

July 10, 2019

Santa Fe National Forest
Attn: Hannah Bergemann, Fireshed Coordinator
11 Forest Lane
Santa Fe, NM 87508

Submitted via email to: Hannah.Bergemann@usda.gov

Re: **COMMENTS ON SANTA FE MOUNTAINS LANDSCAPE RESILIENCY
PROJECT SCOPING DOCUMENT**

Dear Ms. Bergemann:

Thank you for the opportunity to comment on the Santa Fe Mountains Landscape Resiliency Project (SFMLRP) Scoping Document.¹

New Mexico Wilderness Alliance is a statewide non-profit organization dedicated to the protection, restoration, and continued enjoyment of New Mexico's wild lands and wilderness areas. As such, we advocate for increased protections for, and the prevention of damage to public lands, and we participate in all levels of agency planning. We have thousands of members in New Mexico and across the country, many of whom regularly visit the Santa Fe National Forest (SFNF), and particularly the area covered by this project proposal.

We have reviewed the scoping document and it raises some significant concerns. We are particularly concerned that the scoping document does not address how the SFMLRP will impact currently designated Wilderness, proposed wilderness management areas, or Inventoried Roadless Areas. We are also concerned that the SFNF will rely upon the SFMLRP in making wilderness proposal decisions during its broader forest plan revision process, potentially excluding areas from being managed as wilderness due to decisions made in the SFMLRP.

Before we begin our comments on the specific proposal, we would like to remind SFNF of the Forest Service's (USFS) mission, its decision-making discretion, and its public trust responsibilities as a federal land management agency.

The USFS mission is "Caring for the Land and Serving People". USFS guidance states that this means the agency must, among other things, advocate a conservation ethic in promoting the health, productivity, diversity, and beauty of forests and associated lands, listen to people and respond to their diverse needs in making decisions, and protect and manage the national forests and grasslands so that they best demonstrate the sustainable multiple-use management concept.

The agency holds federal land in trust for future generations of the American public. While the agency has a multiple use mission, it is not charged with allowing every use on every acre. Quite the opposite; it is expected that the agency will reserve some areas for conservation and recreation, and will close certain areas to development. This is in conformance with the multiple use mandate. Additionally, agencies are given enormous discretion in their decision making

¹ Santa Fe National Forest, Santa Fe Mountains Landscape Resiliency Project Scoping Document (June 2019), https://www.fs.usda.gov/nfs/11558/www/nepa/110443_FSPLT3_4655386.pdf [hereinafter "Scoping Document"].

authority. Unless Congress directly tells the agency what to do in a specific scenario, or the agency acts with no rational basis for its decisions, the agency has full discretion to make decisions within its mission. We encourage SFNF to remember that it is not bound to allow restoration projects here by any law, rule, or guidance whatsoever.

I. NEPA Requirements

Public Participation

The National Environmental Policy Act (NEPA) and its accompanying guidance both from the Council on Environmental Quality (CEQ) and the USFS NEPA Manual, make it clear that public agencies should include those parties who are actually interested in the development of a decision document. Forest Service Manual 1909.15.10 § 11.52 (4) states that USFS shall, “[e]nsure that the level of effort to inform and to involve the public is consistent with the scale and importance of the proposed action and the degree of public interest.” The Pecos/Las Vegas and Española Ranger Districts are certainly two of the most visited USFS ranger districts in New Mexico, used extensively by hikers, backpackers, hunters, and anglers. The level of public interest is extremely high.

The agency has ample discretion to increase the comment period to 60 or even 90 days, which would be in conformance with USFS’s NEPA goals and would alleviate some of the frustration expressed at the public meetings. We hope SFNF will consider extending the public comment period and holding at least one additional public meeting dedicated to answering the public’s questions in a more robust way. We submitted a letter on July 5, 2019, specifically requesting an extension of the comment period and additional public meetings.

Prohibition on Predecision

NEPA prohibits an agency from being “predecisional.” In other words, NEPA requires that federal agencies take a “hard look” at the issues presented, the public’s interest, the best available science, and the potential environmental impacts of various alternatives, and to actually weigh that evidence when making a decision.² An agency is not permitted to have made decisions internally before the NEPA process is complete.

SFNF must not simply adopt the Greater Santa Fe Fireshed’s desires without thorough consideration of impacts through NEPA analysis and consideration of how those impacts would affect SFNF’s obligations under the National Forest Management Act (NFMA). The Greater Santa Fe Fireshed has a different objective than SFNF. SFNF must evaluate all available information during this process and proceed in conformity with the USFS’s responsibility of sustainably holding land in trust for the use and enjoyment of future generations of the American public.

II. Best Available Science

² See *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 838 (D.C. Cir. 1972), see also Question 1a, Forty Most Asked questions Concerning the CEQ’s National Environmental Policy Act, available at <https://www.energy.gov/sites/prod/files/2018/06/f53/G-CEQ-40Questions.pdf> (NEPA “includes all reasonable alterna

USFS is directed by NEPA, agency guidance, and Executive Orders to make its decisions based on the best scientific information available. NEPA regulations require that in an environmental analysis, “[t]he information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). Executive Order 13563 (2011), affirming Executive Order 12866 (1993) states that, “[o]ur regulatory system . . . must be based on the best available science.” The 2012 Forest Planning Rule states that the best available scientific information must be used to inform the planning process and documentation of how science was used in the plan must be included. *See* FSH 1909.12.

III. Boundaries

We are confused and concerned about the source of the boundaries for this analysis. USFS lands comprise more acres within the Greater Santa Fe Fireshed than those included in the project area. Similarly, the project area contains acres outside of the Greater Santa Fe Fireshed. The scoping document does not provide the basis for the boundary lines of the project area.

There appear to be more than 23,500 acres of Inventoried Roadless Areas (IRA) within the project area, comprised of portions of at least six IRAs.³ As you know, IRAs are areas which have been inventoried by USFS and found to possess wilderness characteristics. While not formally designated as protected areas through legislation, they are areas which are potentially suitable for future wilderness designation by Congress, and which are generally managed for preservation of their wilderness characteristics by USFS.

In 2001, the Roadless Rule was finalized, and it has survived several federal court challenges. The USFS website states that, “[t]he 2001 Roadless Rule establishes prohibitions on road construction, road reconstruction, and timber harvesting on 58.5 million acres of inventoried roadless areas on National Forest System lands. The intent of the 2001 Roadless Rule is to provide lasting protection for inventoried roadless areas within the National Forest System in the context of multiple-use management.”⁴ We are concerned about the complete lack of discussion of IRAs within the scoping document. SFNF should clarify the SFMLRP’s impact on these IRAs. If SFNF is using an exception to the 2001 Roadless Rule, it needs to make that clear to the public.

Further, most of the IRAs included within the project area have been evaluated in the draft documents for the upcoming forest plan revision as containing high wilderness characteristics, and one IRA was evaluated as containing moderate wilderness characteristics. Again, we are concerned with the scoping document’s complete lack of discussion of areas with moderate or high wilderness characteristics. Uses which could degrade these areas should not be permitted or even considered before SFNF has completed its forest plan revision process and submitted its wilderness proposals to Congress. If SFNF makes a decision on the SFMLRP first, SFNF may exclude areas from protection in the forest plan which would otherwise qualify for wilderness management. At the very least, SFNF should clarify how the SFMLRP will preserve or enhance the wilderness characteristics of inventoried areas within the project area.

³ Based upon our review of SFNF’s IRA GIS overlays and comparison with the proposed project area.

⁴ <https://www.fs.usda.gov/roadmain/roadless/2001roadlessrule>.

IV. Endangered Species

The official policy of the United States, as expressed in the Endangered Species Act (ESA) is that “all Federal departments and agencies shall seek to conserve endangered species and threatened species.” 16 U.S.C. §1531(c)(1). Under the ESA, USFS has an affirmative duty to ensure that any action it authorizes is not likely to jeopardize listed species or result in the destruction or adverse modification of designated critical habitat. *Id.* § 1536(a)(2). In order to fulfill this responsibility, when USFS knows that listed species are present in the action area, which is true in this case, it must conduct a biological assessment. *Id.* § 1536(c). We request that the biological assessment(s) for this project be made available on the project website, for ease of public accessibility.

Further, when, as part of the biological assessment, USFS determines that either listed species or critical habitat are likely to be adversely affected, formal consultation and/or conference with FWS is necessary. 50 C.F.R. § 402.12. In this case, based on the potential likely impacts to both listed species and designated critical habitat, we believe that a determination that this project may adversely affect both is likely, and therefore SFNF should initiate formal consultation with FWS upon completion of the biological assessment. We request that the draft Environmental Assessment (draft EA) explain the consultation and/or conference process used by USFS for this project, as well as the information contained in any biological assessment and biological opinion, including any discretionary conservation recommendations provided by Fish and Wildlife Service (FWS).

We know that there is at least one listed species in the analysis area, the Mexican Spotted Owl (MSO). Based on previously completed mapping, we believe that MSO have designated critical habitat both within and near the project area. This is not discussed in detail within the scoping materials, except for the fact that MSO Protected Activity Center (PAC) locations within the project area have been noted, but must be both disclosed and analyzed within the draft EA. The identity of all listed species and critical habitat within the project area must be presented in the draft EA, along with the potential impacts to those species and habitats. We also note that USFS should include a comprehensive monitoring and mitigation strategy for all listed species as part of the draft EA and any project that moves forward within the area.

The scoping materials do not mention the significant impacts to MSO that may occur based on activities that may take place throughout the proposed action area. MSOs have been threatened throughout the Southwest for many decades, and recovery has not been achieved. Moreover, because of their use of a wide variety of habitats and the number of projects that take place on forest lands, the cumulative effects to this species are significant in any large-scale project undertaken over many years.

Breeding and nesting periods are a particularly significant time for raptor populations. In studies of MSO in New Mexico, breeding and nesting activities took place from March until July (Delaney et al. 1999:44). Additionally, foraging behavior also increased during this period (Delaney et al. 1999: 46). It is also important to note that MSO rely on small prey species, and the impacts of activity associated with this project on those populations are important to understanding the overall impacts to MSO viability and recovery. It is unclear based on the scoping materials how much ground disturbance and overall habitat fragmentation that might directly impact prey species would occur. This should be made clear in the draft EA.

MSO are also particularly sensitive to noise pollution and disruption caused by human activities. Because of the potential scope of the activities within the entire project area, we assume that noise pollution throughout the lifespan of these activities will be varied, dispersed, and significant. Studies of MSO have demonstrated that noise from even relatively limited recreation activities can disrupt owl activity and have “caused declines in several important activities that could adversely affect the reproductive success of owls” (Swarthout and Stiedl 2003: 311). The research suggests that human activity of any kind, especially near nesting sites, can create disruptions to MSO behavior and activity that directly threaten reproductive success. We encourage USFS to analyze the potential noise impacts from this project and future related activities as it considers the impacts to MSO in the area. Further, we request USFS assess how noise pollution and human behaviors in the area from ongoing recreation will contribute to the cumulative impacts here.

Additionally, we are unsure about SFNF’s level (if any) of consultation with FWS, which will need to be consulted on endangered species. USFS Manual 1909 notes that the “[r]esponsible official *shall* identify and contact other federal, state, or local agencies with an interest in the action.” See § 11.3 (emphasis added). It also states that the Lead Agency shall request the participation of each cooperating agency in the NEPA process at the earliest possible time.

None of the documents on the SFMLRP website mention any discussions thus far with FWS, and there were no FWS representatives at the public meetings. As discussed in more detail below, this project overlaps Critical Habitat for the Mexican Spotted Owl (MSO). SNF is prohibited by the Endangered Species Act from jeopardizing this species, and should have notified FWS at the earliest possible point to get a list of endangered species in the proposal area. SFNF must then prepare a Biological Assessment for each listed species to determine whether or not the proposed action may jeopardize any of the species.⁵ If the Assessment determines jeopardy may occur, SFNF must initiate formal consultation with FWS.⁶

We would appreciate clarification of the process SFNF went through to get to this point, and again, encourage the agency to extend the comment period and to host additional public meetings to be more within the spirit of the NEPA regulations of widely including the public.

We understand that SFNF expects to conduct an environmental analysis and reach a finding of no significant impact, but we are concerned that a project of this size and scope is more appropriately analyzed through an environmental impact statement. At over 50,000 acres it is one of the largest single vegetation clearing and burning projects ever proposed on SFNF. An EA will not provide sufficient analysis for such a large-scale project with potential impacts on a broad spectrum of resources and wildlife.

V. USFS Sensitive Species

The official policy of USFS, as expressed in the Forest Service Manual (FSM), is to “[a]void or minimize impacts to species whose viability has been identified as a concern.” FSM § 2670.32. Further, decisions “must not result in loss of species viability or create significant trends toward federal listing.” FSM § 2670.32.

⁵ 50 C.F.R. § 402.12.

⁶ *Id.*

The scoping materials do not mention the significant impacts to northern goshawk that may occur based on activities that may take place throughout the proposed action area. The northern goshawk has been listed on USFS Region 3's Sensitive Species list since 1982. (Reynolds et al. 1992:1). In studies of the northern goshawk across the region, breeding and nesting takes place from early March until late September. (Reynolds et al. 1992:3) It is also important to note that northern goshawk rely on small prey species, and the impacts of activity associated with this project on those populations are important to understanding the overall impacts to northern goshawk viability and recovery. It is unclear based on the scoping materials how much ground disturbance and overall habitat fragmentation that might directly impact prey species would occur. This should be made clear in the draft EA.

Where northern goshawk communities exist outside of MSO protected and restricted areas, a less stringent, but still existent set of standards and guidelines apply.⁷ These guidelines instruct SFNF to “[l]imit human activities in or near nest sites and post-fledgling family area’s during the breeding season[,]” and to prepare a fire management plan whenever a fire is planned in the occupied nest area. The scoping documents do not make clear how these standards and guidelines will be implemented throughout the project area, and as such do not make clear the extent of impacts upon this species and its habitat as a result of the SFMLRP. This should be made clear in the draft EA.

VI. The public’s use of, and interest in, this area.

The draft EA should include extensive analysis of the public’s use of, and interest in, this area. Public use in the SFNF is high for hiking, backpacking, equestrian trail riding, hunting, and fishing. It likely has one of the highest levels of public use of any public land in the State of New Mexico, with the possible exception of the Sandia Mountains. People care deeply and passionately about this area.

SFNF should consider this, both with regards to whether the project is actually appropriate, and also with regards to any future public meetings it may choose to hold at future stages of this process. SFNF has discretion to allow longer comment periods and a greater number of public meetings than the number required by NEPA.

VII. Conclusion

As currently written, it is unclear whether the proposal meets SFNF’s responsibilities to preserve public land for the use and enjoyment of future generations of Americans. The project proposal calls for extensive thinning and prescribed burning, without apparent consideration of the wilderness characteristics of large swaths of the proposed action area.

We believe it should become clear to SFNF that the proposal must be re-written to address:

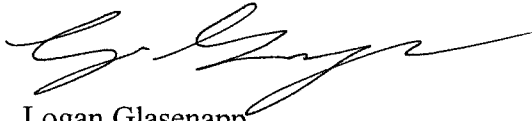
- The impacts to IRAs and potential wilderness areas
- The impacts to threatened or endangered species and USFS sensitive species;
- The need for an EIS, as opposed to the SFNF contemplated EA;
- The prohibition on pre-decision; and

⁷ Santa Fe National Forest Plan, 1987, amended 2010, app. D.

- The impacts of the SFMLRP on SFNF's ongoing Forest Plan revision process.

Thank you for your consideration of our comments, please include these comments as part of the project record, let us know if you have any questions, and please include us on the list of interested parties.

Sincerely,



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