REGION 8
DENVER, CO 80202

August 5, 2024

Ref: 8EJC-NE

Heather Noel, Acting Forest Supervisor
White River National Forest
c/o Jamie Werner
Attn: Sweetwater Lake Recreation Management and Development Project
900 Grand Avenue
Glenwood Springs, Colorado 81601
Transmitted by email

Dear Forest Supervisor Noel:

The U.S. Environmental Protection Agency Region 8 has reviewed the U.S. Department of Agriculture Forest Service May 2024 Notice of Intent (NOI) for the White River National Forest (WRNF) Sweetwater Lake Recreation Management and Development Project (Project). In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA) and Section 102(2)(C) of the National Environmental Policy Act (NEPA), we are providing scoping comments. The CAA Section 309 role is unique to EPA. It requires EPA to review and comment on the environmental impact on any proposed federal action subject to NEPA's environmental impact statement requirements and to make its comments public.

According to the NOI, the proposed project will encompass 832 acres on the WRNF surrounding Sweetwater Lake in northeastern Garfield County, Colorado, in the Eagle-Holy Cross Ranger District. The USFS proposes to improve recreation access and facilities and authorize a long-term special use permit (SUP) to the Colorado Parks and Wildlife (CPW) to manage the area. The NOI notes that the project may require an amendment to the WRNF Forest Plan. Of the 832 acres, 488 acres are newly acquired by the USFS. The proposed action includes evaluation of existing historic structures for restoration or removal; developing a new campground area to provide 15-20 new campsites; construction of 8-12 new cabins; construction of equestrian facilities including a barn, stables, 4-7 overnight camping sites, extra day-use parking for visitors, and overnight parking and access to the Flat Tops Wilderness Area; development of additional lake access; conversion of existing USFS campground and parking to day-use individual or group picnic sites; construction of a new lodge which will include administrative and educational spaces, and may offer small-scale food service, a group picnic site, and/or mobile kitchen parking; evaluation of establishing day-use hiking and equestrian trails on the northeast side of the lake; construction of maintenance facilities and personnel housing; and development of a cave management plan in consultation with the Tribes.

Based on preliminary information, our initial areas of interest for the Draft EIS focus on identifying baseline conditions, potential impacts, and mitigation measures related to (1) water resources, including wetlands; (2) air quality; (3) climate change; (4) Tribal interests; (5) environmental justice; (6) biological resources; and (6) visitation and recreation. We recommend that the Draft EIS propose a reasonable range of alternatives and evaluate the direct, indirect, and cumulative impacts associated with each alternative on environmental resources in a manner that will allow for the decision-maker to effectively plan to reduce potential impacts to such resources to the greatest extent possible. Our detailed recommendations are attached in the enclosure of this letter for your consideration.

We appreciate your consideration of our comments at this early stage of the process and look forward to reviewing the Draft EIS. These comments are intended to help ensure a thorough assessment of the project's environmental impacts, adequate public disclosure, and an informed decision-making process. If further explanation of our comments is desired, please contact me at (303) 312-6155 or mccoy.melissa@epa.gov, or Shannon Snyder, lead reviewer for this project, at (303) 312-6335 or snyder.shannon@epa.gov.

Sincerely,

MELISSA MCCOY

Digitally signed by MELISSA MCCOY
Date: 2024.08.05 17:20:23 -06'00'

Melissa W. McCoy, Ph.D., J.D.
NEPA Branch Manager
Environmental Justice, Community Health, and Environmental Review Division

Enclosure

ENCLOSURE – EPA's Detailed Scoping Comments on the Sweetwater Lake Recreation Management and Development Project

Overarching Comment

The new lodge, campgrounds, cabins, lake access points, trails, parking areas, and other areas may result in an increase in visitation to the project area. Available information indicates daily visitation may be capped at 250 daily visitors.[1] This information also seems to indicate current visitation may be well below 250 daily visitors.[2] We recommend the Draft EIS discuss current visitation to Sweetwater Lake and the surrounding area and general visitation trends. We also recommend making reasonable estimates of how visitation may increase due to the proposed developments and considering these increases in visitation under the action alternatives in the impact analyses.

The stated purpose and need in the NOI include "…managing visitation at the appropriate scale for the long-term viability of the 832 acres surrounding the lake and its resources." We recommend the Draft EIS contain an analysis of the recreational carrying capacity.[3] The Interagency Visitor Use Management Council's website provides a visitor use framework for federal lands that contains information on how to establish a carrying capacity and measures to manage recreational use.[4] Using this framework, we recommend the USFS establish a carrying capacity that prioritizes the protection of the environment. We also recommend the Draft EIS include:

- A monitoring plan that informs management of recreational use.
- Triggers and timeframes for corrective action.
- A commitment to close and rehabilitate areas that are threatened or damaged.
- A commitment to improve signage to educate and inform the public on recreational best management practices and trail/road designations and closures.

Water Resources

Water Quality

Sweetwater Lake is approximately 10 miles upstream of the Colorado River. The Colorado River is on the State of Colorado's most recent EPA-approved Clean Water Act (CWA) §303(d) list and is impaired for temperature. We note Sweetwater Lake has not been assessed for compliance with state water quality standards, but has designated uses to support Agriculture, Cold Water Aquatic Life species, Recreation, and Water Supply.[5] We recommend the Draft EIS provide a summary of available information and monitoring data on water quality and identify impaired waterbodies within and downstream of the planning area, including waterbodies listed on the most recent EPA-approved State CWA §303(d) list, which can be accessed using EPA's How's My Waterway tool[6] and the Colorado

[1] *See* https://soprissun.com/sweetwater-lake-proposed-management-plan-invites-feedback/.
[2] *See* https://drive.google.com/file/d/1H4SEGiSZTRiFrleloajVvh49gMP948w6/view; https://drive.google.com/file/d/1U0RQ5ycEdEur6_KsZdJcnwu8f-YT1_4g/view.
[3] *See* https://academic.oup.com/jof/article/114/3/339/4599819.
[4] https://visitorusemanagement.nps.gov/VUM/Framework
[5] State of Colorado Regulation 33, segment COUCUC13
[6] https://mywaterway.epa.gov/

Department of Environment and Health (CDPHE) Clean Water GIS Maps.[7] Such data for any streams and waterbodies potentially affected by proposed activities, such as recreational use in and around the lake, including boating and equestrian use, would provide information for the evaluation of the potential impacts on downstream water quality, and a point of comparison for future monitoring of impacts. We recommend including parameters of significance (e.g., *E. coli*) to impaired waterbodies within or downstream of the project area and evaluating what ongoing impacts may be due, at least in part, to existing development and activities within the project area. Identification of any significant gaps in data may be helpful in developing the project monitoring plan. When defining existing conditions, please consider the following:

- Include waters directly impacted by the project as well as the waters indirectly (or secondarily) impacted by the project, such as downstream segments.
- Include water quality data, including at a critical flow condition if available, for any potentially affected stream reaches.
- Consider and document water quality impairments per State CWA Section 303(d) lists and draft or established Total Maximum Daily Loads (TMDLs), and identify potentially affected dischargers, including water treatment providers.
- Identify any Source Water Protection areas and how the project will be consistent with Source Water Protection planning measures.

Aquatic Resources

We recommend the Draft EIS identify aquatic resource existing conditions in the project area, including wetlands (including peatlands or fens), springs, streams, and ephemeral drainages. Specifically, we recommend describing watershed conditions, streambank conditions, vegetation cover, soil conditions, and wildlife and fish population health and habitat. We recommend the Draft EIS include a map of the project area that identifies wetlands and regional water features within a minimum of 500 feet from any proposed or existing facilities (e.g., campgrounds, proposed lodge, equestrian facilities), roads, trails, or other developed areas, with dominant and rare plant community types identified. We also recommend conducting wetland functional analyses if there is any potential that proposed activities will cause impacts.

Groundwater

Groundwater is an important resource since it provides domestic and public water supply and supports environmental flows and levels in groundwater dependent ecosystems (GDEs). GDEs include fens and other wetlands fed by groundwater, terrestrial vegetation and fauna sustained by shallow groundwater, ecosystems in streams, lakes fed by groundwater, and springs. While GDEs occupy a small percentage of landscapes in the arid West, riparian areas and GDEs provide disproportionately large ecosystem services such as water filtration, wildlife habitat, and flood control. The proposed action has the potential to impact GDEs by altering surface run-off, infiltration, evapotranspiration, sedimentation, and soil compaction. Additionally, activities associated with the proposed action have the potential to introduce contaminants to GDEs and shallow aquifers.

We recommend the Draft EIS include a map of groundwater resources, including GDEs, and a discussion to include the following information (if available): identification of major and sensitive

[7] https://cdphe.colorado.gov/clean-water-gis-maps

aquifers; location and extent of groundwater recharge areas; location of existing and potential (i.e., those that can reasonably be used in the future) underground sources of drinking water (USDW)[8]; and characterization of source water protection zones for public water systems in proximity of the project (see more information above). We also recommend identifying the shallow aquifers, including bedrock and alluvial aquifers along streams and rivers, that are located in the planning area and are sources for public water systems, domestic wells, stock wells, or GDEs. Shallow aquifers are more susceptible to contamination because there is less intervening soil to adsorb contaminants before they reach the groundwater. Shallow aquifers also commonly exchange flows with surface-water features, such as streams and lakes, and may supply groundwater to support wetlands and wildlife.

Fen Wetlands

Fens are groundwater-fed, peat-forming wetlands that often host rare plants and animals. Fens also provide important ecological and hydrological functions by improving water quality in headwater streams, sequestering carbon, and providing base flows to streams during late summer and/or drought periods. Fen wetlands rely on permanently saturated soil conditions which slows the decomposition of organic material, and therefore fen communities are very sensitive to hydrologic alterations. With accumulation of peat occurring at rates between 4 and 16 inches per 1,000 years, these ecosystems are generally considered to be irreplaceable. The U.S. Fish and Wildlife Service (USFWS) designated fen wetlands a Resource Category 1, which is habitat that is considered unique and irreplaceable on a national basis or at the ecoregion level.[9] Further underlining the uniqueness and importance of fens in Colorado, the Corps revoked the use of a majority of Nationwide Permits in peatlands/fen-type wetlands to protect this unique wetland type.

When fen hydrology is disturbed and peat is exposed to aerobic conditions (e.g., due to a change or elimination of groundwater flow paths), soil microbes shift from anerobic respiration to aerobic respiration and begin to consume the organic matter within the soils. Oxidation of the organic soils can permanently alter groundwater flow paths and hydro-physical properties of the soil such that restoration relies on the development of new peat material above the impaired soils. Restoration of fens is therefore both an extremely lengthy and challenging process. The USFWS's Region 6 fen protection policy states, *"Therefore, onsite or in-kind replacement of peat wetlands is not thought to be possible. Furthermore, at present there are no known reliable methods to create a new fully functional fen or to restore a severely degraded fen."* Mitigation for fen impacts is not possible on regulatory time scales. Therefore, impacts to fens are irretrievable.

Because fens develop over thousands of years, have unique ecological values and are irreplaceable, the EPA considers any temporary or permanent impact to fens or to their groundwater source to be a "significant" impact under NEPA. We recommend that the Draft EIS include a description and the acreage of fens within the planning area and the potential direct and indirect impacts to fens and their groundwater supply that could result from the project. We also recommend that project design criteria include requirements to avoid both direct and indirect impacts, whether permanent or temporary, to these highly valued resources.

[8] In general, this includes aquifers with a concentration of total dissolved solids (TDS) less than 10,000 mg/L and with a quantity of water sufficient to supply a public water system. Aquifers are presumed to be USDWs unless they have been specifically exempted or if they have been shown to fall outside the definition of USDW (e.g., ≥ 10,000 mg/L TDS).

[9] fws.gov/policy/501fw2.html

Impacts to Water Quality

The NEPA analysis should determine whether and to what extent proposed activities may contribute to a degradation of water quality in the planning area. Direct impacts may include increases in turbidity from increased boat activity or decreases to biodiversity.[10] Indirect impacts from the project may result from increased motorized traffic on Sweetwater Road (a dirt road) which runs parallel to Sweetwater Creek, a tributary of the Colorado River. We recommend the Draft EIS: (a) analyze potential direct, indirect and cumulative impacts to any waterbodies within and/or downstream of the planning area, including waterbodies listed on the most recent EPA-approved State CWA § 303(d) list; and (b) coordinate with the CDPHE if there are identified potential impacts to impaired waterbodies in order to avoid causing or contributing to the exceedance of water quality standards.

We also recommend discussing impacts to water quality from facility construction (including new lake access points) and trail development and maintenance caused by soil loss, altered soil chemistry, increased surface storm flow, changes in water temperature associated with erosion of soils and stream banks, soil compaction, reduced stream base flows from decreased infiltration to groundwater, and vegetation loss. To minimize water quality impacts stemming from these activities, we recommend utilizing best management practices (BMPs), design features, and mitigation measures. We also recommend discussing the effectiveness of the selected practices. Examples include the following:

- Avoid or bridge wetlands and sensitive ecological areas where feasible;
- Situate campgrounds, cabins, and other facilities away from aquatic areas.
- Locate trails away from difficult to replace alpine resources, such as alpine meadows, wetlands, streams, and riparian areas as much as possible;
- Provide only the necessary number of lake access points and minimize vegetation disturbance during their construction;
- Ensure trashcans are present in developed facilities and by trails near Sweetwater Lake;
- Locate campsites, trails, restrooms, and other facilities away from steep slopes or erosive soils;
- Minimize trail-stream crossings;
- Provide trail and facility drainage to control surface erosion using appropriate design features and BMPs;
- Consider trail effects on stream structure and seasonal spawning habitats when determining alignment; and
- Allow for large woody debris recruitment to streams and riparian buffers near streams to enhance filtration and reduce runoff.

Water Demand

The proposed action has the potential to increase water needs above what is currently being used. In the Draft EIS we recommend estimating the range of water demand that will be needed for (1) project construction and (2) long-term operations. We also recommend identifying the source(s) of this water, the affected hydrologic basins or aquifers, the potential impacts of the water withdrawal (e.g., drawdown of aquifer levels, reductions to stream flow, and impacts to aquatic life, wetlands, springs, and other aquatic resources), and the potential effects on water quality and other water users.

[10] *See, e.g.,* https://royalsocietypublishing.org/doi/10.1098/rspb.2021.1623

Public Drinking Water Supply Sources

The proposed action could potentially impact sources of public drinking water. For example, facilities and trail construction and increased traffic on dirt roads are major sources of sediment. Sediment can adversely impact water quality by increasing turbidity and plugging filters and other treatment systems, thereby increasing the cost of water treatment. Suspended sediment can also carry chemical pollutants, such as phosphates, pesticides, and hydrocarbons into surface water and groundwater. States have conducted source water assessments for groundwater and surface water sources of public drinking water supplies. The EPA recommends the Draft EIS include a map, appropriate for public dissemination and in accordance with State data security requirements, showing the generalized locations of all source water assessment and protection areas associated with public drinking water supplies. Preliminary information about public drinking water sources in specific states can be obtained at: https://www.epa.gov/enviro/sdwis-search. Maps may be available from CDPHE, or the EPA upon request. Please note that more specific maps, available from the State, should be utilized by the USFS when locating project activities. We also recommend the Draft EIS include an assessment of potential project impacts or benefits, design criteria, and mitigation options for protecting these high value drinking water resources from potential project impacts.

Wastewater Impacts

EJScreen's Environmental Burden Indicator indicates that wastewater discharge is a concern in the project area (85th percentile). In addition, the project area is in proximity to a large number of nearby streams, along with the lake itself. The Scoping Letter states that the new lodge building will not necessitate an increase in wastewater accommodation.[11] While the small-scale food service and prepackaged food offerings may limit the wastewater from food processing, these new services may still increase wastewater due to increased restroom usage through expanded visitation and increased staffing. New sites and amenities, such as additional campgrounds and day use spaces, may also result in similar increases in wastewater. We recommend evaluating impacts from these potential increases in wastewater and discussing any plans to minimize such impacts.

Groundwater Impacts

Construction and maintenance practices associated with roads, and heavy equipment use have the potential to impact GDEs by altering surface run-off, infiltration, evapotranspiration, sedimentation, and soil compaction. Additionally, construction and maintenance actions such as equipment fueling and waste practices in temporary work areas have the potential to introduce contaminants to GDEs and shallow aquifers. We recommend that the Draft EIS evaluate the Project impacts to groundwater resources for all the alternatives. This will be useful for the reader and decision-makers to evaluate and compare the impacts among the Project's alternatives.

Wetland Impacts

The EPA supports the decision to close the wetland and historic pasture north of Sweetwater Lake to human entry. This step will limit disturbance in this fragile ecosystem and likely facilitate the restoration of this area. The EPA recommends implementing a monitoring plan to determine if the proposed closures are having the intended restoration effects and if additional actions are needed. We also recommend discussing the necessary steps for limiting unauthorized human entry in this area, for example, through additional signage or fencing, or enhanced enforcement of this area.

[11] Scoping Letter, page 2.

Given the presence of nearby wetlands, we recommend the Draft EIS identify any and all additional wetlands and describe how the project will show compliance with Executive Order (EO) 11990, *Protection of Wetlands*, including how wetland impacts will be avoided, and how unavoidable impacts will be minimized and mitigated. If any proposed development is expected to result in the discharge of dredged or fill material into waters of the U.S., including certain wetlands, we recommend ensuring that all requirements are met under CWA Section 404. This permit program is administered jointly by the Corps and the EPA. We recommend the Forest Service consult with the Corps during the NEPA process to determine the applicability of CWA Section 404 permit requirements in the project area. The Draft EIS should also include an analysis of impacts to wetlands not regulated by the Corps.

Soil Conditions and Impacts

Highly erodible soils may be found in the planning area and sedimentation may represent a significant source of pollutants that may degrade water quality. Depending on a host of variables including soil characteristics, current disturbance, and topography, associated runoff from future surface disturbances could introduce sediments as well as salts, heavy metals, nutrients, and other pollutants into surface waters. To disclose and mitigate the potential impacts of future soil disturbance, we recommend the Draft EIS provide baseline soil data for the planning area. We also recommend the Draft EIS estimate erosion rates for the proposed actions and evaluate the resulting impacts to water quality and aquatic resources for each alternative. For this analysis, we recommend using an appropriate erosion model for the planning area. We also recommend the Draft EIS include exclusion areas, specific design features, and BMPs that would be utilized to protect resources within the planning area.

Air Quality

Existing Air Quality Conditions

The EPA recommends the Draft EIS characterize existing air quality conditions to enable a qualitative and quantitative assessment of air quality impacts resulting from the proposed action and alternatives. Providing baseline data regarding existing air quality in the project area and an estimation of the existing emission-generating activities and resulting air pollutants facilitates an understanding of the environmental impacts currently occurring, and therefore, what further impacts could occur with the project.

The EPA recommends the Draft EIS present existing air quality and air quality related values (AQRV) data, including the most relevant and recent air quality design values (background pollutant concentrations).[12] The EPA also recommends identifying all sensitive receptors in the vicinity, such as nearby residences, population centers, nonattainment areas, Class I Areas (e.g., Flat Tops Wilderness Area), and Class II Areas with sensitive resources, and noting regional air quality and AQRV trends over the past several years.[13]

[12] Data are available from EPA's design value webpage (https://www.epa.gov/air-trends/air-quality-design-values). Monitoring locations and data can also be accessed by the public through the EPA's outdoor air monitor webpage (https://www.epa.gov/outdoor-air-quality-data/interactive-map-air-quality-monitors), as well as through the EPA's Air Quality System (AQS) for AQS users (https://www.epa.gov/aqs). For PM_{10} the background concentration is the fourth highest monitored PM_{10} concentration each year averaged over the three-year period.

[13] *See* https://www.fs.usda.gov/air/technical/class_1/wilds.php?recordID=23 – for Flat Tops Wilderness Area Class I area.

To provide background for existing air quality impacts, the EPA recommends providing a baseline estimate of emissions from ongoing visitation to the location based on existing visitor use data, as well as USFS operations and maintenance of the Sweetwater Lake area.

Environmental Consequences
We recommend the alternatives provide explanations of the actions that would be completed including activities that will generate air emissions. Based on the explanation of the activity, we recommend providing a roster, and schedule for use, for equipment needed to complete the alternatives as well as the targeted visitation rates under each alternative. This information provides the basis to be able to estimate the emissions that could result from the alternatives and can provide information to disclose what impacts may occur and whether activities and the resulting emissions have the potential to create air quality impacts that may warrant additional considerations for reducing impacts. This step is also key for stakeholders to understand which alternative, including the No Action Alternative, would result in the largest environment benefit and least impact.

The EPA recommends providing a reasonable estimate for air pollutant emissions associated with the alternatives. In developing estimates, the EPA recommends considering the following emission sources:

- Construction and maintenance of trails, campsites, day use areas, cabins, the new lodge, and all other proposed developments, including equipment used;
- Projected increases in visitation and vehicle traffic to the project area, both as a result of the proposed development and general visitation trends (including tailpipe emissions and mechanically entrained particulate matter (PM);
- Additional employees needed to staff proposed facilities who would need to travel to and from the project area and potential transportation emission reduction strategies; and
- Motorized boating and off-highway vehicles (if applicable).

We recommend the Draft EIS identify nearby residences and property and work with the affected community to develop BMPs and mitigation measures to address potential impacts to nearby residences and property. For instance, it would be helpful to include BMPs to address air emissions from vehicles and equipment, including fugitive dust associated with construction, maintenance, and increased traffic; sound impacts; and lighting impacts, if applicable.

Climate Change

Since all individual sources of Greenhouse Gas (GHG) emissions contribute to the collectively profound threat of climate change and most actions will be affected by climate change, it is important to consider impacts to and from climate change in agency decision-making. Therefore, and consistent with EO 14008's direction that "[t]he Federal Government must drive assessment, disclosure, and mitigation of climate pollution and climate-related risks in every sector of our economy," we recommend including analysis of GHG emissions and climate related impacts in the Draft EIS. For the analysis, the EPA recommends the USFS follow interim guidance published by the Council on Environmental Quality (CEQ) on January 9, 2023, to assist federal agencies in assessing and disclosing

climate change impacts during environmental reviews.[14] The CEQ developed this guidance in response to EO 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*. This interim guidance is currently in effect and provides direction for analyzing and discussing project-related direct, indirect, and cumulative climate-related impacts. As discussed in the guidance, when conducting climate change analyses in NEPA reviews, agencies should consider, as appropriate: (1) the potential effects of a proposed action on climate change, including by assessing both GHG emissions, such as the emissions generated from construction and maintenance and potential increases in visitation, and reductions from the proposed action; and (2) the effects of climate change on a proposed action and its environmental impacts. Consistent with this guidance, the EPA recommends the USFS include in the Draft EIS an alternative that minimizes project-related GHG emissions and/or practicable mitigation to reduce project-related GHG emissions. We also recommend including an evaluation of opportunities to improve the resilience of the alternatives to climate-related impacts and measures to reduce any impacts of the alternatives that may be exacerbated by climate change.

As part of the analysis of climate change-related impacts, the EPA recommends the Draft EIS include a discussion of reasonably foreseeable climate change impacts in the planning area—such as changes in precipitation patterns, hydrology, vegetation distribution in respective watersheds, and temperature—and the potential effect of these impacts on the alternatives. For instance, ongoing drought could impact water levels in Sweetwater Lake, requiring future adjustments to the proposed lake access points. Evaluating this information in the analysis could help inform the development of measures to improve the resiliency of development plans. Climate considerations should also include how the shifting baseline of climate may affect the significance of impacts in various resource areas over time.

Environmental Justice

The EPA recommends the USFS ensure the Draft EIS follows all relevant mandates that guide the information, analyses, and activities necessary for the environmental justice (EJ) impacts analysis. EO 12898, *Federal Actions to Address Environmental justice in Minority Populations and Low-Income Populations*, February 11, 1994, was supplemented by EO 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All*, April 26, 2023, which strengthens the federal government's commitment to provide meaningful opportunities for engagement of EJ communities.[15] The government-wide approach in Section 3 of the EO requires each agency "identify, analyze, and address disproportionate and adverse human health and environmental effects (including risks) and hazards of Federal activities, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns." Specifically, it directs agencies to conduct NEPA reviews that analyze direct, indirect, and cumulative effects of federal actions on communities with EJ concerns. Section 3(b)(i) of EO 14096 also directs the EPA to assess whether each agency analyzes and avoids or mitigates disproportionate human health and environmental effects on communities with EJ concerns when carrying out responsibilities under Section 309 of the Clean Air Act, 42 U.S.C. 7609. In addition, Executive Order

[14] https://www.federalregister.gov/documents/2023/01/09/2023-00158/national-environmental-policy-act-guidance-on-consideration-of-greenhouse-gas-emissions-and-climate

[15] 88 *Federal Register* 25251 (April 26, 2023). https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all

13985 – *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* – sets expectations for a whole-of-government approach to advancing equity for all. Therefore, consistent with these executive orders and CEQ's *Environmental Justice Guidance Under NEPA*,[16] the EPA recommends the Draft EIS include the following:

- Identify communities within the geographic scope of the impact area that are living with EJ concerns, including the sources of data and a description of the methodology and criteria utilized. This should involve comparing percentages of low income and/or minority residents in the project area to an appropriate reference community.
- Meaningfully engage any communities with EJ concerns with respect to the USFS's decisions on the proposed action, and with Tribal Historic Preservation Officers if cultural or historical artifacts are or have been found in the project area.
- Assess socioeconomic concerns for indigenous communities and communities with EJ concerns, including:
    - An assessment of historic, ongoing, and cumulative baseline environmental impacts, including health impacts from cumulative pollution loads, and identification of any already existing disproportionate impacts in these overburdened communities.
    - A discussion of potential direct, indirect, and cumulative impacts of the proposed project and alternatives on the health of these communities, and identification of disproportionate and adverse impacts. This should involve comparing the impacts to communities with EJ concerns to the impacts of the project on the reference community.
    - An evaluation of socioeconomic impacts, including the potential for additional burden on local communities' ability to provide necessary public services and amenities during construction.
- Mitigation measures or alternatives to avoid or reduce any disproportionate adverse impacts. We recommend involving the affected communities in developing the measures.
- Document the process used for community involvement and communication, including all measures to specifically address equitable community engagement and involvement of low-income and minority communities. Include an analysis of results achieved by reaching out to these populations.

A report of the Federal Interagency Working Group on Environmental Justice & NEPA Committee, *Promising Practices for EJ Methodologies in NEPA Reviews*,[17] provides methodologies gleaned from current agency practices to both consider environmental justice concerns during environmental analyses and encourage effective participation by communities with environmental justice concerns.

The EPA strongly encourages the use of EJScreen when conducting EJ scoping efforts.[18] The EPA's nationally consistent EJ screening and mapping tool is a useful first step in highlighting locations that may be candidates for further analysis. The tool can help identify potential community vulnerabilities by calculating EJ Indexes and displaying other environmental and socioeconomic information in color-coded maps and standard data reports (e.g., pollution sources, health disparities, critical service gaps,

[16] https://www.epa.gov/environmentaljustice/environmental-justice-and-national-environmental-policy-act
[17] https://www.epa.gov/sites/production/files/2016-08/documents/nepa_promising_practices_document_2016.pdf
[18] https://ejscreen.epa.gov/mapper/

climate change data). EJScreen can also help focus environmental justice outreach efforts by identifying potential language barriers, meeting locations, tribal lands and indigenous areas, and lack of broadband access. For purposes of NEPA review, a project is considered to be in an area of potential EJ concern when the area shows one or more of the twelve EJ Indexes at or above the 80th percentile in the nation and/or state. However, scores under the 80th percentile should not be interpreted to mean there are definitively no EJ concerns present.

While EJScreen provides access to high-resolution environmental and demographic data, it does not provide information on every potential community vulnerability that may be relevant. The tool's standard data report should not be considered a substitute for conducting a full EJ analysis, and scoping efforts using the tool should be supplemented with additional data and local knowledge when reasonably available in order to comply with the direction provided in EO 14096. Also, in recognition of the inherent uncertainties with screening level data, the EPA recommends assessing each block group within the project area individually and adding a buffer around the project area as far as effects could occur. Please see the EJScreen Technical Information for a discussion of these and other issues.

Reservation Equity Issues

There will likely be a need for a reservation system for new campground and cabin developments. We note that there is evidence indicating that the use of an online reservation system can create inequities, having exclusionary effects and introducing barriers to non-White and low income groups.[19] We recommend determining whether an online reservation system for these sites is likely to skew site usage with respect to certain demographic groups and taking any necessary steps to ensure that these facilities remain accessible to a wide range of groups, for example, by providing walk-up sites or implementing a free lottery system for reservations instead of using a paid, reservation system with a set time slot.

Tribal Consultation and Indigenous Knowledge

The proposed action includes developing and implementing strategies to reduce or mitigate potential impacts to cultural resources. The NOI states that for the cave within the project area, the USFS would consult with the Tribes to develop a cave management plan to ensure cultural resources are preserved. The EPA encourages the USFS to consult with all potentially interested Tribal nations early in the development of the Draft EIS and incorporate feedback from the Tribes when making decisions regarding the Project. We also recommend documenting this consultation in the Draft EIS and discussing the role of the Tribes in the decision-making process.

It is also important that formal government-to-government consultation take place early in the scoping phase of the project planning process to ensure that all issues are adequately addressed in the Draft EIS. The principles for interactions with Tribal governments are outlined in the Presidential Memorandum on Government-to-Government Relationship with Tribal Governments (September 23, 2004) and in Executive Order (E.O.) 13175, *Consultation and Coordination with Indian Tribal*

[19] *See* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10488315/.

Governments (November 6, 2000).[20,21,22] *Best Practices for Identifying and Protecting Tribal Treaty Rights, Reserved Rights, and Other Similar Rights in Federal Regulatory Actions and Federal Decision-Making* was issued on November 30, 2022, and represents the most current and comprehensive federal recommendations for contacting and consulting with Tribal governments.[23] We recommend cross-referencing Section 7 of this document with the Tribal consultation procedures proposed for the Project to ensure that all relevant policies (e.g., treaty rights, Tribal sovereignty rights, etc.) are considered and that a similar level of opportunity for early and adaptable engagement is available under USFS EIS development process.

To the extent such information is not sensitive or otherwise confidential, we recommend the Draft EIS document the contact made with Tribal communities, include a summary of the results of Tribal consultation, and identify the main concerns expressed by Tribes, how those concerns were addressed, and what additional or continuing consultations may be warranted. We also recommend identifying any protection, mitigation, and enhancement measures that were identified by Tribes. We recommend the EIS summarize the areas in which mutually desired outcomes or consensus with Tribes has been or is expected to be achieved regarding their treaty or reserved rights. Resources with cultural and religious significance to any Tribal communities should be identified at the discretion of the Tribe. As a resource, we recommend the document *Best Practices Guide for Federal Agencies Regarding Tribal and Native Hawaiian Sacred Sites* for current federal Tribal consultation standards for protecting and improving access to Tribal sacred sites on federal lands.[24] We further recommend referencing *Tribal Consultation: Best Practices in Historic Preservation* published by the National Association of Tribal Historic Preservation Officers.[25] Consultation for Tribal cultural resources is further required under Section 106 of the National Historic Preservation Act.[26]

Indigenous Knowledge

On November 15, 2021, a Presidential Memorandum on *Indigenous Traditional Ecological Knowledge and Federal Decision Making* directed federal agencies to develop robust plans for ensuring meaningful Tribal consultation on agency work that may affect Tribal Nations and the people they represent.[27] The November 30, 2022, Presidential Memorandum, *Guidance for Federal Departments and Agencies on Indigenous Knowledge,* further directs federal agencies to consider Indigenous Knowledge as a form of

[20] EO 13175: https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/

[21] Memorandum on Government-to-Government Relationships with Tribal Governments: https://www.govinfo.gov/content/pkg/WCPD-2004-09-27/pdf/WCPD-2004-09-27-Pg2106.pdf

[22] 86 FR 7491; 01/29/2021.

[23] Best Practices for Identifying and Protecting Tribal Treaty Rights, Reserved Rights, and Other Similar Rights in Federal Regulatory Actions and Federal Decision-Making. Available at https://www.bia.gov/sites/default/files/dup/inline-files/best_practices_guide.pdf

[24] Best Practices Guide for Federal Agencies Regarding Tribal and Native Hawaiian Sacred Site. Available at https://www.bia.gov/sites/default/files/media_document/sacred_sites_guide_508_2023-1205.pdf

[25] National Association of Tribal Historic Preservation Officers. May 2005. Tribal Consultation: Best Practices in Historic Preservation. Available at https://www.nathpo.org/assets/pdf/NATHPO_Best_Practices/

[26] *See* https://www.ecfr.gov/current/title-36/chapter-VIII/part-800/subpart-A.

[27] Presidential Memorandum on Indigenous Traditional Ecological Knowledge and Federal Decision Making. Available at https://www.whitehouse.gov/wp-content/uploads/2021/11/111521-OSTP-CEQ-ITEK-Memo.pdf

evidence that should be used to inform federal policy, research and decision making.[28] Therefore, agencies should solicit Indigenous Knowledge and elevate it into the Tribal consultation process to better inform decision-making while respecting Tribal sovereignty over the information and its uses.

In preparing the Draft EIS and ensuring meaningful public involvement throughout the planning and NEPA process, the EPA recommends utilizing Tribal consultation to identify and integrate Indigenous Knowledge into the Draft EIS analyses. Data can include the collection of local, regional, and traditional knowledge which may expand upon USFS's understanding of the Project's affected environment (including Tribal uses and existing climate impacts) and its anticipated impacts (including impacts to hunting, fishing, and gathering and land and water use patterns in the area).

We recommend that, in addition to reviewing any pertinent Indigenous Knowledge currently available, additional studies and outreach be conducted as necessary to identify indirect and cumulative impacts from the proposed action and the alternatives. For example, analyzing how Project alternatives may bisect or fragment wildlife habitat and movement routes, as informed by Indigenous Knowledge, and how that may impact hunting and land and water use patterns, could be one potential way of identifying and integrating Indigenous Knowledge into the indirect and cumulative impacts analysis in the Draft EIS.

Additional outreach and studies may also be developed during the development of the proposed alternatives in order to develop alternatives that are based on Indigenous Knowledge as it relates to natural processes and patterns. The *Department of the Interior Nature-Based Solutions Roadmap* provides guidance on working with Tribes to develop nature-based solutions to the problems that federal projects may seek to resolve.[29] To the extent possible, we recommend incorporating Indigenous Knowledge into the development of nature-based federal project alternatives (as informed by the Tribal consultation process).

Visitation and Recreation

Visitation Management

The proposed action has the potential to significantly increase visitation, recreation, and vehicle traffic to and from the lake. In the Draft EIS we recommend evaluating the need for a shuttle to and from the recreational area during peak visitation periods (e.g., like what has been implemented at Eldorado Canyon State Park and Hanging Lake) to decrease impacts to the environment and the surrounding community. We also recommend evaluating in the Draft EIS whether not allowing certain types of vehicles at the recreation area (e.g., off-highway vehicles, motorized boats, and recreational vehicles) may be warranted to protect sensitive environmental values.

Trail Density

The proposed action includes new trail developments to the northeast and southwest sides of Sweetwater Lake, which would provide loop trails, connections to other existing trails, and new access to the Flat Tops Wilderness Area. In considering new trail development, we recommend taking steps to

[28] Presidential Memorandum on Guidance for Federal Departments and Agencies on Indigenous Knowledge. Available at https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf

[29] Department of the Interior Nature-Based Solutions Roadmap. Available at https://www.doi.gov/sites/doi.gov/files/doi-nbs-roadmap.pdf

limit trail density. Many existing trails in proximity to the project area are currently spaced greater than 1 mile from neighboring trails. Ample spacing between trails is beneficial for several reasons. In addition to its aesthetic benefits, ample trail spacing creates areas where vegetation is less susceptible to trampling and other recreational stressors.[30] It also helps reduce negative impacts on wildlife from non-consumptive forms of recreation, such as hiking.[31] We recommend that trail density and its impacts are considered in the process of developing trails in the project area. We also recommend closing any redundant trails or trails with low levels of use in the project area.

Equestrian Facilities

The proposed action includes the construction of new equestrian facilities, including a barn and stable, along with 4 to 7 equestrian camping sites. We recommend considering the impacts of this development to the Flat Tops Wilderness Area. For example, the proposed facilities may increase the number of equestrian visitors to the Flat Tops Wilderness Area. In contrast to visitors travelling by foot, equestrian visitors are generally able to travel greater distances and may therefore increase human presence in less frequented parts of the Flat Tops Wilderness Area.

Given that the Flat Tops Wilderness Area already receives a high level of visitation during fall hunting seasons, we recommend discussing the projected use of these facilities by commercial outfitters, the potential for increased crowding in both the Flat Tops Wilderness Area and project area, and the potential impacts on wildlife and vegetation.

Biological Resources, Habitat, and Wildlife

A variety of avian species inhabit the project area. The Roaring Fork Audubon has recently collected data on 84 different bird species in the project area, including 11 species of conservation concern.[32] Likewise, the USFWS Information for Planning and Consultation tool indicates that several birds protected under the Endangered Species Act (ESA), the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act may be present in the project area. We recommend the USFS work with the USFWS and CPW to determine potential impacts of the alternatives on plant and wildlife species, especially species classified as rare, threatened, or endangered on either state or federal lists. We also recommend:

- Evaluating in the Draft EIS the potential direct, indirect, and cumulative impacts to species and their habitat for each of the proposed alternatives;
- Discussing in the Draft EIS the proposed action's consistency with existing laws and regulations, including the ESA, Migratory Bird Treaty Act, and Bald and Golden Eagle Protection Act;
- Engaging in early consultation with the USFWS concerning listed avian species and other listed mammals, fish, plants, and insects in the project area and determining appropriate design criteria, mitigation, and monitoring. We also recommend documenting these consultations in the Draft EIS; and
- If applicable, summarizing, or including as an appendix in the Draft EIS, any biological

[30] *See* https://www.tandfonline.com/doi/abs/10.1080/00222216.1985.11969628.
[31] *See, e.g.,* https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/j.1755-263X.2008.00019.x.
[32] https://soprissun.com/sweetwater-lake-proposed-management-plan-invites-feedback/

assessment prepared by USFS after informal consultation or biological opinion prepared by USFWS after formal consultation. We also recommend demonstrating that the proposed action is consistent with the biological assessment or opinion.

The proposed action includes building new campgrounds, cabins, trails, and other facilities. These developments may negatively impact avian species by increasing disturbance and human presence in the vicinity of Sweetwater Lake. A review article that analyzes the impacts of non-motorized recreational activities, such as hiking, wildlife viewing, and horse riding, on avian species found that 88% of the 61 published articles on the topic identified negative effects, including changes in bird physiology, behavior, abundance, and reproductive success.[33] Human presence along trails may also reduce the density and richness of birds,[34] which is relevant since the proposal includes new trails and other developments, such as cabins and campgrounds, that may lead to increases in recreational visitation to the project area. Given these potential impacts, we recommend considering the following for the Draft EIS:

- Incorporating design or mitigation measures for avian and other wildlife species to offset any potential negative impacts from the proposed action. Possible measures include habitat restoration and improvement, and recreational closures in sensitive wildlife habitat areas. We recommend describing the effectiveness of such measures to protect plants and wildlife, and indicate how they would be implemented and enforced;
- Limiting the size of large groups visiting the project area, which can minimize negative impacts on certain avian species;[35]
- Limiting recreational visitation during breeding periods and critical stages of avian development, as recreational disturbance during this time may have negative consequences;[36]
- Allocating areas with no lake access points to preserve avian habitat along the perimeter of Sweetwater Lake;
- Providing additional monitoring of avian habitat within the project area; and
- Providing educational training to any staff conducting vegetation management in the project area on avian habitat, identification, and any other pertinent information to minimize disturbance of avian species.

Ecological Connectivity

On March 21, 2023, the CEQ published a memo titled Guidance to Federal Departments and Agencies *on Ecological Connectivity and Wildlife Corridors*.[37] This memo reinforces the need to promote greater connectivity across terrestrial and freshwater habitats, as well as across airspaces; to sustain biodiversity; and to enable wildlife to adapt to fluctuating environmental conditions, including those caused by climate change. We recommend utilizing this guidance to inform the alternatives analysis,

[33] https://www.sciencedirect.com/science/article/pii/S0301479711001411

[34] *See, e.g.,* https://www.frontiersin.org/journals/ecology-and-evolution/articles/10.3389/fevo.2018.00175/full.

[35] *See, e.g.,* https://www.sciencedirect.com/science/article/pii/S0301479711000077.

[36] *See, e.g.,* https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0166748.

[37] https://www.whitehouse.gov/wp-content/uploads/2023/03/230318-Corridors-connectivity-guidance-memo-final-draft-formatted.pdf

best management practices, and mitigation measures to conserve, enhance, protect, and restore corridors and connectivity.