Leanne Veldhuis
Eagle-Holy Cross Ranger District
P.O. Box 190, Minturn, CO 81645
Via e-portal: https://cara.fs2c.usda.gov/Public//CommentInput?Project=64047

August 5, 2024

Dear Ms. Veldhuis:

The following are the scoping comments of Roaring Fork Audubon, Colorado Sierra Club Roaring Fork Group, and Rocky Smith, on the Sweetwater Lake Recreation Management and Development Project, as described in the Notice of Intent to prepare an environmental impact statement (NOI) at 89 Fed Reg 37165 et seq., May 6, 2024. A list of supporting individuals and groups is provided at the end of this document

INTRODUCTION. Sweetwater Lake and the surrounding area is unique in all of Colorado. The area under consideration for development has a rich variety of ecological, hydrological, cultural and other values, is located in an out-of-the-way place, and currently has low to moderate recreation use with relatively low impact. Any development of the area must conserve the qualities that make the area unique.

The Forest Service, having recently acquired 488 acres around Sweetwater Lake, needs to determine how to best manage the area to protect the character, qualities and values of the Sweetwater area. The area will need to be assigned to at least one management area under the forest plan, via amendment to that plan.

As an initial matter, the word "development" in the project name is concerning. The area needs very little "development" of new facilities; rather its ecological, historical and community values need to be protected from the many negative impacts that development brings with perhaps renovation of some existing facilities for human use. In any case, management must be designed to conserve all the values that make Sweetwater Lake area a special place. These values, and how the proposed project might affect them, are further discussed throughout these comments.

The area is now a relatively lightly used area for hiking, fishing, hunting, horse riding, bird watching, and non-motorized boating (on the lake). Turning the area over to state management would likely change the nature of visitation and use intensity by encouraging more people to visit and thus greatly increasing the impacts on the resources, including off-site resources, as is discussed throughout this letter.

Now, anyone can visit the area and recreate. But there would be a substantial fee for entry to a state-managed area, discouraging use by low-income people and people such as local residents who wish to visit the area often, usually for a short time (say a few hours). Also, the opportunity for quiet recreation, such as bird-watching, would be lost in the hustle and bustle of an area with increased human use.

NEPA AND ALTERNATIVES

Use the latest CEQ Rule. The Forest Service must use the most recent version of the CEQ Regulations implementing NEPA. See 89 Fed Reg 35554 et seq., May 1, 2024. This set of rules has better provisions for ensuring both comprehensive analysis of all potentially significant impacts and appropriate public engagement. Note the following provision for application of this rule:

> The regulations in this subchapter apply to any NEPA process begun after July 1, 2024. An agency may apply the regulations in this subchapter to ongoing activities and environmental documents begun before July 1, 2024.

40 CFR 1506.12 (2024). Issuance of the NOI begins the scoping for the project, which is the start of the NEPA process. Therefore, the Forest Service must use the 2024 CEQ rule for the Sweetwater Project.

Purpose and Need. It is important to state a purpose and need (PN) that will guide the development of alternatives for managing the areas and protecting the important resources therein. The PN for the project should be to manage the newly acquired national forest land to conserve its ecological, scenic, historical, cultural and recreational values. The NOI currently states:

> The purpose of the proposed action is to provide the public a natural resource based recreational and educational experience at Sweetwater Lake that is reflective of the culture and history of the area while managing visitation at the appropriate scale for the long-term viability of the 832 acres surrounding the lake and its resources.

NOI at 37165.

This PN is insufficient. As currently stated the PN may undermine the ecological values of Sweetwater. Instead, the PN needs to emphasize conserving the wildlife and biological diversity values of the area. The proposed action is likely to increase recreational use, which will likely in turn increase impacts on wildlife habitat integrity, sustainability and security.

Part of the *need* for the project is to "reduce or mitigate potential impacts on the site's natural and cultural resources from public visitation." There is still no specific mention of ecological or wildlife values. Protecting these values and also cultural/historical and scenic values needs to be a prominent part of the purpose and need for the project. This would help ensure that the important values are carefully considered in the development or revision of a proposed action and in analysis of potential impacts from the various alternatives.

Alternatives. The EIS for the Sweetwater Project must consider a wide range of alternatives for management of the area. The 2024 CEQ Rule states that

agencies shall:

> (a) Rigorously explore and objectively evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination. The agency need not consider every conceivable alternative to a proposed action; rather, it shall consider a reasonable range of alternatives that will foster informed decision making.

1502.14.

Below we describe some alternatives that need to be considered, but this should not be considered a complete list. The alternatives described below are not necessarily mutually exclusive; i. e., two or more alternatives or parts of them might be combined.

--Site Plan. One management for the area, which would allow considerable human use of the area but would not fully conserve its unique values, is reflected in the Site Plan prepared by the Sweetwater Lake Action Team (SLAT). It provides for existing uses and some increased use. This Plan is attached in full as Attachment 1 and is similar to the proposed action.

--Special interest area. Under the agency's Planning rule, forest plans can have designated special interest areas (SIAs), i. e., areas other than those protected or proposed for designation under the Wilderness Act or Wild and Scenic Rivers Act. "Designated area" is defined in the rule as follows: "An area or feature identified and managed to maintain its unique special character or purpose". 36 CFR 219.19.

Forest planners are directed to:

> Identify existing designated areas other than the areas identified in paragraphs (c)(2)(v) and (c)(2)(vi) of this section, and determine whether to recommend any additional areas for designation.

Forest Service Planning Rule at 36 CFR 219.7(c)(2)(vii).

We recommend the area be designated as the Sweetwater Lake Ecological, Historical, and Scenic Special Interest Area. Under Forest Service policy, the responsible official can recommend such an area and the Regional Forester can designate this type of area of less than 100,000 acres. See FSH 1909.12 24 – Exhibit 01.

Under this alternative, the area would be assigned to Management Area (MA) 3.1: Special Interest Area - Emphasis on Use and Interpretation. See Forest Plan at 3-29, 3-30. Any plan components for the area must conserve the area's values. The area should be withdrawn from mineral entry (both locatable and leasable[1]) and must not be suitable for timber production, as such uses would clearly be incompatible with the purposes for which it would be designated.

[1] Under the Federal Onshore Oil and Gas Leasing Reform Act regulations, the Forest Service clearly has the authority to prohibit oil and gas leasing in identified areas. See 36 CFR 228.102(c)(1)(iii).

To ensure consistency of management and protection of the Sweetwater Lake area's values, the SIA could be expanded to cover ecologically connected systems of the surrounding area that maintain ecological connectivity, i. e., area outside the agency's most recent acquisition to include even more than the larger 832-acre area surrounding the Forest Service's recent acquisition. An SIA could be expanded to include the area north of the lake up to the boundary of the Flat Tops Wilderness. This includes land now assigned to MAs 5.41 (big game winter range) and 1.2 (recommended for addition to the Wilderness). This would allow management of a larger area, especially for ecological resources, and help ensure habitat connectivity for a variety of species. It could include part or all of the Sweetwater A Colorado Roadless Area. (See further discussion below.)

For an SIA, a management plan would need to be prepared, even if the State of Colorado would manage the area. Such a management plan, or at least the outline of such a plan, could be proposed and analyzed during the current NEPA process. In any case, public review of any management plan for an SIA would be necessary.

--Forest Service management without SIA designation. Under this alternative, an SIA would not be designated, and the Sweetwater Lake area would be assigned to other management areas. Currently, the national forest land surrounding the project area is assigned to MAs 5.4 (south of Sweetwater Lake) and 5.41 (north of Lake). NOI at 37166; see also Forest Plan MAs map. MA 1.2 is assigned to an area just north of the MA 5.41 area.

As identified by CPW's SAM mapping, elk (Cervus elaphus) (use the habitat on the northeast side of Sweetwater Lake for a winter concentration area, MA 5.41 is likely appropriate for the area north of the lake. However, there would need to be some direction for management during the seasons when big game are not present, but when breeding bird use is highest in spring and summer, when human use and associated impacts to wildlife would be the highest.

MA 5.4 would not be consistent with the existing purpose and need, nor with protecting and retaining the values of the project area, as the MA's emphasis is partially on manipulation. Part of the desired condition for MA 5.4 areas includes: "A full range of silvicultural prescriptions may be employed that includes timber harvest…Silvicultural treatments may be larger than 40 acres in size". Plan at 3-55.

Also, two standards for this MA are:

> These areas are part of the suitable timber land base and they contribute to the allowable sale quantity.
>
> A full range of vegetation treatments including timber management and grazing strategies may be applied to these lands.

Plan at 3-56.

Any kind of manipulation for commercial timber production would mar the scenery, wildlife habitat, and the recreational experience for human visitors.

The EIS must analyze and disclose how management with the MAs now surrounding the area and/or any other MAs to be applied to the project area would conserve and retain the area's unique and important values.

Under any alternative with Forest Service management of the area, concessionaires could be used to provide services, such as a developed campground and cabin rental.

--State management without designating a state park name. Merely designating an area a "state park" would likely draw a sizable number of people to it. As is argued throughout these comments, increasing human recreational use would diminish or destroy the wildlife and ecological values that make the area special. For instance, Sweetwater provides refugia for numerous native wildlife species that are listed on the Colorado SWAP including Bald Eagle and Peregrine Falcon. If the Forest Service wishes to have the State of Colorado manage or help manage the area, it needs to explore state management without a state park. See additional comment in the Authority section below.

--Minimal management. An alternative that would provide no development should be considered. A no development alternative would provide an appropriate baseline for analyzing impacts, including those caused by humans, among alternatives.

Under this alternative, no facilities would be provided except for possibly a few primitive parking areas. There would be no developed campground, cabins, lodge, or additional boat launches on the lake. Structures with historical significance would be maintained, but others would be removed.

Forest plan amendment. The NOI states that "[t]he proposed action may require amending the forest plan. Id. at 37166, emphasis added. Any action will require a plan amendment, as land not under the jurisdiction of the Forest Service at the time the plan was approved has now been added to the White River National Forest. This land will need to have MAs applied, as well as any other plan components needed to manage the project area and the surrounding national forest land. All direction for the area would have to be added to the plan via amendment.

Mitigation. Any form of management of the area will cause impacts. The NEPA document must propose mitigation for these impacts. Under the CEQ Rule, mitigation is described as follows:

> Mitigation means measures that avoid, minimize, or compensate for adverse effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a connection to those adverse effects. Mitigation includes, in general order of priority:
>
> (1) Avoiding the adverse effect altogether by not taking a certain action or parts of an action.

(2) Minimizing the adverse effect by limiting the degree or magnitude of the action and its implementation.
(3) Rectifying the adverse effect by repairing, rehabilitating, or restoring the affected environment.
(4) Reducing or eliminating the adverse effect over time by preservation and maintenance operations during the life of the action.
(5) Compensating for the adverse effect by replacing or providing substitute resources or environments.

40 CFR 1508.1(y).

An EIS is not complete unless it contains "a reasonably complete discussion of possible mitigation measures." Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 352, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989). ("…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.") That requirement is implicit in NEPA's demand that an EIS must discuss " 'any adverse environmental effects which cannot be avoided should the proposal be implemented.' " Id. at 351-52, 109 S.Ct. 1835 (quoting NEPA, 42 U.S.C. § 4332(C)(ii)); see also 40 C.F.R. § 1502.16(h) (stating that an EIS must contain "[m]eans to mitigate adverse environmental impacts").

The agency must analyze mitigation measures in detail and explain how effective the measures would be. Northwest Indian Cemetery Protective Ass'n v. Peterson, 795 F.2d 688, 697 (9th Cir.1986), rev'd on other grounds, Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988). "A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA." Id.

Avoiding impacts altogether by project design is the best approach. In this case, that can be accomplished by not approving a high-impact alternative – managing the area as a state park or other type of area that is designed to attract a sizable number of people. For all alternatives, potential mitigation must be described, and the likely effectiveness of mitigation must be disclosed. This is especially important for impacts to wildlife and ecosystem functions.

PROTECT WILDLIFE, PLANTS AND THEIR HABITAT

Currently, human use of the area is low-moderate, due in part to the lack of facilities, such as cabins and a developed Forest Service campground with amenities such as electricity and water. Upgrading and replacing facilities and adding new ones would very likely increase the human use of the project area.

With its complex topography and mosaic of ecosystems, the Sweetwater Lake area is used by a variety of wildlife communities and species. Communities include: cliff dwellers (Peregrine Falcon, Golden eagle); cave dwellers (bat species); wetlands (waterfowl); upland forests and

shrublands with numerous breeding neotropical migrant avian species and terrestrial mammalian communities including small mammals, ungulates, mesopredators and large carnivores.

Many of these species are adversely affected by human presence, which would certainly increase considerably with the operation of a state-managed recreation area. Effects could include but would not necessarily be limited to: degradation and fragmentation of habitat, reduced abundance of numerous species, nest abandonment, increased stress and concomitant energy use from reacting to human presence, and poor reproductive success. On the west side of the lake, human use is light, so habitat generally remains intact and ecologically functional. On the east side, there is already a considerably adverse impact on wildlife from human alteration. However, this habitat could be restored to enhance habitat for native ungulates including mule deer and elk, breeding bird species including Virginia's Warbler and Brewer's Sparrow and plant species such as *Penstemon harringtonii*.

Forest plan standards applying to threatened, endangered, and sensitive species must be followed. See Forest Plan at 2-18. General Wildlife Standards at id. p. 2-16 must be followed as applicable. This includes protection of the area around peregrine falcon nests per standards 8 and 9.

Forested habitat must be maintained. Trees should not be cut or removed except for safety. This includes snags, or standing dead trees, which should generally be retained because they are very important habitat for numerous avian species and a few mammal species.

All alternatives should follow Council on Environmental Quality (CEQ) guidance on Ecological Connectivity and Wildlife Corridors, issued March 21, 2023.

Wildlife resources of the Sweetwater Lake and the surrounding potential State Park and likely impacts to them from human development and use are detailed below.

**WILDLIFE VALUES AND RESOURCES AT SWEETWATER.** Increased recreational and development pressure at Sweetwater would result from the proposed State Park development which raise critical ecological concerns that must be addressed in the Environmental Impact Statement, as is detailed below.:

Roaring Fork Audubon (RFA) conducted breeding bird surveys in 2023 and 2024 at Sweetwater Lake. A total of 84 breeding bird species were documented at Sweetwater Lake and in the surrounding wetland and upland habitat within the area boundaries. Of these 84 species, nine are listed on CPW's SWAP (CPW 2015), four are listed on the USFS Region 2 sensitive species list, fifteen are listed by the U.S. FWS as species of concern, and the State of North American Bird Report identifies twenty-eight of the species at Sweetwater with Watchlist Scores between 9 and 12, indicating that they are in decline and identifies three species with watchlist scores greater than 13 indicating that they are at risk of extinction. Complete survey results are listed in Appendix 1.

**CLIFF COMMUNITIES** at Sweetwater provide habitats for a wide diversity of birds including Peregrine Falcon, Golden Eagle, Black Swifts, and several species of swallows.

**WETLAND COMMUNITIES.** Sweetwater Lake wetlands provide important wildlife resources for fish, amphibians, and waterfowl. Disturbing or diminishing these aquatic plant communities with recreational development will also diminish wildlife food, nesting and cover resources.

**UPLAND WILDLIFE COMMUNITIES IN HABITAT SURROUNDING SWEETWATER LAKE**. CPW's SAM data (2020) indicate that uplands and wetlands surrounding Sweetwater Lake provide habitat for several ungulate species including: elk with winter range, winter concentration areas and severe winter range; mule deer with winter range; moose with summer and winter range; and in winter, Canada lynx have medium to high potential for using upland habitat to the west and north of Sweetwater Lake. SAM data also indicates that several native carnivore species commonly use upland habitat surrounding Sweetwater Lake, including black bear, mountain lion, and Canada lynx. CPW's SAM data (CPW 2020) identifies the south side of the lake as black bear summer concentration area and the north side as a fall human conflict area; mountain lions use the overall habitat surrounding the lake; and Canada lynx have a moderate probability of occurring in habitat surrounding Sweetwater Lake depending on time of year with higher probability during winter months.

**DEVELOPMENTAL AND RECREATIONAL IMPACTS TO WILDLIFE**.
Outdoor recreation is growing rapidly around the world and has been identified as one of the greatest threats to protected areas (Balmford et al. 2015; Schulze et al. 2018). In the United States, visitation to developed recreation sites is projected to increase by 23% by 2030 (White et al. 2014).

CPW's proposed development at Sweetwater Lake will dramatically increase human recreational use of the lake and surrounding upland habitat. A growing body of scientific evidence informs that human visitors can have adverse impacts on an area's natural resources. Recreation is a leading factor in endangerment of plant and animal species on United States federal lands and is listed as a threat to 188 at-risk bird species globally (Larson et al. 2016). In their systematic review of the scientific literature, researchers analyzed 274 articles on the effects of non-consumptive recreation on animals across all geographic areas, taxonomic groups, and recreation activities. The evidence was clear with over 93% of reviewed articles documenting at least one effect of recreation on animals, the majority of which (59%) were classified as negative effects, followed by unclear (25.9%) and positive (14.7%) effects. (Larson et al. 2016).

Wildlife is impacted by both direct and indirect effects of recreation. Direct impacts are due to wildlife often perceiving that humans are potential predators (Botsch et al. 2018). Thus, when exposed to human presence, animals may react with important changes in their behavior and physiology, e.g., increased vigilance, flight, and release of stress hormones, which in turn may have negative consequences for individual fitness and the dynamics of animal populations (Botsch et al. 2018)).

In general, researchers at the USDA Forest Service, Pacific Northwest Research Station (Wisdom et al. 2018) found that ungulates respond to recreational activities by avoiding areas near roads, trails, and other types of human activities. This avoidance results in habitat compression and consequent loss of habitat to human-sensitive wildlife species (Wisdom et al. 2018).

Canada lynx is a CPW SWAP species. Lynx is associated with conifer forests and rely heavily on snowshoe hares as a food resource (Ivan et al.). Snowshoe hares are identified by CPW SAM data as occupying the overall area surrounding Sweetwater Lake (CPW 2024). Lynx is often considered reclusive and, while they can tolerate some level of disturbance from winter recreation activities, recent studies in Colorado show that Lynx have already changed their behavior in response to motorized recreation (Squires et al. 2019). Lynx may also be negatively affected by summer recreation.

Bat species use the cliffs surrounding Sweetwater Lake. Because bat populations are particularly sensitive to variations in survival and reproductive output, the USDA Forest Service, Rocky Mountain Region recommends that human activity in and near roosts must be minimized or eliminated, especially during reproductive and hibernal periods (Gruver and Keinath 2006).

**AVIAN SPECIES WILL BE NEGATIVELY IMPACTED BY RECREATIONAL DEVELOPMENT AT SWEETWATER.**

Bird populations have plummeted in the past five decades, dropping by 2.9 billion across North America—an overall decline of 29 percent from 1970 (Rosenberg et al 2019), the magnitude of which could significantly affect the continent's food webs and ecosystems (Daly 2019). Bird populations have declined across nearly all habitats and for a multitude of reasons including climate warming, habitat conversion, pesticides, habitat compression and loss, and human disturbance.

Primary threats to bird species are habitat loss and human disturbance. Proactive bird conservation is critical at a time when continued human impacts will be intensified by effects of a changing climate (USFWS 2021).

**IMPACTS TO WATERFOWL**. Roaring Audubon Breeding Bird surveys (Appendix 1) and CPW's SAM data (CPW 2024) document that Sweetwater Lake wetland and aquatic communities provide breeding habitat for waterfowl. Waterfowl are wary, seeking refuge from all forms of disturbance, particularly those associated with loud noise and rapid movement. Human disturbance can induce nest abandonment, reduce hatching success, and decrease hatchling survival (Hamann et al. 1999). Recreational activities that cause disturbance to waterfowl listed in order of decreasing severity are: 1) rapid overwater movement and loud noise; 2) overwater movement with little noise such as sailing, windsurfing, rowing, or canoeing; 3) little overwater movement or noise such as wading or swimming; and 4) activities along shorelines such as fishing, birdwatching, walking and traffic (Hamann et al. 1999).

**IMPACTS TO RAPTORS**. Human activities are known to impact raptors in at least three ways: by causing mortality to eggs, young, or adults; by altering habitats; and by disrupting birds' normal behavior (Postovit and Postovit 1987). For instance, disturbance of wintering Bald Eagles

results in increased energy expenditures due to avoidance flights and decreased energy intake due to interference with feeding activities (Stalmaster 1983, Knight and Knight 1984).
Bald Eagles and Peregrine Falcons were observed nesting and raising and fledging their young at Sweetwater Lake in the spring and summer of 2023 and 2024. Additionally, CPW's SAM data (2024) identifies Bald eagles using the lake for summer nesting and foraging sites and using the lake for a winter concentration area and foraging site and identifies Peregrine Falcon using the cliffs surrounding lake for a nesting area.

Spatial and temporal restrictions or buffer zones are important strategies to protect raptors during periods of extreme sensitivity (Knight and Skagen 1988, Knight and Temple 1995). The enforcement of spatial and temporal buffer zones can protect raptors from the effects of visual disturbances (e.g., human development or recreation), audible disturbances (e.g., motorized and non-motorized recreation), and direct disturbances (e.g., shooting, recreational rock climbing). Median distances recommended for buffer zones for Bald Eagle are 650m (445m-800m range) and for Peregrine Falcon peregrine falcon are 800m (50m-1600m range). Temporal buffers should include all nesting activities but must at least extend from the arrival of the adult birds in the nesting area through the first few weeks of nestling development (Suter and Jones 1981). For Bald Eagles and Peregrine Falcons this means from February 1st through August 1st
CPW's 2020 Bald Eagle management plan (CPW 2020b) provides guidance regarding the importance of protecting both nest and foraging habitat: "While it is important for land managers to focus on protecting nest sites, attention should also focus on defining important foraging areas that support the pair's nesting effort."

Disturbances that may have contributed to the peregrine falcon decline include destruction of wetlands, construction of roads and other structures, poaching, removal of eggs and nestlings from nests, disturbance from recreational activities, and climate change (Kiff 1988). Human disturbance may disrupt the reproductive behavior of peregrine falcons (Ellis 1982, Herbert et al. 1969). Rock climbing and other recreational activities pose a threat to peregrine falcons [Ratcliffe 1993]. **The Peregrine Falcon Recovery Plan, produced by the US Fish and Wildlife Service, discourages any land use practices that may disturb the habitat or prey base of peregrine falcons within a 10-mile (16 km) radius of an active nest (McAllister et al. 1996). And, Stephenson and Calcarone (1999) concluded that protecting nesting sites from human disturbance is critical for Peregrine Falcon conservation.**

**IMPACTS TO SONGBIRDS.**
The North American Bird Conservation Initiative (NABCI 2016) is based on the first-ever conservation vulnerability assessment for all 1,154 native bird species that occur in Canada, the continental United States, and Mexico. Included in that report is The Watch List, which identified 432 species of highest conservation concern based on high vulnerability scores of 14 or higher, or with a concern score of 13 and a steeply declining population trend. These are the species most at risk of extinction without significant conservation actions to reverse declines and reduce threats.

Watch listed breeding birds documented to occur at Sweetwater Lake include: Virginia's Warbler which has a score of 14; Eleven breeding bird species observed at Sweetwater have scores between 9 and 12, indicating moderate concern due to declining populations and included

Broad-tailed Hummingbird, Black-chinned Hummingbird, Black-headed Grosbeak, Cordilleran Flycatcher, MacGillivray's Warbler, Orange-crowned Warbler, Rock Wren, Peregrine Falcon, Vesper's Sparrow, White-throated Swift, and Wilson's Warbler (Appendix 1).
Primary threats to bird species are habitat loss and human disturbance. Proactive bird conservation is critical at a time when continued human impacts will be intensified by effects of a changing climate (USFWS 2021). Protecting, conserving, and restoring our remaining wildlands and wildlife from further fragmentation, habitat compression and loss, and human disturbance at the local level is key to preventing extinction at a global level.

## PROHIBIT USE OF DRONES

Recreational use of drones has become quite popular. But such use would be inappropriate for the Sweetwater Lake area. Drone use could be very disturbing to wildlife, especially during the nesting season and during winter, when wildlife can least tolerate any disturbances. The constant hum of drones would also mar the experience for human users seeking quiet recreation.

The Forest Service has authority to prohibit drone use via 36 CFR 261.8(a), under which "molesting…any kind of wild animal, bird, or fish,…" is prohibited. Under 261.50, "…each Forest Supervisor may issue orders which close or restrict the use of described areas within the area over which he has jurisdiction".
Exceptions to a prohibition on drone use could include law enforcement, and also for monitoring human use and wildlife use with permission of the responsible official.

## PROTECT SOILS

More facilities and more people mean a larger area of compacted soils. This would be particularly true for sites hardened (maybe even paved) for developed camping. Runoff after snowmelt and rainstorms would not as easily be absorbed on site and more easily run off into Sweetwater Lake and streams. The proposal for management of the area must show how this runoff would be managed to prevent a deterioration of water quality.

## PROTECT WATER QUALITY AND QUANTITY

Providing for greatly increased human use would necessitate the installation of toilet facilities throughout the area.[2] The waste must be disposed of properly. It might mean the construction of a new or greatly expanded septic system. Such a system could affect water quality in creeks and Sweetwater Lake.

The NEPA document for the project must show how wastewater will be disposed of, and that the system will comply with all state and local laws and regulations.

[2] According to the map accompanying the NOI, vault toilets would be constructed at the day use parking, interpretive/education, and equestrian areas, and the new campground would have a dump station.

Increased recreational and development pressure that would result from the proposed Sweetwater Lake development area raises critical water resource and ecological concerns that must be addressed in the Environmental Impact Statement process, including:

- Water quality and quantity impacts to Sweetwater Creek above and below the Lake.

- Water quality and quantity impacts to Sweetwater Lake.

- Source of water for the proposed increase in development and public use including: groundwater resources, well extraction, and any related impacts proposed to be caused by the increase in development and recreation.

- Surface water resources, including diversion and/or extraction, and any related impacts proposed to be caused by the increase in development and recreation.

- Water rights intended for use of the increased development must be identified.

- Impacts to riparian ecosystems in the development area including wetlands, plants, fish, and other wildlife.

- Impacts to wetlands, and measures that will be used to minimize or avoid these impacts. We are pleased to see that the wetland area northwest of Sweetwater Lake would be closed and evaluated for possible ecosystem restoration. NOI at 37166.

PROTECT CAVES

There is at least one cave in the area. Caves need to be protected from human disturbance. Forest Plan Wildlife General Standard 2 (p. 2-16) and the guidelines at pp. 2-3 and 2-17 need to be applied to conserve resources therein.

The proposed action commendably would prepare a cave management plan "in consultation with the tribes to ensure the vital cultural history is preserved and incorporate the plan into the proposed special use permit." NOI at 37166. In preparing the management plan, the Forest Service should assess whether the cave should be designated as a significant cave under 36 CFR 290.3(c). Preliminarily, it may qualify on the basis of biota (bats; see more below); and/or cultural resources. 36 CFR 290.3(c)(1) and (2). If the cave is found to have important resources, it should be recognized as a significant cave, per 36 CFR 290.3.

If bats roost or hibernate in any cave, then humans must be kept away during the season(s) the bats may be present. This is especially true for Townsends big-eared bat, which has been documented in the area and is known to be very sensitive to human disturbance.

MAINTAIN HISTORICAL RESOURCES

With implementation of a major developed recreational facility, old and historical buildings might be demolished to make way for new facilities. However, that cannot be allowed to happen at Sweetwater Lake.

According to ECS, 2020, Sweetwater Lake "has been a guest resort from the early 20th century providing outdoor fishing, hunting, hiking, and activities typically found on a guest ranch". Id. at 10. This study examined 13 properties in the area, 5 of which were built between 1910 and 1930, and eight built between 1950 and 1970. Id. at 32.

The report concluded that the Sweetwater Lake Resort should "be considered eligible for the [National Register of Historic Places]" because the buildings thereon are a "congruous group of properties representative of the architectural style and form of Colorado mountain entertainment/recreation, architecture, and landscape architecture during the early to mid-twentieth century." Id. at 33.

It is thus required under the National Historic Preservation Act that these buildings be conserved. Unless the land on which the buildings sit is unstable and could result in damage to the buildings, the buildings should not be relocated, as that might remove them from their historical setting, and thus the historical context would be destroyed.

Use of the buildings should be considered in whatever management scheme is adopted for the area. Restoring the cabins, if necessary for safety or desirable for other reasons, could be done as long as their historical attributes and value were retained. Note that the Site Plan does include use of these properties. The cabins should not be demolished unless there is no hope of saving them for their historical value.

ADDRESS ROAD SAFETY. The roads leading up to Sweetwater Lake, both the Colorado River Road and County Roads 40 (Eagle County) and 150 (Garfield County), are winding, narrow roads. Even now, two cars passing in the narrow sections can collide if one vehicle does not stay well to the right.

With a state-managed area or any management encouraging increased use, the problems would get worse with increased traffic. If the proposed action approves facilities for recreational camping vehicles, the problem becomes potentially quite serious. Long, wide vehicles would significantly increase the probability of collisions and thus pose a significant safety hazard for all road users. One serious head-on collision could close the road for hours.

The need for law enforcement, fire, and emergency medical response would likely increase. Emergency vehicles would have a harder time getting through with the additional traffic and would face increased risk with more vehicles and larger ones on the roads accessing the area.

Another issue, at least on the Sweetwater Road, is landslides. After heavy rains, slopes adjacent to the road often loosen, sending down a torrent of mud, gravel, and rocks that blocks the road.

The roads could be widened, and at the same time, slope stability could be addressed. However, this would be very expensive and probably take at least a few years. During the time of reconstruction, the road would have to be restricted to one lane or closed altogether at times in the section(s) undergoing widening in order to ensure safety and operability of construction crews. This would be a serious inconvenience for local residents and other road users trying to get to or from their homes or the Sweetwater Lake area.

The roads to the Sweetwater Lake area pass through Eagle and Garfield Counties. It is our understanding that both counties have stated that they have no intention of upgrading the road.

The effects on road use and safety would be an indirect result of increased human use of the Sweetwater area from an upgraded area. Therefore, road issues and the need to ensure safety are connected to the management of Sweetwater and must be addressed in NEPA. See 40 CFR 1501.3(b), 1508.1(i)(2).

MANAGE FOR SUSTAINABLE HUMAN USE

To conserve the values of the Sweetwater Lake area, human use must be kept at a relatively low level and intensity that does not exceed historic use levels. As indicated by the State of Colorado's 2017 report (attachment 2) the potable water system study certified that AJ Brinks "serves an average of 23 people per day during the Supplier's busiest 60 days of the year." Further, according to the USFS' Sweetwater campground use data (attachment 3) campground use varies from 1 to 4 of the 7 available sites being occupied during the limited season. These data indicate that the total current average summer use is likely not more than 40-50 people per day, generally engaged in non-motorized recreation such as fishing, hiking, horse riding, and boating. An increase in this use may occur, but management should not encourage additional use. A higher level of use would negatively impact wildlife habitat and degrade the recreational experience of users, who come to the area likely not wanting to see crowds of people but rather to experience quiet and solitude that the area now provides

It is important to analyze the effects of proposed management on the recreation experience as well as other resources like wildlife and habitat, water, and ecosystem function. Now, people come to the area for a quiet, away-from-the crowds recreation experience. That would likely change if the current proposed action is approved. Where would people who want a low-key experience go if human use increases considerably, and what would be the effect of increased use on those areas?

Many aspects of the proposed recreational additions conflict with best trail management practices.as recommended by the 2021 Colorado's Guide to Planning Trails with Wildlife in Mind taskforce in which all the USFS, BLM, USFWS and CPW participated and fully supported (Colorado Trails with Wildlife in Mind Taskforce 2021). We recommend that any recreational development adhere to and implement these best management practices to help avoid and limit recreational impacts to wildlife and their habitat.

Winter use must be part of the proposed action. With big game winter range in the area, use over at least part of the project area will have to be limited or prohibited. Winter use should be non-motorized in order to minimize impacts to wildlife.

Winter use also has implications for road safety. Increased visitor use in winter would increase traffic on the access roads and thus increase the chances for accidents and closure on these roads. This must be addressed in the EIS.

Data on recent (last 10 years or so) recreational use of the Sweetwater Lake area during all seasons should be presented in the EIS. It will provide a good basis for comparison with the expected levels of use under each of the alternatives.

CONSIDER POTENTIAL EFFECTS ON WILDERNESS, PROPOSED WILDERNESS, AND ROADLESS AREAS.

The property involved is partially surrounded by the Sweetwater A Colorado Roadless Area (CRA). That is, the newly-acquired national forest land goes right to the boundary of this CRA. Use in the state area would likely lead to an increase in use of the CRA, as some park visitors would hike into the CRA. There are up to six trails that traverse the CRA, and it seems likely that visitor use on at least the first few miles of these trails could increase considerably if the proposed action is approved and implemented.

This could degrade the roadless area's roadless characteristics. Specifically: habitat for at-risk species could be made less effective with increased human presence, the area might no longer serve as a naturally appearing or reference landscape, and the diversity of plant and animal communities could be reduced. See the Colorado Roadless Rule (CRR) 36 CFR 294.41.

During formulation of the CRR, the Forest Service described the Sweetwater A CRA as follows:

> The CRA also provides potential habitat for the following Forest Service sensitive species: wolverine, marten, pygmy shrew, Northern goshawk, boreal owl, olive-sided flycatcher, black swift, American 3-toed woodpecker, Brewer's sparrow, and leaser panicled sedge. The CRA has documented breeding habitat for boreal toads and native populations of Colorado River cutthroat trout. This CRA also provides habitat for bald eagles (nesting, winter range), bighorn sheep (overall range), black bear (overall range), elk (overall and winter range, summer concentration, production, movement corridor), mountain lion (overall range), mule deer (overall and winter range, summer concentration, movement corridor), osprey (nesting), and for a variety of bats. This area is provides winter range, as well as areas of winter concentrations for both deer and elk.

White River National Forest Roadless Profiles at 72.[3]

[3] See: https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5291673.pdf

Having a state-managed area might make it easier to access the Flattops Wilderness. The road that runs on the north side of Sweetwater Lake ends at a trailhead that provides access to four trails into the Wilderness. Right now, the road, just before ending in a small parking lot at the trailhead, gets very rough. This probably discourages use of the trailhead. However, if this road were improved as part of a state-managed area, it would facilitate increased use in the adjacent parts of the Flattops Wilderness. The impacts from such increased use need to be disclosed.

The CRA is adjacent to the Wilderness, which is "a Mandatory Class I airshed". The CRA is also "within a state defined source water assessment area (municipal water supply)." Profiles, ibid.

The Forest Plan recommended that 800 roadless national forest acres in the Sweetwater area be added to the Flat Tops Wilderness. See Forest Plan Record of Decision at 30. It is important that the wilderness quality of this area be conserved.

The trailhead for Hack Lake is located right across from the old restaurant by Sweetwater Lake. Increased visitation to Sweetwater Lake might encourage additional use of this trail, especially since day-use parking would be provided near the trailhead. (See Project Area Map; note location of areas B). The Hack Lake area is managed as a Special Recreation Management Area by the Bureau of Land Management; a small portion, which is adjacent to the Flattops Wilderness, is a wilderness study area. The BLM website for the area states:

> Fauna includes black bear, mountain lion, mule deer, Rocky Mountain bighorn sheep, and Rocky Mountain elk. Outstanding opportunities include hiking, backpacking, hunting and photography.[4]

Increased use of this area could degrade the qualities of the BLM area. Thus, the potential impacts from increased use of this area must be disclosed and minimized.

The NOI states that a new equestrian area, to be constructed in the middle pasture, "could also provide overnight parking and access to the surrounding Flat Tops Wilderness Area.". Id. at 37165. New access to the Flat Tops Wilderness is not needed from the Sweetwater area. Four trails already access the wilderness from the Hilltop Trailhead. Any new trail from the middle pasture that would access the wilderness would have to ascend very steep terrain. Therefore, the provision for new trails into the Flat Tops Wilderness should be removed from the proposed action.

FIGHT NOXIOUS WEEDS AND PROTECT RARE PLANTS. The greater presence of people means an increased opportunity for the introduction and spread of non-native plants, i. e., noxious weeds. Before any ground disturbance occurs, the area should be surveyed for noxious weeds. Any populations found should be eradicated to the greatest degree practicable. Herbicides should not be used, or only minimally used, to protect water quality and to avoid killing or damaging non-target vegetation. With increased use, annual surveys and any needed eradications would be necessary.

[4] https://www.blm.gov/site-page/programs-national-conservation-lands-colorado-hack-lake-wsa. Visited August 14, 2023.

Before any action is approved, the project area needs to be surveyed for rare plants so that any action can avoid these populations and minimize damage to them. Then the surveys for weeds can be used to detect rare plant populations. Any new facilities must not disturb such populations, and they must be located sufficiently far away that people using the area are not likely to trample or otherwise damage the plants. That is, there must be a sufficient buffer around each rare plant population that allows it to expand and migrate in response to climate.

## AUTHORITY FOR STATE MANAGEMENT

Under the proposed action, the Forest Service would issue a 20-year special use permit to the Colorado Department of Parks and Wildlife to manage the project area. NOI at 37165. It is unusual for the Forest Service to turn over management of any national forest land to an agency of another government. For the reasons explained below, this issue needs to be addressed in NEPA documents for the project and/or elsewhere.

This issue is important because it may be unclear what laws and regulations apply. It is national forest land, so federal laws and regulations would apply; however, if the area is managed by the state, then state laws and regulations might be applicable. Would state park managers be expected to enforce federal laws and regulations, or state provisions, or both? That would present problems. Visitors would need to know in advance what rules and regulations for the area would apply.

Since the land in question would still be national forest land, the White River National Forest Plan would still apply.

Has the Forest Service signed a memorandum of agreement or understanding (MOA or MOU) with Colorado Department of Natural Resources/Department of Parks and Wildlife, or will such an instrument be signed before the management is approved? If so, whatever instrument is used must be available to the public during scoping or, if signed later, during a subsequent public comment period.

What fees would be charged for entry and use of the Sweetwater Lake area under State management? Currently, access to the area is free. Local residents visit the area frequently, often for short periods. That free use could end with State management. Usage of the area would shift to those with more money. To prevent this loss of accustomed benefit for local residents, the Forest Service should require the state to allow the continuation of free, short-term use for local residents.

## CONCLUSION

The Sweetwater Lake area is a special place. It has important wildlife habitat hosting many species, including some that are sensitive and/or that react negatively to human disturbances. It provides a place for uncrowded, quiet recreation, cultural/historic resources, and beautiful

scenery. Any management must conserve these important resources. Human use cannot be encouraged to increase to the point where it harms the special values of the area.

A state park should not be opened in the area. The Forest Service should designate a special interest area covering the project area and some of the surrounding national forest land. What laws and regulations would be applied and by whom needs to be clarified.

Please keep us informed of any subsequent opportunities for public input.

Sincerely,

Mary Harris
President, Roaring Fork Audubon
345 Colorado Ave. Unit 303
Carbondale, Colorado
smnharris@gmail.com

Delia Malone
Wildlife Chair and Roaring Fork Group Executive member
Colorado Sierra Club Roaring Fork Group
0111 Mountain Lion Way
Redstone, Colorado, 81623
deliamalone@earthlink.net

Rocky Smith, Forest Management Analyst
1030 North Pearl St. #9
Denver, CO 80203
303 839-5900
2rockwsmith@gmail.com

THE UNDERSIGNED INDIVIDUALS AND GROUPS SUPPORT THESE COMMENTS.

Keith and Leigh Birdsong
[redacted]

Bill Bohannan
[redacted]

Walker Bohannan
[redacted]

Lynn Brown
[redacted]

Lulu Colby
[redacted]

Timothy Ebner
[redacted]
Property owner in Sweetwater Canyon below the lake.
[redacted]

John C. Emerick, Ph.D.
Executive Board
ColoradoWild
[redacted]

Carol Fischer
[redacted]
Property owners on 151 for 65 years
[redacted]

Tim Hennum [redacted]
Gretchen Hennum [redacted]
Katelin Hennum [redacted]
[redacted]

Mark Herman and Diane Frantz-Herman
[redacted]

Josh and Mickey Fried
[redacted]

Katie and Alan Hood
[redacted]

Larry Mabry
[redacted]
I'm a 25-year resident of the Sweetwater community.
[redacted]

Diane Osborn

[redacted]

Austin Page

[redacted]

Ashley Page

[redacted]

Janet and Benny Rivera

[redacted]

Rogers Family

[redacted]

Todd Schmidt and Jeanne Nedrelow

[redacted]

Bill Sepmeier

[redacted]

I am a Sweetwater resident of 20 years:

Scott and Rita Skelton

[redacted]

Garrett and Betty Jean Smith.

[redacted]

Casie and Dan Ward

[redacted]

[redacted]

Tom Sobal
Director
Quiet Use Coalition
[redacted]

Mary Stephens, [redacted]
Bill Stephens, [redacted]
Malorie Stephens, [redacted]
Lucas Stephens, [redacted]
Katie LaFramboise, [redacted]
Ty LaFramboise, [redacted]
[redacted]

Michael Thompson
[redacted]

Scott and Carol Vasina
[redacted]
We are Sweetwater residents along Sweetwater Road.
[redacted]

Brian Widhalm
[redacted]

Jennifer Widhalm
[redacted]

Derrick and Tammi Wiemer
[redacted]

Craig & Kat Williford
[redacted]

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Attachment 1 Site Plan
Attachment 2. 2017 Colorado Potable Water System Study at Sweetwater
Attachment 3. Sweetwater USFS Campground Use 2016-2023

Appendix 1. Roaring Fork Audubon Breeding Bird survey results at Sweetwater Lake 2023 and 2024. Watchlist scores of 9-12 indicate moderate declines; scores =>13 indicate species at risk of extinction.

| Bird Species | CPW SWAP List | Region 2 Sensitive Species List | State of North American Bird Report Watchlist Score | USFWS Bird Species of Conservation Concern |
|---|---|---|---|---|
| Ring-necked Duck | | | | |
| Canada Goose | | | | |
| Mallard | | | | |
| Barrow's Goldeneye | | | | |
| Common Merganser | | | | |
| Dusky Grouse | | | | |
| Wild Turkey | | | | |
| Eurasian Collared-Dove | | | | |
| Mourning Dove | | | | |
| Common Nighthawk * | | | 11 | X |
| Black Swift * | Tier 2 | X | 15 | X |
| White-throated Swift | | | | |
| Broad-tailed Hummingbird. * | | | 12 | X |
| Black-chinned Hummingbird * | | | 10 | X |
| Great Blue Heron | | | | |
| Osprey | | | | |
| Bald Eagle | Tier 2 | X | 9 | |
| Swainson's Hawk * | Tier 2 | | 12 | X |
| Red-tailed Hawk | | | | |

| | | | | |
|---|---|---|---|---|
| **Sharp-shinned Hawk** | | | | |
| **Cooper's Hawk** | | | | |
| **Turkey Vulture** | | | | |
| **Northern Harrier *** | **Tier 2** | | **11** | **X** |
| **Golden Eagle *** | **Tier 1** | | **10** | **X** |
| **Long-eared Owl *** | | | **13** | **X** |
| **Belted Kingfisher *** | | | **10** | **X** |
| **Red-naped Sapsucker** | | | **9** | |
| **Northern Flicker** | | | **9** | |
| **American (Northern) Goshawk *** | | | | |
| **American Kestrel (decline in Colorado)** | | | | |
| **Peregrine Falcon** | **Tier 2** | **X** | **10** | |
| **Western Flycatcher *** | | | **12** | **X** |
| **Dusky Flycatcher** | | | **9** | |
| **Warbling Vireo** | | | | |
| **Black-billed Magpie** | | | **9** | |
| **Steller's Jay** | | | | |
| **Woodhouse's Scrub Jay *** | | | **NA** | **X** |
| **Clark's Nutcracker *** | | | | |
| **Common Raven** | | | | |
| **American Crow** | | | | |
| **Barn Swallow** | | | | |
| **Cliff Swallow** | | | | |
| **Violet-green Swallow** | | | | |
| **Tree Swallow** | | | **10** | |
| **Northern Rough-winged Swallow** | | | | |
| **Mountain Chickadee** | | | **10** | |
| **Black-capped Chickadee** | | | | |
| **Bushtit** | | | | |
| **Red-breasted Nuthatch** | | | | |
| **Rock Wren** | | | | |
| **House Wren** | | | | |
| **Blue-gray Gnatcatcher** | | | | |
| **American Dipper** | | | **10** | **X** |
| **Ruby-crowned Kinglet** | | | | |
| **Mountain Bluebird** | | | | |
| **American Robin** | | | | |
| **Swainson's Thrush** | | | **10** | |
| **Townsend's Solitaire** | | | **10** | |
| **Hermit Thrush** | | | | |
| **Gray Catbird** | | | | |
| **European Starling** | | | | |
| **Cedar Waxwing** | | | | |
| **House Sparrow** | | | | |
| **House Finch** | | | | |
| **Pine Siskin** | | | **10** | |
| **Green-tailed Towhee** | | | **11** | |
| **Spotted Towhee** | | | | |
| **Brewer's Sparrow *** | **Tier 2** | **X** | **11** | **X** |

| | | | | |
|---|---|---|---|---|
| **Fox Sparrow** | | | | |
| **Song Sparrow** | | | | |
| **Vesper Sparrow** | | | | |
| **Song Sparrow** | | | | |
| **Lincoln's Sparrow** | | | | |
| **Chipping Sparrow** | | | | |
| **Red-winged Blackbird** | | | | |
| **Bullock's Oriole *** | | | **11** | **X** |
| **Yellow Warbler** | | | | |
| **Orange-crowned Warbler** | | | **9** | |
| **Virginia's Warbler *** | **Tier 2** | | **14** | **X** |
| **MacGillivray's Warbler** | | | **12** | |
| **Wilson's Warbler** | | | | |
| **Black-headed Grosbeak** | | | **9** | |
| **Western Tanager** | | | **9** | |
| **Lazuli Bunting *** | **Tier 2** | | **9** | **X** |