



Great Old
Broads
For Wilderness
Get Into The Wild



January 19, 2021

Reviewing Official Sandra Watts, Acting Regional Forester
333 Broadway Blvd SE
Albuquerque, NM, 87102;
Submitted via email to: objections-southwestern-regional-office@usda.gov

Re: Fossil Creek Comprehensive River Management Plan Objection

Dear Ms. Watts:

Please accept this objection filed by Sierra Club's Grand Canyon (Arizona) Chapter, the Center for Biological Diversity, Maricopa Audubon, and Great Old Broads for Wilderness. Objections to the Environmental Impact Statement (EIS) are due on the first business day following 45 days after the publication date of the decision, which was published on December 4, 2020. Thus, the EIS objection deadline is January 19, 2021. The Comprehensive River Management Plan (CRMP) objection deadline is 15 days later. This objection letter comments on the EIS, the CRMP, the Decision, and other associated documents, thus our objection is timely.

The Sierra Club, founded in 1892, is a national nonprofit organization of approximately three million members and supporters nationwide, and 60,000 in Arizona, dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives.

Founded in 1989, Great Old Broads for Wilderness are advocates, stewards and educators for wild lands. Broads advocates for management that ensures lands remain ecologically diverse with healthy, functioning ecosystems.

The Center for Biological Diversity is a public-interest wildlife conservation organization that works to secure a future for all species. We do so through science, law and creative media, with a

focus on protecting the lands, waters and climate that species need to survive. We provide these comments on behalf of our 1.7 million members and activist-supporters nationwide who value wilderness, biodiversity, old growth forests, and the threatened and endangered species which occur on America's spectacular public lands and waters.

Maricopa Audubon is a non-profit environmental organization dedicated to the enjoyment of birds and other wildlife, with a primary focus on the protection and restoration of the habitat of the Southwest, through education and community involvement. Maricopa Audubon has approximately 2,300 members. Maricopa Audubon has been actively involved in the protection of Fossil Creek since 1991. Maricopa Audubon was one of the original environmental partners who demanded and negotiated the return of full flows to Fossil Creek on June 6, 2005.

Objector's Involvement in Fossil Creek:

Sierra Club's Grand Canyon Chapter was organized in 1965; prior to and especially since that date our members have been involved in protecting Arizona's resources while enjoying a broad range of recreational activities including wildlife, observation, fishing, hunting, hiking, backpacking, camping, horseback riding, motorized scenic touring, and more. We have a significant interest in protecting and restoring the water quality in Arizona's rivers, lakes, and streams and in protecting the health of the forest and wildlife. Sierra Club participated in the processes leading to the decommissioning of hydropower and the restoration of full spring flows to the creek. We were actively engaged in the 2005 restoration of the native fishery, including the fish barrier. The Sierra Club helped author and supported the Arizona Wilderness Coalition's November 2003 proposal to establish the Fossil Creek Wild and Scenic River. We helped move it through Congress, leading to designation in March 2009. The Sierra Club has informed the public about the need to protect this area and has demonstrated our concern by cleaning up tons of trash from Fossil Creek. We have also led public educational outings in Fossil Creek. Since 2010, the Sierra Club has consistently participated in dozens of public and stakeholder group meetings with the Coconino National Forest. Enduring numerous false starts and delays, we have provided timely comments at every opportunity, including our last letter (April, 2019) reacting to the draft Comprehensive Resource Management Plan (CRMP) for the Fossil Creek Wild and Scenic River (FCWSR) (file name: "Fossil CRMP Comments Final_20190404.pdf) which is incorporated by reference into this objection.

Great Old Broads for Wilderness and the Center for Biological Diversity have participated in the stakeholder meetings for the CRMP and filed comments at every opportunity. By this reference the following objection incorporates all previous comments.

The Center along with the Sierra Club's Grand Canyon Chapter and the Yavapai Apache Nation were the original partners spearheading the June 6, 2005, return of full flows to Fossil Creek over

the objections of the Forest Service,¹ the Arizona Game and Fish Department,² and Arizona Public Service. We have participated in countless meeting with generations of the endless rotations of Forest Service employees in arriving at this moment of finalizing a final management plan.

We attach past comments, primarily to document the fact that the Forest Service has been unwavering in its predetermined plan, as we said in our May 13, 2011, comments³ on the Fossil Creek Wild and Scenic River Management Plan, that "[i]n summary, the Forest Service's plan perpetuates the excessive recreational use of Fossil Creek that is so harmful to the stream's riparian habitat and its recovery."

We are pleased to finally receive a final decision on the CRMP. We are, however, disappointed in the direction it has taken. The proposed Modified Alternative E sacrifices the Outstandingly Remarkable Values (ORVs) by making excessive recreation a priority, allows destructive motorized touring, and inadequately monitors the natural environment.

National Environmental Policy Act Requirements (NEPA):

NEPA requires a "coherent and comprehensive up-front environmental analysis" to ensure an agency "will not act on incomplete information, only to regret its decision after it is too late to correct" (Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1216 [9th Cir. 1998]). NEPA thus requires federal agencies to analyze the direct, indirect, and cumulative impacts of the proposed action (42 U.S.C. § 4332[C]; 40 C.F.R. §§ 1508.7, 1508.8, 1508.25 [the scope of a proposed action must include connected, cumulative, and similar actions]; Sierra Club v. Bosworth, 2007 U.S. App. LEXIS 28013 [9th Cir. 2007]). Cumulative impacts include the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 C.F.R. § 1508.7). A cumulative effects analysis must also provide detailed and quantifiable

¹ Correspondence, from: USFS Southwest Regional Forester Charles W. Cartwright, to: Federal Energy Regulatory Commission Secretary Lois D. Cashell; RE: Forest Service's formal comments on the Draft Environmental Impact Statement for the Childs Irving Project; September 25, 1997, https://www.biologicaldiversity.org/programs/public_land/lands/rivers/fossil_creek/pdfs/19970925-draft-EA-comments-USFS-USFS-OK-WITH-RELICENSING-AND-PARTIAL-FLOW-RETURN-marked.pdf.

² Correspondence, from: AGFD Habitat Specialist Debra C. Noel, to: Federal Energy Regulatory Commission Secretary Lois D. Cashell; RE: Draft EA for Hydropower License at the Childs Irving Project; September 16, 1997, https://www.biologicaldiversity.org/programs/public_land/lands/rivers/fossil_creek/pdfs/19970919-EA-DRAFT-1997-AGFD-COMMENTS-CONCUR-WITH-10-CFS-TO-IRVING-19970919-MARKED.pdf.

³ Correspondence, from: Center for Biological Diversity Co-founder and Board Member Robin Silver, M.D., to: Fossil Creek Planning Team Leader Lynn Humphrey; RE: Fossil Creek Wild and Scenic River Management Plan, May 13, 2011, https://www.biologicaldiversity.org/programs/public_land/lands/rivers/fossil_creek/pdfs/wild-and-scenic-USFS-MANAGEMENT-PLAN-comments-Center-20110513-WITH-PARTNERS-ALTERNATIVE.pdf.

information and cannot rely on general statements and conclusions (Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1380 [9th Cir. 1998]). Scientific honesty and rationality are a NEPA requirement: "...the agency must use high quality information and accurate scientific analysis..." (40 C.F.R. Sec. 1500.1(b)) "and must disclose any responsible opposing view." (Id.1502.9(b)).

Support for selected features:

We strongly support the existing permit system to control visitation to the recreational reach of the FCWSR, but we object to the grossly excessive proposed visitation levels. Provided there is adequate monitoring and funding we support the Adaptive Management and Monitoring Plan if the modifications discussed below are included.

Objection: Recreational ORV is not justified

As described in the CRMP, three previous evaluations of ORVs for Fossil Creek did not identify a Recreation ORV. The 1993 and early 2000 evaluations were conducted by the Forest Service. Congressional designation of the FCWSR in March 2009 was based on the 2003 proposal developed by the Arizona Wilderness Coalition which purposely did not propose recreation as an ORV. Despite three previous concurring evaluations, the Coconino National Forest (CNF) and Tonto National Forest (TNF) have now inappropriately added a Recreational ORV that does not meet the necessary criteria. Selecting recreation as an ORV places recreation as a feature that must be protected and enhanced. This is very different from managing recreation to protect other ORVs. Note that recreation can and should be managed, which can and must occur without ORV status.

The Draft CRMP on page 25 quotes the Interagency Guidelines on justifying an ORV:

- *"A value must be river-related or river-dependent. To be considered river-related or river-dependent, a value must be located in the river or on its immediate shorelands (generally within 0.25 mile on either side of the river); contribute substantially to the functioning of the river ecosystem; and/or owe its location or existence to the presence of the river."*
- *"A value must be rare, unique, or exemplary in a regional or national context. To be considered rare, unique, or exemplary, a value should be a conspicuous example from among a number of similar values that are themselves uncommon or extraordinary."*

The Guidelines further specify:

"In such administration primary emphasis shall be given to protecting its aesthetic, scenic, historic, archaeologic, and scientific features."

You have not satisfactorily addressed our concerns that your actions are inconsistent with the above Guidelines:

- Recreation harms instead of contributing to the functioning of the river ecosystem.
- The recreational values in Fossil Creek - mainly water play - are not rare, unique, uncommon, or exemplary in the regional context.
- The Guideline does not include recreation as a “primary emphasis.”

The Wild and Scenic Rivers Act requires protection of river values via a policy that reflects “nondegradation” and “enhancement.” The Bureau of Land Management, National Park Service, US Forest Service and US Fish and Wildlife Service, “A Compendium of Questions & Answers Relating to Wild & Scenic Rivers, A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council, U.S. Bureau of (Revised: August 2018) states,

“The Interagency Guidelines interpret Section 10(a) of Act (the protect and enhance mandate) as “a non-degradation and enhancement policy for all designated river areas, regardless of classification. . . . Specific management strategies will vary according to classification but will always be designed to protect and enhance the values of the river area.” The overarching goal articulated in Section 10(a) is to protect existing high-quality conditions while improving conditions when unacceptable impacts are documented, thus leaving each river to future generations in better condition than when it was designated.”

And further, the Interagency Guidelines, with respect to management implications, state agencies must,

“Protect rivers by documenting and eliminating adverse impacts on values (free-flow, water quality, ORVs), including activities that were occurring on the date of designation...[and]

Enhance rivers by seeking opportunities to improve conditions.”

Increasing visitation is not consistent with these guidelines.

Objection: Excessive Persons at one time (PAOT)

The Forest Service has not addressed our concern regarding excessive PAOT. We strongly object to the unreasonably high maximum visitation levels in modified Alt E for the reasons detailed in our previous comments. Many more commenters observed that current visitation levels have degraded visitor experience. Even though full flows returned in 2005, Fossil Creek has not recovered, even according to Forest Service data.

Existing visitor limits of 810 PAOT do not adequately control recreational impacts and evidence of degradation is still apparent. The Forest Service plans to enhance the Recreation ORV by

proposing increased PAOT is illogical because increased visitation increases impacts to the natural environment – regardless of infrastructure. This is a clear example of how an incorrectly selected Recreation ORV will increase stress on the river values that the Forest Service is supposed to protect, effectively sacrificing biological values to recreation.

As we said on April 2, 2019,

"...even 14 years since the return of full flows, Fossil Creek has not recovered. In fact, your own data and observations acknowledge that, even with reduction of recreation via a lottery system, Fossil Creek has not recovered."⁴

You have chosen to start at a level of visitor numbers and recreation site access ("148 vehicles (810 PAOT) from April 1 – October 1.") that has not allowed recovery since flows were returned on June 6, 2005, without addressing your rationale except your oft repeated mantra of "may be modified under the adaptive management framework" (which we will address in more detail below). This is akin to a physician advising acceptance of a patient's degraded condition and recommending continuation of the very actions precluding the patient's recovery. This is called "malpractice."

⁴ Correspondence, from: Center for Biological Diversity Co-Founder and Board Member Robin Silver, M.D., to: Coconino National Forest Supervisor Laura Jo West (Submitted electronically to comments-southwestern-coconino-redrock@fs.fed.us and via FAX to: 928-203-7539); RE: FOSSIL CREEK CRMP. Center for Biological Diversity and Maricopa Audubon Society comments on the Fossil Creek Wild and Scenic River Draft Comprehensive River Management Plan (CRMP) and Draft Environmental Impact Statement (DEIS); April 2, 2019, https://www.biologicaldiversity.org/programs/public_lands/rivers/fossil_creek/pdfs/wild-and-scenic-CRMP-20181128-DEIS-CRMP-COMMENTS-20190402-Center_MAS-FINAL.pdf . *

Objections: Adaptive Management Plan

Throughout the EIS and CRMP, the Adaptive Management Monitoring Plans are used to guide administrative decisions. Thus it is critical that adequate monitoring is conducted, informs management, and this is reflected in Chapter 6 of the CRMP. However, we are incredulous that you can suggest \$6 million (and it will undoubtedly probably two or three times that amount before completion of the rebuilding project) to repair the closed portion of FR708 while the monitoring group struggles to find funding for an inadequate set of monitoring plans, and while useful monitoring plans have been rejected due to cost concerns. We object to funding the 708 rebuild at the expense of monitoring, and ask that funding for improved monitoring have higher priority. Tying this fact to your starting at a PAOT preventing recovery, guarantees that recovery will not be possible as inadequate monitoring funding will additionally guarantee the Forest Service will never monitor as promised which is the established Forest Service practice.⁵ The

⁵ Center for Biological Diversity v. U.S. Fish and Wildlife Service, and U.S. Forest Service, Case 4:17-cv-00475-JAS, September 25, 2017 (Rosemont Mine).; Notice of Intent to Sue the U.S. Department of Agriculture (USDA), the U.S. Forest Service (USFS), the U.S. Department of Interior (DOI), and the U.S. Fish and Wildlife Service (USFWS) for failing to reinstate Endangered Species Act (ESA) consultation on termination of the Columbine area special use permits in order to secure essential recovery habitat to aid survival of the critically endangered Mount Graham Red Squirrel, April 13, 2018, http://www.biologicaldiversity.org/species/mammals/Mount_Graham_red_squirrel/pdfs/20180413-Notice-of-Intent-to-Sue-Mount-Graham-Columbine-Special-Use-Permits.pdf.; Rapid Assessment of Cattle Impacts in Riparian Exclosures on the Apache-Sitgreaves National Forest, Arizona, Center for Biological Diversity, December 2018, https://www.biologicaldiversity.org/programs/public_land/grazing/pdfs/20181200-Rapid-Assessment-of-Cattle-Impacts-in-Riparian-Exclosures.pdf.; Sixty-day Notice of Intent to Sue for Violations of Endangered Species Act Consultation Requirements Regarding the Impacts of Domestic Livestock Grazing on Streamside and Aquatic Species and their Critical Habitat on National Forest Lands Within the Upper Gila River Watershed, July 17, 2019, https://www.biologicaldiversity.org/programs/public_land/grazing/pdfs/Upper-Gila-USFS-grazing-allotments-NOI-2019_07_17.pdf.; Sixty-Day Notice of Endangered Species Act Violations, Apache-Sitgreaves Nat'l Forest July 27, 2019, http://forestpolicy.org/wp-content/uploads/2019/07/000007_Center-for-Bio-Div-re-ESA-re-Jumping-Mouse-Region-3.pdf.; Sixty-Day Notice of Endangered Species Act Violations, Lincoln National Forest, September 13, 2019, <https://www.biologicaldiversity.org/species/mammals/pdfs/Inf-NOI-20190913-NMMJM-REININITIATION-FINAL.pdf>.; Rapid Assessment of Cattle Impacts in Riparian Exclosures & Critical Habitat on the Apache-Sitgreaves National Forest-2019 (addendum to 2018 survey), Center for Biological Diversity, January 2020, https://www.biologicaldiversity.org/programs/public_land/grazing/pdfs/20200100-APACHE-SITGREAVES-CATTLE-IMPACT-2019-ADDENDUM.pdf.; Center for Biological Diversity v. U.S. Forest Service and U.S. Fish and Wildlife Service, Case No. 4:20-cv-00020-DCB, January 13, 2020 (Apache-Sitgreaves National Forest and Gila National Forest grazing).; Center for Biological Diversity and Maricopa Audubon Society v. David Bernhardt, Secretary of the Interior; U.S. Fish and Wildlife Service; and U.S. Forest Service, Case 4:20-cv-00075-JGZ, February 20, 2020 (Apache-Sitgreaves National Forest New Mexico Meadow Jumping Mouse).; Ravaged River: Cattle Damage to Endangered Species Habitat in Arizona's Verde River Watershed, Center for Biological Diversity, March 16, 2020, https://www.biologicaldiversity.org/programs/public_land/rivers/pdfs/Ravaged-River-Verde-Cattle-Impact-Survey.pdf.; Sixty-Day Notice of Endangered Species Act Violations, Verde River Drainage, March 16, 2020, https://www.biologicaldiversity.org/programs/public_land/rivers/pdfs/NOI-20200316-Verde-River.pdf.; Sixty-Day Notice of Intent to Sue if you fail to remedy your Endangered Species Act Violations threatening the Mexican Spotted Owl in Arizona and New Mexico, April 2, 2020, https://www.biologicaldiversity.org/species/birds/Mexican_spotted_owl/pdfs/Mexican-Spotted-Owl-NOI-20200402.pdf.; Center for Biological Diversity, Maricopa Audubon Society, Mount Graham Coalition v. Vicki Christiansen, Chief, U.S. Forest Service, Aurelia Skipwith, Director, U.S. Fish and Wildlife Service, and David Bernhardt, Secretary, U.S. Department of the Interior, Case 4:20-cv-000251-BGM, June 10, 2020 (Mount Graham recreational cabins and camp).; Chiricahua Leopard Frog Critical Habitat, Hickey & Blackjack Allotments in Apache-Sitgreaves National Forest, Center for Biological Diversity, August 11, 2020, https://www.biologicaldiversity.org/species/amphibians/Chiricahua_leopard_frog/pdfs/20200806-7-CLF-CH_Hickey-and-Blackjack_ASNE_field-report.pdf.; Email report to USFS Acting Regional Forester Elaine Kohrman, RE: Gila Wilderness images documenting widespread and devastating damage to the area from feral cattle, August 16, 2020.; Center for Biological Diversity v. Vicki Christiansen, Chief, U.S. Forest Service; and Aurelia Skipwith, Director, U.S. Fish and Wildlife Service, Case

Forest Service seeks to hide behind the mantra of "adaptive management" to attempt to satisfy the requirements of NEPA without any effort to remedy the Forest Service's consistent failure to ever implement "adaptive management" in practice. The FEIS mentions "adaptive management" 241 times without any analysis of the Forest Service's consistent failure to ever implement "adaptive management" in practice. To make matters worse, the FEIS admits on page 39 that "[c]overing the costs of implementing the CRMP will likely require funding from multiple sources. Appropriated funds the Coconino and Tonto national forests receive through their annual budget allocation will likely need to be supplemented with outside funds, on-site revenue generation through a recreation fee, and volunteers. This is likely the case with any alternative." The FEIS fails to identify concrete funding sources when it is the Regional Forest Service Policy to spend money on priorities such as the perpetuation of destructive grazing and destroying endangered species Critical Habitat throughout the Region and then defending these practices with support for litigation. As two concrete examples, (1) the Regional Forester has chosen to spend approximately \$9 million from 2016 to 2018 on two allotments on the Lincoln National Forest guilty of 335 permit violations 2016-2020;⁶ and (2) the Apache -Sitgreaves, Coconino, Coronado, Gila, and Prescott National Forest Supervisors, supported by the Regional Forester, have chosen to spend money defending their refusal to monitor and stop illegal riparian grazing instead of obeying their respective Forest Plans, allotment Biological Opinions, and the Endangered Species Act. As the Coconino and the Tonto National Forest Supervisors continue these practices, there is no reason to trust any promises or commitments at Fossil Creek.

- We commented that Recreation ORV monitoring plans (CRMP Tables 6-11, 6-12, and 6-13) represent a seriously unbalanced strategy. There are three monitoring plans for recreation but the adaptive management and monitoring for the Biological ORV is limited to two species, plus general indicators such as bare soil and macroinvertebrates. The planned parking areas will not even be calculated in bare soil monitoring. In our view, this is inadequate to assess the overall biological health of the FCWSR, and we ask for an additional monitoring plan that could include direct measurements of vertebrate species populations, possibly a Bio-Blitz conducted every 5 years.
- The CRMP page 133 describes several "Other Biological ORV Monitoring" topics with existing baseline and current data, yet these are not connected to a metric, adaptive management actions, thresholds, and indicators. Since additional data is available, it should be used.

1:20-cv-00863, August 27, 2020 (Lincoln National Forest New Mexico Meadow Jumping Mouse).; Center for Biological Diversity and Maricopa Audubon Society v. U.S. Forest Service and U.S. Fish and Wildlife Service, Case 3:20-cv-08243-DGC, September 17, 2020 (Coconino National Forest, Prescott National Forest, and Tonto National Forest grazing).; "On the Brink, How Federal Agency Neglect Is Killing Chiricahua Leopard Frogs, Center for Biological Diversity, December 2020.

⁶ Email, from: Robin Silver, to: Lincoln National Forest Sacramento District Ranger Randall Chavez and Lincoln National Forest Supervisor Travis Mosely; RE: LINCOLN NATIONAL FOREST SPENDS \$8.7 MILLION TO SUBSIDIZE TWO COWBOYS GUILTY OF 335 PERMIT VIOLATIONS 2016-2020, summary of Freedom of Information responses, November 1, 2020.

- We suggested adding seasonal bird counts to the intermittent blackhawk monitoring protocol. The response to comments and the selected alternative does not adequately address our suggestion. You suggest reliance on Important Bird Area counts, but these are not tied to an improved monitoring plan with thresholds and management actions. Further, the monitoring plans should welcome, but should not rely on, volunteers or other agency efforts.
- The Recreation ORV monitoring plan for recreation experience (CRMP Table 6-13) will not provide accurate data. We offered specific concerns about in our April 2019 letter. Surveying on-site and/or registered visitors creates biased data because you are not contacting citizens who refuse to visit due to crowding, noise, regulation, etc. Your explanation refers to a USFS Visitor Use Monitoring protocol, but you have not explained how that plan addresses our concerns.
- The Recreation ORV monitoring plan for recreation opportunity (CRMP Table 6-14) is poorly designed. We understand that USFS policy establishes the baseline for recreation planning as the date of Congressional designation, but we disagree that the date of WSR designation, March 2009, is a valid baseline for management. The 2009 visitation data - about 81,000 - is artificially swollen due to previous inadequate USFS management of Fossil Creek, which carelessly permitted excessive uncontrolled visitation, vast amounts of trash, and unforgivable resource damage; this should not be used to justify or to manage a Recreation ORV. It is far more logical to use the 2006 visitation of 20,000. Furthermore, the soft and hard thresholds and associated management actions attempt to restore visitation to the peak visitation 2009 baseline levels of about 81,000, which created an unmanaged disaster that degraded the area. This is analogous to rewarding increased access privileges to a criminal for confessing resource damage. The Forest Service should implement better management that is not dependent on the regulatory requirement to use the 2009 baseline.
- We suggested adding noise monitoring procedures, thresholds, and administrative actions to a monitoring plan. The Forest Service has not addressed our concerns. The monitoring plan should be revised to include AM thresholds, actions, and enforcement policies for noise caused by visitors and vehicles.

Objection: Inadequate Noise Analysis

We note the addition in EIS Chapter 3 of an expanded discussion of visitor and vehicular noise that lists many serious negative impacts on wildlife and visitor experience. These impacts are not addressed in any monitoring plan, and the EIS discussion fails to meet the NEPA requirements described on page 2 of this letter. The qualitative noise analysis in the EIS fails the legal requirement to provide cumulative effects analysis including “detailed and quantifiable

information and cannot rely on general statements and conclusions (Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1380 [9th Cir. 1998]).” The EIS continues to discuss noise in a conditional, passive, conjectural, and qualitative sense only with respect to recreation. There is no monitoring plan with thresholds and administrative actions for noise issues. CRMP “Appendix A. Resource Protection Measures” states “*15. Activities in the high, very high, and extremely high noise level range (Table D-1) will not occur during critical periods of time for wildlife*” seems to refer to construction and maintenance activity, and there is no discussion of the critical periods for wildlife. Table D-1 in the Appendices is utterly irrelevant to our concerns about wildlife impacts.

The EIS fails to take a hard look and quantitatively analyze the impacts, including the cumulative impacts, of noise on wildlife and recreational experience for those who value our public lands for quiet recreation. This level of analysis is inadequate and must be replaced with a quantitative estimate of harm to avian and terrestrial wildlife and degradation of the visitor recreational experience, including for quiet recreation. Motorized thru traffic is a significant noise generator (see Sierra Club letter of April 2019) that has not been quantitatively analyzed. Noise levels from motorized travel that interferes with wildlife and the human experience should not be tolerated in any federally protected area, especially in the Fossil Creek corridor.

Objection: Motorized Access

We strongly object to expensive repairs to FR708 that will expand public motorized access to middle Fossil and permit through travel. We do support minimal maintenance to permit search and rescue services (SARS) and administrative use. The EIS fails to take a hard look that adequately analyzes the impacts of public motorized through travel on FR708, including the cumulative impacts on wildlife and recreational experience. Obviously, your decision rewards the energetic lobbying campaign of your favored constituents, the few businesses in Strawberry who never even lifted a single finger to help us restore full flows to Fossil Creek.

If the road were opened, additional debris will inevitably fall from the unstable cliffs leading to hazards for visitors and vehicles using the road. Additional concerns are for dust and traffic; the critical noise issue is discussed above. The Forest Service should keep the unstable portion of FR 708 closed to public use to protect natural values, public safety, and to avoid huge repair and maintenance expenses.

The Forest Service should not be pressured by the public to open the closed portion of FR 708 beyond reasonable emergency response activities. Businesses in Pine/Strawberry have attempted to influence Forest officials into ordering opening the road beyond reasonable SARS activities for private benefit. Subsidizing private business is not an ORV. Spending \$6 million to support a

few businesses in Strawberry and to permit a few dozen OHVs to drive through middle Fossil Creek is irresponsible and is a poor use of scarce funding. A \$6 million road improvement budget could be put to better use on other projects that will provide a quality recreational experience.

In our April 2, 2019 comments, we provided extensive details regarding the well documented geological instability of the four miles of Forest Road 708 from Strawberry below the Fossil Springs parking turn off. "Treacherous" is the word used to describe the road in the words of one USFS official.⁷ The FEIS seems to agree. On page 12, the FEIS says,

"Due to landslides and rockfalls, the road (FR 708) that accesses Fossil Creek and the former Irving hydropower generation station from Strawberry, AZ has often been closed (SHB Geotechnical Engineering 1988). A Forest Service gate located approximately 5 miles west of Strawberry serves as a control point just past the Bear Trail (Fossil Springs) trailhead. The section of road (~4 miles) just past the control gate as the road enters into Fossil Creek canyon is at greatest risk from geologic hazards (USDA 2014). Romero (USDA 2014) noted "many jointed, loose rocks along the road" along with rockfalls and large talus piles (figure 9). Little opportunity exists to mitigate these hazards located immediately adjacent to the road."

The FEIS says on page 39 in footnote 12,

"The cost of repairing the closed section of FR 708 is based on the Forest Service report, "FN708 Conceptual Remediation Strategies" (Romero 2014) and an updated estimate completed by the Tonto National Forest in late 2018. Estimated repair costs in Romero 2014 range from \$2.8 - \$3.9 million; however, the report notes that some costs are not included in this estimate and that an expanded field study is necessary to better determine costs. The 2018 Tonto National Forest estimate is \$5.5 to \$6.0 million. Both of these documents are contained in the project record."

Consistent with Forest Service abusive and disrespectful treatment of the Public,⁸ the phrase "documents are contained in the project record" means that "records are difficult or impossible for the Public to find by agency choice." "Romero 2014" is found as "Date Published 01-09-2017" on the Coconino National Forest's Fossil Creek webpage; however, "an updated estimate completed by the Tonto National Forest in late 2018" upon which the "2018 Tonto National Forest estimate is \$5.5 to \$6.0 million" is based is nowhere to be found. No objection period can close without the Public having the opportunity to evaluate the highly questionable and controversial Forest Service decision to open the 708 Road for an inadequate estimate of "\$5.5 to \$6.0 million" when APS was budgeting \$180,000 per year in routine maintenance on the roads

⁷Email, From: Lawrence E Vogel, To: Gary Hanna, Paige D Rockett, Jennifer M Burns, Subject: Fossil Creek Road Closed, January 10, 2011.

⁸MSO Leadership Forum Workgroup, June 17 & 26, 2020 Workshop Notes where consistent system wide failure of Forest Service officials to provide critical readily available documents to the Public to evaluate proposed projects.

from Camp Verde and Strawberry⁹ as Yavapai County has never been able to maintain the road and where in 2017, Regional Director of Engineering estimated approximately \$5 million "the estimate to mitigate the rockfall safety issues"¹⁰ alone. Except for maintenance to allow emergency medical response OHVs access, there is no reason consistent with logic or any ORV to rationalize reopening the road for safe general public use especially when there is no money to maintain the basic ORVs for which we turned full flows to Fossil Creek.

The EIS does not include a quantitative analysis of increased traffic, public safety, and increased costs of road maintenance and administration. The level of analysis must include a quantitative estimate of harm to avian and terrestrial wildlife and degradation of the visitor recreational experience. The EIS is flawed because it lacks an analysis comparing road repair costs with funding for other projects in the FCWSR. Absent an analysis showing that expanded motorized access is the most cost-effective use of limited funds, motorized public use and through travel on FR708 as proposed in Modified Alternative E should be eliminated.

Objection: Horses damage trails.

The EIS fails to address and protect Fossil Creek from the damage by horses. In our April 2, 2019, DEIS comments, we noted,

"The Fossil Creek Springs Trail is dominated by steep and long stretches of unstable caliche type substrate. Horses will continue to make maintenance of this trail difficult. Horses will continue to contribute to the current and future erosion and sediment runoff challenges."¹¹

The EIS offers no rationale for promoting the destruction of trails and for promoting erosion and increased sedimentation by horses. The EIS fails to clearly delineate how horses will be controlled once they reach old dam site via the Flume Trail as they will be very destructive to the area if they go anywhere off from the Flume Trail itself.

Objection: Fishing.

The EIS fails to address and protect Fossil Creek from the reintroduction of exotic fish by anglers. In our April 2, 2019, DEIS comments, we noted,

⁹ Email, From: To: Gary Hanna, From: Christine Crawford, Cc: David Franquero, Subject: FW: Fossil Creek Road, November 4, 2011.

¹⁰ Email, From: Danny Montoya (Regional Director of Engineering), To: Christine Crawford [Tonto NF Assistant Forest Engineer]; Neil Bosworth [Tonto NF Supervisor], Subject: FW: Rep Gosar Request, November 6, 2017.

¹¹ Correspondence, from: Center for Biological Diversity Co-Founder and Board Member Robin Silver, M.D., to: Coconino National Forest Supervisor Laura Jo West (Submitted electronically to comments-southwestern-coconino-redrock@fs.fed.us and via FAX to: 928-203-7539); RE: FOSSIL CREEK CRMP. Center for Biological Diversity and Maricopa Audubon Society comments on the Fossil Creek Wild and Scenic River Draft Comprehensive River Management Plan (CRMP) and Draft Environmental Impact Statement (DEIS); April 2, 2019, https://www.biologicaldiversity.org/programs/public_lands/rivers/fossil_creek/pdfs/wild-and-scenic-CRMP-20181128-DEIS-CRMP-COMMENTS-20190402-Center_MAS-FINAL.pdf.

" Protection of native fish and aquatic macroinvertebrate habitat is a prime ORV. We have already noted that fact that Fossil Creek is the best remaining native fishery. The DEIS does recognize that "[m]ore people represent a greater likelihood that a visitor will introduce an invasive fish species." (P. 50)

With respect to fishing in Fossil Creek, AGFD has failed to respect this basic principle of invasive fish introduction increases with sport fishing. Consequently, we have already experienced an introduction of exotic bass into the Creek. And unfortunately, in response to this crime, AGFD failed to even research the source of the bass. Incredulously, no forensics were even done on the recovered bass!. The perpetrator is still free.

A July 1996, study, "Interbasin Transfer of Aquatic Biota via Anglers' Bait Buckets," by Herbert R. Ludwig Jr. and Jay A. Leitch examines increased risk of introduction of exotics by anglers, concluding that "drastic policy measures would have to be undertaken to reduce angler's potential for the dispersal of [exotic] aquatic species." Fossil Creek is too valuable a resource to risk for minimal sport angler usage."¹²

When Arizona Game and Fish Department could only document 46 anglers fishing at Fossil Creek in 2009,¹³ they quit collecting angler use data at Fossil Creek to avoid further embarrassment.¹⁴

The EIS fails to evaluate the increased risk of destroying the incredibly important and central ORV of protecting native fish merely to obliged Arizona Game and Fish Department's primary agenda of promoting consumptive use of wildlife. The EIS presents no rationale for playing along with Arizona Game and Fish Department's selfish and risky games.

Objection: Fossil Creek Springsnail protection.

The EIS fails to clearly address and commit that bridges across springsnail sites will be built prior to allowing and emergency OHV and/or horses to use the Flume Trail.

In our April 2, 2019, DEIS comments, we noted,

¹² Ibid.

¹³ Fossil Creek Angler Use (Creel) and Patrol Contacts, Arizona Game and Fish Department, February 2, 2009.

¹⁴ Email, from Arizona Game and Fish Department Urban Fishing Program Manager Eric Swanson, to rsilver@biologicaldiversity.org, Subject: Fossil Creek fishing reports 2010, 2011 and 2012., March 1, 2013.

"Springs and seeps along the Flume Trail should be protected to prevent crushing of Fossil springsnails."¹⁵

The FEIS must provide for protection from trampling or crushing by human, OHVs, and horses.

Objection: Public Safety

We are shocked at the callous and officious response to Comment ER-38 on page 110 of the Appendices. You are apparently more concerned with jamming in visitors than with providing a safe recreational experience. Visitor safety and behavior IS your responsibility and you cannot dodge that by claiming otherwise. We have similar concerns about the “toilet bowl” feature near the dam below the springs, and the long hot hike on the Bob Bear trail. The CRMP contains Table 1-2 listing rescues, but there is no analysis comparing public safety, rescue costs, and high visitor levels. This analysis is needed to objectively evaluate the impacts of high visitation levels and to provide for adequate public safety, search, and rescue. As such, the draft fails to meet the legal requirement to include a cumulative effects analysis.

We look forward to discussing our objections. Our goal is to protect Fossil Creek’s unique values, and especially to preserve the biological integrity of this special place.



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¹⁵ Correspondence, from: Center for Biological Diversity Co-Founder and Board Member Robin Silver, M.D., to: Coconino National Forest Supervisor Laura Jo West (Submitted electronically to comments-southwestern-coconino-redrock@fs.fed.us and via FAX to: 928-203-7539); RE: FOSSIL CREEK CRMP. Center for Biological Diversity and Maricopa Audubon Society comments on the Fossil Creek Wild and Scenic River Draft Comprehensive River Management Plan (CRMP) and Draft Environmental Impact Statement (DEIS); April 2, 2019, https://www.biologicaldiversity.org/programs/public_lands/rivers/fossil_creek/pdfs/wild-and-scenic-CRMP-20181128-DEIS-CRMP-COMMENTS-20190402-Center_MAS-FINAL.pdf.

/s/

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