



Southwest Program Office

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May 10, 2020

Joshua Hall
Northern New Mexico Riparian, Aquatic and Wetland Restoration Project
Santa Fe National Forest
11 Forest Lane
Santa Fe, NM 87508

RE: Northern New Mexico Riparian, Aquatic and Wetland Restoration Project Draft EA

Dear Mr. Hall,

Please accept the following comments on behalf of Defenders of Wildlife regarding the Northern New Mexico Riparian, Aquatic, and Wetland Restoration Project Draft Environmental Assessment (EA). Defenders is a non-profit, 501(c)3 organization that works to ensure the protection of native plants and animals and their habitats throughout North America. Defenders has more than 1.8 million members, supporters and online activists nationwide, including more than 7,800 in New Mexico.

We thank the Santa Fe, Carson and Cibola National Forests (the Forests) for actively prioritizing watershed restoration activities and increasing the capacity of the Forests to restore and revitalize the rivers, streams, wetlands and meadows that are so ecologically valuable in the Southwest. Especially due to our arid climate and the effects of climate change, water is our most valuable resource that not only determines the health of our forests, but our human communities as well.

Centuries of overgrazing, road construction, and logging have wreaked havoc on these delicate ecosystems, yet we have a responsibility to ensure that these areas, which include the headwaters of many river systems that provide drinking water for millions of people, are healthy and resilient. This will require robust restoration activities including restoring natural flow regimes to channelized rivers and streams, raising water tables to spread water out across wetlands that hold water, lower water temperatures, and encourage the growth of valuable grasses and sedges, and planting trees to stabilize stream banks, and limit erosion. Many of these projects will also help create and build habitat for wildlife, including threatened and endangered species, and are necessary for their recovery and long-term stability.

We thank the Forests for identifying and prioritizing many of these activities in the riparian, aquatic and wetland restoration project. If implemented fully and responsibly, these activities have the potential to greatly improve the health of our forests, make them more resilient against the impacts of climate change and build habitat for imperiled species that depend on them.

In our scoping letter, we identified a need for any and all projects to avoid or mitigate any impacts to federally listed species. Especially since these activities are designed to improve habitat for species like the New Mexico meadow jumping mouse and Southwestern willow flycatcher, it is even more essential that project implementation does not have any short-term negative impacts.

We thank the Forest Service for including robust conservation measures in Appendix B that are both general and specific to all federally listed species that occur in the region as well as Rio Grande cutthroat trout. These measures take seriously the need to guard against direct, short-term impacts to these species.

We also thank the Forest Service for requiring that surveying for species like the New Mexico meadow jumping mouse accompany any restoration work. As is often the case, funding for research like this is limited, which has proven to be a barrier to understanding the species current distribution. In this way, these activities could have a multi-fold benefit for the species' conservation.

One issue from our scoping comments that was not addressed in the draft EA was including activities that specifically address beavers, themselves. While the state wildlife agencies and the Forest Service often collaborate in constructive ways on wildlife management, the Forest Service has the ultimate authority to manage wildlife habitat and populations on National Forest System lands. Federal land managers have considerable powers and statutory duties to manage wildlife on federal lands and therefore should take a stronger role in determining strategies and activities for managing beaver for the benefit of riparian restoration.¹

In *Kleppe v. New Mexico*, 426 U.S. 529, 541 (1976), the Court stated, “the ‘complete power’ that Congress has over public lands necessarily includes the power to regulate and protect the wildlife living there.” *Kleppe* further described the limit of a state’s ability to dictate policy on federal lands: “those powers exist only in so far as [their] exercise may be not incompatible with, or restrained by, the rights conveyed to the Federal government by the Constitution.” The Forest Service clearly has the authority to manage wildlife habitat and species populations.²

With this authority in mind, the Forest Service should include an additional project category focused on translocating beavers between appropriate areas of suitable habitat across the three forests. Not only would this complement each of the five project categories currently included in the draft EA, but the Forest Service possesses full authority to take this action.

Finally, the Cibola, Gila and Lincoln National Forests are all closed to commercial and recreational beaver trapping for restoration purposes. In order to realize the full effect of riparian restoration efforts, the Santa Fe and Carson National Forests should consider a similar closure to ensure beaver restoration is successful.

Thank you again to the forests for undertaking this project. Riparian, aquatic and wetland

¹ Nie, Martin and Barns, Christopher and Haber, Jonathan and Lurman Joly, Julie and Pitt, Kenneth and Zellmer, Sandra B., *Fish and Wildlife Management on Federal Lands: Debunking State Supremacy* (June 5, 2017). *Environmental Law*, Vol. 47, No. 4, 2017. Available at SSRN: <https://ssrn.com/abstract=2980807>.

² Schultz, C.A., Sisk, T.D., Noon, B.R., and M.A. Nie. 2012. Wildlife conservation planning under the United States Forest Service’s 2012 planning rule. *The Journal of Wildlife Management*. 77: 428-444.

restoration will be essential to ensure our forests remain healthy, and by making wildlife a more central focus of the plan, the Forests will be able to take the most comprehensive and holistic approach possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Dax". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Dax".

Michael Dax
New Mexico Representative
Defenders of Wildlife