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Title: Director, Southwest River Protection Program

Comments: Susan Eickhoff, Forest Supervisor and Responsible Official

Ashley National Forest

355 North Vernal Avenue

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RE: Objection to the Ashley National Forest Draft Record of Decision, Forest Plan, and Final Environmental Impact Statement (FEIS)

Dear Supervisor Susan Eickhoff and Objection Reviewing Officer,

American Rivers hereby formally objects to the Ashley National Forest's ("Forest") Draft Record of Decision (ROD), Final Environmental Impact Statement (FEIS), and Forest Plan. We do so following the regulations in 36 CFR 219. The Draft Record of Decision was dated and published in April of 2023 by the Responsible Official, Forest Supervisor, Susan Eickhoff. Subsequently, the legal notice of the objection period appeared in the newspaper of record, the Vernal Express, on April 19, 2023. The 60-day objection period thus ends on June 18, 2023.

Lead Objector:

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About American Rivers

American Rivers is a national nonprofit conservation organization championing an effort to protect and restore all rivers, from remote mountain streams to urban waterways. Healthy rivers provide people and nature with clean, abundant water and natural habitat. For over 50 years, American Rivers staff, supporters, volunteers, and partners have shared a common belief: Life Depends on Rivers. With headquarters in Washington, D.C., and offices in every region of the country, including throughout the Southwest, we have protected more than 150,000 river miles, removed more than 200 dams, and conserved clean water for people and nature.

Objections

American Rivers details six substantive objections to the Draft ROD, FEIS, and Forest Plan below.

1. The Forest's Wild and Scenic Rivers Suitability Determination fails to comply with proper procedure

The Ashley National Forest inappropriately concluded and published Wild and Scenic rivers suitability decisions in the proposed final Forest Plan, Final Environmental Impact Statement (FEIS), and Record of Decision (ROD). The Forest indicated, in its draft Wild and Scenic Eligibility Study and Report in May 2019, that the current Forest

Plan revision process would not include a Wild and Scenic rivers suitability analysis:

The Ashley National Forest intends to conduct a suitability evaluation, as part of a plan amendment, subsequent to the Record of Decision for its land use plan revision." (Wild and Scenic Eligibility Study and Report, May 2019, section 4.2, p. 4-5. Emphasis added.)

Correspondingly, American Rivers, in its comments on the draft Wild and Scenic eligibility report, supported the Forest's decision not to conduct a suitability analysis as part of the Forest Plan revision, and American Rivers did not provide comments-indeed it was not afforded opportunity to comment-on possible, let alone proposed, suitability decisions now reflected in the proposed Forest Plan, FEIS, and Draft ROD.

Inclusion of Wild and Scenic River suitability decisions in the Forest Plan, FEIS, and Draft ROD is disingenuous, and it is inconsistent with a) statements included in the Draft Wild and Scenic Eligibility Report, and b) provisions in the Forest Service Handbook regarding opportunity for public review and comment on forest planning and management decisions in general (National Environmental Policy Act and Forest Service Handbook 1909.2, Chapter 40, 43), and on Wild and Scenic rivers decisions in particular (FSH, Chapter 80, 81.1 and 85.2).

Remedies

The Forest must remove Wild and Scenic suitability decisions from the proposed final Forest Plan, FEIS, and Draft ROD, and the Forest must correspondingly include and uphold full status and protective interim management for all Wild and Scenic eligible streams in its analysis.

The Forest must provide fully compliant opportunity for public review and comment, before decisions regarding Wild and Scenic suitability are considered or finalized.

2.The Forest failed to consider important supplemental information regarding potential Wild and Scenic Rivers

Ashley National Forest, in preparing a final evaluation and report regarding Wild and Scenic eligibility (and subsequently, suitability), failed to consider supplemental information, including information and sources provided by American Rivers in comments on the Draft Wild and Scenic Rivers Study and Report, submitted in May 2019. Additional information sources identified in those comments included new ecological and habitat data drawn from Utah Natural Heritage Program and State of Utah Instream Flows Protection Program. This data in itself also constitutes "changed conditions," even as the content of the data details changed conditions on the ground.

Such consideration of additional and supplemental information and information sources is required by National Environmental Policy Act (NEPA) and related regulations, and under Forest Service planning instructions regarding land use planning and Wild and Scenic rivers evaluation (Forest Service Handbook, Chapter 80, 81.1).

In its response to comments, the Forest simply restated its generalized reliance on, "...Intermountain Region (Region 4) eligibility process...", without responding to the value, legitimacy, or substance of the data and sources recommended in comments (Summary Responses to Scoping Comments and Errata to Draft Eligibility Report, October 2022, pp. 2-3).

Remedies

The Wild and Scenic eligibility evaluation process must be reopened, with renewed opportunities for public review and comment, to specifically consider new supplemental information about stream and stream-corridors, including data available from Utah Natural Heritage Program, the State of Utah Instream Flows Protection Program, and from other appropriate sources.

Forest planning documents must include specific responses to information from those sources, including

information presented in previous American Rivers comments and information from the agencies themselves.

3. The Forest failed to consider climate change adaptation and ecosystem services as potential Wild and Scenic Outstandingly Remarkable Values (ORVs)

Ashley National Forest (Forest) refused to consider additional potential values that qualify select streams for Wild and Scenic eligibility, even though data supporting these values constituted "changed conditions."

In comments on the draft Wild and Scenic Rivers Eligibility Study and Report, May 2019, American Rivers called for specific consideration of climate change adaptation and ecosystem services as potential values qualifying candidate streams for Wild and Scenic eligibility, based on scientific data.

Specifically, American Rivers cited summary information from Adaptation Partners, the interagency research service funded by the U.S. Forest Service to coordinate resource and data sources toward "science-based management partnerships focused on climate change adaptation in the western United States..." American Rivers comments cited specific climate adaptation considerations recommended to the Forest Service by Adaptation Partners.

In its response to comments, the Forest did not address the concepts and values of climate adaptation and ecosystem services, or the value, legitimacy, or substance of related information provided by the Forest Service-funded research service that prepared that information.

Remedy

The wild and scenic eligibility process must be reopened, with renewed opportunities for public review and comment, to include specific screening of all candidate streams for potential outstanding remarkable values in the context of climate change and ecosystem services in general, and in the context of specific information provided by Adaptation Partners.

4. The Forest failed to reconsider previously evaluated streams for Wild and Scenic eligibility

Ashley National Forest refused to reconsider 22 streams previously evaluated for Wild and Scenic eligibility and suitability in 2008, or to consider potential changed circumstances and changed conditions related to those streams despite evidence provided by American Rivers.

In its response to comments, the Forest asserted that comments did not identify specific changed circumstances that may be relevant to the current wild and scenic evaluation. (Responses to Scoping Comments and Errata to Draft Eligibility Report, October 22, pp. 2) This is incorrect.

American Rivers, in comments on the draft Wild and Scenic Eligibility Study and Report, May 2019, cited climate change adaptation and ecosystem services as new considerations when evaluating outstandingly remarkable values for candidate streams (see objection issue #3)-concepts that were not considered during earlier Wild and Scenic evaluations, and that have since become essential in planning decisions that affect land and water resources, particularly in the Colorado River Basin.

In addition, in the same comments, American Rivers provided supplemental data-from Utah Natural Heritage Program and the State of Utah Instream Flows Protection Program, among others-that was created or updated since earlier Wild and Scenic evaluations were completed by the Forest (see objection issue #2).

Further, the simple passage of time, since previous Wild and Scenic evaluations were completed, warrants a

general reconsideration of potentially changed circumstances and conditions on fast-moving issues such as climate adaptation.

Each of these considerations constitute potential changed circumstances and warrant reconsideration of Wild and Scenic eligibility, as noted in Forest Service planning guidance (Forest Service Handbook, Chapter 80, 82.4)

Remedy

The Forest's Wild and Scenic eligibility process must be reopened for these 22 streams, with renewed opportunity for public review and comment, to incorporate and consider new information available from Adaptation Partners, Utah Natural Heritage Program, State of Utah Instream Flows Protection Program, and other relevant supplemental sources; and to specifically document how information from those sources does or does not constitute changed circumstances or changed conditions, and how that information does or does not meet the standards of Wild and Scenic eligibility.

5. The Forest failed to document and evaluate potential Wild and Scenic eligibility values for additional streams

Ashley National Forest failed to adequately evaluate the Wild and Scenic potential of 11 additional streams.

In comments on the draft Wild and Scenic Eligibility Study and Report, May 2019, American Rivers highlighted eleven streams overlooked in that study and report and documented specific stream-related natural values that warrant a finding of Wild and Scenic eligibility.

In its response to comments, the Forest appeared to simplistically dismiss the information provided in American Rivers comments, without explaining how that information was found to be not compelling to a finding of Wild and Scenic eligibility, or even whether the Forest evaluated that information at all, contrary to policy and law. (Responses to Scoping Comments and Errata to Draft Eligibility Report, October 22, pp. 3)

Remedy

The Wild and Scenic eligibility process must be reopened, with renewed opportunity for public review and comment, to address the potential outstandingly remarkable values of 11 streams highlighted in previous public comments, and to specifically document how those potential values do or do not meet standards for wild and scenic eligibility.

6. The Forest wrongly excluded 28 rivers from consideration and affirmation of their Wild and Scenic eligibility based on a prior suitability study and a subsequent one in this Forest Plan, in violation of the 2012 Planning Rule

Rivers found eligible must remain so - so long as they are free-flowing and possess at least one Outstandingly Remarkable Value (ORV) - regardless of any administrative findings of unsuitability. The decision to exclude rivers found unsuitable is located on pages 17 and 18 of the Forest's Draft Record of Decision.

The Forest misapplied agency policy in finding several streams ineligible for Wild and Scenic designation or choosing not to consider streams for their eligibility. The Forest's approach to implementing the 2012 Planning Rule wrongly assumes that there is a permanent administrative release process for streams found eligible for Wild and Scenic designation. The result is that the most valuable, potential Wild and Scenic Rivers -- e.g. those free-flowing streams with the most exceptional ORVs -- are forever eliminated from administrative protections based upon a political and cultural snapshot at the time of the suitability determination. The result in turn is an ever-dwindling suite of potential Wild and Scenic Rivers, contrary to the intent of Congress and the language of the 2012 Planning Rule. The 2012 Planning Rule does not support this approach, instead requiring that streams found to be eligible be protected as such.

The FEIS and Forest Plan err in stripping Wild and Scenic eligibility, and the administrative protections that entails, from rivers found not suitable. Doing so without a reasonable basis is arbitrary and capricious. The FEIS makes no claims and provides no evidence that these 28 streams the Forest has found eligible are not free-flowing or do not possess at least one Outstandingly Remarkable Value. Thus these 28 streams remain eligible.

This objection shows clear inconsistencies between the Forest's rationale and laws, regulations, and policies, rendering the ineligibility findings untenable and in violation of the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA). This objection shows in particular, that the Forest's approach to potential Wild and Scenic Rivers is inconsistent with the 2012 Planning Rule. At the same time, we show clear support in the record, consistent with agency policy and federal law, to reverse course and find these river reaches eligible for Wild and Scenic designation, as was recommended by American Rivers and our partner, American Whitewater, with whom we share Objection #6. American Whitewater's comments go into greater detail here, which we support.

Remedy

American Rivers requests that the final management plan for the Ashley National Forest find the 28 rivers and streams that the Forest has previously found eligible in recent years to be Wild and Scenic eligible still. Whether or not the Agency may legally conduct additional political and economic analysis during forest planning for the purposes of recommending rivers for Congressional designation, the Agency cannot just wave away the objective, on-the-ground facts that make rivers eligible by deciding they are not politically suitable for designation at that time.

We look forward to working with the Reviewing Officer on these important issues and remedies.

Sincerely,

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