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Via Online Portal

Forest Service Project Portal

<https://cara.fs2c.usda.gov/Public/CommentInput?Project=284162>

Via Email

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RE: Comments on the Forest Service's Draft Environmental Impact Statement for the Sweetwater Lake Recreation Management and Development Project

On behalf of Sweetwater Community Club, Inc.; the Sweetwater Lake Working Group (a subcommittee of Sweetwater Community, Club); Wendy T. Cogdal; Derrick Wiemer; Mary Stephens; Bill Stephens; and Joel Walker, we hereby submit comments on the Draft Environmental Impact Statement ("Draft EIS") for the proposed Sweetwater Lake Recreation Management and Development Project (the "Proposed Action").¹

The Proposed Action aims to increase recreational opportunities at Sweetwater Lake by issuing a 20-year special use permit ("SUP") to Colorado Parks and Wildlife ("CPW") to operate and maintain the 846-acre SUP area around Sweetwater Lake. The Proposed Action also includes a forest-wide amendment to the 2002 White River National Forest Land and Resource Management Plan (the "Forest Plan"), which would create a new Management Area ("MA") in the White River National Forest (called MA 8.22 – State or Local Government Managed Developed Recreation Areas) and then apply that designation of MA 8.22 to the entire 846-acre SUP area.

¹ Sweetwater Community Club is a nonprofit organization that was founded in the 1970s. Since its founding, Sweetwater Community Club has hosted community gatherings; advocated for safe infrastructure, sustainable recreation, and conservation of the local community near Sweetwater Lake; and engaged with federal, state, and local governmental officials on proposals that would adversely affect the Sweetwater Lake community. Sweetwater Community Club membership is approximately 85 households.

As it currently stands in the Draft EIS, technical reports, and references, the Forest Service's analysis of various topics is deficient, inaccurate, missing, or misleading in numerous important respects. These serious defects preclude an objective understanding of the Proposed Action, alternatives, and impacts, therefore rendering it impossible for the public and the Forest Service to evaluate which alternative best serves the Forest Service's purpose and need, as well as the applicable Forest Plan standards, goals, and objectives. Accordingly, the Forest Service should address the issues below and publish a supplemental Draft EIS that corrects these deficiencies and facilitates a more accurate, objective examination of the Sweetwater Lake Recreation Management and Development Project.

At minimum, if the Forest Service refuses to prepare and publish a Supplemental Draft EIS, the Forest Service must at least address and/or respond to the issues highlighted below before reaching a final decision on whether to proceed with the Proposed Action or some other alternative. If the Forest Service fails to meaningfully address the issues raised in this letter, the agency will be in violation of the procedural and substantive mandates of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4347, the National Forest Management Act ("NFMA"), 16 U.S.C. §§ 1600-1614, and the Administrative Procedure Act, 5 U.S.C. § 706.

I. THE PROPOSED ACTION—AND THE ENTIRE NEPA PROCESS—APPEARS SKEWED TO SUPPORT A PREORDAINED OUTCOME TO ALLOW CPW TO MANAGE SWEETWATER LAKE AS COLORADO'S 43RD STATE PARK

NEPA's effectiveness depends entirely on involving environmental considerations in the initial decisionmaking process. *See, e.g., Metcalf v. Daley*, 214 F.3d 1135, 1145 (9th Cir. 2000) (citation omitted). Accordingly, an agency's examination of impacts and alternatives "must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made." *Forest Guardians v. U.S. Fish & Wildlife Serv.*, 611 F.3d 629, 712 (10th Cir. 2010) (quoting *Metcalf*, 214 F.3d at 1142) (internal quotation marks omitted). Utilizing the NEPA process as nothing more than a ruse to justify or rationalize a decision already made is therefore a violation of the letter and spirit of NEPA. *See id.* ("[I]f an agency predetermines the NEPA analysis by committing itself to an outcome, the agency likely has failed to take a hard look at the environmental consequences of its actions due to its bias in favor of that outcome and, therefore, has acted arbitrarily and capriciously.").

Although there is a "high standard to prove predetermination," *Forest Guardians*, 611 F.3d 692 at 714, the Forest Service's Draft EIS process here certainly appears to be foreordained to achieve a specific outcome—indeed, an outcome urged aggressively by the State of Colorado long before the NEPA process—to effectively make Sweetwater Lake, located on federal land, Colorado's 43rd state park by handing over federal management of this land to CPW. In fact, documents in the Forest Service's decisionmaking record make clear that CPW taking over management of Sweetwater Lake is already a foregone conclusion, despite the purported purpose of this NEPA process to analyze *whether* the Forest Service should ultimately allow CPW to manage Sweetwater Lake through issuance of an SUP.

For example, in June 2021, Forest Service emails show recognition that "CPW is officially joining in as a partner on the Sweetwater Project." Exhibit 1. Soon thereafter, in

August 2021, a Forest Service official warned other Forest Service staff, as well as CPW staff, to avoid calling the now-proposed SUP area a “state park” because that “gives the appearance of a pre-decision” well before the initiation of the NEPA process. Exhibit 2. While acknowledging the close partnership between Colorado Governor Jared Polis’s office and the Forest Service on this project, Forest Supervisor Scott Fitzwilliams explained in October 2021 that he “cautioned” the Governor and his staff “to be careful about saying too much about what we plan to build” in order to avoid “getting too out in front” because “[w]e don’t want to be pre-decisional from a NEPA perspective.” Exhibit 3. Despite the Forest Service’s repeated calls for caution in order to downplay the foregone conclusion that the agency would turn over management of Sweetwater Lake to CPW for management by the State of Colorado, an early 2022 state park budget request by the Colorado Department of Natural Resources made clear the State’s view, even before the NEPA process, that Sweetwater Lake would become Colorado’s “newest state park,” which required immediate funding for “personnel and operating resources” in order “to support initial public access” to the park as early as 2022. Exhibit 4.; *see also id.* (referring to Sweetwater Lake, in this 2022 budget request, as “Colorado’s 43rd state park at Sweetwater Lake in Garfield County”). Then, in January 2023, CPW and the Forest Service prepared and publicly distributed a PowerPoint presentation, in which the agencies stated that they “[a]nticipate” that a “final version” of the Forest Service SUP to CPW for Sweetwater Lake management “will be ready for signature *this month*.” Exhibit 5 (emphasis added).²

Given this highly questionable history underlying the project—all of which predated the *start* of the NEPA process by more than a year—this situation smacks of predetermination. Indeed, there is strong evidence that the Forest Service’s actions here, walking in lockstep with CPW for several years prior to finally engaging the public in May 2024 when it began the NEPA process, “amounted to a surrender of the Government’s right to prevent activity in the relevant area.” *Metcalf*, 214 F.3d at 1144. If that is the case, “such a firm commitment before preparing an [EIS]” means that the Forest Service “failed to take a ‘hard look’ at the environmental consequences of [its] actions and, therefore, violated NEPA.” *Id.* at 1145.

In addition to statements made by the Forest Service and CPW in the record, the Draft EIS’s analysis provides further evidence of predetermination. For instance, the Forest Service appears to dismiss Alternatives 1 and 3 in part because they purportedly would fail to achieve consistency with the Forest Plan’s Wildlife General Standard 9, which requires a seasonal restriction of human activities within ½-mile of peregrine falcon nests between March 15 and July 31. *See* Draft EIS at 67. Although the Proposed Action would *also* be inconsistent with Wildlife General Standard 9, *see id.*, the Forest Service goes out of its way to try to explain why this inconsistency is permissible in the context of the Proposed Action based on topography and proposed mitigation. *See id.* at 214. Nowhere, however, is there any similar attempt to explain how Alternatives 1 or 3 might be implemented consistent with Wildlife General Standard 9, even though those alternatives would involve far *less* human activity in the Sweetwater Lake area (and

² It is unclear whether this SUP was ever finalized and signed in or around January 2023 as the agencies anticipated. But the more important point is that the Forest Service and CPW were representing to the public in *January 2023* that they were nearing finalization and execution of the SUP, which was *16 months* before the Forest Service even initiated the NEPA process by filing a scoping notice in the Federal Register. *See* 89 Fed. Reg. 37165 (May 6, 2024).

less developed recreational opportunities that could disturb falcons), thus naturally posing less of a disturbance threat to falcons. Rather than treat Alternatives 1 and 3 objectively and attempt to bring them into consistency with the Forest Plan (as the Forest Service went out of its way to do for the Proposed Action—i.e., Alternative 2), the agency merely asserted that the agency would “continue to face challenges enforcing closure orders intended to limit human entry and other activities in environmentally sensitive areas,” including near falcon nests. *Id.* at 211. But there are two problems inherent in this cursory assertion: (1) the Forest Service has only previously observed “some” limited disturbance of falcons at Sweetwater Lake and there has been fledgling success every year since 2022, *id.* at 208-09; and (2) the Forest Service already implements risk mitigation measures such as “[b]uffers and restrictions” around falcon nests, and there are likely other proven measures that would further enhance compliance with and enforcement of closure orders, such as additional signage, remote cameras, and other tools routinely used by federal, state, and local agencies when protecting and managing wildlife on public lands. The Forest Service’s refusal to consider readily available measures to bring Alternatives 1 and 3 into consistency with the Forest Plan’s General Wildlife Standard 9—while expending significant effort in the Draft EIS to bring the Proposed Action (with far more human activity) into purported consistency with that same standard—demonstrates a NEPA process designed to cook the books so that only one alternative is a lawful, Plan-consistent outcome.

Accordingly, we respectfully request that the Forest Service address the issue of predetermination in a supplemental Draft EIS (or, at minimum, in its Final EIS), explaining in detail the history leading to the NEPA process, any commitments made by the Forest Service prior to initiating the EIS process regarding the specific alternatives the agency would consider in its Draft EIS, Forest Plan consistency among alternatives, and any financial commitments made to date by the Forest Service that are contingent on ultimately issuing the SUP and conferring management authority to CPW for Sweetwater Lake. In addition, we expect that in light of the above discussion, the Forest Service will make a more serious attempt to treat all alternatives objectively—and not just the Proposed Action—by considering readily available measures that could bring each alternative into Forest Plan consistency, as required by NFMA. Unless and until the Forest Service addresses this threshold issue, the EIS process appears to be nothing more than a paperwork exercise intended to rationalize and justify a decision already made long ago by the Forest Service, the Governor’s Office, and CPW.

II. THE PROPOSED ACTION DOES NOT MEET SUP APPLICATION OR ISSUANCE REQUIREMENTS SET FORTH IN THE FOREST SERVICE’S REGULATIONS THAT IMPLEMENT NFMA

Highlighting the peculiar and seemingly predetermined nature of this permitting process is the fact that CPW recently responded to a request under the Colorado Open Records Act for all records related to CPW’s application or proposal for an SUP from the Forest Service to manage Sweetwater Lake, by confirming that CPW has never submitted any such application. This makes no sense. The Forest Service’s regulations clearly require a formal proposal or application before the agency can issue an SUP to occupy Forest Service lands. *See* 36 C.F.R. § 251.54. Yet, here, CPW’s responses to public records requests make clear that no such application or proposal has been made.

Paradoxically, the Draft EIS ignores this important issue entirely. It fails to explain when CPW applied for an SUP, identify the contents of any application, or clarify any terms or conditions to which CPW committed in that application in the event the Forest Service ultimately grants an SUP for Sweetwater Lake. Furthermore, CPW has not publicly accepted the Proposed Action. Rather, CPW has repeatedly stated that it is merely a commenting agency. In turn, CPW has delayed preparing and/or publishing resource management plans until after the Forest Service issues its Record of Decision. This delay has created a critical data gap, depriving the public of the opportunity during the EIS process to comment on vital management plans, financial authorizations, and public safety measures that are essential to a safe, sustainable approach to managing Sweetwater Lake.

In particular, although it analyzes a proposal to issue an SUP, the Draft EIS fails to satisfy the following requirements that apply to every SUP and its respective SUP application, as set forth in the Forest Service's own regulations that implement NFMA:

- 36 C.F.R. § 251.54(d)(2)(ii)(A) (State Authorization Under Which the Proposal is Made): No proof of state authorization has been disclosed in the Draft EIS or elsewhere. If State authorization has not been obtained, the Draft EIS is premature.
- 36 C.F.R. § 251.54(d)(3) (Technical and Financial Capability): CPW has provided no evidence of financial authorization or assurance to construct, maintain, or terminate the project.
- 36 C.F.R. § 251.54(d)(4), (e)(1)(iii) (Project Description & Public Safety): The Draft EIS lacks sufficient detail to evaluate public safety compliance. *See infra* at 6-8.
- 36 C.F.R. § 251.54(e)(1)(ii) (Forest Plan Consistency): The Proposed Action fails to meet several governing Forest Standards as described herein. *See infra* at 11-19.

In addition to not meeting the applicable SUP requirements, the Proposed Action appears to contravene CPW's own requirements set forth in C.R.S. § 33-10-106(1)(c) for site suitability. The record must address the site-specific issues raised here—single-route access and evacuation, sustainable capacity, emergency response, mudslide/rockslide risk, enforceable wildlife closures, and resource compatibility—before the Forest Service relies on CPW as the SUP applicant.

III. THE DRAFT EIS SUFFERS FROM MAJOR OMISSIONS, UNDERANALYSIS, AND MISLEADING EVALUATION THAT UNDERMINES THE PUBLIC'S ABILITY TO FULLY UNDERSTAND AND COMMENT UPON THE PROPOSED ACTION, ALTERNATIVES, AND IMPACTS

The Forest Service ignored numerous important topics, failed to adequately analyze several key issues, and misleadingly presented other issues in the Draft EIS. Below, we

summarize what we view as the most serious defects in the Draft EIS without providing an exhaustive list of every concern.³

1. Reference Materials

The Forest Service did not provide Draft EIS reference materials to the public—including, for example, CPW’s Sweetwater Lake Property Resource Stewardship Plan (2024)—until August 4, 2026, despite the comment period opening on June 26, 2026. There are still multiple reference documents requested that have not been provided for review by the time of this comment letter. These reference materials are crucially important to a full understanding of the Proposed Action, as well as the Forest Service’s broader analysis contained in the Draft EIS.

Accordingly, while the public was afforded a 90-day comment period *on the Draft EIS*, many important, underlying materials were available only for roughly half of that time period (during peak work season for this agricultural based community and at a time when many people travel for summer vacations), which is in our view unacceptable given the Forest Service’s stated commitment to provide 90 days to review and digest this factually complex Draft EIS, technical reports, and (belatedly provided) reference materials. We believe that this fact warrants an extension of the Draft EIS review and comment period, so that we and other members of the public have sufficient time to carefully review and understand the Forest Service’s proposal and related analysis.

2. Public safety

Public safety—including ingress/egress concerns and emergency response concerns due to the fact that Sweetwater Lake may only be accessed by Sweetwater Road (CR 40/CR 150)—is the ***most important issue*** for my clients. This is because the proposed SUP area is at the dead-end of an 11.7-mile, narrow, winding, rural road in a box canyon, bordered by a series of gulches, subject to regular occurrences of mudslides and boulders blocking the only evacuation route for lake visitors, local residents, and staff. In addition, Sweetwater Road sits within a high wildfire risk area, and wildfires in both 2025 and 2020 required the evacuation of all residents and lake visitors from the Sweetwater Lake area, all of whom had to use Sweetwater Road as the only egress option. As a demonstration of the precarious egress situation, during the Derby wildfire firefighters had to cease fire suppression efforts and evacuate due to forecasted rain and the high potential of being trapped due to the single egress (Sweetwater Road) being prone to mudslides and rockslides. Recent newsworthy mudslides carrying boulders blocking Sweetwater Road in multiple locations occurred on August 30, 2026, trapping residents and lake visitors alike, followed by a lightning-caused wildfire only a half mile from Sweetwater Lake on September 2, 2026.

³ Many of the issues raised herein were identified to the agency in significant detail in scoping comments; yet, the Forest Service appears to have simply ignored them without any explanation. See, e.g., *Historical Use Levels, Summer Occupancy and Protection of Wildlife Habitats* (Aug. 1, 2024), <https://cara.fs2c.usda.gov/Public/Letter/4580750?project=284162>.

Despite the obvious and serious concerns with public safety of greatly expanding the number of human visitors (including visitors with large vehicles, such as RVs and trucks with trailers) as the Forest Service proposes in the Proposed Alternative (and Alternative 4), the Draft EIS hardly addresses this highly significant issue. Indeed, in the Draft EIS, the Forest Service states: “[f]or a related analysis of public transportation, emergency medical services, and ingress/egress for natural disaster emergencies (e.g., wildfire) near the Project area, refer to **Section 3.8** of this EIS.” Draft EIS at 170. But Section 3.8 of the DEIS says *nothing* about public safety, let alone ingress/egress issues, emergency evacuation, response plans in the event of mudslides or rockslides, or how these issues will be significantly exacerbated by allowing RVs and trucks with trailers to access Sweetwater Lake under the Proposed Action. Rather, Section 3.8 of the Draft EIS focuses exclusively on *socioeconomics* and how the Proposed Action and alternatives will affect tax revenue and other economic factors in Garfield County and beyond. See Draft EIS at 144-59. This is not a mere typo; the Draft EIS lacks this analysis entirely.

Likewise, in the Traffic, Parking, and Roads Technical Report supporting the Draft EIS, the Forest Service states: “[f]or related analysis of public transportation, emergency medical services, and ingress/egress for natural disaster emergencies (e.g., wildfire) near the Project Area, refer to the *Socioeconomics Technical Report* for the Project.” Draft EIS, *Traffic, Parking, and Roads Technical Report* at 4. But as with the DEIS, the source material to which the Forest Service refers the public does *not* contain the promised discussion. Rather, the Socioeconomics Technical Report, as its name implies, looks at socioeconomic impacts resulting from the Proposed Action and various alternatives, similar to Section 3.8 of the Draft EIS. Nowhere in the Socioeconomics Technical Report does the report even use the words “ingress” or “egress,” and “public safety” is mentioned once in a generic list. See Draft EIS, *Socioeconomics Technical Report* at 39. Although it lacks any analysis other than economic impacts (via increased fees and employment), the Socioeconomics Technical Report does confirm—as is well-established—that there are “recurring wildfire and flash flood hazards, particularly along canyon corridors,” *id.* at 41; “demands for . . . emergency services would increase commensurate with the increase in visitors,” *id.* at 49; and “new visitation to Sweetwater Lake has the potential to increase emergency and fire-related incidents and create additional demand on response teams,” *id.* at 50. Thus, while the Socioeconomics Technical Report purports to consider the *socioeconomic* toll on emergency responders in Garfield County and Eagle County, *id.* at 57-58, nowhere in the Draft EIS or its technical reports is there any analysis of (let alone a hard look at) the adverse public safety effects (including to nearby residents who must also use Sweetwater Road for egress) of authorizing significantly more visitors to Sweetwater Lake under the Proposed Action (and Alternative 4), including with RVs and trucks with trailers, where the only egress in the event of wildfires, mudslides, rockslides, or other emergencies is the winding, perilous Sweetwater Road.

The failure to address this major public safety concern, cited as a “critical” component of the project’s analysis by CPW in its own 2024 scoping comment, is extremely troubling to my clients and the public at large. Evacuations, of which there have been multiple in recent years, will be substantially exacerbated by the increased congestion and limited maneuverability due to potentially hundreds of park visitor evacuees on the single egress road. The Traffic, Parking, and Roads Technical Report supporting the Draft EIS indicates that Sweetwater Road “can accommodate trailers or motorhomes up to 30 feet in length,” Draft EIS, *Traffic, Parking, and Roads Technical Report* at 31. Yet, the Proposed Action allows 36-foot motorhomes without

identifying completed, engineered road improvements showing they can safely navigate Sweetwater Road without entering the opposing lane. Previous evacuations proved complex and time-consuming due to the agricultural base of the community, which requires large-scale evacuations of horses and cattle. Adding more people and large vehicles to evacuate may well place lives in danger, whether local residents, lake visitors, or staff. Accordingly, a proper, lawful natural disaster and public safety emergency ingress/egress analysis is pertinent to determine a safe park capacity as it relates to the 11.7-mile, single egress, Sweetwater Road corridor, in order to avoid risk to local residents and lake visitors alike.

We hope that the Forest Service's failure to address these paramount public safety issues (outside of socioeconomic impacts) was a sincere mistake. Regardless, either in a supplemental Draft EIS (preferably) or at least in a Final EIS, the Forest Service must seriously examine this issue to determine a safe lake visitor capacity level, reconsider allowable vehicle lengths, and adopt risk mitigation measures sufficient to protect the lives and safety of residents, lake visitors, and staff. Absent that analysis, the Forest Service's EIS process flouts NEPA and cannot serve as a lawful predicate for a final decision on whether to adopt the Proposed Action.⁴

3. Baseline Recreational Data

The Forest Service's failure to accurately account for the existing baseline of recreational visitorship and use of Sweetwater Lake permeates all aspects of the Draft EIS. This error significantly affects the adequacy of the Draft EIS, both because it underestimates the increase in visitorship that will result from the Proposed Action or alternatives to it (and therefore calls into question the sustainability of the capacity limits that would be part of the Proposed Action), and because it substantially understates the effects to wildlife and other natural resources based on a misunderstanding of the proportional increase from current recreational visitorship levels and the higher levels of recreational visitorship that occur under the Proposed Action (and alternatives to it). There are several distinct errors that led the Forest Service to greatly underestimate the proportional increase in recreational visitorship from baseline, existing levels.

First, the Draft EIS suggests that there is no reliable data regarding historical use of Sweetwater Lake by recreational visitors. *See* Draft EIS at 106. But that is not correct. Forest Service campground occupancy data available upon request, and the Colorado Department of Public Health water classification for the outfitter operation, are readily available data sets that document historical use levels. In reality, visitorship averaged about 30 people per day up to 2018, with recreational visitors primarily using the existing Forest Service campground and an

⁴ In our view, a lawful public safety analysis here would include, at minimum: (1) an independent route analysis (which models residents, visitors, employees, large vehicles, and incoming responders under realistic fire and debris-flow scenarios); (2) the establishment of a reliable secondary egress (i.e., a feasible secondary egress route in the event of blockage of Sweetwater Road during an evacuation event); (3) an examination of clearance-time results (which evaluates assumptions, vehicle counts, bottlenecks, blockage scenarios, and the time required to clear the Sweetwater Road corridor); and (4) the ultimate adoption of binding limits and conditions in the Record of Decision for occupancy, vehicle type and amount, and closure and emergency conditions that would trigger action.

on-site outfitter with restaurant and cabin rentals. Since 2019, when the on-site outfitter reduced its operations (i.e., closed its restaurant, then cabin rentals phased out through 2020), recreational visitorship dropped noticeably and has remained consistent at those lower levels from 2019 to present. Because of the very low level of human presence and activity since 2019, wildlife and other resources have grown accustomed to solitude and very low levels of human disturbance. Rather than recognizing this obvious fact and using site-specific metrics based on Sweetwater Lake recreational visitorship, the Draft EIS uses an “assumption of full capacity” and acknowledges that this “overestimates actual historic visitation” in a manner that is not reflective of historical averages or the situation from 2019 to present. *See, e.g., id.* at 106. In this way, the Forest Service has failed to identify a lawful, accurate baseline recreational visitorship level, which is essential to inform the agency and the public as to permissible recreational capacity limits that will not overtax wildlife and other resources that will be affected by the Proposed Action (or any action alternative).

Second, the Draft EIS’s analysis of existing daily traffic is also highly misleading, which taints the Proposed Action’s analysis regarding the level of impact and reasonable capacity limits on recreational visitors to Sweetwater Lake. In the Traffic, Parking, and Roads Technical Report, the Forest Service measured average daily traffic in the proposed SUP area along Sweetwater Road for approximately one year (September 2024 to August 2025, excluding May 2025 due to equipment problems). *See Draft EIS, Traffic, Parking, and Roads Technical Report* at 26-27. The report then inexplicably applied multipliers to seasonal traffic averages derived from Interstate 70 (a major artery that serves a very different purpose than Sweetwater Road), rather than applying multipliers based on site-specific data relevant to the Sweetwater Road corridor. *See id.* at 27 n.18 (acknowledging the use of Interstate 70 data for the multipliers). Not only did the generic multiplier overestimate baseline recreational visitorship to Sweetwater Lake, but two other factors did as well: (1) the August – September 2025 data artificially inflates actual, baseline traffic numbers because the Derby Wildfire happened these months and the SUP area served as the primary meeting and staging area for firefighters and emergency responders, and each of their vehicle trips was counted by passive traffic counters, *see id.* at 26 n.17; and (2) the traffic count data fails to account for *non*-recreational use of Sweetwater Road—which traffic counters cannot differentiate from recreational use—and which includes daily, year-round use by semi-trucks, snowplows, delivery vehicles (e.g., UPS or FedEx trucks), and trucks with agricultural or heavy equipment, given that the parking lot at Sweetwater Lake is the *only* large-vehicle turnaround location on the entire 11.7-mile Sweetwater Road. All of these factors contributed to a heavily skewed and overinflated assumption of baseline recreational visitorship that does not comport with the reality on the ground in terms of *recreational* visitors, especially since 2019.⁵

Accordingly, either in a supplemental Draft EIS or at least in the Final EIS, the Forest Service must revisit these problems and identify an accurate, evidence-based, site-specific baseline of recreational visitorship to Sweetwater Lake, and use that updated baseline to analyze

⁵ The passive traffic counters, even when placed within the project area, also fail to distinguish between recreational visitors and Forest Service or CPW staff or consultants that visited the area for administrative, maintenance, or other purposes, including to gather information necessary for the EIS process. This, too, overestimates baseline recreational use.

permissible capacity levels for recreational visitors and the impacts resulting from each alternative in light of the proportional increase in visitorship allowed under each option.

4. Flat Tops Wilderness

The Forest Service similarly underanalyzes the impact of the Proposed Action (and Alternative 4) to the adjacent Flat Tops Wilderness Area, the values that led to its designation as a Wilderness Area, and wildlife and other sensitive resources that are found in the Flat Tops Wilderness Area.

The Draft EIS acknowledges, as it must, that the Proposed Action (and Alternative 4) will result in indirect impacts to the Flat Tops Wilderness Area. *See, e.g.*, Draft EIS at 203. In fact, a specific component of the Proposed Action aims to “provide designated access to the Flat Tops Wilderness for both equestrians and hikers/backpackers.” *Id.* at ES-3; *see also id.* at 6. As a result, the Forest Service states that “[v]isitation to the Flat Tops Wilderness would likely increase” under the Proposed Action (and Alternative 4), and admits that under those alternatives the “[w]ilderness characteristic ‘has outstanding opportunities for solitude or a primitive and unconfined type of recreation’ *may be degraded* by this increase in visitation.” *Id.* at 64 (emphasis added). Conversely, Alternatives 1 and 3 do *not* increase access to the Flat Tops Wilderness, and the Draft EIS notes that “existing patterns of wilderness use” would continue under Alternative 1 and therefore “Alternative 1 is not anticipated to impact the untrammeled, natural, or undeveloped characteristics of the Flat Tops Wilderness.” *Id.* at 203; *see also id.* at 205 (same for Alternative 3).

Despite recognizing that construction plans under the Proposed Action and Alternative 4 will (and are intended to) facilitate increased access to the Flat Tops Wilderness, the Forest Service improperly and inexplicably defers its cumulative effects analysis and management obligations to a future NEPA process, stating: “[s]hould management actions become necessary to control visitation to the Flat Tops Wilderness to meet Forest Plan standards, these actions would be considered in a separate, future NEPA analysis.” *Id.* at 206. Given the foreseeable effects to the Flat Tops Wilderness that will be driven by the Proposed Action’s large increase in recreational visitation and improvements intended to facilitate access to the Flat Tops Wilderness, it is impermissible to defer the Forest Service’s NEPA duties to some future date.

At minimum, either in a supplemental Draft EIS or at least in the final EIS, the Forest Service must objectively analyze the additive impacts of the Proposed Action (and Alternative 4) to the wilderness characteristics, wildlife, and other resources in the Flat Tops Wilderness; explain what strategies and measures will be implemented once certain levels of resource damage or wilderness value impairment occur; and identify measurable criteria and metrics that will determine when the Forest Service must implement those strategies and measures to minimize and mitigate further impacts to the unique resources of the Flat Tops Wilderness.

5. Wildlife

The Forest Service’s analysis of wildlife in the Draft EIS omits myriad important considerations, underanalyzes multiple issues, and fails to sufficiently explain the rationales the

agency presents for deviating from binding Forest Plan standards. Accordingly, unless these issues are properly addressed in a supplemental Draft EIS or at least in the agency's Final EIS, the Forest Service will be in violation of NFMA, NEPA, and the APA.

a. Peregrine Falcons

The Draft EIS correctly acknowledges that peregrine falcons have done remarkably well at Sweetwater Lake in recent years when recreational visitorship has been at very low levels:

Peregrine falcons are confirmed breeders at Sweetwater Lake. The analysis area's cliffs support excellent falcon nesting habitat, and peregrines have fledged young every year since WRNF monitoring began in 2022. Buffers and restrictions established by the WRNF and the USFWS currently limit human activity near active nests.

Draft EIS at 209; *see also* Draft EIS, *Wildlife Technical Report* at 45-46. Yet, the Forest Service now proposes to significantly expand recreational access through the Proposed Action (or even more so under Alternative 4), but in the process the agency has failed to seriously consider the impacts of substantially increased visitorship to active peregrine falcon nests and important falcon habitat surrounding Sweetwater Lake.

i. General Wildlife Standard 8

At the outset, we highlight the Draft EIS's complete failure to identify—let alone assess the Proposed Action's consistency with—binding General Wildlife Standard 8 in the Forest Plan, which requires the Forest Service to “[d]iscourage land use practices and development that adversely alter the character of peregrine falcon hunting habitat or prey base within ten (10) miles of the nest site and the immediate habitats within one (1) mile of the nesting cliff.” Forest Plan at 2-16. The Draft EIS is completely silent as to General Wildlife Standard 8, even though it is plainly applicable to the Proposed Action that will introduce new construction and recreational activities that will unavoidably alter the character of peregrine falcon hunting habitat and its prey base within ten miles of the active nest site, as well as the immediate habitat within one mile of the cliff where the nest is located. In fact, the Draft EIS acknowledges that the use of Sweetwater Lake by watercraft “may decrease waterfowl abundance and thus peregrine prey availability.” Draft EIS at 214. It is reasonable to assume that the massive increase in recreational users of Sweetwater Lake and the surrounding area will also result in decreased waterfowl abundance and peregrine prey availability. Yet, the Draft EIS is devoid of any discussion of how the Proposed Action or alternatives will (or even could) achieve consistency with General Wildlife Standard 8.

The Wildlife Technical Report accompanying the Draft EIS includes General Wildlife Standard 8 in a list of all Forest-wide wildlife standards, *see* Draft EIS, *Wildlife Technical Report* at 18, but nowhere in that document (or elsewhere in the Draft EIS or any technical report) is there any discussion about the consistency of the Proposed Action or alternatives with General Wildlife Standard 8, let alone any consideration of measures that would allow the Proposed Action or other alternatives to become consistent with General Wildlife Standard 8. Given the binding nature of this standard, the Forest Service's failure to address this issue is a flagrant

violation of NFMA (and also a NEPA violation), which must be remedied in a supplemental Draft EIS or at least in the Final EIS. *See, e.g., All. for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1113-14 (9th Cir. 2018) (noting that each forest plan must include “standards,” which are “binding limitations typically designed to prevent degradation of current resource conditions”); *Native Ecosystem Council v. U.S. Forest Serv.*, 418 F.3d 953, 963 (9th Cir. 2005) (explaining that the public must “be able to reasonably ascertain from the record” that the Proposed Action “is in compliance with the [Forest] Plan standard[s]”).

ii. General Wildlife Standard 9

In contrast to General Wildlife Standard 8, the Draft EIS identifies General Wildlife Standard 9 as applicable to the peregrine falcon eyrie at Sweetwater Lake. *See* Draft EIS at 67, 214. But the Forest Service’s assessment and ultimate resolution of consistency with General Wildlife Standard 9 is patently arbitrary, as explained below.

In the Forest Plan, General Wildlife Standard 9 requires that: “[h]uman activities will be restricted within one-half (½) mile of occupied peregrine falcon areas between March 15 and July 31 for nest sites, or July 1 to September 15 for hack sites”; “[p]rotection distance may vary depending on local topography, potential for disturbance, and location of important habitat components.” Forest Plan at 2-16. Hence, unless there is a compelling site-specific reason, the Forest Service must implement a seasonal, ½-mile restriction on all human activity for falcon nest sites between March 15 and July 31.⁶

Rather than abide by this binding requirement, the Forest Service deemed the Proposed Action and every alternative analyzed in detail in the Draft EIS to be *inconsistent* with General Wildlife Standard 9. *See* Draft EIS at 67. Instead of formulating alternatives that would be consistent with General Wildlife Standard 9—i.e., alternatives that provide increased recreational use without encroaching on a ½-mile seasonal restriction buffer around the peregrine falcon eyrie—the Forest Service instead manufactured several rationales as to why a ½-mile buffer is not necessary for this particular nest, and why a ¼-mile buffer from the cliff bands used by peregrine falcons would instead be sufficient. *See* Draft EIS at 214.

First, the Forest Service asserts that two new recreational zones under the Proposed Action would “fall near the periphery of the half-mile radius of the cliff bands.” *Id.* But whether

⁶ CPW, which will manage the SUP area if the Forest Service approves the Proposed Action (or Alternative 4), also has promulgated its own recommended buffers and seasonal restrictions for Colorado Raptors. *See* CPW, *Recommended Buffers and Seasonal Restrictions for Colorado Raptors* (2020), <https://cpw.widencollective.com/assets/share/asset/fqmg4ds76b>. As with General Wildlife Standard 9 in the Forest Plan, CPW recommends no surface occupancy within a 1/2-mile radius of an active nest from March 15 to July 31. *See id.* CPW also explains that “[d]ue to propensity to relocate nest sites, sometimes up to ½ mile (2640 feet, 800 meters) along cliff faces, it is more appropriate to designate ‘Nesting Areas’ that encompass the cliff system and a ½ mile (2640 feet, 800 meters) buffer around the cliff complex.” *Id.* Although CPW applies these buffers at other state parks that CPW manages, CPW and the Forest Service evidently do not plan to abide by these requirements and recommendations for Sweetwater Lake.

the human activity falls in the periphery of a restriction zone is irrelevant; the question is whether increased recreational visitation and activities in those areas can be expected to disturb falcons, which depends upon the line of sight of those areas from the falcon nesting area. And as to that question, there is no evidence or information provided that explains why a massive influx in recreational visitors within ½-mile of the nest will not disturb falcons.

Second, the Forest Service asserts that “[l]ocal topographic characteristics that would decrease the peregrines’ perceived disturbance resulting from these features include the lake itself, the densely vegetated wetland area upstream of the lake, and the valley between the eyrie and the campgrounds,” and “[t]hese features may be suitable to prevent the occupation and use of the campgrounds from disturbing the peregrines.” *Id.* Not only does the Draft EIS provide zero photographic or other evidence substantiating these topographic features or explaining *why* these features “may” be suitable to avoid falcon disturbance, but the Draft EIS also fails to mention the indisputable fact that all of the new, proposed recreation zones will be in direct line of sight from the peregrine falcon eyrie (including the Sweetwater Lodge, North Day Use, South Day Use, Administrative, Cabin, Interpretive/Education, Equestrian, and Campground zones, in addition to new fishing piers, North Overlook, and an associated trail). Some of these zones and facilities—which are never mentioned in the Forest Service’s justification for ignoring the ½-mile falcon nest buffer—start as close as a mere *800 feet* from the nest cliff. Yet, the Draft EIS merely refers to two other recreation zones—the Equestrian and Campground zones—in providing its justification for a buffer smaller than ½-mile and ignores the rest of these zones and activities. This is not a reasoned justification.⁷

Accordingly, unless the Forest Service can produce photographic or other evidence substantiating its rationale that *none* of the Proposed Action’s zones or activities will be within direct line of sight of the falcon nest, or otherwise explain coherently how this large influx of recreational visitors inside a ½-mile radius of the nest will not disturb falcons or their prey base, the Proposed Action cannot be made consistent with General Wildlife Standard 9 and the Forest Service must therefore select a different alternative that abides by this binding standard (as well as CPW’s peregrine falcon buffer/restriction recommendation), in order to avoid violating NFMA and NEPA.

In addition, as a more general matter, we have serious concerns about the Forest Service’s proposed “mitigation,” in which the agency proposes that all construction under the Proposed Action—which we understand may occur in up to ten different years given the scope of the Proposed Action—“begin either prior to the onset of the nesting season or after the young birds have fledged,” in order to avoid “nestling mortality.” Draft EIS at 214; *see also id.* at A-18 (imposing mitigation measure RPM-WLD-12: “To reduce the risk of nest abandonment and nestling mortality of the known peregrine falcon eyrie, the Forest Service (or CPW under Alternatives 2 and 4) shall avoid initiating disturbance within a half mile of the eyrie during the nesting season (March 15 or after July 31), and instead shall initiate construction either prior to or after this period.”).

⁷ Members of Sweetwater Community Club have recently conducted field visits of the SUP area. All of the Proposed Action’s new zones are in direct line of sight with the falcon eyrie.

There are several problems with this proposed mitigation. First, there is no disclosure or analysis in the Draft EIS of how many years the Forest Service anticipates active construction within ½-mile of the eyrie, which with multiple years of construction (and potential nest failure and/or abandonment) will cause significant cumulative effects to peregrine falcons and their nesting success. Second, while initiating construction after the young birds have fledged (i.e., after July 31) both satisfies General Wildlife Standard 9 and reduces the risk of nestling mortality, it is unclear how the alternative mitigation option either satisfies Standard 9 or reduces the risk of nest abandonment. If, in fact, construction begins “prior to the onset of the nesting season” (i.e., before March 15) but then *continues into the nesting season*—which appears to be allowed by RPM-WLD-12—this mitigation option would still threaten nest abandonment in each year of construction because it would result in the same “noise and commotion” that can “cause peregrines to avoid nesting [at Sweetwater Lake] during the year of construction.” *Id.* at 214. In short, Standard 9 is not concerned with when human activities *initiate* (which is the focus on RMP-WLD-12); it is clearly focused on avoiding *all* human activity within ½-mile of the eyrie between March 15 and July 31, and there is no exception for loud, disturbing activities that started prior to March 15. As a result, the currently proposed mitigation does not satisfy General Wildlife Standard 9 and is thus inconsistent with the Forest Plan.

Accordingly, we urge the Forest Service, in a supplemental Draft EIS or at least in its Final EIS, to fully address the impacts to peregrine falcons, account for the anticipated number of years of construction that would occur within ½-mile of the eyrie, and require mitigation that not only restricts the initiation date for construction within the ½-mile buffer but rather restricts *all* construction and related human activity within ½-mile of the eyrie between March 15 and July 31 in each year of construction.

b. Bald Eagles

As with peregrine falcons, the Forest Service’s Draft EIS glosses over foreseeable impacts to federally protected bald eagles and proposes to act in a manner adverse to bald eagles. In the Forest Plan, the agency set forth two binding standards for bald eagles:

1. If a winter roost or nest site is discovered, write a management plan to ensure that the necessary habitat components are maintained.
2. Human activities should be prohibited within 250 yards of bald eagle winter roosting areas between November 15 and March 1. Human activities should be prohibited within 400 yards of an active nest between February 1 and August 15.

Forest Plan at 2-24. By definition, these standards require the Forest Service to identify the protected resource (i.e., eagles), identify and evaluate the necessary habitat components eagles need in the relevant area (including winter roosts), and impose seasonal spatial restrictions to avoid impairing nesting, roosting, feeding, or sheltering behavior. Here, however, the Forest Service has taken a very different approach than the one required by the

agency's Forest Plan standards (or the buffers and restrictions set forth in CPW's raptor recommendations).⁸

As a threshold matter, while the Forest Service stated that an eagle management plan would be prepared as part of the Proposed Action, *see* Draft EIS at 67, at this time there is no management plan provided to the public, let alone any site-specific studies (including on the tolerance of resident bald eagles to tolerate human disturbance), winter roost evaluations, or other data regarding eagles. As a result, no public evidence demonstrates where winter roosts are located, what distance of buffer is needed around those roosts, and what other mitigation measures might be necessary to come into compliance with the Forest Plan. That alone is highly troubling and runs afoul of the requirements of Bald Eagle Standard 1.

Moreover, although the Forest Service states in the Draft EIS that by imposing a 400-yard buffer *and* “[w]ith implementation of proposed mitigation” the Proposed Action would become consistent with Bald Eagle Standard 2, *see* Draft EIS at 67, that is incorrect for two reasons. First, nowhere does the Forest Service explain whether *these* bald eagles that nest at Sweetwater Lake can withstand substantially increased human activity only 400 yards from active nests, as opposed to a larger buffer (such as the ½-mile buffer that CPW recommends for active eagle nests throughout Colorado).

Second, even if the Forest Service could demonstrate that a 400-yard buffer is appropriate for eagles at Sweetwater Lake, the Proposed Action violates Bald Eagle Standard 2 by *not* applying that same buffer to the Cross Creek Trail (Trail #1855), which falls within 400 yards of an active nest and has two unsanctioned overlooks well within 400 yards of an active nest. Rather than impose the 400-yard buffer with respect to the Cross Creek Trail—i.e., the buffer the Forest Service is applying to all other activities near eagle nests—the Forest Service instead proposed an *adaptive* (or reactive) management approach whereby activities may take place on that trail, and only *later* would measures be considered to reduce disturbance once those activities harm and impair the behavior of Sweetwater Lake's eagles. *See* Draft EIS at A-17. In fact, the Forest Service's proposed mitigation measure states that the Forest Service and CPW would “[a]dd a seasonal timing

⁸ CPW's bald eagle buffer recommendations are as follows:

No Surface Occupancy (NSO) beyond that which historically occurred, within ¼ mile (1320 feet, 400 meters) radius of active nests. No permitted, authorized, or human encroachment activities within ½ mile (2640 feet, 800 meters) radius of active nest sites from December 1 through July 31. The majority of bald eagle chicks in Colorado have fledged by July 31; however, for late-nesting or potential re-nesting bald eagles, CPW recommends seasonal restrictions beyond July 31 if chicks are still present in the nest. CPW's recommended buffer is more extensive than the National Bald Eagle Management Guidelines (USFWS 2007) due to the generally open habitat used by Colorado's nesting bald eagles, [which is reflective of conditions at Sweetwater Lake].

restriction(s) on Trail #1855” only “if there is evidence of bald eagles changing winter roosting or nesting behavior in response to human disturbance.” *Id.* In other words, not only does the non-use of a 400-yard buffer on this trail flout Bald Eagle Standard 2, but it also means that no mitigation would be implemented until after “take” of eagles from human disturbance has already occurred in violation of the Bald and Golden Eagle Protection Act, *see* 16 U.S.C. § 668, and the Migratory Bird Treaty Act, 16 U.S.C. § 703. This type of reactive, adaptive mitigation only *after* eagles are harmed is not consistent with the letter or spirit of Bald Eagle Standard 2 (or federal laws that protect bald eagles).⁹

Moreover, the existing monitoring of the Sweetwater Lake eagles and their tolerance to human activity and disturbance cannot establish a lawful or meaningful baseline for anticipating effects to eagles with a massive influx of new recreational visitors, including within roughly 400 yards from active nests. Our understanding is that the Forest Service is relying upon monitoring reports from Bald Eagle Watch (“BEW”) trained volunteers who monitor specific eagle nests. Although our members have formally requested that the Forest Service provide any other bald eagle monitoring data that may have been used as part of the agency’s analysis of bald eagle impacts, the Forest Service has not provided any responsive records at this time. The BEW monitoring is a valuable tool for tracking statewide populations, however it was found to be lacking in the detail and frequency to answer the central questions of this NEPA process—i.e., how many people on average use the nest area now, how the resident bald eagles respond, and what level of future use (and at what distance) would likely cause disturbance? The BEW monitoring forms do not ask volunteers to document the number of recreationists, precise activity type, exact location, duration of the activity, noise levels (measured via a decibel reader), dog presence, boating/shoreline use, or line-of-sight conditions. Many reports only characterize human activity under a generic category “Agriculture or ranch operation,” yet the observation documented on the report occurred when the ranch was closed for the season with no specific indication if humans other than the observer were present.

BEW monitoring also falls short in additional respects. For example, the monitoring frequency and duration are far too limited to establish a reliable, season-by-season recreation baseline, let alone a reliable disturbance threshold for the Sweetwater Lake eagles. Moreover, our understanding is that very little BEW monitoring occurred on weekends, with

⁹ Similar to Forest Service’s discussion of consistency with the Forest Plan’s peregrine falcon standards set forth in our predetermination comments above, *see supra* at 2-4, the Forest Service barely attempts to consider readily available options to bring Alternatives 1 and 3 into consistency with Bald Eagle Standards 1 and 2 (while at the same time the agency goes out of its way to propose *after-the-fact* mitigation to purportedly bring the Proposed Action into consistency with those standards). While it is true that CPW would not have on-site management and enforcement under Alternatives 1 and 3, there are readily available options such as additional signage, remote cameras, and other tools routinely used by federal, state, and local agencies when protecting and managing wildlife on public lands, which could be implemented here to significantly reduce or eliminate human disturbance to eagles. At best, the failure to consider such options is perplexing; at worst, the Forest Service’s actions appear intended to downplay the benefits of Alternatives 1 and 3 to support a preordained outcome.

only two weekend days representing peak season, once in 2022 and once in 2023, which is when recreation use would be the highest. Thus, whatever limited value the BEW monitoring might provide the Forest Service, it is nowhere near sufficient to provide data-driven evidence of current impacts to bald eagles and the foreseeable increase in effects to those same eagles once the Forest Service greatly increases recreational use and human disturbance only 400 yards from active eagle nests.¹⁰

The Forest Service's attempt to downplay the success of the Sweetwater Lake eagles is also misleading. The agency asserts that "[n]esting success" has only been "intermittently successful," due to purported nest failures in 2023 and 2025. *See* Draft EIS, *Wildlife Technical Report* at 44. But it is our understanding that the 2023 nest failure was based on a single visual observation by a BEW volunteer in May 2023, where that volunteer noted the status as "unoccupied/undetermined" after a short, 45-minute observation period. That is by no means sufficient to determine conclusively that the nest failed for the 2023 season.

Likewise, the 2025 nest failure followed a documented disturbance—an incident about which members of Sweetwater Community Club (and its Sweetwater Lake Working Group), along with numerous bird advocacy and conservation organizations, wrote the Forest Service to express concern and urge follow-up action. Despite this reported, documented instance of eagle take—occurring approximately 225 meters from an active nest during the early breeding period, after which the BEW reports indicate the nest failed after the eagles ceased incubating—the Forest Service declined to take action, and now follows that inaction by failing to adopt sufficient buffers, such as the ½-mile buffer recommended by CPW, to avoid similar disturbance to these eagles in the future given that they are obviously highly sensitive to human activity.

The need for eagle nest buffers larger than 400 yards is also underscored by the fact that the bald eagles at Sweetwater Lake have been disturbed by human activity well outside 400 yards. For example, BEW monitoring data shows that on April 2, 2024, human presence (observer) *600 meters from the nest* disturbed the two adult eagles incubating in the nest. The human activity disturbance was documented as "divebomb/circle overhead." This example—during a time period of no recreational use (i.e., only the observer present), compared to the Proposed Action—reinforces the need for more stringent buffers to avoid disturbing and otherwise taking these eagles, especially with the substantial increase in recreational use proposed here.

In sum, at minimum, the Forest Service must ensure that the selected action complies fully with Bald Eagle Standards 1 and 2, including by conducting winter roost surveys, determining an accurate and reliable recreational use and disturbance baseline, preparing an eagle management plan and vetting that plan through the public NEPA process, placing at

¹⁰ As explained above in the recreational baseline section, the Forest Service is wrong that the Proposed Action would only increase recreational activity by "2.5 times the peak day visitor market demand over that which is projected under the No Action Alternative." Draft EIS, *Wildlife Technical Report* at 61. We think that it is closer to a 7-10 times increase, if based on an accurate recreational baseline from 2019 to present. *See supra* at 8-10.

least a 400-yard buffer around the nest for all activities (including Trail #1855), and considering whether a larger buffer (consistent with CPW's recommended buffer for eagles) is necessary given prior disturbances of these eagles at distances greater than 400 yards.

c. Elk and Deer

The Forest Service's Draft EIS is also problematic in its failure to seriously consider the foreseeable, permanent, adverse impacts to elk and deer (and key habitat for those species). We address several of those concerns below.

The Draft EIS acknowledges that "increased use of trails above [Sweetwater] Lake" as part of the Proposed Action (and Alternative 4) will cause "[i]ncreased hiker disturbance to elk & deer." Draft EIS, *Wildlife Technical Report* at 55. In addition, "year-round occupation of the Administrative Zone would add localized impacts to wintering elk and deer that do not currently exist." *Id.* at 60. Furthermore, the Proposed Action will impact "calving/fawning areas from the Campground and Equestrian Zones." *Id.* at 75. And, the Forest Service notes that "new roads, new campground, and a new equestrian facility would be built in severe winter range" under the Proposed Action. Draft EIS at 67. Moreover, the Forest Service explains that "[t]he energy expenditures of deer and elk and other wildlife that result[] from the startle and escape response to human encounters uses valuable energy stores that need to be built up through the summer and fall for survival during winter," and notes that "these increasing summertime energy expenditures may be decreasing survival, fecundity, and natality of elk herds in portions of the WRNF." Draft EIS, *Wildlife Technical Report* at 75.

Despite these serious concerns regarding new impacts to elk and deer from greatly ramping up recreational use, the Forest Service proposes a single, very modest measure as part of the Proposed Action—i.e., "a proposed winter closure on the Keep Ditch Trail from December 1 through April 15 to provide security for elk in mapped winter concentration and severe winter range." Draft EIS at 111; *see also id.* at A-18 ("To provide security for elk in mapped winter concentration and severe winter range, the Forest Service (or CPW under Alternatives 2 and 4) shall institute a winter closure on the Keep Ditch Trail from December 1 through April 15."); Draft EIS, *Wildlife Technical Report* at 77 ("RPM-WLD-17: Institute a winter closure on the Keep Ditch Trail from December 1 through April 15 to provide security for elk in mapped winter concentration and severe winter range."). However, significantly more must be done (or at least *considered and analyzed*) by the Forest Service—via seasonal closures and/or year-round buffers in sensitive areas for elk and deer—to minimize and mitigate the onslaught of impacts to elk and deer that will foreseeably result from a massive increase in recreational visitors and infrastructure under the Proposed Action (and Alternative 4).

Likewise, the Forest Service must consider and address the recommendations from the Forest Service's own biologist (Jen Prusse), which she deemed essential to reduce disturbance of elk and deer. *See* Exhibit 6. As she explained, the Forest Service should "[f]ocus development on already existing disturbed areas south of C.R. 150 to minimize expansion into higher value wildlife habitat." *Id.* at 5. This is because "[a] south-facing slope predominates the landscape on the north side of County Road 150"; "[t]his slope is ideal for wintering ungulates, including mule deer and elk . . . [and] has been mapped by CPW as a mix of elk winter, severe winter, and

winter concentration area.” *Id.* “This same area is valuable spring fawning and calving area for mule deer and elk.” *Id.* As a result, this agency expert recommended that the Forest Service “[m]ove [the] Admin/Employee Area off of the upper bench (currently irrigated meadow) and put it adjacent to where the old barn is or within the area already impacted near the lake, south of C.R. 150” because “[t]his facility, compared to all others proposed to be north of C.R. 150, has the potential to be the most disruptive to ungulates since it will be in use year-round.” *Id.* She also recommended that the agency “[r]elocate the family campground,” “the Equestrian Campground and the Equestrian Day Use/Parking,” and the “[o]utfitter facilities that are proposed to be north of C.R. 150.” *Id.* And, only “[i]f relocation of the Family Campground or Equestrian facilities is not possible, initiate and enforce a closure of these areas from December 1 – June 15.” *Id.* Especially where the Forest Plan contains a standard specifically designed to reduce harm in key wildlife habitats such as this habitat for elk and deer—i.e., General Wildlife Standard 1, *see* Forest Plan at 2-16 (“[s]easonal restrictions will be applied to reduce disturbance in key wildlife habitats”)—it is patently arbitrary for the Forest Service to ignore the possibility of such restrictions north of C.R. 150, given their importance to elk and deer, despite comments from the agency’s own biologist on the necessity of such measures.

In sum, we are very concerned about the amount of planned infrastructure (and associated human activity using that new infrastructure) that will permanently eliminate high-quality elk and deer habitat, and the Forest Service’s failure to consider alternate locations for this infrastructure south of Sweetwater Road or to institute seasonal restrictions prohibiting the use of these facilities from December 1 to June 15. Because the loss of these key habitat areas for elk and deer under the Proposed Action would be permanent and significant, the proposal as written both violates General Wildlife Standard 1 and constitutes an irretrievable loss of winter range and calving habitat functionality for the entire lifespan of the SUP (and likely longer given the likelihood of renewal at the end of the permit term). We urge the Forest Service to more candidly address this issue in a supplemental Draft EIS or at least in the agency’s Final EIS.

6. Ecosystem Health

Also overlooked in the Draft EIS is the Forest Plan’s paramount aim—i.e., Forest Plan Goal 1—to “[p]romote ecosystem health and conservation” of the White River National Forest. Forest Plan at 1-3. Although the Draft EIS pays lip service to the Forest Service’s obligation to ensure consistency with all Forest Plan goals, *see, e.g.*, Draft EIS at 11-12, nowhere does the Forest Service even mention Forest Plan Goal 1, let alone explain how the massive increase in recreational visitors and consequent serious impacts on various resources promotes (rather than detracts from) ecosystem health. We respectfully request that the Forest Service address ecosystem health in a supplemental EIS or at least in its Final EIS, in order to ensure consistency with the Forest Plan and NFMA (as well as NEPA’s disclosure and analysis requirements).

IV. THE ALTERNATIVES ANALYSIS IN THE DRAFT EIS IS SKEWED AND FAILS TO ADDRESS NUMEROUS IMPORTANT ISSUES, BUT A LAWFUL FINAL ALTERNATIVE MUST ADDRESS PUBLIC SAFETY, WILDERNESS, WILDLIFE, ECOSYSTEM HEALTH, AND OTHER IMPORTANT ISSUES

Because of the myriad, serious deficiencies identified above, including both cross-cutting problems with the Draft EIS such as predetermination and lack of accurate baseline recreational visitorship data, as well as issue-specific problems such as impacts to public safety, the Flat Tops Wilderness, wildlife, and ecosystem health, we do not believe that the public can discern from the Draft EIS an objective, comparative analysis of alternatives that has been designed to satisfy the Forest Plan's standards and legitimately balance the purposes and needs identified in the Draft EIS. Accordingly, we respectfully request that the Forest Service, either in a supplemental Draft EIS or at least in its Final EIS, reconsider alternatives and the measures necessary to avoid, minimize, and mitigate impacts to important resources that will be foreseeably affected by the action that the Forest Service ultimately selects.

Because we are hopeful that the Forest Service will conduct a new analysis of alternatives given the problems inherent in the Draft EIS's presentation of alternatives and their respective impacts, we do not take a formal position on which of the alternatives addressed in the Draft EIS is our preferred approach. Nonetheless, we provide some thoughts below to help shape and guide the Forest Service's evolving consideration of alternatives, in light of the agency's statement that the Forest Service will remain open-minded and might ultimately select "a combination of the four alternatives" from the Draft EIS or it may "select components of the action alternatives or develop an entirely new alternative created from components of each." Draft EIS at 11.

First, despite characterizing the Proposed Action (i.e., Alternative 2) as a distinct alternative from Alternative 4 throughout the Draft EIS and contrasting the purportedly greater impacts from Alternative 4 (with no capacity limit) to downplay the impacts of the Proposed Action that will impose a daily recreational capacity limit of 250 visitors, the Forest Service's Visitor Use Management Plan undercuts the central distinction between the two alternatives. There, the Forest Service explains—for the first time after saying nothing in the Draft EIS itself—that visitor capacity under the Proposed Action could "be adjusted upwards if trends demonstrate that all objectives are improved and sustainable into the future." Draft EIS at A-8. Not only does this major loophole eliminate the primary distinction between the Proposed Action and Alternative 4—thereby undermining the NEPA process and the duty to explore alternatives in comparative form that materially differ from each other—but it also fails to provide *any* metrics by which the decision to adjust capacity upwards will be governed. If, in fact, the Forest Service wishes to make Alternative 2 and its capacity limit more malleable and subject to adaptive management (i.e., upward adjustment in the event data demonstrates that certain objectives are improved), the agency must discuss this prospect in the Draft EIS itself, explain in its impact analysis how the possibility of increased capacity would be expected to increase impacts to various resources, and provide clear metrics that will be utilized to ascertain whether an upward (or downward, for that matter) adjustment is warranted. Especially because those adjustments would presumably occur outside of public view (without any further NEPA review), it is imperative that the Forest Service fully disclose and vet that information *now* so that the

public can weigh in on the sufficiency of such metrics and measures that will dictate expanded visitor capacity for many years.

Second, at least as currently envisioned, Alternatives 1 and 3 (in contrast to Alternatives 2 and 4) appear to be best aligned with public safety for local residents and Sweetwater Lake visitors. Those alternatives also appear to have the highest potential for achieving consistency with the Forest Plan's paramount goal of ecosystem health and with the wildlife standards that apply to the peregrine falcon and bald eagle, so long as the Forest Service takes steps, as it must, to utilize readily available tools and measures to ensure protection of wildlife. Moreover, Alternatives 1 and 3 also appear to be most aligned with protecting wilderness resource values in the Flat Tops Wilderness and with conserving key habitat for elk and deer. Accordingly, while we do not take a formal position at this time—and instead we request an objective reanalysis of alternatives in a supplemental EIS or at least in the Final EIS, in light of these and other public comments—Alternatives 1 and 3 seem best positioned to balance all of the goals at stake and ensure consistency with the Forest Plan.

With that said, our clients (i.e., local residents in the community surrounding Sweetwater Lake) are open to other options, so long as certain basic conditions are satisfied. Indeed, we have not taken any formal position, nor have any specific preference, for whether the Forest Service or CPW is the primary management agency for Sweetwater Lake. We care only that the alternative ultimately selected does the following:

- The Selected Action and the capacity limits set therein, as well as the analysis of impacts to affected resources, must be based on accurate, site-specific (rather than regional) data of baseline recreational visitorship (excluding visits by staff, emergency responders, or delivery vehicles).
- The Selected Action must be managed with mandatory public safety elements, with natural disaster emergency ingress/egress incorporated into the Selected Action.
 - This requires a natural disaster emergency ingress/egress study, which is made public and subject to comment by affected local residents and municipalities, that determines permissible capacity limits, vehicle sizes, necessary road upgrades and maintenance needs, and response plans.
- The Selected Action must be managed to ensure wildlife protection and consistency with Forest Plan standards or, if necessary, CPW buffer recommendations.
 - With respect to the peregrine falcon, the Forest Service must ensure consistency with General Wildlife Standards 8 and 9, by addressing the issues raised above.
 - With respect to bald eagles, the Forest Service must ensure consistency with Bald Eagle Standards 1 and 2, by addressing the issues raised above.
 - With respect to elk and deer, and to ensure consistency with General Wildlife Standard 1, the Forest Service must relocate the family campground, equestrian

campground and day use/parking, and the outfitter facilities proposed to be north of Sweetwater Road, or if the Forest Service can substantiate in the record why this is not possible the agency must at least initiate a closure of these areas from December 1 to June 15 each year.

- The Selected Action must be consistent with Forest Plan Goal 1 to promote ecosystem health, and the Forest Service must document how the Selected action achieves that goal.

In sum, we would support an alternative that addresses the key issues relevant to future management of Sweetwater Lake, objectively evaluates the impacts of that action, and ensures consistency with the Forest Plan and sustainability of area resources for local residents and a limited number of recreational visitors for many years to come.

V. GIVEN THE MYRIAD, SIGNIFICANT FLAWS IDENTIFIED ABOVE, THE FOREST SERVICE MUST CONFRONT THE PURPOSES BEHIND THE ACQUISITION OF SWEETWATER LAKE AS A FEDERAL PROPERTY AND ENSURE THAT THE SELECTED ALTERNATIVE COMPORTS WITH THE GOALS AND OBJECTIVES THAT LED TO ITS ACQUISITION

Needless to say, the local Sweetwater community is extremely troubled with the Forest Service's handling of this project in the Draft EIS. The local community supported—in fact, outright advocated for—the Forest Service's acquisition of this property through the use of Land and Water Conservation Fund (“LWCF”) money. However, in light of the agency's omission of critically important issues from the Draft EIS, combined with the Forest Service's willful ignorance of historical baseline recreational use as a means to determine a permissible recreational user capacity that will avoid destroying numerous natural resource values (and support public safety), the local community views the Proposed Action (and the Draft EIS process as a whole) as a bait-and-switch from what the Forest Service proposed in applying for LWCF funding with the community's backing.

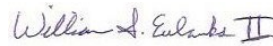
For instance, the Forest Service's application for LWCF funding cited the protection of wetlands, raptor habitat (for both falcons and eagles), elk and mule winter range, and habitat connectivity as specific benefits that would accrue if the Forest Service acquired Sweetwater Lake. *See* Exhibit 7; Exhibit 8. In order to obtain LWCF funding, the Forest Service explicitly represented that: “[a]cquisition of this parcel would bring these valuable and unique water resources under management direction that seeks to maintain the natural character, quality, quantity and health of these resources into perpetuity”; “[k]eeping these lands in open space will contribute to climate change resiliency by preventing fragmentation and potential development” and “[c]onsolidating ownership of these lands will facilitate animal movement and secure migration patterns, improving the ability of wildlife to adapt to climate change”; and acquisition would conserve “ample cliff side habitat that provides nesting opportunities for the American peregrine falcon and golden eagle, both of which have confirmed nests.” Exhibit 9 at 2. The Forest Service also made clear (in order to obtain LWCF funding) that community support is crucial and would be fostered by the acquisition. *See* Exhibit 7 at 6; *see also* Exhibit 10 (scoring acquisition of Sweetwater Lake as a 15 out of 15 points in that it would connect community and be acquired and managed to facilitate community input and support).

In our view, the Proposed Action severely fails to protect the specific resources that the Forest Service identified (and gained strong community support for) in order to obtain LWCF funding and acquire Sweetwater Lake. Had the local community known of the Forest Service's real plans—i.e., the Proposed Action—it certainly would not have supported the initial acquisition of this property. Regardless, at minimum, the Forest Service must address in a supplemental Draft EIS, or at least in the agency's Final EIS, how the action ultimately selected protects the resources identified by the Forest Service that it touted at the time it sought funding and community support to acquire this property. Absent that analysis, the Forest Service has failed to consider an important aspect of the problem, having told the public one thing in order to marshal support for property acquisition only to do something entirely contradictory.

CONCLUSION

We appreciate the opportunity to submit comments on the proposed action. Although we have serious concerns about the legal sufficiency of the Draft EIS as written, we have provided a roadmap in these comments for how the Forest Service can address the most glaring deficiencies and ensure that the Selected Alternative gains the support of local residents. If you would like to discuss these comments in more detail, please contact me at the email below to set up a video or telephone meeting with me (and my clients).

Respectfully submitted,

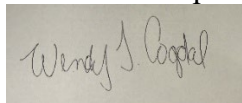


William S. Eubanks
Owner & Managing Attorney
Eubanks & Associates, PLLC
bill@eubankslegal.com

Pursuant to 36 C.F.R. § 218.25, these comments are submitted on behalf of:

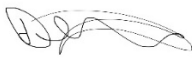
Sweetwater Community Club, Inc.
0600 Sweetwater Road
Gypsum, CO 81637

Authorized Representative Signature (President, Sweetwater Community Club):

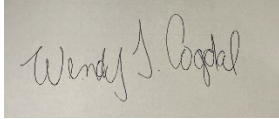


Sweetwater Lake Working Group
0600 Sweetwater Road
Gypsum, CO 81637

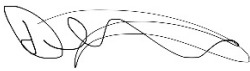
Authorized Representative Signature (Chair, Sweetwater Lake Working Group committee):



Wendy T. Cogdal
1864 Sweetwater Road
Gypsum, CO 81637
Signature:

A handwritten signature in cursive script that reads "Wendy T. Cogdal". The ink is dark and the background is a light, textured surface.

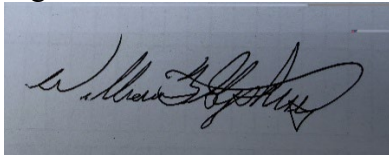
Derrick Wiemer
1760 County Road 151
Gypsum, CO 81637
Signature:

A handwritten signature in cursive script that reads "Derrick Wiemer". The signature is fluid and stylized, with a long horizontal flourish at the end.

Mary Stephens
0964 Sweetwater Road
Gypsum, CO 81637
Signature:

A handwritten signature in cursive script that reads "Mary Stephens". The signature is written in a clear, flowing cursive style.

Bill Stephens
0964 Sweetwater Road
Gypsum, CO 81637
Signature:

A handwritten signature in cursive script that reads "Bill Stephens". The signature is bold and stylized, with a prominent horizontal line across the middle.

Joel Walker
2121 N. Frontage Rd W.
PMB 41
Vail, CO 81657
Signature:

A handwritten signature in cursive script that reads "Joel Walker". The signature is written in a simple, clear cursive style.