

October 7, 2019

Cal Joyner
Regional Forester
333 Broadway SE
Albuquerque, NM 87102

Emailed to: objections-southwestern-regional-office@usda.gov

RE: Bighorn Sheep Population Management Project

Pursuant to 36 CFR 218 regulations, this is an objection to the Tonto National Forest Finding of No Significant Impact and Environmental Assessment (EA) **Bighorn Sheep Population Management Project** submitted on behalf of the Sierra Club, Tuell Consulting, Friends of the Sonoran Desert, and Wilderness Watch. The Responsible Official is Tonto National Forest Supervisor, Neil Bosworth.

The Sierra Club is one of the oldest grassroots environmental organizations in the country. Sierra Club's mission is "to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments." Cyndi Tuell of Tuell Consulting is an attorney, conservation advocate, who recreates in the Tonto National Forest and is concerned with the management of wildlife and federal public lands. Friends of the Sonora Desert (FSD) is a charitable organization dedicated to the stewardship of the Sonoran Desert ecosystem throughout its range, including the Sea of Cortez. Wilderness Watch is a national wilderness conservation organization dedicated to the protection and proper stewardship of the National Wilderness Preservation System.

The lead objector is Wilderness Watch.

All of the above named organizations and individual submitted scoping comments, dated January 14, 2019 and submitted comments on the EA, dated May 20, 2019. We have also been involved in the earlier proposal from 2014, which is similar to this one. Collectively, Objectors have expressed concern about the proposal to allow the Arizona Game and Fish Department to land helicopters in Wilderness Areas within the Tonto National Forest for the purpose of managing bighorn sheep populations. Authorization of helicopter landings in Wilderness Areas directly and significantly harms the Objectors and the memberships of the Objector groups.

Objectors all have connections to the Tonto National Forest and enjoy non-mechanized activities and experiencing the beauty, peace, and solitude found only in designated Wilderness Areas. Our organizational missions and personal interests include protection of natural resources and wildlife within designated Wilderness Areas, specifically on the Tonto National Forest and throughout National Forests in Arizona. The authorization of helicopter landings within Wilderness Areas in the Tonto National Forest, if implemented

as written, would adversely impact and irreparably harm the Wilderness Characteristics of the Tonto National Forest, would negatively impact bighorn sheep and predator populations statewide, and would negatively impact our recreational and spiritual activities. In addition, this decision violates the National Environmental Policy Act 42 U.S.C. 4321 et seq., the Wilderness Act, 16 U.S.C. 1131 et seq., and the Administrative Procedures Act 5 U.S.C. Sec. 706, and associated implementing regulations.

Sincerely,



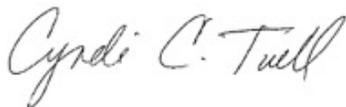
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Wilderness Act Violations

A. There is No Definitive Wilderness Purpose

Our EA comments noted (footnotes included):

While wilderness areas should certainly be utilized as places to study an untrammelled baseline, they must be studied in a manner that preserves wilderness character. An area demonstrates “wilderness character” when “in contrast with those areas where man and his own works dominate the landscape . . . the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.” 16 U.S.C. §1131(c). The Forest Service has described “wilderness character” as “the combination of biophysical, experiential, and symbolic ideals that distinguish wilderness from all other lands.” The Wilderness Act and the Forest Service’s implementing regulations are clear: helicopter flights and landings constitute motorized intrusions that are harmful to wilderness character. Accordingly, the Wilderness Act prohibits the use of motorized equipment and transport, including helicopters, in designated wilderness with only one exception: “except as necessary to meet minimum requirements for the administration of the area *for the purpose of this chapter.*” 16 U.S.C. § 1133(c) (emphasis added).

Based on our review of the EA, the Forest Service mainly asserts that the project as proposed would be useful to AGFD’s “ultimate goal” that “robust populations of this indigenous species to be restored throughout remaining suitable habitat in its historic range.” EA at 4.¹ This justification falls far short of what the Wilderness Act requires, which is to demonstrate that the project as proposed is necessary to “preserv[e] the wilderness character of the area.” *Id.* § 1133(b). Unless the Forest Service can make and support this demonstration in its forthcoming analysis of the project, the project cannot proceed. *Id.* § 1133(c); *Wilderness Watch v. U.S. Fish & Wildlife Serv.*, 629 F.3d 1024, 1040 (9th Cir. 2010) (setting aside agency’s authorization of new structures in wilderness area pursuant to § 1133(c) where agency failed rationally to demonstrate that structures would advance wilderness preservation and no less intrusive approach could achieve that goal).

The Forest Service in proposing this project is responding to AGFD’s proposal for up to 150 helicopter landings² in the Four Peaks, Hellsgate, Mazatzal, Salt River Canyon, and Superstition Wildernesses so AGFD can “capture bighorn sheep for research, population monitoring, and response to disease as based on information provided by the Department” EA at 8. AGFD’s request is based upon a plan by

¹ The EA at 4 also tries to shoehorn in wilderness stewardship, “The desired future condition also includes an element of improved knowledge related to bighorn sheep management, conservation, research, and wilderness stewardship.” This is not explained in this section of the EA.

² The EA at 8 states that up to 30 flights could be considered for any one Wilderness for one year. That leads the reader to believe that up to 750 flights could be approved. Thus, the EA is not clear.

that agency.³

Under the Wilderness Act, the Forest Service may approve the use of helicopters to collar bighorn sheep in the Tonto National Forest only if the agency rationally demonstrates that (1) studying bighorn population dynamics to inform state wildlife management decisions is necessary to preserve wilderness character and (2) there is no alternative to helicopter use that would achieve that purpose. 16 U.S.C. § 1133(c); *Wilderness Watch*, 629 F.3d at 1036. Consistent with this statutory standard, the Forest Service’s management direction dictates that wildlife “[r]esearch methods that temporarily infringe on the wilderness character may be used, provided the information sought is *essential for wilderness management* and alternative methods or locations are not available.” FSM 2323.37 (emphasis added). The Forest Service Manual prohibits “the use of motorized equipment or mechanical transport unless the research is essential to meet minimum requirements for administration of the area as wilderness and cannot be done another way (sec. 4(c) the Wilderness Act).” FSM 2324.42 (4). As discussed below, the justifications for the project advanced in the EA do not satisfy this standard and, indeed, it appears that the statutory standard cannot be met with respect to AGFD’s project.

The latest EA continues along the same lines:

The Department seeks to conduct portions of their ongoing bighorn sheep conservation, research, and management program within the aforementioned wildernesses. These management objectives include capturing and collaring bighorn sheep to monitor habitat use, monitor population status (genetic diversity, reproductive status, mortality, overall health, declines due to disease and/or other factors), evaluate travel and movement corridors, evaluate the potential for their interaction with domestic and feral ungulates, and to detect outbreaks of epizootic and other diseases.

These activities stand to improve conservation of this recovering species within and beyond designated wildernesses managed by the Tonto National Forest. Continued monitoring and research would improve future management decisions related to bighorn sheep conservation and wilderness stewardship. These actions would require the landing of a helicopter in wilderness areas; a prohibited action under *Section 4 (c) of the Wilderness Act of 1964*.

EA at 6. Little has changed from the EA on which comments were sought. The EA conflates the Arizona Game and Fish Department (AGFD) objectives with wilderness stewardship, as our comments show. Capturing and collaring of bighorn sheep does not promote stewardship of wilderness. Rather, it trammels a native species in Wilderness as well as violates the Wilderness Areas themselves. Improving conservation of a species “beyond designated wildernesses” is clearly not a wilderness purpose. “Continued

³ The FS website contains no information about AGFD’s goals and plans other than what is in the EA. Unless one has a copy of the latest AGFD plan, it is impossible to ascertain the underlying reasons for this proposal and how that may intersect with Wilderness. That information should have been appended to the EA.

monitoring” of bighorns suggests that monitoring is ongoing now. If so, why is this additional project needed? None of these questions are answered by the EA because the purpose and need is not really a wilderness purpose, rather it is shoehorned into AGFD desires.

For example, Table 2 in the EA shows extant GPS locations of collared bighorn sheep. Why isn't this information adequate for AGFD? Again, the real reason for this project is to meet AGFD's management goals as explained in the EA which includes consistent and possibly increasing collaring, capture of bighorn sheep in Wilderness, supposedly to increase populations of bighorns. This is more akin to artificial propagation, or ranching of wildlife, rather than managing for natural populations, which fluctuate.

The EA fails to show how future management of bighorn sheep is related to wilderness stewardship. The EA leads the reader to conclude that without heavy manipulation of bighorn populations the species will go extinct. This is 1) untrue, and 2) opposite of how wilderness species and wilderness areas should be managed. The EA raises the issue of domestic sheep and feral sheep and goats, “[g]iven the proximity of many bighorn sheep populations on the Tonto National Forest to domestic and feral sheep and goats, improved data related to temporal and spatial overlap among these populations is needed.” EA at 23. Yet, nowhere in the EA does the Forest Service explain or show, in map form, where those sheep and goat allotments or feral animals are located. All we have is a simple allegation without any proof. Without more explanation and analysis, this is simply a red herring. Furthermore, the Forest Service has the ability and authority to manage livestock populations on allotments surrounding the designated Wilderness areas so that domestic livestock such as sheep and goats will not be in proximity to wild bighorn sheep herds, something that some of the Objectors have requested for more than a decade. The Wilderness Act requires that the Forest Service manage domestic livestock *outside* designated Wilderness Areas rather than trammel Wilderness Areas and excessively manage wild species *within* designated Wilderness Areas. This is especially true when the Forest Service has clear authority to manage the largest threat to wilderness species outside of Wilderness Areas. The lack of agency will to properly manage livestock grazing is not found within the Wilderness Act.

In essence, the proposal leads to a continual and ongoing program of heavy-handed wildlife management in Wilderness that is completely incompatible with Wilderness. The supposed need is based on a belief that bighorn sheep cannot survive without this kind of manipulation and management. That would make them livestock rather than wildlife, by the Forest Service’s own admission in the EA.

In any case, we have known for decades what needs to be done to protect bighorn sheep. The issue of sheep grazing allotments and driveways on the Tonto National Forest should have been addressed, and those located outside of Wilderness according to Freedom of Information Act (FOIA) data Wilderness Watch received from the Forest Service about grazing in Wilderness.⁴ The Forest Service refused to analyze any alternative that would require management actions take place outside of Wilderness Areas. This is in violation of the court decision on the Kofa Refuge cited in our comments.

⁴ See attached FOIA information FOIA from the Tonto National Forest on grazing in Wilderness.

Put simply, the pertinent issues affecting bighorn sheep are outside of designated Wilderness on the Tonto National Forest; the management actions to address those pertinent issues must therefore take place outside of designated Wilderness. To do otherwise is a violation of federal law.

In summary, the proposal does not comply with the Wilderness Act. As we show in our comments and this objection⁵ the proposal 1) does not serve the purpose of the Wilderness Act so the an exemption in section 4(c) of the Wilderness Act does not apply, and even if it did, 2) the project is not necessary to meet minimum requirements for administration of wilderness, so the exemption criteria are not met.

REQUESTED REMEDY: withdraw the FONSI and the Decision Notice (DN) and prepare an Environmental Impact Statement that fully addresses and analyzes the concerns raised in this Objection as well as prior comments submitted by Objectors and that includes a range of alternatives for management of wildlife and domestic livestock outside of designated Wilderness Areas.

B. Bighorn Sheep Disease is not an Emergency Under the Wilderness Act

The EA misleads the reader to conclude that this is an emergency under section 4(c) of the Wilderness Act. See EA at 13, 14, 15, and 22. Our comments noted:

Shoehorning the proposal by declaring disease an “emergency” is not consistent with the Wilderness Act. EA at 9, 10 and 18. The provision is only for persons in the Wilderness. Besides, disease is a natural process. In any case, addressing domestic sheep allotments and driveways on the Tonto National Forest is the best way to prevent disease transmission.

The EA further states, “[i]f such an event occurs (disease), the Forest Service would rapidly respond to subsequent requests by the Department for additional landings on an as-needed basis, recognizing such a scenario as an emergency.” EA at 13. It is clear that these so-called emergencies, which are not actual human emergencies under the Wilderness Act, are not subject to the actions supposedly designed to mitigate some of the damage caused to Wilderness. See EA at 14 and 15. Thus, there could be far more damage to Wilderness from the AGFD program than the EA analyzes.⁶ This is also a violation of the National Environmental Policy Act (NEPA), which we address more fully below.

REQUESTED REMEDY: withdraw the FONSI and the Decision Notice (DN) and prepare an Environmental Impact Statement that fully addresses and analyzes the concerns raised in this Objection as well as prior comments submitted by Objectors and that includes a range of alternatives for management of wildlife and domestic livestock outside of designated Wilderness Areas.

⁵ The attachments we provide with this objection also support this conclusion.

⁶ Rather than approve this program, it may be better to respond to the site-specific nature of the so-called emergencies, if they arise, with adequate public involvement and NEPA analysis.

NEPA Violations

A. The FONSI is Unsupported and the Action is Likely to Have a Significant Impact: an Environmental Impact Statement Must Be Prepared.

As we stated in our previous letters, we have grave concerns about the lack of environmental review for the bighorn sheep monitoring and relocation program on a state-wide level. Objectors specifically asked for an Environmental Impact Statement (EIS) in our scoping letter and our prior comments in response to the EA. In our prior comments, Objectors outlined our rationale for asking for an EIS.

There is nothing in the FONSI that addresses our explicit concerns and the FONSI is a far cry from a “convincing” statement of reasons explaining why this five-year long, forest-wide helicopter project with far reaching cumulative effects does not have significant impacts.

The impacts of this project on the stewardship of the Tonto National Forest and multiple designated Wilderness Areas are, in fact, far reaching. This project includes: five years of up to 30 helicopter landings in Wilderness Areas; requires the use of helicopters to trap and move sheep in Wilderness Areas across the forest. Regionally, helicopters are being used in Wilderness areas on Bureau of Land Management managed lands in Arizona and New Mexico, and in the Santa Fe and Carson National Forests. There is no agency addressing the cumulative, long-term, and significant impacts of such wide- spread helicopter use on National Forest lands and designated Wilderness Areas in Region 3. This is especially troubling given the extensive and prolonged nature of activities authorized by this project that are expressly prohibited by the Wilderness Act due to impacts on Wilderness character.

NEPA requires federal agencies to prepare a detailed EIS for all major Federal actions significantly affecting the quality of the human environment. (42 U.S.C. § 4332[2][C]). If an agency decides not to prepare an EIS, it must supply a “convincing statement of reasons” to explain why the project’s impacts will be insignificant (*Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998)). “The statement of reasons is critical to determining whether the agency took a ‘hard look’ at the potential environmental impact of a project” (*Id.*). As we stated above, the FONSI does not provide a convincing statement of reasons for why an EIS is not necessary.

In considering whether an EIS is required for a proposed action, the Council on Environmental Quality regulations directs agencies to consider ten “significance factors” (40 C.F.R. § 1508.27[b]; *Sierra Club v. Bosworth*, 510 F.3d 1016,1033 (9th Cir. 2007)).

“[Any] of these factors may be sufficient to require preparation of an EIS in appropriate circumstances” (*National Parks and Conservation Assoc. v. Babbitt*, 241 F.3d 722, 731 (9th Cir. 2001)). Criteria for determining when a full EIS is required include:

- (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be

beneficial.

- (2) The degree to which the proposed action affects public health or safety.
- (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.
- (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
- (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
- (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
- (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
- (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
- (10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Many of these criteria are implicated and we discuss several in detail below:

Unique Characteristics:

The unique characteristics of the immediate geographic area for this project include five designated Wilderness Areas in the Tonto National Forest, covering at least 189,000 acres of Wilderness lands. By definition, designated Wilderness meets the unique characteristics. Furthermore, the Verde River and Fossil Creek Wild and Scenic Rivers are located in the project area. These Wilderness areas include historic and cultural resources, and ecologically critical areas. These areas will be impacted for at least five years by this decision. This alone requires the preparation of an EIS.

Highly Controversial and Highly Uncertain and/or Unique / Unknown Risks:

An EIS is also required where impacts are “highly controversial,” i.e., implicate “a substantial dispute [about] the size, nature, or effect of” the agency’s actions – or

otherwise implicate “highly uncertain” or “unknown risks.”⁷ Moreover, agencies must consider “context” and, thus, whether impacts are significant relative to the affected region, interests, or locality, and in light of both short- and long-term effects. Thus, an action could raise concerns about purely local resources, or purely short-term effects, but nonetheless require preparation of an EIS. That is precisely what is occurring with this and other helicopter/sheep projects across Arizona and Region 3.

We address the issue of unanalyzed regional impacts in the paragraphs above and address the controversial and highly uncertain aspects of this project here. This project is likely to be highly controversial and the effects are highly uncertain, just as a similar proposal was, as noted above. There are several factors impacting bighorn sheep viability that must be addressed before the agency may authorize extensive helicopter intrusion. These factors have not been addressed and thus perpetuate the uncertainty of bighorn viability in these areas. Further, it is clear that the proposed actions have and will continue to promote other activities with scientifically controversial and uncertain outcomes (e.g. predator control, harassment factors for other wildlife species, degradation of wilderness character, etc.). It is also clear that the extent of the proposed activities, and their relation to other activities, are uncertain, or at least not fully disclosed. These factors mandate the preparation of an EIS.

This project involves the relocation and monitoring of a species extirpated from large portions of the state due, most likely, to human actions, though the science on this issue is unresolved and remains highly controversial and nothing in the record refutes this scientific controversy. The statement in the FONSI that “the effects on the quality of the human environment are not likely to be highly controversial” is completely unsupported. We cannot find any information in the EA to refute our assertion that there is scientific controversy about the impacts from this project. We raised specific concerns that have not been adequately addressed: about the impacts of helicopter noise on sheep; about sheep population information; connectivity; noise impacts to sheep and people; the use of the “North American Model;” the heavy handed use of collaring and re-trapping/re-collaring of sheep when many researchers are moving towards less intrusive research methods; the lack of information from the AGFD on the impact of removing sheep from established herds; and the use of mountain lion/predator control related to the collaring of sheep, and use of helicopters for predator control in the face of contrary advice and information from biologists. There is no information in the EA or the FONSI addressing our concerns about the impacts of moving or monitoring sheep using helicopters and the impacts of noise, and no information refuting our concerns about predator management in the face of scientific opposition and controversy on that issue.

Establishing a Precedent for Future Actions:

⁷ 40 C.F.R. 1508.27(b)(4), (5); *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998)

It is clear there is an overall programmatic desire to heavily manipulate bighorn populations in all Wildernesses by the AGFD, and the federal agencies appear to be adopting a change in policy that attempts to diminish the agency's obligation to administer these areas as Wilderness. This represents a position in policy that has the potential to impact future authorizations and requires the preparation of an EIS.⁸

Related to Other Actions with Individually Insignificant but Cumulatively Significant Impacts:

NEPA emphasizes “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 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)).

This action is related to projects across the state of Arizona involving the removal and translocation of desert bighorn sheep, a species listed by the AGFD as a Species of Greatest Conservation Need, from designated Wilderness Areas using helicopters in the Tonto National Forest. This project requires the use of mechanized and motorized equipment within designated Wilderness Areas, which is a violation of the Wilderness Act unless it is *necessary to meet the minimum requirement for preservation of the area as wilderness* and a proper Minimum Requirements Decision Guide analysis is completed. It is unknown and extremely uncertain if the sheep monitoring and relocation project will be successful and there are unknown risks to the land, the sheep, and personnel who will carry out the relocation tasks such as monitoring, re-collaring, and repeatedly moving these sheep.

While we again assert that this action alone requires an EIS, this action is directly related to the AGFD's plan to move sheep about the state, both from and to designated

⁸ The EA on page 61 tries to suggest that because other similar actions have occurred or been approved in other states such as Idaho and Utah, this current proposal is not precedential. However, regarding Idaho, Judge Winmill held that a proposal to collar elks via helicopter in the Frank Church-River of No Return Wilderness was in error. Attached is the ruling. In Utah, a controversial decision to capture bighorn sheep and mountain goats via Helicopter in Wilderness, was subsequently dropped because the Utah Division of Wildlife Resources “needs can be addressed using other methods of sampling.” Disease transmission was also an issue in that proposal. Attached are the withdrawal letter and the objection on that proposal. That proposal has some issues that are similar if not identical to those in this proposal.

Wilderness Areas, likely indefinitely. The cumulative impacts of moving sheep about the state along with the proposed helicopter landings in Wilderness Areas throughout Arizona are not being analyzed by the U.S. Forest Service or any other agency. As we stated in our previous comments and above, similar projects are taking place throughout Region 3 of the U.S. Forest Service system.

Adverse Effects to Endangered Species

The project location includes critical habitat for threatened and endangered species such as southwestern willow flycatcher, Mexican spotted owl, narrow-headed garter snake, northern Mexican garter snake, loach minnow, spikedace, razorback sucker, and Chiricahua leopard frog. Mexican spotted owl and Morafka's desert tortoise are known to be present in the project area. Species listed by the state of Arizona as species of greatest conservation need located within the project area include bald eagle, golden eagle, desert sucker, Sonoran sucker, American peregrine falcon, lowland leopard frog, mapleleaf false snapdragon, northern goshawk, eastwood alum root, pale Townsend's big-eared bat, Pima Indian mallow, Mogollon fleabane, and Alamos deer vetch.

The Action Threatens a Violation of Federal Law or Requirements Imposed for the Protection of the Environment

This action will violate the Wilderness Act because there is no demonstrated need for this project in order to administer these five Wilderness Areas to preserve their wilderness character. Further, even if the project were necessary to preserve these five Wilderness Areas, the use of helicopters and helicopter landings is demonstrably not the minimum necessary for this project. Additionally, this project will violate the Endangered Species Act because the Forest Service has failed to consult with the U.S. Fish and Wildlife Service.

This project will also violate the National Forest Management Act because this project will violate the Tonto's Forest Plan by violating the desired conditions for Wilderness and is directly contrary to direction found in the Forest Service Manual (FSM) at 2323.37 which states wildlife "[r]esearch methods that temporarily infringe on the wilderness character may be used, provided the information sought is essential for wilderness management and alternative methods or locations are not available." (Emphasis added.)

The FSM also prohibits "the use of motorized equipment or mechanical transport unless the research is essential to meet minimum requirements for administration of the area as wilderness and cannot be done any other way (sec. 4(c) the Wilderness Act)."

As we stated in our prior comments, meeting the desires and plans for the state game agency is in no way essential to Wilderness preservation or maintenance and is clearly not necessary and can be done another way. The AGFD has been successfully managing bighorn sheep populations since the 1980s, apparently without the need to land helicopters in Wilderness Areas until around 2010 or 2012. Bighorn sheep populations in the Tonto National Forest have flourished to the point of being used to repopulate areas

historically used by bighorn sheep across Arizona, New Mexico, Colorado, Texas, and Utah. The population of bighorn sheep has grown to the point that tags for bighorn sheep are issued by the AGFD annually, with the first occurring in 1957 and bighorn sheep numbers have steadily increased since that time.

While use of a helicopter for sheep management is “preferred,” it is not the only technique available and when considering the long-term and widespread impacts to Wilderness, a preference for efficiency does not warrant a violation of the Wilderness Act. Given that just 56 percent of the bighorn sheep habitat and just 61 percent of the documented sheep locations are within designated Wilderness Areas in the Tonto National Forest, the “need” to use helicopters in Wilderness is extremely perplexing and this issue was not adequately addressed in the EA. We therefore continue to ask the question: why do helicopters need to land in Wilderness when nearly half of the sheep’s habitat is located outside of designated Wilderness and the largest threat to sheep populations is also located outside Wilderness?

The FONSI, as it is now presented, would result in a violation of the Wilderness Act, the National Forest Management Act, and the Endangered Species Act because the Forest Service has failed to demonstrate any need for this project, the project is in violation of the Tonto National Forest Plan, and there has been no consultation with Fish and Wildlife Service regarding impacts to endangered species. Therefore, this project must not proceed.

Any one of the above criteria (unique characteristics, related actions/cumulative impacts, adverse effects to endangered species, violation of Federal law or requirements imposed for the protection of the environment, controversy) should have led the Tonto National Forest to prepare an EIS and foreclose a FONSI because, for this project, substantial questions have been raised about the significant degradation of some human environmental factors.⁹ It is, of course, the agency’s burden to provide a convincing statement of reasons justifying a decision to rely on a lesser EA and not an EIS; we need not show that significant effects will in fact occur.¹⁰ The Forest Service has not provided any such “convincing statement” in the FONSI.

The Forest Service should have prepared an EIS for this project. There has been no disclosure or analysis to date by AGFD describing and justifying the need for this project. The EA does not justify a FONSI. As such, an EIS under NEPA and in collaboration with each of the federal and state agencies involved in bighorn sheep management and this project must be prepared.

⁹ PCA v. Babbitt, 241 F.3d 722, 731 (9th Cir. 2001); Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1149 (9th cir. 1988).

¹⁰ Idaho Sporting Congress, 137 F.3d at 1150

REMEDY: withdraw the FONSI and prepare an Environmental Impact Statement that fully addresses and analyzes the concerns raised in this Objection as well as prior comments submitted by Objectors.

B. The FONSI/EA Fail to Analyze an Adequate Range of Alternatives, in Violation of NEPA.

In our prior comments we specifically asked the Forest Service to consider and analyze alternatives to the use of helicopters. This is critical given the fact that approximately 44 percent of the occupied sheep habitat is outside Wilderness Areas. The failure to analyze an alternative that included ground monitoring and no sheep translocations, or an alternative that addressed sheep population concerns by eliminating the Heber-Reno sheep driveway or other livestock related threats to sheep has resulted in a violation of NEPA. The use of helicopters in Wilderness to manage sheep would not address any of the longer-term factors affecting bighorn sheep populations, including disease, urban encroachment, and habitat fragmentation. The failure to analyze a non-motorized, ground-based capture alternative is a violation of NEPA.

NEPA requires the Forest Service analyze more than a single action alternative. The Forest Service should have analyzed an alternative that would require the use of helicopters only outside designated Wilderness areas and an alternative that would not authorize the use of helicopters at all. This failure is glaring given that nearly 50% of the sheep population is located outside designated Wilderness Areas.

The EA does not look at a non- motorized option. Rather, it eliminates a non-motorized, ground based alternative because it does not meet the purpose and need of the analysis or meet state objectives. The purpose and need was so narrowly defined as to preclude a reasonable range of alternatives.

We again note that Federal Agencies are required by NEPA to “rigorously explore and objectively evaluate All reasonable alternatives and to briefly discuss the reasons for eliminating any alternatives that were not developed in detail” (40 CFR 1502.14, emphasis added.) Unfortunately, the FONSI and EA fail in analyzing an inadequate range of alternatives, in violation of NEPA.

REQUESTED REMEDY: A Range of Reasonable Alternatives must be developed and presented for Public Comment, Preferably via the use of an EIS.

C. The Date of the Objection Announcement was not included on the Forest Service’s Website.

36 CFR 218.7(d) states:

Within 4 calendar days of the date of publication of the legal notice in the newspaper of record or, when applicable, the FEDERAL REGISTER, a digital image of the legal notice or FEDERAL REGISTER publication, or the exact text of the

notice, must be made available on the Web. Such postings must clearly indicate the date the notice was published in the newspaper of record or FEDERAL REGISTER, and the name of the publication.

The Forest Service website does not clearly indicate the date the noticed was published in the paper of record. Rather, we only know the date the item was posted to the webpage by the Forest Service, which could be 4 days *after* the beginning of the objection period. The text of the legal notice on the web¹¹ is not a direct copy of the ad in the paper with the date of publication. Rather, it tells the public:

Objections must be submitted within 45 days following the publication of this legal notice in the *Arizona Capitol Times*. The publication date in the newspaper of record is the exclusive means for calculating the time to file an objection. Those wishing to object should not rely upon dates or timeframe information provided by any other source. The regulations prohibit extending the time to file an objection.

No date is provided in the text of the legal notice. Thus, it is not clear when the notice was published in the paper of record as required by agency regulations that deal with NEPA and public involvement.

REQUESTED REMEDY Reopen the objection period.

D. The MRDG is not available to the Public on the Web or in the EA.

The Forest Service relies heavily on the MRDG (Minimum Requirements Decision Guide) for concluding this project is consistent with the Wilderness Act. This became especially apparent in the response to comments. That document state, “The proposed action was developed from, and complies with, the Minimum Requirements Decision Guide, the tool used to establish these minimum requirements to meet the purpose and need for action and comply with the Wilderness Act.” Comment Response Report at 1. “The Forest Service has conducted a Minimum Requirements Analysis to determine the minimum tool required for the administration of the wilderness and the continued preservation of wilderness character in the long term. This detailed analysis can be found in the Minimum Requirements Decision Guide (MRDG).” Comment Response Report at 8. “A Minimum Requirements Decision Guide (MRDG) was prepared that determined the minimum tool for this project.” Comment Response Report at 11. This list is not exhaustive, but gives only three examples of the importance of the MRDG in the response to comments.

¹¹ See attached.

The EA (including the FONSI) also defer to the MRDG, which is not available to the public on the project website.¹² The EA states:

A Minimum Requirements Decision Guide prepared for this project analyzed the known effects of helicopter landings and sheep collaring on the qualities of wilderness character and determined the minimum tool for conducting this activity, as well as whether the activity needed to take place within wilderness (MRDG in project record).

EA at 60. Such an important analysis should have been integrated into the analysis in the EA and should have been included on the web. It prejudices the public when such documents are not available. CEQ regulations only allow incorporation by reference when the underlying material is actually available: “No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment.” 40 C.F.R. § 1502.21. Forest Service regulations state the same. See 36 C.F.R. §220.4(h).

REQUESTED REMEDY: Require that the EA be reopened for public comment with the project record, especially the MRDG, available to the public on the web for comment and/or incorporate the MRDG into the EA.

CONCLUSION

Objectors remain committed to participating in the development of ecologically sound wildlife and Wilderness management for the Tonto National Forest. We object to the authorization of helicopter landings in the Tonto National Forest Wilderness areas for at least the next five years because wilderness values are being trampled, the level of impacts require the preparation of an EIS and wilderness values should not be trampled for a slightly more efficient management scheme proposed by the AGFD.

¹² Rather than do the analysis, as required by NEPA, in the EA itself, it is in the inaccessible MRDG. An MRDG cannot substitute for NEPA compliance. NEPA compliance is also addressed elsewhere in the objection.