassment and significant disruption of wildlife habitat. Absent a robust demonstration of meeting this requirement, any assertion by the Forest Service that the proposed action complies with the TMR would be arbitrary and capricious. Here, we also remind the agency that requirements under the TMR are wholly separate from ESA compliance where the latter provides for incidental take, and the former does not. Of particular concern are the seven trail additions within PACs under the proposed action.[73] We appreciate these additions include the seasonal protections we called for in our comments, but we question expanding motorized trail access without demonstrating the Forest Service can effectively enforce these seasonal protections. As such, part of ensuring compliance with the TMR requires generating a detailed monitoring and enforcement plan as part of the final decision detailing strategies and tactics the agency will utilize to maximize compliance with the travel plan.

Alternative 2 includes 83 miles of open roads and trails, and approximately 1,943 acres of dispersed camping corridors within Mexican spotted owl PACs; Alternative 2 would add both new roads and trails with new camping corridors within six PACs.[74] At the same time, the FEIS includes additional analysis of all road sections through Mexican spotted owl PACs, and proposes seasonal closure (or remain closed) for all but the shortest road sections.[75] The FEIS does not explain whether this analysis is based solely on road length or on other aspects such as proximity to nest core, location within the PAC, and topography, nor does the FEIS indicate whether the impacts of the roads and trails were evaluated and determined to be inconsequential.

Apache trout and Gila chub.

[70] Center for Biological Diversity, et al., October 29, 2019 comments to the Revised DEIS, at 19.
[71] Wildlife specialist report at 19.
[72] Center for Biological Diversity, et al., October 29, 2019 comments to the Revised DEIS, at 21.
[73] Wildlife specialist report at 25, Table 15.
[74] Wildlife specialist report at 25.
[75] FEIS at 149, Table 66.

In our comments to the Revised DEIS, we recommended that, to mitigate impacts to Apache trout and Gila chub, the Travel Management Plan close more routes along the Blue River and San Francisco Rivers Complex.[76] The FEIS proposes no changes to roads along Blue River, Eagle Creek, and San Francisco River.[77]

C. The FEIS fails to minimize conflicts among recreational uses, including designated Wilderness areas, primitive and semi-primitive nonmotorized areas classified under the recreation opportunity spectrum (ROS), eligible Wild and Scenic Rivers, and specific Inventoried Roadless Area.

In our comments to the Revised DEIS, we recommended that the Travel Management Plan close more routes along the Blue River and San Francisco Rivers Complex, as well as in Important Bird Areas.[78] The San Francisco River is Impaired and is also critical habitat for the endangered spikedace and loach minnow. The San Francisco River is also eligible for Wild and Scenic designation and part of an Audubon Important Bird Area. Southwestern willow flycatchers have nested at a site near the San Francisco headwaters and 1,327 acres of critical habitat for yellow-billed cuckoo has been proposed along the San Francisco River. [79]

According to the FEIS, "Roads along the Blue River, Eagle Creek, and San Francisco River have had considerable negative impacts to the fish species and populations within these drainages, along with the associated riparian habitat and corridors. The endangered loach minnow and spikedace populations have likely been impacted the greatest in these areas, along with the Gila and roundtail chubs."[80]

We support the removal of NFS Road 212 from the San Francisco River between Martinez Ranch and the Forest Service boundary. However, the FEIS proposes no changes to roads along Blue River, Eagle Creek, and San Francisco River.[81] Alternative 2, the proposed action, includes 63.86 miles of motorized routes within eligible and suitable wild and scenic river corridors.[82]

Suggested Resolution

The Forest Service should issue a revised FEIS that provides to the public the site-specific information that was applied to individual trails and areas, resulting in site-specific reductions in impacts and conflicts among uses.

The FEIS should analyze measures that reduce impacts to threatened, endangered and sensitive species and their habitats, closing routes and dispersed camping within designated critical habitat for New Mexico meadow jumping mouse, Southwestern willow flycatcher, and yellow-billed cuckoo, and within protected activity centers for

[76] Center for Biological Diversity, et al., October 29, 2019 comments to the Revised DEIS, at 29.
[77] FEIS at 155.
[78] Center for Biological Diversity, et al., October 29, 2019 comments to the Revised DEIS, at 29.
[79] Center for Biological Diversity, et al., October 29, 2019 comments to the Revised DEIS, at 29.
[80] FEIS at 215.
[81] FEIS at 155.
[82] FEIS at 84.

Mexican spotted owl, and closing routes that have stream crossings that impact aquatic habitat for listed species.

The FEIS should disclose and analyze the impacts of all routes within the Blue and San Francisco Rivers complex and all Important Bird Areas for the impacts to sensitive species habitat, the eligibility of Wild and Scenic Rivers, and Important Bird Areas.

The FEIS should consider and analyze measures to reduce impacts to areas eligible for Wild and Scenic Rivers designation and Important Bird Areas. Specifically, the FEIS should consider closures or seasonal closures within these areas.

VI. The FEIS fails to consider measures that would mitigate the impacts of motorized big game retrieval.

In our previous comments to the Revised DEIS, we recommended that the Travel Management Plan include restrictions on motorized big game retrieval in order to protect resources within the expansive areas opened to MBGR. As an example, we listed several MBGR restrictions implemented in the Williams Ranger District on the Kaibab National Forest:

> Only one vehicle (one trip in and one trip out) would be allowed for MBGR per harvested animal.
>
> Hunters must use the most direct and least ground disturbing route in and out of the area.
>
> MBGR is not allowed when conditions are such that travel would cause damage to natural or cultural resources (such as during wet weather events).
>
> Motorized vehicles would not be allowed to cross riparian areas, streams, and rivers except at hardened crossings or crossings with existing culverts. [83]

In the response to comments, the FEIS rejected these recommendations, stating that the one-mile distance is consistent with national forests adjacent to the Apache-Sitgreaves.[84] By rejecting the listed restrictions to MBGR without analyzing their effects, the FEIS fails to consider and analyze measures to mitigate impacts to resources, including impacts to sensitive and protect species and their habitats, violating NEPA. As the U.S. Supreme Court has explained, "omission of a reasonably complete discussion of possible mitigation measures would undermine the 'action forcing' function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects."[85] The Forest Service's summary dismissal of the proposed mitigation measures, which the agency has adopted elsewhere, is not the "reasonably complete" discussion the Supreme Court mandated.

<u>Suggested Resolution</u>

The Forest Service should issue a revised FEIS that analyzes measures to mitigate the impacts of motorized big game retrieval to resources within areas open to MBGR. As

[83] Center for Biological Diversity, et al., October 29, 2019 comments to the Revised DEIS, at 39.

[84] FEIS, Volume 2, Response to Comments, at 27.

[85] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989).

examples, we recommend the following restrictions, already adopted for use on the Kaibab National Forest.

> Only one vehicle (one trip in and one trip out) would be allowed for MBGR per harvested animal.
>
> Hunters must use the most direct and least ground disturbing route in and out of the area.
>
> MBGR is not allowed when conditions are such that travel would cause damage to natural or cultural resources (such as during wet weather events).
>
> Motorized vehicles would not be allowed to cross riparian areas, streams, and rivers except at hardened crossings or crossings with existing culverts.

At a minimum, the Forest Service must provide a reasoned explanation for rejecting these measures, which the Final EIS failed to do.

VII. The draft decision violates the Roadless Rule by allowing dispersed camping in areas where it will result in the creation of unauthorized roads within Inventoried Roadless Areas.

Alternative 2 permits dispersed camping along roads that border Inventoried Roadless Areas. Where camping is permitted on the side of the road facing the IRA, the proliferation of user-created roads to reach camping sites would extend into the IRA, diminishing the roadless character of the IRA.

Furthermore, the proposed travel management maps do not display the location of dispersed camping corridors in relation to Inventoried Roadless Areas in a way that would allow the public to understand the potential impacts, including the potential acreage of their extent. These concerns were presented at length and in substantial detail in our previous comments on the RDEIR.[86]

Suggested Resolution

Dispersed camping corridors that border Inventoried Roadless Areas should limit vehicle access to the side of the road outside of the IRA.

The FEIS should provide a map that clearly delineates the Inventoried Roadless Areas and identifies camping corridors in relation to the IRAs.

VIII. The FEIS fails to disclose and analyze the potential impacts of the Alpine Trail OHV route currently under development, which would result in substantial cumulative effects on the trail system and national forests.

[86] Center for Biological Diversity, et al., October 29, 2019, comments to the Revised DEIS.

On August 8, 2023, the Apache-Sitgreaves National Forests hosted an open house discussion on a proposal to establish a motorized OHV trail through National Forest lands and routes, between Payson, AZ, and Hannagan Meadow, approximately 700 to 800 miles long.[87] The fact sheet for the Arizona Alpine Trail states that the proposed location of the trail is "primarily" on existing motorized trails and forest roads on the Tonto, Coconino and Apache-Sitgreaves National Forests, and that "new routes that will be added will go through the NEPA process."

The designation of a specific, named OHV trail is reasonably expected to result in a significant increase in use, with associated impacts such as illegal off-trail vehicle travel, trash, noise, and impacts to wildlife. The impacts of this active proposal should be disclosed and considered in the cumulative effects analysis.

Suggested Resolution

The impacts of the Alpine Trail OHV route should be disclosed and considered in the cumulative effects analysis for the Travel Management Plan.

IX. Objections related to specific roads and trails.

There are some discrepancies between the geodatabase files provided on the project web site and the maps posted on May 23, 2024, with respect to specific route designations. Specifically, the geodatabase map indicates that NFR 3150, 4014, 4688, 5101, and 5491 are open, and the May 23 map book indicates that these roads are closed. We support closing these roads.

We understand that the May 23 maps are intended to represent the most recent and correct version of the Travel Management Plan.[88] If there are discrepancies between the two versions, we expect the map book to be the more accurate of the two sources. We identify these discrepancies here to ensure that our understanding is correct regarding the status of each of these roads, and to ensure that the status is correctly identified in the motor vehicle use map.

Other objections related to specific roads and trails.

FR 8432 - In Alternative 2, this road is designated ML2. It follows and is frequently crossed over by the drainage for that area (see pictures) that feeds into Colter Creek.

[87] August 29, 2023 fact sheet on the Arizona Alpine Trail, by the Apache-Sitgreaves National Forests and Arizona Alpine Trail, Inc. Available at https://azalpinetrail.org/alpine-open-house-meeting/. Exhibit 5.
[88] Personal communication with Scott Grunder, June 11, 2024.

Colter Creek is the source of water for a number of Norviel Decree water permit holders in Nutrioso. This road is used for service by Alpine Fire Department and a local internet service provided, and may be used to provide access to a grazing permit holder. Motorized vehicle use is resulting in extensive rutting, damaging riparian areas and reducing water quality.

FR 81A - In Alternative 2, this road is designated ML2. This road is in the Auger Canyon area of Nutrioso that has seen heavy ATV damage.

81A comes very close to an occupied residential area multiple times, and if used by ATVs, will create noise and dust, disrupting the quiet nature of the neighborhood. It also is the access point for multiple closed roads in an area already dealing with heavy ATV damage. There is an increasing proliferation of unauthorized user-created motorized trails along 81A, and particularly from the end of the spur road.

ATV28 - In Alternative 2, this road is designated ATV. At the SE end of this road (at 88R, see picture) is Colter Creek.

Colter Creek is the source of water for a number of Norviel Decree water permit holders in Nutrioso. Due to the sensitive nature of riparian areas and the dependence on clear water for T&E species, the termination of the ATV28 road at 88R needs to have a physical barrier to keep ATV operators from driving across the creek, or ATV28 should be closed.

ATV33 - In Alternative 2, this new road is designated ATV. At the northern end it crosses the Red Hole Draw, an area known for a denning site used by the threatened Mexican gray wolf and a drainage that feeds into Colter Creek. This road should be closed to reduce impacts to the riparian areas and protected species habitat, and water quality in Colter Creek, which provides water for the town of Nutrioso. If the USFS isn't able to physically close ATV 33 to halt further impacts, the USFS should close roads FR287 and ATV28, which provide access to ATV33.

88B, 581 and **586** - In Alternative 2, these roads are designated ML2. Seasonally, these roads both pass through vernal pools and marshy wetlands, important to wildlife. They should be closed seasonally. Picture shows the extent of damage from a user-created camping spur off 88B.

FR 8067 - In Alternative 2, this road is designated ML2. This road comes very close to an occupied residential area in multiple places. OHV use creates noise and dust, disrupting the quiet

nature of the Tal-Wi-Wi neighborhood, which sources its drinking water from springs in the area. Additionally, this road crosses over multiple drainages. Previously used by the permit holder to access the pastures, this is a popular hiking route for residents of Alpine and Nutrioso. Motorized vehicle use is resulting in extensive rutting, damaging riparian areas and reducing water quality.

FR 8249 - In Alternative 2, this road is designated ML2. In recent years this road has become severely damaged by motor vehicle traffic and is now almost impassible.

FR 8249S - In Alternative 2, this road is designated ML2. This road comes very close to an occupied residential area, and if used by ATVs, will create noise and dust, disrupting the quiet nature of the Alpine Divide neighborhood. In recent years it has become extremely damaged by motor vehicle traffic and is almost impassible. It is also the access point for multiple closed roads in the area.

ATV Trail 26 - ATV Trail 26 is a recently created user-created trail that was not identified in earlier maps. This is a short spur road that climbs through very steep and rough terrain, resulting in increasing damage in two drainages, including one with a spring-fed creek running through it. There is a proliferation of unauthorized user-created trails from this spur.

FR 8065 and FR 8066 - FR 8065 is causing damage and siltation within a creek and the surrounding riparian meadow, and is resulting in a proliferation of unauthorized user-created motorized trails along the creek and in the talus slopes at the end of the road. FR 8066 is in extreme disrepair and is resulting in high levels of erosion and sedimentation into the nearby creek.

FR 88S - FR 88S traverses the Wallow Fire burn area and is resulting in erosion and sedimentation into Colter Creek and other creeks. FR 88S also provides motorized access to OD Ridge, resulting in disturbance to the deer, elk, and bighorn sheep herds that use OD Ridge as a refuge.

FR 8855 - FR 8855 is a user-created road that provides unauthorized access to the Williams Valley Non-Motorized Area and is resulting in a proliferation of unauthorized access and trails into the non-motorized area.

Suggested Resolution

Confirm that the draft decision identifies the status of NFR 3150, 4014, 4688, 5101, and 5491 as closed, and that status is correctly identified in the final maps.

Evaluate FR 8432, FR 81A, ATV 28, ATV 33, FR 88B, FR 581, FR 586, FR 8067, FR 8249, FR 8249S, ATV 26, FR 8855, FR 88S, FR 8065, and FR 8066 for ongoing impacts and unauthorized user-created trails, and for closure to public access to protect the resources.

X. The draft decision fails to adhere to the 2015 Land Management Plan for the Apache-Sitgreaves National Forests, and thereby violates the 1976 National Forest Management Act.

The Apache-Sitgreaves National Forests Land and Resource Management Plan sets the objectives of annually maintaining at least 20 percent of the passenger vehicle roads, 10 percent of the high-clearance vehicle roads, and at least 20 percent of NFS motorized trails. Forest Plan at 75.

The FEIS states that maintenance costs for the road system under Alternative 2 would be $6.48 million, while the Forests' annual roads maintenance budget averages $1.41 million. FEIS at 35 and 36. The FEIS does not explain how the preferred alternative would address the gap between the funding needed to maintain a sustainable road system, and the funding that is budgeted. Instead, the FEIS states that "*Even though current funding levels may not support fully maintaining all NFS roads, the economic comparison of alternatives assumes all designated NFS roads would be fully maintained*." FEIS at 38. The FEIS does not explain how the assumption of full maintenance will be satisfied.

While no figure for deferred maintenance is given in the FEIS, the 2010 DEIS (at 39) listed the deferred maintenance level at over $52.5 million. None of the alternatives presented in the FEIS address this lack of needed maintenance.

The Forest Plan sets the objective that "[new] roads, motorized trails, or designated motorized areas should be located to avoid meadows, wetlands, seeps, springs, riparian areas, stream bottoms…" Forest Plan at 76. However, Alternative 2, the proposed action, includes dispersed camping on 34 acres of New Mexico meadow jumping mouse occupied habitat, and motorized big game retrieval on 1,656 acres of occupied habitat, which is centered on riparian areas. Wildlife report at 19.

The Forest Plan sets the objective that "[new] roads or motorized trails should be located to avoid Mexican spotted owl protected activity centers, northern goshawk post-fledging family areas, and other wildlife areas as identified; seasonal restrictions may be an option." Forest Plan at 76. However, Alternative 2 would add both new routes with new camping corridors within six PACs. Wildlife Specialist Report at 28.

The Forest Plan sets the guideline that "[roads] and motorized trails should be designed and located so as to not impede terrestrial and aquatic species movement and connectivity." Forest Plan at 76. However, Alternative 2 includes no changes to roads along Blue River, Eagle Creek, and San Francisco River to mitigate impacts to Apache trout and Gila chub.[89]

<u>Suggested Resolution</u>

The FEIS should include an actionable plan for annually maintaining at least 20 percent of the passenger vehicle roads, 10 percent of the high-clearance vehicle roads, and at least

[89] FEIS at 155.

20 percent of NFS motorized trails, and addressing deferred maintenance, to comply with the Forest Plan.

The draft decision should be revised to ensure that new roads, motorized trails, and designated motorized areas are located to avoid meadows, wetlands, seeps, springs, riparian areas, and stream bottoms, to comply with the Forest Plan.

The draft decision should be revised to ensure that roads or motorized trails should be located to avoid Mexican spotted owl protected activity centers, northern goshawk post-fledging family areas, and other wildlife areas, and that roads and motorized trails should be designed and located so as to not impede terrestrial and aquatic species movement and connectivity, to comply with the Forest Plan.

CONCLUSION

We strongly support the components of the proposed action that would reduce the impacts to sensitive and imperiled species, waterways, riparian areas, habitat connectivity, and reduce conflicts between motorized recreation and quiet uses. We must, however, respectfully object to the decision not to include conservation measures that would reduce impacts to important species habitat.

We request a meeting to discuss potential resolution of issues raised in this objection, pursuant to 36 C.F.R. § 218.11(a). We hope that the Forest Service will use the objection process and such a meeting as opportunities to engage with stakeholders, including the objectors here, to develop a project that is legally and ecologically sound.

Sincerely,

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Exhibits

Exhibit 1. Memorandum from Leslie Weldon, U.S. Forest Service Washington Office, to Regional Foresters et al. (Dec. 17, 2013)

Exhibit 2. Memorandum from Joel Holtrop, U.S. Forest Service Washington Office, to Regional Foresters et al. (Nov. 10, 2010).

Exhibit 3. WildEarth Guardians, Environmental Consequences of Forest Roads, March 2020.

Exhibit 4. WildEarth Guardians, Watershed Condition Framework Synopsis and Review, 2011.

Exhibit 5. Fact sheet on the Arizona Alpine Trail, from the Apache-Sitgreaves National Forests and Arizona Alpine Trail, Inc. (August 29, 2023).