

Imler-Jacquez, Sandra R -FS

From: Judi Brawer <jbrawer@wildearthguardians.org>
Sent: Thursday, December 19, 2019 1:58 PM
To: FS-comments-southwestern-santafe
Subject: [CAUTION: Suspicious Link]Encino Vista Landscape Restoration Project
Attachments: Encino scoping letter.pdf

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Questions: Spam.Abuse@usda.gov

To whom it may concern,

Please find attached our scoping comments on this project

Sincerely,
Judi



JUDI BRAWER
Wild Places Program Director

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December 19, 2019

Rich Nieto, District Ranger
Coyote Ranger District
HC-78, Box 1
Coyote, NM 87012

Submitted electronically via comments-southwestern-santafe@usda.gov

Re: Scoping Comments on the Encino Vista Landscape Restoration Project Purpose and Need for Action and Proposed Action

Dear Mr. Nieto,

WildEarth Guardians respectfully submits these comments to the U.S. Forest Service concerning the scope of the agency's analysis under the National Environmental Policy Act (NEPA) of the Encino Vista Landscape Restoration Project across approximately 128,400 acres within the Coyote Ranger Districts on the Santa Fe National Forest (Santa Fe NF). The landscape-scale project includes a number of activities requiring rigorous environmental analysis including forest plan amendments, significant vegetative treatments in TES species habitats, road construction and road management actions. These activities will occur in multiple sub-watersheds, specifically the Coyote Creek, Cañones Creek, Headwaters Rio Puerco, Poleo Creek, Outlet Rio Puerco, Upper Rio Galina and Rio Capuling. *See* Encino Vista Landscape Restoration Project Purpose and Need for Action and Proposed Action (hereinafter "Scoping Notice"), p. 2. Please add my names and organization to the contact list to receive any future public notices regarding this project.

Most, if not all, of the sub-watersheds in the project are impaired or functioning at risk and many of the roads in the project area are in poor condition. *See* Scoping Notice, p. 5. Improving these conditions at a measurable level is an outcome we urge the Forest Service to demonstrate in the subsequent analysis. Given the scope and scale of the proposed action, including two Forest Plan amendments, and thus the potential for significant impacts, we strongly urge the Forest Service to prepare an environmental impact statement (EIS).

I. The Forest Service must ensure that this is truly a "Restoration" project.

The purpose of the Encino Vista Landscape Restoration project is to restore overall forest health, lower fire risk, improve watershed health, and enhance wildlife habitat across the landscape. There is a need to increase forest ecosystem sustainability and resiliency to insects, disease, and climate change by shifting forest composition and structure toward desired conditions within the historic (or natural) range of variability for each forest type. There is also a need to reduce the risk of uncharacteristic wildfires, to improve species habitat, and overall watershed conditions.

This project focuses on forest restoration and resiliency treatments to:

- Reduced stand densities
- Reintroduce fire on the landscape
- Revitalize meadows and aspen stands
- Promote a diverse forest structure for a variety of wildlife species
- Improve watershed conditions across the landscape, which would safeguard the water supply for villages, towns and ranches within the project area as well as downstream communities, by increasing the quality and quantity of water that flows through the network of streams improving watershed function within the Encino Vista Project area
- Significantly reduce the risk of catastrophic wildfire and its aftermath (flooding, debris flow)

Scoping Notice, pp. 8-9.

Yet, despite being touted as a landscape restoration project, the proposed action provides little in actual restoration activities such as identifying the Minimum Road System and associated actions such as decommissioning system roads, removing non-system roads and fixing poorly placed and/or sized culverts, in-stream and riparian restoration, and reducing the impacts of livestock grazing and motorized use. Without such restoration work, the Encino Vista project is merely a logging and burning project, not restoration. These restoration actions are essential to meeting the stated purpose and need, and achieve the desired results, above.

According to the Scoping Notice,

The project area overlaps twelve HUC 12 sub-watersheds, but the majority (74%) of the project is within these sub-watersheds: Cañones Creek, Coyote Creek, Headwaters Rio Puerco, and Poleo Creek. These four sub-watershed are a crucial source of recharge of ground water used as drinking water for the communities of Coyote, Youngsville, Cañones and Abiquiu. Portions of four other sub-watersheds make up nearly 23% of the project area, they are: Outlet Poleo Creek, Upper Rio Gallina, Rio Capulin, and Abiquiu Reservoir. The Cañones Creek is an impaired functioning watershed. The other previously mentioned watersheds are functioning at risk.

Scoping Notice, p. 5. Yet, there is no substantive information as to how these watersheds will be improved to ensure the necessary groundwater recharge. Extensive timber management is not the answer, especially without other substantive restoration activities such as road decommissioning, riparian restoration, and addressing the impacts of livestock grazing.

Indeed, according to the Scoping Notice, livestock grazing plays a significant role in why the area is purportedly outside of historic ecological conditions. “Fire suppression is the primary reason which has allowed for change in fuels (suppression combined with grazing and logging are the driving factors for change in fuel abundance, type, and arrangement).” Scoping Notice, p. 5. In the Juniper Grass ERU, “Typically, native understory grasses are perennial species, while forbs consist of both annuals and perennials. Shrubs are characteristically absent or scattered. Due to the effects of long-term fire suppression and grazing in this type, in many locations the current condition is severely departed from historic conditions.” *Id.*, pp. 5-6. It is

unclear how livestock grazing has impacted the other vegetation communities such as Aspen, mixed conifer, Ponderosa pine, dry mixed conifer, Pinion-Juniper woodlands, and pinion-juniper sagebrush. This must be analyzed as part of the baseline conditions and cumulative effects analysis.

Further, replacing Forest Plan standards with desired conditions and guidelines weakens the Forest Plan. The Forest Service's desired conditions are not based on the best available science and are static conditions used as an excuse for the Forest Service to continuously log in areas where natural fire should be returned. Forests are not static, they are constantly changing, and natural fire is an essential component of this change.

II. Mexican Spotted Owl

We are dismayed at the Forest Service's failure to ensure the protection and restoration of MSO and their habitat. The Encino Vista project directly contradicts the current injunction on logging activities in Mexican Spotted Owl habitat, and the proposed Forest Plan amendments do not comply with the 1996 Standards and Guidelines that still apply on the Santa Fe NF and impose significant restrictions/constraints on management activities in protected habitat (i.e., PACs and steep slopes). One of the assumptions of the current programmatic Biological Opinion for the Santa Fe NF is that the Forest Service will implement the the Forest Plan, including the 1996 Standards and Guidelines. So, since the proposed Forest Plan amendments deviate from the 1996 Standards and Guidelines, that is an action "outside" of the programmatic Biological Opinion that requires a separate "stand alone" Biological Opinion. Further, the Encino Vista project and associated MSO Forest Plan Amendment fails to incorporate significant and essential components of the 2012 Recovery Plan.

The 2012 Recovery Plan states that scientific

studies suggest that at least some kinds of mechanical forest treatments may negatively affect spotted owls. No clear guidance emerges from these studies relative to types, extents, or spatial arrangement of treatment that might minimize effects to owls. Such information is needed if management is to proceed in owl habitat. Lacking such information, managers should proceed cautiously in terms of treatment intensity and extent. That is, initial treatments should be limited in spatial extent and treatment intensity, and should be aimed at balancing reduced fire risk with maintaining the mature forest structure that seems to be favored by spotted owls. Treatments in owl habitat should be linked to rigorous monitoring of owl response, to allow us to evaluate the effects of different types and extents of treatments in an adaptive management context... The Recovery Team recommends mechanical treatment in PACs only if such monitoring occurs.

2012 Recovery Plan, p. 73.

Pursuant to the 2012 Recovery Plan, "Forest restoration and fuels-reduction treatments must be evaluated over time using appropriate modeling, rigorous monitoring, management experiments, and/or research to assess their effectiveness in maintaining or creating owl habitat and/or their effectiveness in reducing the threat of high severity or stand-replacing wildland fire." *Id.*, p. 250. Accordingly, the NEPA analysis for this project must include the results of past monitoring of the impacts of timber management activities, roads and motorized use, noise and recreational activities, and livestock grazing on MSO. And, this project must incorporate the rigorous monitoring and other recovery recommendations of the 2012 Recovery Plan. We expect to see the results of at least two years of rigorous pre-project monitoring in the NEPA analysis.

The Forest Service must comply with the ESA, its Forest Plan (including the 1996 Standards and Guidelines), and the 2012 Recovery Plan to provide for the recovery of MSO. This includes limiting activities that impact critical habitat, Protected Activity Centers (PACs), and recovery habitat. The FS must consult with the U.S. FWS on the impacts of the project and Forest Plan Amendment on MSO, and these consultation documents must be provided to the public during the NEPA process on the agency's website for this project.

The Forest Service should follow the management recommendations in the 2012 Recovery Plan (see Appendix C of the 2012 Recovery Plan), for PACs, recovery habitat, and other habitats, and must also analyze the impacts of climate change on MSO, as discussed in the 2012 Recovery Plan.

III. As part of the analysis of the Encino Vista Project under NEPA, the Forest Service must not only consider the Santa Fe National Forest's Travel Analysis Report and identify unneeded roads to prioritize for decommissioning or other uses, but it must also identify the Minimum Road System.

The Forest Service faces many challenges with its vastly oversized, under-maintained, and underfunded road system. The Santa Fe National Forest is no exception. According to the 2008 TAR, "we estimate that the Santa Fe National Forest needs over \$4 million per year for adequate maintenance for all of our roads, using recommended maintenance frequencies and costs." 2008 Travel Analysis Process Report, p. 18. The TAR identifies as a partial resolution will be to reduce the miles of the designated road system." *Id.* It does not appear that the TAR has been updated since 2008, so this \$4 million could have significantly increased since then, and there is no information on the Forest Service's progress in decommissioning unneeded roads.

The impacts from roads to water, fish, wildlife, and ecosystems are well documented in scientific literature. The following is just a small list of examples:

- Increased sedimentation in stream beds has been linked to decreased fry emergence, decreased juvenile densities, loss of winter carrying capacity, and increased predation of fishes, and reductions in macro-invertebrate populations that are a food source to many fish species (Rhodes et al. 1994, Joslin and Youmans 1999, Gucinski et al. 2000, Endicott 2008).
- Roads can act as barriers to [fish] migration (Gucinski et al. 2000). Culverts in particular often interfere with sediment transport and channel processes such that the road/stream crossing becomes a barrier for fish and aquatic species movement up and down stream.
- Where both stream and road densities are high, the incidence of connections between roads and streams can also be expected to be high, resulting in more common and pronounced effects of roads on streams (Gucinski et al. 2000).
- Roads and trails impact wildlife through a number of mechanisms including: direct mortality (poaching, hunting/trapping) changes in movement and habitat use patterns (disturbance/avoidance), as well as indirect impacts including alteration of the adjacent habitat and interference with predatory/prey relationships (Wisdom et al. 2000, Trombulak and Frissell 2000).
- Forman and Hersperger (1996) found that in order to maintain a naturally functioning landscape with sustained populations of large mammals (such as elk), road density must be below 0.6 km/km² (1.0 mi/mi²).
- The MSO 2012 Recovery Plan identifies the impacts that roads, noise and motorized recreation have on MSO, including breeding.

Indeed, the scoping notice admits that “[m]any of the roads in the project area are in poor condition. These roads do not provide safe and efficient access. Their degraded state may be causing soil erosion.” Scoping Notice, p. 5. Yet, despite this project being touted as a “restoration” project, there is no mention of a resilient road system, road decommissioning, or otherwise improving vegetation, habitat, and riparian conditions by removing roads and limiting motorized use. Instead, the Forest Service proposed to construct approximately 5 to 10 miles of temporary roads and conduct road infrastructure improvement and maintenance on existing Forest Service roads within the project area. Scoping Notice, p. 10. In order to meet the restorative purpose and need for the project and eliminate or reduce the impacts of the roads within the project area to water quality, fish and wildlife habitat, the Forest Service needs to take steps related to its road system.

Local communities and visiting recreationists are also impacted by the oversized, under-maintained and under-funded road system. Since roads are not regularly maintained or upgraded, they are highly susceptible to storms. Small culverts become plugged with debris, forcing water over the road and often resulting in the road getting washed out. Gullies can form along roadbeds making it difficult to drive a car on the road. This “storm damage” can eliminate access and often takes years to fix, if it even gets fixed at all. In order to ensure access to beloved trails, campsites, fishing and swimming holes, etc., the Forest Service should target limited road maintenance funding to high priority recreation/community access roads.

The Forest Service recognized the challenges related to the oversized and deteriorating road system nearly two decades ago. In 2001, the Forest Service promulgated the Roads Rule (referred to as “subpart A”). 66 Fed. Reg. 3206 (Jan. 12, 2001); 36 C.F.R. part 212, subpart A. The Roads Rule created two important obligations for the agency. One obligation is to complete a Travel Analysis. 36 C.F.R. § 212.5(b)(2). Another obligation is to identify the minimum road system needed for safe and efficient travel and for the protection, management, and use of National Forest system lands. *Id.* § 212.5(b)(1).

In 2008 the Santa Fe National Forest took the first step and completed its travel analysis report (2008 TAR). The next step under Subpart A is to consider the valid portions of the travel analysis report and begin to identify and implement the minimum road system (MRS) in the analysis of site-specific projects of the appropriate geographic size under NEPA.¹ Here, extensive time that has passed since the 2008 TAR, and it doesn’t appear that the Forest Service has made any effort to identify the MRS within the project area. Given that the Encino Vista Project is considering changes to a number of roads, and given its geographic scale, this is precisely the type of project where the Forest Service must consider its Travel Analysis Report and identify unneeded roads to prioritize for decommissioning or to be considered for other for the Santa Fe National Forest, and identify the MRS.² This is essential to meeting the restoration purpose and need.

The minimum road system is the road system the Forest Service determines is needed to:

- “meet resource and other management objectives adopted in the relevant land and resource management plan”;
- “meet applicable statutory and regulatory requirements”;
- “reflect long-term funding expectations”;
- “ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.”

¹ See Memorandum from Leslie Weldon to Regional Foresters et al. on Travel Management, Implementation of 36 CFR, Part 212, Subpart A (Mar. 29, 2012) (hereafter 2012 Weldon Memo), page 2 (directing forests to “analyze the proposed action and alternatives in terms of whether, per 36 CFR 212.5(b)(1), the resulting [road] system is needed”).

² *Id.* (directing forests to use the travel analysis report to identify the minimum road system for proposed actions at the scale of a 6th code subwatershed or larger).

36 C.F.R. §212.5(b)(1). The Forest Service should identify the minimum road system by analyzing whether a proposed project is consistent with the relevant portions of the travel analysis report and consider the minimum road system factors under 36 CFR 212.5(b)(1) for each road the agency decides to keep as part of the specific project.³

Subpart A directs the agency to “identify the roads on lands under Forest Service jurisdiction that are no longer needed,” and therefore should be closed or decommissioned.⁴ The rule refers to all roads, not just National Forest System roads. The rule defines a road as “[a] motor vehicle travelways over 50 inches wide, unless designated and managed as a trail.”⁵ The forest must assess these proposed actions in relation to the risks and benefits analysis in the Travel Analysis Report, as well as the factors for a minimum road system, with the goal of minimizing adverse environmental impacts.

We are concerned that the scoping notice for this project didn’t even reference the Travel Analysis Report and has not identified any roads to be closed, much less decommissioned, or culverts to be replaced. We believe these actions are essential to achieve the restoration purpose and need of the project and move the forest towards a more economical and storm resilient road system. We expect to see the incorporation of the Travel Analysis Report into the draft Environmental Impact Statement, along with reasoning if decisions are made that are different from the recommendations in the report. Sometimes we have seen this as a table and sometimes as an appendix to the analysis. The overall purpose being to minimize environmental impacts, ensure reliable access and be in-line with road maintenance budgets.

IV. The Forest Service must prepare a robust Environmental Impact Statement (EIS) under NEPA.

The Encino Vista project, including the proposed Forest Plan amendment, “may” have a significant impact on the environment, and thus the Forest Service must prepare a robust EIS, ensuring that it complies with NEPA’s required “hard look.” The agency may not ignore topics if the information is uncertain or unknown. Where information is lacking or uncertain, the Forest Service must make clear that the information is lacking, the relevance of the information to the evaluation of foreseeable significant adverse effects, summarize the existing science, and provide its own evaluation based on theoretical approaches. 40 C.F.R. § 1502.22.

The EIS must analyze the baseline conditions of the project area, and the direct, indirect and cumulative impacts of the proposed timber management activities, road construction and maintenance, and all other activities. There are a number of large landscape projects throughout the Santa Fe NF, and the agency has yet to address the cumulative impacts of so much timber management and associated road building, especially on old growth, MSO and other species’ and their habitats. Other issues that must be analyzed include the impacts of livestock grazing, particularly in light of climate change, on forest ecosystems, vegetation, riparian areas, and overall forest health. Livestock grazing and the poor condition of the road system must be assessed as part of the baseline conditions.

³ *Id.* (“The resulting decision [in a site-specific project] identifies the [minimum road system] and unneeded roads for each subwatershed or larger scale”).

⁴ 36 C.F.R. § 212.5(b)(2). See also Center for Sierra Nevada, 832 F. Supp. 2d at 1155 (“The court agrees that during the Subpart A analysis the Forest Service will need to evaluate all roads, including any roads previously designated as open under subpart B, for decommissioning.”).

⁵ 36 C.F.R. § 212.1.

- a. The Forest Service should clearly articulate the statement of purpose to include its duty to identify the minimum road system, and provide support for the claimed need.

The Forest Service must shape the project's purpose and need statement according to applicable statutory and regulatory requirements. When the agency takes an action "pursuant to a specific statute, the statutory objectives of the project serve as a guide by which to determine the reasonableness of objectives outlined in an EIS." *Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853, 866 (9th Cir. 2004). The Forest Service has a substantive duty to address its over-sized road system. *See*, 36 C.F.R. 212.5. This underlying substantive duty must inform the scope of the project and be included in the agency's NEPA analysis. It's been nearly 2 decades since the agency finalized the Subpart A rules, and 11 years since the Santa Fe NF conducted its TAR, and the Forest Service can no longer delay in addressing this duty.

- b. The Forest Service should accurately define the official road network as the baseline for the NEPA analysis.

The baseline and no-action alternative can differ.⁶ Current management direction does not compel the Forest Service to recognize decommissioned roads and unauthorized roads as part of the road system. Disclosure of the number and location of decommissioned routes and unauthorized routes, as well as the impacts of those routes, is a necessary component of the no-action alternative. But it is separate and distinct from the identification of the baseline, which should be the official open route system.

In addition, it is helpful for public understanding to have clearly articulated which roads proposed for closure and decommissioning are already not drivable by the public due to lack of maintenance, road wash-outs and storm damage. It's incumbent upon the Forest Service to accurately describe the road network now, what is planned for the future and why those steps will be taken. There is significant room for improvement on how the agency describes the current challenges and how changes may or may not impact communities.

- c. The Forest Service must consider a broad array of impacts related to forest roads in its NEPA analysis.

Impacts from Forest Roads

The best available science shows that roads cause significant adverse impacts to National Forest resources. Erosion, compaction, and other alterations in forest geomorphology and hydrology associated with roads seriously impair water quality and aquatic species viability. Roads disturb and fragment wildlife habitat, altering species distribution, interfering with critical life functions such as feeding, breeding, and nesting, and resulting in loss of biodiversity. Roads facilitate increased human intrusion into sensitive areas, resulting in poaching of rare plants and animals, human-ignited wildfires, introduction of exotic species, and damage to archaeological resources. We will look to see if the Santa Fe National Forest outlines a range of activities focused on reducing road impacts, as part of its' draft Environmental Impact Statement. These activities should include road maintenance, installation of BMPs, culvert replacements, hydrologically-disconnecting roads from streams, fish passage improvements, appropriate road closures (sometimes seasonal) and road decommissioning which can all be beneficial to wildlife, water quality, aquatic species and forest users if

⁶ See, e.g., FSH 1909.15, 14.2; Council on Environmental Quality's (CEQ) Forty Most Asked Questions (1981), #3 (explaining "[t]here are two distinct interpretations of 'no action'"; one is "'no change' from current management direction or level of management intensity," and the other is if "the proposed activity would not take place").

properly considered and implemented. As this project moves forward, we ask that the Agency ensure that activities on the ground result in changes to the current net negative impacts from these roads.

Climate Change and Forest Resources

Climate change intensifies the impacts associated with timber management, livestock grazing and roads. Draft guidance from the Council of Environmental Quality (CEQ) indicates the Forest Service must include existing and reasonably foreseeable climate change impacts as part of the affected environment, assessed as part of the agency's hard look at impacts, and integrated into each of the alternatives, including the no action alternative. The Forest Service has a substantive duty under its own Forest Service Manual to establish resilient ecosystems in the face of climate change.⁷ The Forest Service should analyze in detail the impact of climate change on the Forest, streams, groundwater, roads, and fish and wildlife habitat. Removing culverts, improving stream/road crossings, upgrading culverts, and decommissioning roads are all very important activities that can increase resiliency to climate change impacts. We encourage the Forest Service to consider climate change impacts – especially related to increasing storm intensity - to ensure that culverts are large enough and/or stream crossings are appropriately designed.

IV. The Forest should not construct temporary roads. If avoidance is impossible, the roads should be immediately reclaimed after use.

We encourage the Forest to take a hard look at the proposed temporary roads in order to be certain that they are needed. Current USFS policy is that road beds be restored to natural condition after such project, yet the scoping notice does not contain any such requirement. And, even when temporary roads are restored to natural condition, there is still an impact when temporary roads are developed. In addition to their hydrologic impact, roads fragment habitat, disturb wildlife, invite more noxious weeds and increase fire danger. Additionally, if they are not properly rehabilitated post-project, they can invite illegal incursions and more damage to natural resources. At minimum, we ask that the Santa Fe National Forest restore these segments as soon as the project activities within that specific area are completed. In addition, we ask that the segments are monitored and enforcement actions taken to ensure proper closure.

Conclusion

As conservationists and visitors to the Santa Fe National Forest, we are certain that with thoughtful planning and clear communication, the Santa Fe National Forest staff can create a true restoration project that includes less logging and road building, and more actual restoration actions such as identifying and implementing a minimum road system, road decommissioning, riparian restoration, returning natural fire to the ecosystem, decreasing livestock grazing, and improving watershed health and groundwater recharge. This endeavor is one of the most important efforts the Forest Service can undertake to restore aquatic systems and wildlife habitat, facilitate adaptation to climate change, ensure reliable recreational and community access, and lower operating expenses.

⁷ See, e.g., FSM 2020.2(2) (directing forests to “[r]estore and maintain resilient ecosystems that will have greater capacity to withstand stressors and recover from disturbances, especially those under changing and uncertain environmental conditions and extreme weather events”); FSM 2020.3(4) (“[E]cological restoration should be integrated into resource management programs and projects . . . Primary elements of an integrated approach are identification and elimination or reduction of stressors that degrade or impair ecological integrity.”).

If you have questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Judi Brawer', with a long horizontal flourish extending to the right.

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