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USDA Forest Service

Attention - Objection Reviewing Officer

Rocky Mountain Region

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Lakewood, Colorado 80401

Objection to proposed Final Plan and FEIS, Rio Grande National Forest

Greetings,

We regretfully submit an objection to proposed Forest Plan, Final Environmental Impact Statement (FEIS) and the draft Record of Decision (ROD) for the Rio Grande National Forest. Please carefully consider the following information and recommendations in preparing remedies to our objections.

About American Rivers

American Rivers is a leading conservation organization working to protect and restore the nation's rivers and streams. Our mission is to protect wild rivers, restore damaged rivers, and conserve clean water for people and nature. Since 1973, we have conserved more than 150,000 miles of rivers through Wild and Scenic River (WSR) designations, dam removals, on-the-ground projects, and advocacy efforts. Our Colorado Basin Program Office

is headquartered in Denver, CO, and our new Southwest River Protection Program Office is headquartered in Durango, CO.

#### Objection summary

We object to the inadequacy of analysis presented in Appendix B of the Rio Grande National Forest (RGNF) Final Land Management Plan, and to corresponding errors and failures in the conclusions presented in that appendix[mdash]Wild, Scenic, and Recreational River Eligibility Determination Process.[1]

#### Points of objection

- 1) The Wild and Scenic eligibility analysis fails to consider important stream segments for eligibility
- 2) The Wild and Scenic analysis fails to provide detailed documentation of potential outstandingly remarkable values that were considered
- 3) The Wild and Scenic analysis fails to document the determination that no changed circumstances have occurred on streams considered in the RGNF 1996 inventory of potential rivers
- 4) The Wild and Scenic analysis fails to find eligibility for three stream segments that, according to that analysis, fully qualify as eligible

Objection point 1 - The Wild and Scenic eligibility analysis[2] fails to consider important stream segments for eligibility

#### Streams dropped from consideration

The eligibility analysis states that 34 stream segments (in addition to those eligible streams carried forward from the RGNF 1996 forest plan revision) were initially considered under the proposed plan, and that four of those stream segments were not evaluated because they "...were not in the U.S. Geological Survey National Hydrography Dataset..."[3]

The elimination from consideration of those four stream segments is inconsistent with the Forest Service Land Planning Handbook, Chapter 80 Wild and Scenic River Evaluation.[4] The Handbook states, in part, that Wild and Scenic eligibility study, "...shall include all rivers named on a standard U.S. Geological Survey 7.5 minute USGS quadrangle map."[5]

That is, the Handbook requires that the rivers inventory shall include[mdash]but is not necessarily limited to[mdash]rivers named on USGS quadrangle maps. The Handbook does not preclude the inclusion of other qualified streams. RGNF must evaluate streams submitted by the public for evaluation.

The eligibility analysis fails to list the four stream segments dropped from consideration. This, in turn denies the opportunity for public review and comment on whether those streams should be evaluated.[6]

#### Streams proposed in public comments, citing best available scientific information

Beyond the 31 stream segments that were considered in the Wild and Scenic analysis, at least 59 additional stream segments were proposed in public comments for consideration. The Forest Service must consider relevant available information and regarding those streams, as provided by citizen organizations, agency

partners, and the public. [7]

The streams proposed for consideration[8] include 24 streams on which the State of Colorado holds instream flow-protective water rights, thus implying unique river-related values that warrant protection in the forest plan:

- [bull] Alamosa River headwaters

- [bull] Alder Creek

- [bull] Bear Creek

- [bull] Beaver Creek

- [bull] Cross Creek

- [bull] East Fork Pinos Creek

- [bull] Elk Creek

- [bull] El Rito Azul

- [bull] Embargo Creek

- [bull] John's Creek

- [bull] Lake Fork Conejos River

- [bull] Lost Mine Creek

- [bull] Middle Fork Conejos River

- [bull] Middle Fork Saguache Creek

- [bull] North Fork Conejos River

- [bull] North Fork Saguache Creek

- [bull] Pinos Creek

- [bull] Saguache Creek

- [bull] South Fork Camero Creek

- [bull] South Fork Saguache Creek

- [bull] Treasure Creek

- [bull] Wannamaker Creek

- [bull] West Alder Creek

[bull] West Fork Pinos Creek

The streams proposed in comments[9] for consideration also include 14 in or along which unique natural values have been identified by Colorado Natural Heritage Program (CNHP). Streams thus identified include those listed in the CNHP Fen Mapping in Rio Grande National Forest:

Elk Creek watershed

[bull] Elk Creek

[bull] Rio Colorado

[bull] South Elk Creek

Alamosa River Headwaters

[bull] Bitter Creek

[bull] Cascade Creek

[bull] Cataract Creek

[bull] Iron Creek

[bull] Gold Creek

[bull] Prospect Creek

[bull] Treasure Creek

Ute Creek watershed

[bull] East Ute Creek

[bull] Middle Ute Creek

[bull] West Ute Creek

[bull] Ute Creek

Other streams identified include 21 listed in CNHP Assessment of Wetland Condition on the Rio Grande National Forest:

[bull] Benito Creek

- [bull] Halfmoon Creek
- [bull] Machin Creek
- [bull] Headwaters Middle Fork Saguache Creek
- [bull] Headwaters South Fork Saguache Creek
- [bull] Spring Creek
- [bull] Twin Peaks Creek
- [bull] Wannamaker Creek
- [bull] Whale Creek
- [bull] Adams Fork
- [bull] North Fork (Conejos)
- [bull] Middle Fork (Conejos)
- [bull] Rito Azul
- [bull] Mesa Creek
- [bull] Rito Hondo
- [bull] Spring Creek
- [bull] Willow Creek
- [bull] Bear Creek
- [bull] Pole Creek
- [bull] Rio Grande above Rio Grande Reservoir
- [bull] West Fork Pole Creek

Additional streams identified are associated with the CNHP list of Potential Conservation Areas: Adams Fork of Conejos River, Baca Grande and Reserve, Conejos River at Platoro, Conejos River at Spectacle Lake, Conejos River Springs, El Rito Azul, Elephant Rocks, Great Sand Dunes, Pole Creek, Ra Jadero Canyons, Rio Grande at Pole Creek Mountain, Rito Hondo Creek, Saguache Creek, Sangre de Cristo Creek, Sangres Alluvial Fan, South Fork of the Conejos River and Hansen Creek, Upper Medano Creek, Upper Pole Creek, and Zapata Falls.[10]

To determine if outstandingly remarkable values are present, RGNF is required to consider, among other factors, "...best available scientific information, and public participation" and information from "...other Federal, State, or local agencies...[11]

The RGNF proposed final plan's Appendix B "References Cited" does not include reference to any of the sources noted above.

Further, the accompanying Final Environmental Impact Statement's (II FEIS) "Response to Comments" fails to reconcile the statement that "... this feature [fens] is uncommon in the Southern Rocky Mountains..." with the Wild and Scenic analysis's failure to consider the presence of fens an outstandingly remarkable value. The response does not document the evaluation leading to that conclusion.[12] Since fens are considered an irreplaceable resource (see USFS Region 2 fen policy, March 19, 2002), their presence in a river corridor should be considered an outstandingly remarkable value.

The FEIS Response to Comments section does not address comments recommending consideration of streams on which the State of Colorado holds instream flow-protective water rights. (FEIS, p. 230 et seq)

The FEIS Response to Comments section does not address comments recommending RGNF evaluate for Wild and Scenic streams associated with Colorado Natural Heritage Program's Assessment of Wetland Condition on the Rio Grande National Forest, or the RGNF should have considered the stream-related values noted in that document as part of best available science. (FEIS, p. 230 et seq)

The FEIS Response to Comments section does not address comments recommending that RGNF evaluate for Wild and Scenic eligibility streams associated with Colorado Natural Heritage Program's Potential Conservation Areas, or that the RGNF should have considered the stream-related values noted in that document as part of best available science.[13]

Again, RGNF is required to consider, in evaluating potential outstandingly remarkable values, "...best available scientific information..." and is required to consider such information from, "...other Federal, State, or local agencies..."[14]

REMEDY - RGNF must expand its Wild and Scenic eligibility analysis to include all the streams listed above, as well as any others submitted in public comments for consideration during the planning process, engaging the scientific information available from the sources cited above.

(Documented examples of potential outstandingly remarkable values, apparently not considered by RGNF, are provided below.) \*

Objection point 2 - The Wild and Scenic analysis fails to provide detailed documentation of potential outstandingly remarkable values that were considered

The Wild and Scenic eligibility analysis provides only a cursory chart (Table 19) with select categories of potential outstandingly remarkable values on 31 free-flowing streams considered in the analysis, noting only that particular streams do ("yes") or do not ("no") support specific value categories.[15]

To be found Wild and Scenic eligible, a stream must only be (a) free-flowing, and (b) possess at least one rare, unique or exemplary value owing to or essentially associated with the stream. Without presenting the data that was considered by RGNF, the proposed final eligibility inventory and determinations appear to be arbitrary or, at least, not transparent.

Neither that chart nor any accompanying narrative provides detail of what stream-specific species or features were reviewed, of how those values and features were evaluated to reach a determination, or of what scientific documents or field observations were used in that determination. The "References Cited" section of Appendix B lists only internal Forest Service correspondence and previous studies; that section includes no indication that

additional, independent scientific resources were consulted.

This failure to employ[mdash]or, at least, failure to cite[mdash]additional scientific resources fails to comply with the Land Planning Handbook's requirement that wild & scenic evaluations rely, in part, on "...best available science..."[16]

In addition, the failure to cite additional scientific resources, or to otherwise document how the analysis of river-related values was undertaken denies the public an opportunity to review and comment on such references and scientific resources. This absence of information and opportunity to comment fails to comply with the Forest Planning Handbook's requirement that wild & scenic evaluations rely, in part, on "...public participation..."[17]

REMEDY - RGNF must revise its Wild and Scenic eligibility analysis to fully and transparently document scientific resources and field observations leading to determinations regarding potential outstandingly remarkable values associated with the streams evaluated, and must submit that revised analysis and those resources and observations to additional public review and comment.

(Documented examples of potential outstandingly remarkable values, apparently not considered by RGNF, are provided below.) \*

Objection point 3 - The Wild and Scenic analysis fails to document the procedures and evaluations leading to the determination that no changed circumstances have occurred on streams considered in the RGNF 1996 inventory of potential rivers

The wild & scenic eligibility analysis simply asserts that, "...the responsible official determined that no changed circumstances existed..." relative to streams evaluated during the 1996 forest plan revision. As a result, some 300 streams were not reconsidered for wild & scenic eligibility.[18]

No documentation of that determination regarding potential changed circumstances is presented. This fails to comply with the Forest Service Land Planning Handbook's detailed procedure for making such a determination[mdash]including consideration of "...changes that indicate a stronger presence, of outstandingly remarkable values..."[mdash]or at least fails to document how the wild & scenic analysis does comply that that procedure.[19]

Much of the information and data sources noted in Objection points 1 and 2 above (and in the related footnote listing examples of streams that appear to possess independently documented unique, rare, or exemplary natural values) has been documented since 1996. It is therefore important to clarify whether such new information was or was not considered by RGNF as potential changed circumstances and, if the new information was considered, how that consideration process occurred.

REMEDY - RGNF must provide detailed documentation of procedures and evaluations leading to the determination that no changed circumstances exist for each stream previously evaluated for Wild and Scenic eligibility as part of the 1996 forest plan revision, and must submit that documentation to public review and comment before making a final determination regarding potential changed circumstances.

Objection point 4 - The Wild and Scenic analysis fails to find eligibility for four stream segments that, according to that analysis, fully qualify

The Wild and Scenic eligibility analysis lists four streams as being free-flowing and possessing at least one outstandingly remarkable value, without determining that those streams eligible.[20]

Specifically, Table 19 in Appendix B notes that free-flowing stream Alpine Creek possesses outstandingly

remarkable values for "historic and cultural values", that free-flowing stream Cottonwood Creek possesses outstandingly remarkable values for "fish", that free-flowing stream Pole Creek possesses outstandingly remarkable values for "historic and cultural values", and that free-flowing stream Cat Creek possesses outstandingly remarkable values for "fish".

Failure to find these four streams Wild and Scenic eligible does not comply with the straightforward, objective standards for eligibility noted in the Wild and Scenic Rivers Act of 1968 and in the Forest Service Land Planning Handbook.

The Wild and Scenic Rivers Act specifies that, "A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in Section 1, subsection (b) of this Act." [outstandingly remarkable values][21]

Correspondingly, the Land Planning Handbook provides specific, concise criteria for eligible rivers, stating, "To be eligible for inclusion, a river must be free-flowing and, in combination with its adjacent land area, possess one or more outstandingly remarkable values." [22]

REMEDY - Alpine Creek, Cottonwood Creek, Pole Creek, and Cat Creek, as listed in Table 19, must be found Wild and Scenic eligible and be appropriately classified to reflect each respective stream's condition and to establish corresponding protective management under the forest plan.

#### Conclusion

Thank you for carefully considering our objection and recommended remedies. As always, we would be happy to meet with you in person to discuss the issues that we have raised.

Sincerely,

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#### References

[bull] State of Colorado, Instream Flow Program (See State Water Division 3 entries)

<http://cwcb.state.co.us/technical-resources/instream-flow-water-rights-database/Pages/main.aspx>

[bull] Colorado Natural Heritage Program, fen mapping data

<https://cnhp.colostate.edu/ourservices/mapping/>

[bull] Colorado Natural Heritage Program, Assessment of Wetland Condition on Rio Grande National Forest



<https://cnhp.colostate.edu/cnhpblog/2012/12/20/new-report-assessment-of-wetland-condition-on-the-rio-grande-national-forest/>

[bull] Colorado Natural Heritage Program, Potential Conservation Areas

<https://cnhp.colostate.edu/ourdata/help/#PCA>

\* Examples of documented stream-specific values (per Colorado Natural Heritage Program et al)

Alpine Creek - bald eagle winter range; lynx denning and winter habitats; Potential Conservation Area (PCA) L4 higher biodiversity significance

Asiatic Creek - lynx denning and winter habitats

Bird Creek - lynx denning and winter habitats

Cat Creek - aquatic designated cutthroat trout habitat; bald eagle winter range; lynx denning and winter habitats

Coal Creek - lynx denning and winter habitats

Cottonwood Creek - lynx denning and winter habitats; bald eagle winter range; PCA L4 higher biodiversity significance

Crosby Creek - lynx denning and winter habitats

East Fork Navajo River - aquatic designated cutthroat trout habitat

Flagstaff Creek - lynx denning and winter habitats

Jarosa Creek - bald eagle winter range; Gunnison prairie dog colony active; lynx denning and winter habitats

La Jara Creek - aquatic designated cutthroat trout habitat; bald eagle winter concentration; bald eagle winter range; Gunnison prairie dog colony active; lynx denning and winter habitats

Little Red Creek - bald eagle winter range; lynx denning and winter habitats

Merkt Creek - Gunnison sage-grouse lek site buffer, overall range, production areas, winter range; lynx denning and winter habitats

Middle Fork Cotton Creek - lynx denning and winter habitats

Middle Fork North Crestone Creek - lynx denning and winter habitats

Middle Fork Pole Creek - lynx denning and winter habitats

Middle Zapata Creek - bald eagle winter range, winter forage; lynx denning and winter habitats

North Fork Cedar Creek - lynx denning and winter habitats

North Fork Pole Creek - lynx denning and winter habitats

North Fork South Zapata Creek - bald eagle winter forage, winter range; lynx denning and winter habitats

Osier Creek - aquatic designated cutthroat trout habitat; lynx denning and winter habitats

Peterson Creek - Gunnison prairie-dog colony active; Gunnison sage-grouse lek sites buffer, production areas, lynx denning and winter habitats

Pole Creek - lynx denning and winter habitats; bald eagle winter range; PCA L4 higher biodiversity significance

Rock Creek - Gunnison sage-grouse lek sites buffer, overall range, production areas; lynx denning and winter habitats

San Luis Creek - Gunnison sage-grouse overall range; lynx denning and winter habitats

Short Creek - lynx denning and winter habitats; aquatic designated cutthroat trout habitat; bald eagle winter range; PCA L4 higher biodiversity significance

South Fork Cedar Creek - lynx denning and winter habitats

South Spanish Creek - bald eagle winter range; PCA L4 higher biodiversity significance

Spanish Creek - aquatic designated cutthroat trout habitat; lynx denning and winter habitats; bald eagle winter concentration, winter forage, winter range; PCA L4 higher biodiversity significance

[1] Rio Grande National Forest Land Management Plan, Appendix B, pp. 143-152. August 2019.

[2] Rio Grande National Forest, Appendix B, p. 143 et seq

[3] Appendix B, p. 147

[4] USDA Forest Service, Forest Service Handbook: FSH 80

[5] Forest Service Handbook, 1909.12\_82.2, p. 7

[6] 36 CFR [sect] 219.7 (vi)

[7] Forest Service Handbook, 1909.12\_81.2

[8] American Rivers comment letter, October 24, 2016

[9] American Rivers comment letter, October 24, 2016; Rocky Smith et al comment letter, December 22, 2017

[10] Ibid.

[11] Forest Service Handbook, 1909.12\_82.73, p. 12

[12] Rio Grane National Forst FEIS, WSRR-5, p. 233

[13] FEIS, p. 230 et seq

[14] Forest Service Handbook, 1909.12\_82.73, p. 12

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] Appendix B, p. 144

[19] Forest Service Handbook, 1909.12\_82.4, p. 8

[20] Appendix B, p. 149

[21] P.L. 99-590, Sec. 2(b)

[22] Forest Service Handbook, 1909.12\_82.7, p. 9