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Comments: Copied from attachment-----

109 Oak Valley Drive | Durango, CO 81301 | 406-600-4061 | AmericanRivers.org
November 1, 2021
Regional Forester (Reviewing Officer)
Southwest Regional Office
Attn: Carson Forest Plan Objections
333 Broadway
SE Albuquerque, NM 87102
Sent via email to: objections-southwestern-regional-office@usda.gov
RE: Objection to Proposed Final Plan and FEIS, Carson National Forest Revision of Land and Resource Management Plan #47966
Dear Carson National Forest, We respectfully submit four objections to the proposed Forest Plan (proposed plan), Final Environmental Impact Statement (FEIS) and the draft Record of Decision (ROD) for the Carson National Forest. We look forward to discussing remedies to our objections with the Carson. Please carefully consider the following information and recommendations in preparing remedies to our objections.
Required Information
Objector: American Rivers
Michael Fiebig, Director, Southwest River Protection Program
109 Oak Valley Drive
Durango, CO 81301
406-600-4061
mfiebig@americanrivers.org
Reference to: Carson National Forest Plan Revision
Responsible Official: James Duran, Forest Supervisor
American Rivers
American Rivers is a leading conservation organization working to protect wild rivers, restore damaged rivers, and conserve clean water for people and for nature. Since 1973, we have conserved more than 150,000 miles of rivers through Wild and Scenic River designations, dam removals, on-the-ground projects, and advocacy efforts. Our Southwest Regional Office is headquartered in Denver, CO, and our Southwest River Protection Program has offices in Durango, CO, and Flagstaff, AZ.
Objection Summary
We object to the inadequacy of analysis in the Wild and Scenic River Eligibility Evaluation ("2019 WSR Evaluation") found in Appendix D of the Draft Plan, and in the final determinations regarding Wild and Scenic River eligibility found on pages 178-181 of the Final Plan and as presented in Volume 3, Appendix G of the FEIS, 1, denying Wild and Scenic river eligibility for stream segments that had previously qualified for eligibility, as detailed in our previous comments submitted during the forest plan revision process.
Specific Points of Objection
1) The proposed plan unnecessarily and inappropriately reassessed existing Wild and Scenic river eligibility for 60 stream segments, allowed only in response to "changed circumstances" to the river or river corridor, and would remove that eligibility from 25 stream segments that retain the characteristics for which they were found eligible
2) The proposed plan fails to document changed circumstances, which are required when reassessing Wild and Scenic eligibility
3) The proposed plan misinterprets Wild and Scenic river eligibility standards and guidance by removing existing Wild and Scenic river eligibility for some stream segments that contain Outstandingly Remarkable Value-enhancing structures (fish barriers), would deny eligibility for other segments because they do not contain such structures, and would deny eligibility for other segments on which the agency intends to install value-enhancing structures
4) The proposed plan misinterprets the definition of free-flowing, inappropriately denying Wild and Scenic river eligibility for certain streams
Objection #1 - The Wild and Scenic river eligibility analysis unnecessarily and inappropriately reassessed existing, previously documented Wild and Scenic eligible rivers
The proposed plan unnecessarily and inappropriately reassessed the existing Wild and Scenic river eligibility for at least 60 stream segments. As a result of that inappropriate reassessment, the proposed plan would remove previously existing Wild and Scenic eligibility from 25 stream segments that retain the characteristics for which they were found eligible, as documented in comments submitted by objectors on the Draft Forest Plan. These streams are: Frijoles Creek, Middle Ponil Creek, Gavilan Canyon, Palociento Creek, Italianos Canyon, Policarpio Canyon, Jiron Canyon, Rio de las Trampas, Long Canyon, Rio de las Trampas headwaters, Manzanita Canyon, Rio Grande del Rancho headwaters, Rio Tusas Box, Rio San Leonardo, Rito de la Olla, Warm Springs & Tierra Amarilla, Rito del Medio Canyon, West Fork (Red River)
1 Carson National Forest Plan (Draft) Appendix G, Wild and Scenic River Eligibility Evaluation, https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd569037.pdf.
3 San Cristobal Creek, Yerba Canyon, South Fork Beaver Creek, Vaqueros Canyon, Diablo Creek, McCrystal Creek
As the Draft Wild and Scenic Eligibility Evaluation acknowledges, both the 2012 National Forest Planning Rule and the Forest Service Handbook are clear in their guidance on reconsideration of Wild and Scenic eligibility: Identify the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System, unless a systematic inventory has been

previously completed and documented, and there are no changed circumstances that warrant additional review.² If a systematic inventory of eligible rivers has been completed, the extent of the study process during plan development or revision can be limited to evaluation of any rivers that were not previously evaluated for eligibility and those with changed circumstances...³ **REMEDY** - Our preferred remedy is that the Carson National Forest retain eligibility for the 25 stream segments that were inappropriately re-evaluated and revert back to the 2002 WSR Evaluation, correspondingly adjust the Final Forest Plan and Final Environmental Impact Statement (FEIS) to reflect those eligibility findings, and appropriately manage those streams and their corridors in a manner that ensures the characteristics warranting their Wild and Scenic eligibility are protected.

Objection #2 - The proposed forest plan fails to document changed circumstances. Forest Handbook direction regarding changed circumstances is clear: Changed circumstances are changes that have occurred to the river or the river corridor that have affected the outstandingly remarkable values... Changes that indicate weaker outstandingly remarkable values may include recovery and delisting of a species, floods, or other events that have adversely affected the river's recreational opportunities, or changes that now make the value of the river more common...⁴ That is, changed circumstances must constitute actual and measurable physical changes to the condition of a river or river corridor. The proposed plan, and the accompanying proposed Final Wild and Scenic River Eligibility Report,⁵ fail to document or even describe such physical changes. Instead, the proposed plan relies on the agency's subjective perception that: ...Changes to river eligibility fit within the revised approach to river management described in the totality of the new plan. By refining the evaluation and management direction for eligible rivers, the Carson NF believes it is managing more in line with the 2012 Planning Rule, 36 CFR sec. 219.7(c)(2)(vi).³ FSH 1909.12 82.24 FSH 1909.12 82.4, emphasis added.⁵ FEIS, Appendix G.4 intent of the Wild and Scenic Rivers Act, providing clearer management guidance, and stronger protections of those values which make a river eligible...⁶ While the agency's intention to provide strong protection for eligible rivers is commendable, neither the proposed plan, nor the FEIS, nor the response to comments on the Draft Plan/Eligibility Report describes, quantifies, or otherwise documents what particular features of currently eligible rivers and corridors do not qualify for eligibility, i.e. the changed conditions. The Forest Service's response to comments submitted by objectors and others on this point⁷ reprise the inappropriate contentions presented in the Draft Plan and Draft Wild and Scenic River Eligibility Evaluation that changes in policy or changes in interpretation of policy warrant changed circumstances. Excerpts include: The definition of outstandingly remarkable values has been aligned with the requirement under the Act and the 2012 Planning Rule that the value be river-related and a unique, rare, or exemplary feature that is significant when compared with similar values from other rivers at a regional or national scale. The revised definition resulted in adjustments to outstandingly remarkable values for some river segments. (p. 143) and The adoption of plan direction regarding eligible rivers and the previous inventory was a decision made as part of the 1986 plan (Amendment 12). That plan and its associated amendments, including the evaluation of river eligibility, is being replaced through this 2012 Planning Rule revision process with a new plan. By refining the evaluation and management direction for eligible rivers in the final Plan, the Carson NF believes it is managing more in line with the intent of the Wild and Scenic Rivers Act, providing clearer management guidance, and stronger protections of the values that make a river eligible. (p. 147) Again, changed circumstances are "...changes that occurred to the river or the river corridor that have affected outstandingly remarkable values...", not changes in policy or changes in the interpretation of policy.

REMEDY - Our preferred remedy is that the Carson National Forest retain eligibility for the previous Wild and Scenic qualified stream segments, adjust the Final Plan and FEIS accordingly, and manage the streams to protect the characteristics on which their Wild and Scenic eligibility is based, as discussed in Objection #1. Alternatively, the Forest must document the physical, on-the-ground, changed circumstances that occurred to the river segments or river corridors previously found eligible in the 2002 WSR Evaluation, justifying their ineligibility in accordance with the 2012 Planning Rule and Forest Service Handbook.

Objection #3 -- The proposed plan misinterprets Wild and Scenic river eligibility standards and guidance concerning Outstandingly Remarkable Value-enhancing structures (fish barriers) in streams analyzed and as a result, inappropriately denies Wild and Scenic eligibility to qualified stream segments.⁶ Ibid. ⁷ FEIS, Appendix A, pp. 142 et al.⁵ The proposed plan and accompanying Wild and Scenic River Eligibility Evaluation assert that human-constructed fish barriers related to protecting genetically pure populations of Rio Grande cutthroat trout (RGCT), a documented outstandingly remarkable value (ORV) for many streams evaluated, affect the eligibility of particular stream segments. However,

that assertion is inconsistently applied in the proposed plan. The proposed plan finds some stream segments eligible specifically because an existing fish barrier enhances and protects RGCT habitat and genetics (e.g. Powderhouse Canyon). For other streams, the proposed plan cites the presence of a fish barrier as a compromise of the stream's free-flowing condition, or as isolating the segment and thus as a reason to find the stream not-eligible. In still other streams, the proposed plan cites the absence of a fish barrier as reason to anticipate possible future loss or RGCT genetic purity, concluding that the fish do not, or eventually will not, qualify as an ORV. Since all components of Wild and Scenic river eligibility evaluation—free-flowing condition, segment classification, presence of ORVs, and eligibility itself—are required to turn on the assessment and documentation of existing conditions, the dismissal of eligibility based on possible future events is not valid. Finally, the Forest appears to anticipate the need to construct additional fish barriers on some streams containing RGCT populations, proposing to remove eligibility from those streams in order to facilitate that future construction. This too ignores existing conditions. A Wild and Scenic rivers eligibility inventory is an objective process assessing whether a stream is 1) free-flowing, and 2) contains at least one ORV. Subjective trade-offs regarding a stream's preferred use by the Forest, or potential future scenarios, are not permitted when making eligibility determinations. Such subjective analyses require a suitability determination, a separate process that was not conducted by the Forest during this plan revision. As described below, properly designed and installed fish barriers can be compatible with Wild and Scenic eligibility.

Fish Barriers and Free-Flowing Condition: The federal Interagency Wild & Scenic Rivers Coordinating Council (IWSRCC) provides guidance on construction and placement of fish barriers and habitat structures on Wild and Scenic rivers.⁸ As acknowledged in the Draft Eligibility Evaluation response to comments,⁹ that guidance states, in part: Such projects may be constructed to protect and enhance fish and wildlife. In-channel structures...are acceptable, provided they do not have a direct and adverse effect on the values of the river. Similarly, in-channel habitat projects may also be constructed above and below a designated river so long as they do not unreasonably diminish the scenic, recreational, and fish and wildlife values of the wild and scenic river. When fish and wildlife species and/or habitat are an outstandingly remarkable value, restoration and enhancement projects may be an important component in a protection strategy. The IWSRCC describes example structures—including fish barriers—that can be designed and installed in an acceptable way:⁸ See: www.rivers.gov, "Wild & Scenic River Questions & Answers"⁹ See: Draft Eligibility Evaluation, Appendix A6

A range of projects are allowable to restore natural channel processes and habitat, including placement of limited rock and wood, native plantings to stabilize streambanks, and removal or addition of fish barriers. Such projects are most likely to protect river values, including a river's free-flowing condition, provided they:

- 1) Mimic the effects of naturally occurring events such as trees falling in and across the river...boulders tumbling in or moving down the river course, exposure of bedrock outcrops, bank sloughing or undercutting, bar formation...and the opening or closing of secondary channels;
- 2) Do not impede natural channel processes, such as bank erosion, bar formation/island building, bed aggradation/degradation, channel migration, or the transport of sediment, wood, and ice;
- 3) Consider the project's effects on other outstandingly remarkable values...
- 4) Protect water quality during the construction period...

The IWSRCC also provides recommendations regarding choice of materials, structural design, and anchoring techniques for in-channel structures on a Wild and Scenic river: Structures should be made of native materials (logs, boulders, etc.) placed in locations, positions or quantities that mimic natural conditions, and anchoring materials such as cables and rebar should be installed in such a manner as to be visually acceptable.

Fish Barriers and Habitat Restoration: The IWSRCC guidance indicates that some in-stream structures can be useful, even encouraged, for improving and protecting documented Outstandingly Remarkable Values such as Fish ORV for Rio Grande cutthroat trout. While these IWSRCC standards and guidance were composed with a focus on congressionally designated Wild and Scenic rivers, and thus subject to the review procedures described in Section 7 of the Wild and Scenic Rivers Act, it is logical that the same guidelines can be applied to eligible stream segments, albeit with a comparatively less stringent Section 7 review. The Forest's response to comments submitted by objectors and others on this point¹⁰ contend that a) anticipated future conditions without a fish barrier was not a consideration in eligibility determinations; and b) some fish barriers do not comply with the IWSRCC's guidance on ORV protective structures. We respectfully disagree with the Forest and agree with the IWSRCC, contending that neither the presence of low-profile, natural-materials fish barriers installed specifically for the purpose of maintaining and enhancing genetic purity and

habitat in support of a Fish ORV[mdash]Rio Grandecutthroat trout[mdash]nor the future potential for installation of such barriers justifies the removal of Wild and Scenic eligibility. REMEDY - The Carson National Forest must adjust the proposed plan and the accompanying Wild and Scenic Rivers Eligibility Report to find eligible all streams on which appropriate Rio Grande cutthroat trout-protective fish barriers have been constructed, on which barriers should be constructed, or are contemplated for construction, where those streams otherwise qualified for eligibility. Those streams include:

1. Rito de la Olla
2. Manzanita Canyon
3. Jiron Canyon
4. Gavilan Canyon

10 FEIS, Appendix A75. San Cristobal Creek

6. Rio Tusas headwaters
7. Jicarita Creek
8. Long Canyon

Objection #4 -- The proposed plan misinterprets the definition of "free-flowing," inappropriately denying Wild and Scenic river eligibility for certain streams. The proposed Carson National Forest Land Management Plan, and accompanying Wild and Scenic River Eligibility determination, reject eligibility for several streams due to its assertion that the streams are not free-flowing, a basic requirement for eligibility. In some cases the evaluation offers no explanation of that finding. In others the explanation is not consistent with official definitions of "free-flowing character." As noted in the Forest Service Handbook, and as acknowledged in the draft Wild and Scenic River Eligibility determination, the Wild and Scenic Rivers Act itself offers an extended definition of free-flowing: "Free-flowing" as applied to any river or section of a river means existing or flowing in a natural condition without impoundment, diversion, straightening, riprapping, or other modifications of the waterway. The existence, however, of low dams, diversion works, or other minor structures at the time any river is proposed for inclusion in the [National System] shall not automatically bar its consideration for such inclusion: Provided, that this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the [National System].¹² The Interagency Wild & Scenic Rivers Coordinating Council (IWSRCC) expands on this definition. "Congress did not intend all rivers to be "naturally flowing," i.e., flowing without any manmade up- or downstream manipulation. The presence of impoundments above and/or below the segment (including those which may regulate flow within the segment), and existing minor dams or diversion structures within the study area, do not necessarily render a river segment ineligible...¹³ Instances of this misinterpretation appear in at least two contexts in the proposed plan. First, stream segments were dropped from Wild and Scenic eligibility consideration due to an inappropriately determined threshold that the existence of small diversions or structures eliminate, when they actually merely affect, free-flowing character. These streams include:

1. Ca[ntilde]ada del Ba[ntilde]o
- 11 DEIS 3, Appendix G
- 12 Wild and Scenic Rivers Act of 1968, Section 16(b), emphasis added
- 13 See: www.rivers.gov, "Wild & Scenic River Questions & Answers"
- 14 DEIS 3, Appendix G, Table 61, pp. 169 et seq
82. Ca[ntilde]ada Fuertes
3. Rio del Medio
4. Ca[ntilde]ada de las Entra[ntilde]as
5. Ca[ntilde]ada de los Alamos
6. Ca[ntilde]ada de Ojo Sarco
7. Rio Tusas
8. Rio Vallecitos
9. San Cristobal Creek
10. Shuree Creek
11. Ca[ntilde]ada de los Comanches
12. Ca[ntilde]ada Embudo
13. Ca[ntilde]ada las Lemitas
14. Lagunitas Creek
15. Rio Nutrias
16. Rock Creek
17. Tanques Canyon

Second, other stream segments were dropped from eligibility consideration because of the presence of fish barriers installed to protect habitat and purity of Rio Grande cutthroat trout, itself an Outstandingly Remarkable Value for eligibility, due to these barriers' affect on free-flowing character. These streams include:

151. Rio de Truchas
2. Rio Angostura
3. Rio de la Olla
4. Manzanita Canyon

Fish Barriers and Free-Flowing Character: As noted in Objection #3, the Interagency Wild & Scenic Rivers Coordinating Council (IWSRCC) provides guidance on construction and placement of fish and habitat structures on Wild and Scenic rivers.¹⁶ As acknowledged in the draft eligibility evaluation response to comments,¹⁷ that guidance states, in part: Such projects may be constructed to protect and enhance fish and wildlife. In-channel structures...are acceptable, provided they do not have a direct and adverse effect on the values of the river. Similarly, in-channel habitat projects may also be constructed above and below a designated river so long as they do not unreasonably diminish the scenic, recreational, and fish and wildlife values of the wild and scenic river. When fish and wildlife species and/or habitat are an outstandingly remarkable value, restoration and enhancement projects may be an important component in a protection strategy. The IWSRCC describes example structures[mdash]including fish barriers[mdash]that can be designed and installed in an acceptable way: A range of projects are allowable to restore natural channel processes and habitat, including placement of limited rock and wood, native plantings to stabilize streambanks, and removal or addition of fish barriers. Such projects are most likely to protect river values, including a river's free-flowing condition, provided they:

- 1) Mimic

15 DEIS 3, Appendix G, Table 61, pp. 169 et seq

16 See: www.rivers.gov, "Wild & Scenic River Questions & Answers"

17 Draft Wild and Scenic Eligibility Evaluation, Appendix A9

effects of naturally occurring events such as trees falling in and across the river...boulders tumbling in or moving down the river course, exposure of bedrock outcrops, bank sloughing or undercutting, bar formation...and the opening or closing of secondary channels; 2) Do not impede natural channel processes, such as bank erosion, bar formation/island building, bed aggradation/degradation, channel migration, or the transport of sediment, wood, and ice; 3) Consider the project's effects on other outstandingly remarkable values... 4) Protect water quality during the construction period...The IWSRCC also provides recommendations regarding choice of materials, structural design, and anchoring techniques for in-channel structures on a Wild and Scenic river: Structures should be made of native materials (logs, boulders, etc.) placed in locations, positions or quantities that mimic natural conditions, and anchoring materials such as cables and rebar should be installed in such a manner as to be visually acceptable. While these IWSRCC standards and guidance were composed with a focus on congressionally designated Wild and Scenic rivers (and thus subject to the review procedures described in Section 7 of the Wild and Scenic Rivers Act), it is logical that the same guidelines can be applicable to eligible stream segments, albeit with a comparatively less stringent Section 7 review. Fish Barriers and Habitat Restoration: Indeed, a portion of the IWSRCC guidance indicates that some in-stream structures can be useful, even encouraged, for improving and protecting documented Outstandingly Remarkable Values such as a Fish ORV for Rio Grande cutthroat trout. REMEDY - Stream segments found ineligible because of minimal effects on free-flowing condition from minor structures must be re-evaluated for Wild and Scenic river eligibility and, if otherwise qualified, found eligible. Stream segments found ineligible because they contain, or are downstream from, fish barriers installed to protect or enhance habitat for rare native fish must be re-valuated for wild and scenic eligibility and, if otherwise qualified, found eligible. Conclusion Thank you for considering our objections and recommended remedies. As always, we would be happy to meet with you to discuss the issues that we have raised. Sincerely, Michael Fiebig Director, Southwest River Protection Program American Rivers