

December 15, 2014

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**RE: Authorization of Helicopter Landings in Wilderness Environmental Analysis**

Pursuant to 36 CFR 218 regulations, this is an objection to the Tonto National Forest Finding of No Significant Impact and Environmental Assessment Authorization of Helicopter Landings by Arizona Game and Fish Department within Designated Wilderness Areas. The Responsible Official is Neil Bosworth. This objection is filed on behalf of the Friends of Wild Animals (FOWA), Supporting and Promoting Ethics for the Animal Kingdom (SPEAK), Grand Canyon Chapter of the Sierra Club, Wilderness Watch, and WildEarth Guardians. Friends of Wild Animals (FOWA) is the lead objector.

FOWA submitted scoping comments for this project on June 6, 2014 and commented on the Environmental Assessment (EA) on September 2, 2014. The comments submitted by FOWA on September 2, 2014 were also signed by Western Watersheds Project, WildEarth Guardians, and SPEAK. The Sierra Club submitted scoping comments on April 30, 2014, and commented on the EA on September 2, 2014. Wilderness Watch submitted scoping comments on June 13, 2014 and submitted comments in response to the PEA on August 29, 2014.

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. FOWA believes in the intrinsic value of wildlife. Wild animals are entitled to live without significant human interference in their basic activities, including foraging, feeding, mating and social behavior. We believe in the importance of balanced ecosystems with healthy predator-prey relationships and in the importance of preserving such ecosystems and wild areas for future generations. FOWA is a group made up of hikers, backcountry guides, animal rights advocates, environmentalists and natural historians.

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." Many of our members use and enjoy the Mazatzal, Hells Gate, Four Peaks, Salt River Canyon, and Superstition Wilderness Areas via hiking, backpacking, wildlife viewing, and more, and have been significantly involved in the establishment and protection of these areas. Sierra Club has also been involved in various projects to protect the lands and their wildlife, including throughout the Tonto National Forests. We also have been significantly involved in wildlife

management, reintroductions, and recovery programs. We support having the full complement of native wildlife and healthy ecosystems overall.

SPEAK is a Tucson-based grassroots organization of animal rights advocates whose interests in protecting wild animals are directly harmed by this project.

Wilderness Watch is a national wilderness advocacy organization, headquartered in Missoula, Montana. Wilderness Watch is dedicated to the protection and proper administration of the National Wilderness Preservation System. Its members use and will continue to use the wildernesses in the Tonto National Forest for outdoor recreation of all kinds, including hiking, horseback riding, and wildlife viewing. The Forest Service's proposed action adversely affects Wilderness Watch's organizational interests, as well as its members' use and enjoyment of the Hellgate, Mazatzal, Four Peaks, Superstition and Salt River Canyon Wildernesses.

WildEarth Guardians is an environmental advocacy organization working to protect and restore the wildlife, wild rivers, and wild places of the American West. WildEarth Guardians was founded in 1989 and has a long history of conservation successes protecting carnivores, ancient forests, rivers and other threatened landscapes and wildlife; we also have a longstanding interest in the management of our Southwestern forests. Today, WildEarth Guardians has more than 43,000 members and e-activists, 25,000 Causes supporters, and over 10,000 Facebook 'likes,' the majority of whom live in the 11 Western states. We now have offices in Arizona, California, Colorado, New Mexico, Montana, Oregon, and Wyoming.

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.

## National Environmental Policy Act (NEPA) VIOLATIONS

### **OBJECTION STATEMENT: THE FONSI IS UNSUPPORTED. THE ACTION IS LIKELY TO HAVE A SIGNIFICANT IMPACT AND 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. FOWA specifically asked for an Environmental Impact Statement (EIS) at page 2 of our scoping letter and at pages 3-5 of our comments in response to the Preliminary EA. Sierra Club specifically asked for an EIS at page 2 of our scoping letter and at pages 2-3, 9, and 10 of our comments in response to the Preliminary EA. Wilderness Watch specifically asked for an EIS at page 1 and 3 of our scoping letter and at pages 8-11 of our comments in response to the Preliminary EA. Each Objector outlined our rationale for asking for an EIS.

There is nothing in the Finding of No Significant Impact (FONSI) that addresses our explicit concerns and the FONSI is a far cry from a “convincing” statement of reasons explaining why this 10-year long, state-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: 10 years of up to 450 helicopter landings in Wilderness Areas; requires the use of helicopters to trap and move sheep in Wilderness areas across the state, including the Coronado National Forest, designated wilderness areas in Yuma and, as we have recently been made aware, helicopter use in the Apache-Sitgreaves National Forest. Regionally, helicopters are being used in Wilderness areas 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.<sup>1</sup> These Wilderness areas include historic and cultural resources, and ecologically critical areas. These areas will be impacted for at least 10 years by this decision. This alone would require the preparation of an EIS.

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<sup>1</sup> The EA barely analyzes impacts to the Verde Wild River and omits any mention of Fossil Creek.

### **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.”<sup>2</sup> 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. 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 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. FONSI at 16-17. We cannot find any information in Chapter 3 to refute our assertion that there is 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 (*see* page 2, 4, 5, 7 of Sierra Club comments dated September 2, 2014, and Wilderness Watch comments dated August 29, 2014, page 9-10); 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 Arizona Game and Fish Department 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 Preliminary EA (PEA), the Draft EA (DEA) 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

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<sup>2</sup> 40 C.F.R. 1508.27(b)(4), (5); *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998)

our concerns about predator management in the face of scientific opposition and controversy on that issue.

**Establishing a Precedent for Future Actions:**

It seems there is an overall programmatic desire to heavily manipulate bighorn populations in all Wildernesses by the Arizona Department of Game and Fish, 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.

**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 Arizona Game and Fish Department as a Species of Greatest Conservation Need, from designated Wilderness areas using helicopters in the Yuma area as well as 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 Coronado National Forest's proposal to allow helicopter landings for the next 10

years for bighorn sheep management.<sup>3</sup> It is also tied directly to the Arizona Game and Fish Department's plan to move sheep about the state, both from and to designated Wilderness areas, for at least 10 years, but more 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, 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. PEA at 33. Mexican spotted owl and Morafka's desert tortoise are known to be present in the project area. PEA at 32. 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. PEA at 33-34.

### **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)." See FOWA comments dated September 2, 2014 page 6.

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<sup>3</sup> AGFD Meeting minutes from "Advisory Committee" for AGFD Bighorn Sheep Reintroduction project in Pusch Ridge on the Coronado National Forest dates 9/2/2013 and available at [http://www.azgfd.gov/w\\_c/CatBighornReintroProj.shtml](http://www.azgfd.gov/w_c/CatBighornReintroProj.shtml).

As we stated in our prior comments (Wilderness Watch comments dated August 29, 2014 at page 4), meeting the desires and plans for the state game agency is in no way essential to Wilderness preservation or maintenance and, as documented in the EA for this project, is clearly not necessary and can be done another way. *See* PEA Chapter 1, indicating that bighorn sheep migrated on their own into at least one Wilderness Area; *see* PEA page 9-10 indicating the real purpose of this project is to make sheep relocation and monitoring more “efficient” for the Arizona Game and Fish Department and *efficiency* is not one of the approved reasons for violating the Wilderness Act of 1964. The AZGFD 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. PEA at 8 and 15. 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. PEA at 3. The population of bighorn sheep has grown to the point that tags for bighorn sheep are issued by the AZGFD annually, with the first occurring in 1957 and bighorn sheep numbers have steadily increased since that time. PEA at 3 and 4. The Arizona Game and Fish Department has publicly stated that if helicopter landings are not authorized for the Tonto National Forest, the sheep they seek for relocation to the Pusch Ridge Wilderness Area relocation project can be obtained through other means. This has in fact been completed as of November 20, 2014, without the use of helicopters in Wilderness areas.<sup>4</sup>

While use of a helicopter for translocation 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. *See* Sierra Club comments dated September 2, 2014, page 5. 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 DEA or PEA at 8-9. *See* Sierra Club comments dated September 2, 2014, page 7 and FOWA comments dated September 2, 2014, page 8. 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? As stated above, the AZGFD has obtained sheep from the Tonto National Forest without the use of helicopters in Wilderness areas for a translocation project in November 2014.<sup>5</sup>

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. Therefore this project must not proceed.

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<sup>4</sup> [http://www.azgfd.gov/w\\_c/bighornSheep.shtml](http://www.azgfd.gov/w_c/bighornSheep.shtml).

<sup>5</sup> [http://www.azgfd.gov/w\\_c/bighornSheep.shtml](http://www.azgfd.gov/w_c/bighornSheep.shtml). *See also* [http://tucson.com/news/local/bighorns-released-in-catalinas-died-during-captures/article\\_d5abd630-711b-11e4-8566-f705a3259a8a.html](http://tucson.com/news/local/bighorns-released-in-catalinas-died-during-captures/article_d5abd630-711b-11e4-8566-f705a3259a8a.html).



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.<sup>6</sup> 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.<sup>7</sup> 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 Arizona Game and Fish Department (AZGFD) describing and justifying the need for this project. The DEA 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.

**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.**

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<sup>6</sup> *NPCA v. Babbitt*, 241 F.3d 722, 731 (9<sup>th</sup> Cir. 2001); *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1149 (9<sup>th</sup> cir. 1988).

<sup>7</sup> *Idaho Sporting Congress*, 137 F.3d at 1150.

**OBJECTION STATEMENT: OUR QUESTIONS AND CONCERNS ARE NOT ADDRESSED IN THE FONSI OR EA**

FOWA asked specific questions about this project in our comments dated June 6, 2014 (page 3), and September 2, 2014 (page 5-6). Several of those questions remain unaddressed:

- What are the impacts of repeated and long-term helicopter use on wildlife in Wilderness areas?
  - Page 14 of the Draft EA/FONSI states merely that there will be no effects. The information in the BA does not adequately address the long-term impacts to wildlife from helicopter use in Wilderness.
- What is the decibel range of helicopters?
  - This question is completely unanswered.
- What are the impacts of noise from helicopters on wildlife generally?
  - This question is answered in generalizations about noise, nothing specific to helicopters.
- What is the basis for the assumption that public recreation is low during November weekdays?
  - Unaddressed.
- Will there be economic impacts related to recreation?
  - Unaddressed.
- What alternatives exist to helicopters?
  - Inadequately addressed.
- What precludes alternatives?
  - Inadequately addressed.
- Are horse riders being consulted on the impacts to horses from helicopters?
  - Unaddressed.
- What are the cumulative impacts to Wilderness areas state-wide related to the management of bighorn sheep populations on Forest Service, Bureau of Land Management, Park Service, Fish and Wildlife Service and other public lands?
  - Unaddressed.
- What is the monitoring plan for assessing impacts during the implementation of the project and into the future?
  - Unaddressed.
- Will the public know in advance when helicopters will be in use?
  - Unaddressed.
- Will this proposal eventually result in Arizona Game and Fish Department or their contractors pursuing, monitoring or killing mountain lions in the Tonto National Forest or elsewhere?
  - Unaddressed.
- Upon what is the determination of how many helicopter trips each year will be required based?
  - Inadequately addressed. Our concerns about the failure to use the Coronado National Forest bighorn sheep relocation project as an indication of the likely underestimate of number of trips needed is also unaddressed. See Sierra Club dated September 2, 2014, page 11.

- How does the Forest Service intend to analyze the effects of increased helicopter use under recent climate change related NEPA requirements? See also Sierra Club comments dated September 2, 2014, page 11.
  - Unaddressed.
- What best available science has been used to understand the impacts on wild animals from stress caused by helicopters as it relates to noise, vibration, human contact and interference on natural predation systems?
  - Inadequately addressed.
- It has been reported that the collars being used have had significant malfunctions. This proposal allows for Arizona Game and Fish to use helicopters to replace the collars. We believe that there is a severe lack of protocol around these collars at the point that they are purchased and placed on the sheep. Please detail the protocol for collar use and replacement for this project.
  - Unaddressed.
- What best available science has been used to understand the effects of recurring capture of relocated animals?
  - Unaddressed.
- How do the benefits outweigh the harms to the bighorn sheep from disturbance and recapture?
  - Unaddressed.
- What is the status of the state-wide bighorn sheep population and upon what is this information based?
  - Unaddressed.
- What is the plan for monitoring bighorn sheep populations both from the project area (where they are removed) and the relocation area?
  - Inadequately addressed.

Sierra Club raised the following questions in its September 2, 2014 comments, which also remain unanswered:

- How many sheep inhabited Arizona at the turn of the century and what is the population goal of the AGFD now? How does this project help meet that goal? (page 4)
  - Unaddressed.
- Considering there was a recent decline in sheep numbers, how do we know the population is large enough or stable enough to withstand a translocation? How will removal of animals from this source (the Tonto National Forest population) affect the sustainability of this population? Several specific questions about sheep populations and how translocations will impact those sheep herds were raised. (page 4)
  - Inadequately addressed for all questions.
- How is it the imperative of the Forest Service to make sure the AGFD process is “efficient”? (page 5)
  - Inadequately addressed.
- Shouldn’t the need for this project be related to having healthy populations of bighorn sheep and other native endemic wildlife? (page 5)
  - Unaddressed.
- Wouldn’t a proposal that limits relocation efforts to outside the Wilderness areas better benefit Wilderness and sheep? (page 5)

- Unaddressed.
- Wouldn't allowing sheep to disperse among Wilderness areas and areas in between (via wildlife linkages) be better for both the sheep and Wilderness? (page 5)
  - Unaddressed.
- How effective does the Forest Service believe this project will be without establishing and maintaining connectivity between sheep populations? (page 6)
  - Unaddressed.
- Have issues related to disease vectors from the Heber-Reno Sheep Driveway been resolved?
  - Unaddressed.
- What is the sheep population size that would support the removal of animals for translocations? (page 7)
  - Unaddressed.
- What is the impact of translocations on source populations of sheep? (page 7)
  - Unaddressed.
- What is the basis for the assumption that the Superstition sheep population, at 184 sheep, can withstand even one relocation effort?
  - Unaddressed.
- If a tortoise is spotted during an attempted landing, will the landing still occur? (page 8)
  - Unaddressed.
- Which alternatives were considered outside the scope of the project and why were they dismissed? (page 8)
  - Unanswered.
- Could elimination of the Heber - Reno sheep driveway and limiting human disturbance be a far less intrusive means of addressing the concerns about bighorn sheep population numbers? (page 9)
  - Unaddressed.
- Will the proposed monitoring and translocation activities cause more harm than good to the sheep populations? (page 10)
  - Unaddressed.
- What predators, other than mountain lions, might be impacted by this project? (page 10)
  - Unaddressed.
- How does this project compare to the relocation project in the Coronado National Forest (Pusch Ridge) with regards to relocation induced mortality and habitat suitability? (page 11)
  - Unaddressed.
- What are the factors in each Wilderness area that will determine numbers of sheep relocated? (page 11)
  - Unaddressed.

Wilderness Watch raised the following question in their August 29, 2014 comments, which remains unanswered:

- What is the maximum length for this project? (Ten years is stated as the minimum.) (page 11)
  - Inadequately addressed.

Failure to address our specific, substantive questions in the DEA is a violation of NEPA and renders this FONSI invalid.

**REMEDY: Withdraw the FONSI and prepare an Environmental Impact Statement that addresses our concerns and questions.**

**OBJECTION STATEMENT: The FONSI/EA Fail to Analyze an Adequate Range of Alternatives, in Violation of NEPA.**

Sierra Club comments dated April 30, 2014, at page 2, specifically asked the Forest Service to consider and analyze alternatives to the use of helicopters. Sierra Club again raised this issue at page 6 of its September 2, 2014, comments, specifically noting the failure of the Forest Service to ask if it was even necessary to capture sheep in Wilderness areas given the fact that approximately 44 percent of the occupied sheep habitat is outside Wilderness areas. Sierra Club also noted 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. *Id.* Sierra Club comments pointed out that the use of helicopters in Wilderness to move sheep would not address any of the longer-term factors affecting bighorn sheep populations, including disease, urban encroachment, and habitat fragmentation. *Id.* Sierra Club noted the failure to analyze a non-motorized, ground-based capture alternative due to the lack of information and citations regarding sheep mortalities based on ground-based net capture methods. *Id.* at 8-9.

FOWA noted the failure of the Forest Service to present an adequate range of alternatives in our September 2, 2014 comments, at page 11. The analysis of a single action alternative without analyzing an alternative that would require the use of helicopters only outside designated Wilderness areas or 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.

Wilderness Watch comments dated August 29, 2014, at page 9, also raised the failure to present an adequate range of alternatives for this project. Wilderness Watch noted that the EA does not look at an alternative that conducts activity only outside the Wildernesses even though nearly half of the bighorn range is outside designated Wilderness. 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.

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

## Wilderness Action Violations

### **OBJECTION STATEMENT: The FONSI/EA Will Result in Actions that Will Violate the Wilderness Act and the FONSI/EA Does Not Comply with the Minimum Requirements Decisions Process.**

The Wilderness Act, and the Forest Service's implementing regulations, expressly prohibit the activities authorized through this FONSI. Further, the essence of wilderness is eroded by authorizations of actions that will necessitate ongoing, heavy-handed human management in areas that are specifically designated by Congress to be free from ongoing, heavy-handed human management. The DEA and FONSI do not make the case that helicopter use for bighorn management is *necessary for administration of the area as Wilderness*. Far from necessary, an authorization of this action would ensure that this area becomes something other than Wilderness. State agency objectives cannot dictate federal wilderness policy, and the Forest Service cannot abdicate its obligation to administer Wilderness areas pursuant to the mandates of the Wilderness Act.

The first step in the two-step process for analyzing whether a project may be exempted from the statutory prohibitions in Sec. 4(c) of the Wilderness Act is to determine, using the Minimum Requirements Decision Guide (MRDG) process, whether any administrative action is necessary to meet minimum requirements to administer the area for the purposes of the Wilderness Act. *Only if action is deemed necessary for administration of the area as wilderness* should the Forest Service proceed to the second step which is to determine the minimum activity, method, or tool needed to accomplish the action that would have the least impact to the Wilderness resource, character, and purposes. Additionally, Forest Service direction at FSM 2323.33 – Wildlife Management & Reintroductions states: “motorized and mechanical transport may be permitted if it is impossible to do the approved reintroductions by non-motorized methods. *See* FOWA comments dated September 2, 2014, page 6, Sierra Club comments dated September 2, 2014, page 12 and Wilderness Watch Comments dated August 29, 2014, pages 1-12.

The Forest Service should not have proceeded beyond step one. In our comments, FOWA specifically noted there is no “need” for this project in order to administer the Wilderness areas that are part of the project. Even if the project were necessary to preserve the wilderness character of these five Wildernesses, there is also nothing in the DEA or FONSI indicating this project is impossible to do using non-motorized or non-mechanized methods and in fact, the only argument for using helicopters is to increase efficiencies for the AGFD. This is an inappropriate use of the 4(c) exception to the ban on the use of mechanized equipment in Wilderness Areas under the Wilderness Act. Objectors noted our objections to the violation of the Wilderness Act in all of our prior comments as indicated above. The Forest Service has done nothing to refute our assertions.

Wilderness Watch explained the violations of the Wilderness Act that will occur if this project is authorized in their August 29, 2014, comments at page 3-4. The project will harm every “quality” of Wilderness character: untrammelled because it involves the intentional manipulation of wildlife populations in the Wilderness areas; natural because it removes many individuals of a native species from the Wilderness; undeveloped because it involves up to 450 helicopter

landings and an undisclosed number of collars, radios, and other motorized equipment; opportunities for solitude because there will be an untold number of helicopter flights at low elevation over Wilderness areas in addition to the 450 landings.

There is no analysis of how collared sheep will impact Wilderness values. There is no response to Wilderness Watch's question asking how translocating bighorn sheep from Wilderness areas will meet the purpose of the Wilderness Act, nor how translocating sheep will meet the minimum requirements for the administration of the areas. Wilderness Watch detailed concerns about the use of the MRDG, which was not available during the comment period, and 4(c) exception to the ban on mechanized equipment on Wilderness areas specifically as it relates to the long-term management of bighorn sheep at page 6 of our August 29, 2014, comments. With over 450 helicopter flights over a minimum of 10 years, this long-term and extremely negative impact on Wilderness must not be authorized because it contradicts FSM 2323.3 that requires the Forest Service to "[p]rovide an environment where the forces of natural selection and survival rather than human actions determine which and what numbers of wildlife species will exist." As we stated in our earlier comments, "[i]f the agency determines populations cannot exist without pervasive and intensive actions that very explicitly violate the Wilderness Act by degrading Wilderness character, the action cannot be justified under the Wilderness Act. By authorizing such an ongoing degradation, the Forest Service is converting designated wilderness into something else – in this case, a game farm... If the species can no longer persist in these areas (due likely to human caused factors that the agency is either not willing to address or cannot address) without excessive human management, the Forest Service must not authorize the action." See Wilderness Watch comments dated August 29, 2014, page 6-7.

As FOWA stated at page 8 of our September 2, 2014 comments, "[t]he use of motorized or mechanized equipment can only be authorized "if these devices are *necessary* to meet the minimum requirements for the administration of the areas as wilderness or are specifically permitted by other provisions" of the Wilderness Act ***and any such use "should be rare and temporary."***" Policies and Guidelines for Fish and Wildlife Management in Wilderness areas, section F(1). Research and management surveys related to fish and wildlife must be compatible with managing the area *as Wilderness* and methods that infringe on Wilderness ***may be authorized only if alternative methods or other locations are not reasonably available.*** Policies and Guidelines for Fish and Wildlife Management in Wilderness areas, section F(3). ***Population sampling should only use methods compatible with the Wilderness environment when possible.*** Policies and Guidelines for Fish and Wildlife Management in Wilderness areas, section F(7). ***Specific to transplanting wildlife, such activities "shall be made in a manner compatible with the Wilderness character of the area."*** Policies and Guidelines for Fish and Wildlife Management in Wilderness areas, section F(12). The decision to allow this project violates each of these policies and guidelines.

We again point out that nearly one-half of the sheep population in the Tonto National Forest is present outside designated Wilderness areas, there are non-mechanized methods of capturing and monitoring sheep within Wilderness areas and neither the Forest Service, nor the project proponent, AGFD, have presented any rational basis for violations of the Wilderness Act that will occur for, at minimum, the next 10 years. Further, if viability concerns for bighorn sheep



might be addressed through management actions that do not violate the Wilderness Act (e.g. restrictions on domestic sheep grazing, restrictions on harassment factors such as hiking trails in sensitive areas, etc.), other actions that do violate the Wilderness Act are certainly not necessary as contemplated by the Act. There is no demonstration that this project is necessary for the administration of any Wilderness area in the Tonto National Forest or elsewhere in the state of Arizona.

We include FOWA's analysis of the MRDG process here, in full, because it clearly demonstrates the correct analysis for determining whether the Forest Service should authorize this project:

Step 1a: Determine if the action proposed is NECESSARY to manage the area as Wilderness

- a. Are there options outside Wilderness? Can the proposed action safely, successfully, and reasonably be accomplished outside wilderness?
  - a. Yes. The bighorn sheep population can be monitored remotely, using satellites. Additionally, improving and restoring wildlife corridors adjacent to the project area will allow sheep to naturally migrate back into the Wilderness areas, eliminating the need for future reintroductions and excessive monitoring by the AZGFD. Further, 44% of the bighorn sheep population is located outside of Wilderness areas.
- b. Is the proposed action consistent with law, regulations, policies, and plans?
  - a. No. The cumulative impacts for this project, on a state-wide level, have not been evaluated. There has never been any NEPA analysis for the reintroduction project despite the use of federal funds, taking place within federal lands, the highly controversial nature of the project, and the impacts to threatened and endangered species and the impacts to protected federal lands.
- c. Any violations of other laws? ESA, etc.
  - a. Yes. See above. Additionally, there are several species listed as threatened or endangered under the ESA and there has been no consultation with the U.S. Fish and Wildlife Service.
- d. Any other guidance to consider?
  - a. Yes. As we explain in the sections above, authorization of this project will violate USFS Policies and Guidelines.
- e. Does the proposed action contribute to preservation of wilderness character?
  - a. No. For two reasons: 1) the sheep are currently present in the Wilderness and heavy handed management by the AZGFD may actually cause harm to the sheep; and 2) the project requires repeated incursions into the Wilderness area over the course of at least 10 years, degrading rather than preserving the Wilderness character. Collared sheep will degrade the Wilderness character and experience.

- f. Is the proposed action necessary for the purpose of Wilderness?
  - a. No. See above. In addition, there is no requirement that the USFS support a project simply because it would be more efficient for the state game management agency, especially when that project will cause excessive degradation of the Wilderness character.

Step 2a: Determine the minimum tool

- a. Analyze at least one feasible alternative that does not involve a generally prohibited act.
  - a. This was not done for this project. The USFS should have analyzed an action alternative that did not authorize the use of helicopters in any manner for this project. For example, eliminating the Heber-Reno sheep driveway would protect bighorn sheep from disease and allow bighorn sheep to expand their populations outside the Wilderness areas without increasing the risk of a catastrophic epizootic event.
- b. Are the tools and techniques used to accomplish the Proposed Action the least degrading to Wilderness characteristics? ***Criteria such as time, convenience, and cost effectiveness may be considered but are less significant than the potential for impacts to Wilderness characteristics.***
  - a. No. The AZGFD can and has been managing the bighorn sheep populations since the 1950s without the need for landing helicopters in Wilderness areas and the sheep population has reached a level where sheep from the Tonto National Forest can be translocated to multiple other states and hunted annually. Non-motorized and non-mechanized management should be the preferred method for bighorn sheep management in the Tonto National Forest Wilderness areas. There are statements in the PEA that make it clear that violating the Wilderness Act by allowing helicopter use for this project is not “necessary,” simply preferred. The “non-motorized” alternative would: make replacing collars “more difficult;” bighorn sheep reintroductions would be “unreasonable limited” but not impossible; the cost would be “prohibitive” though no explanation is given for how the project has been so successful for the past 60 years despite the “prohibitive” costs; and a wildlife health specialist “may not be available during the time when capturing would occur,” but may also be available. PEA at 26.

Additionally, the time frame for this project is described as “a minimum ten year period.” PEA at 45. This explicit admission in the project PEA requires the Forest Service to reject this project because the long-term impacts to Wilderness are *clearly not* rare nor temporary.

Because the MRDG was not available during the PEA comment period, our groups did not comment specifically on the MRDG and we noted that the failure to allow public review and comment on this key document was very inappropriate and in violation of NEPA. *See* FOWA comments dated September 2, 2014, at page 10; Sierra Club comments dated September 2, 2014, at page 12; Wilderness Watch comments dated August 29, 2014, at page 7.

However, we have reviewed the MRDG and provide our comments upon that document here:

The MRDG for the project does not comply with the Wilderness Act and the process outlined in the manuals for completing the MRDG. Elsewhere in this objection we show how the proposal serves no legitimate wilderness purpose. For example, Wilderness is damaged by using it as a game farm for translocating bighorn sheep.

The first step of the MRDG is to determine whether the project can be done outside of Wilderness. The MRDG says, regarding activities outside of Wilderness that, "[o]n the Tonto National Forest, approximately 56 percent (189,325 acres) of occupied bighorn sheep habitat is within designated wilderness areas (Table 1)." This does not explain why the 44 percent can't be used for the purpose of translocating sheep. In any case, translocating sheep from these Wildernesses to somewhere else is not a wilderness purpose.

The MRDG further explains:

*Some of the bighorn sheep in and around the Four Peaks Wilderness and Superstition Wilderness can likely be captured outside of wilderness, but to obtain a proper distribution of ewes rams, and yearlings for translocation efforts, several bighorn sheep will need to be captured within these wilderness areas. Targeting the limited habitat and populations of bighorn sheep outside these wilderness areas may cause additional stress resulting in adverse health effects to these bighorn sheep. Furthermore, the majority of bighorn sheep survey locations have been documented within wilderness areas indicating that the bighorn sheep are more likely to be located within wilderness than outside of wilderness (Table 2.)*

Again, the purpose of wilderness is not to serve as a game farm for translocation of bighorn sheep. It is also not to meet management objectives of the AZGFD. The above paragraph admits that sheep can be captured outside of Wilderness areas. Oddly, this paragraph claims that targeting animals outside of wilderness may cause additional stress to the sheep. The MRDG does not explain the illogical implication of why only the bighorn sheep outside of Wilderness suffer stress.

Thus, there is no justification to proceed beyond the first step of the MRDG because, first, using wilderness as a game farm is not the purpose of wilderness; and second, sheep can be translocated from outside the wilderness. Our objection addresses this issue in more detail elsewhere. Third, the assumption that sheep must have collars and that population monitoring is necessary is not proven by experience nor demonstrated in the record for this project. Bighorns were in the Tonto National Forest from the 1980s but only recently did the AZGFD request this heavy-handed kind of management.

Apparently, the AZGFD could manage sheep without all of this intrusive technology between 1980 and 2010, and there is no rationale provided explaining this radical change in management techniques.

The MRDG also fails the MRDG instructions. The MRDG states in step one:

The Tonto National Forest proposes to authorize the use of helicopters by the Arizona Game and Fish Department within the Tonto National Forest, including landing in designated wilderness areas, for the purposes of bighorn sheep management for a minimum of ten years. Helicopters would be used for capture and translocation of bighorn sheep, to conduct research on bighorn sheep, and to monitor bighorn sheep populations within portions of the Four Peaks, Hellsgate, Mazatzal, Salt River Canyon, and Superstition Wilderness Areas. **This action is necessary** for the Arizona Game and Fish Department to meet bighorn sheep management objectives and conservation strategies identified in the Arizona Game and Fish Departments (Department) State Wildlife Action Plan (SWAP). (*Emphasis added*)

Page 3 of the instructions for doing MRDGs (found at wilderness.net) clearly states:

The description should explain, in general terms, the situation that may require some action -- but **should not** assume action will be taken **nor** identify a specific method or tool unless it is necessary to understand the situation. The description should not attempt to justify the use of motorized equipment or mechanical transport, or the placement of a structure, facility, or temporary road. This description of the existing situation helps determine the Step 1 analysis whether *any* action is necessary in wilderness -- and sometimes the appropriate administrative response may be no action at all. If action is needed, the specific actions, methods, tools, etc. will be identified and evaluated in Step 2. (Emphasis in original).

Further, the illustrations of incorrect examples in the instructions for doing MRDGs (at pages 3 and 4) clearly show that the MRDG is incorrectly done for step one. In essence, this MRDG is a pro forma exercise done to justify a pre-made decision.

These are not the only errors in the MRDG. For example, page 1:5 suggests that there are valid existing rights or special provisions in wilderness to require this project. It then cites sections 4(b) and 4(c) of the Act, erroneously conflating public purposes (plural) with the singular purpose of Wilderness. It also cites to section 4(d)(7). However, this section does not compel action in Wilderness. Indeed, it is neutral on the issue of wildlife. The broader term “*wildlife management*,” which crosses jurisdictional boundaries, is not mentioned in the Wilderness Act.

The supremacy clause in the US Constitution gives ultimate authority over wildlife and fish on public lands to the federal government. Several cases have referred to the U.S.C.A., Article IV Sec. 3, and clause 2 rulings under U.S. Constitutional law. Cases which have upheld the supremacy of the federal government to manage wildlife by way of the authority granted in various federal statutes include *Hunt v. U.S.* (278 U.S.

96,1928), *U.S. v. State of Washington* (520 F.2d 676, 1975) *New Mexico State Game Commission v. Udall* (410 F.2d 1197, 1969) and *Kleppe v. New Mexico* (426 U.S. 529, 1976). In *Kleppe v. New Mexico*, the U.S. Supreme Court ruled that, “We hold today that the property clause gives Congress the power to protect wildlife on the public lands, state law notwithstanding.” Indeed, the Endangered Species Act itself is proof that state jurisdiction of wildlife and fish is subservient to federal authority, even on private land.

Thus, the wording in section 4(d)(7) “jurisdiction or responsibilities” of the states “with respect to wildlife and fish” conveys narrow meaning in the sense of reasonable hunting/fishing seasons and regulations. It seems Congress wanted to keep that part of the *status quo* intact, intending that the various states would regulate hunting and fishing in wilderness, as they always had, but that it be done in a way compatible with wilderness. Senate Report 109, April 3, 1963, clearly notes regarding wilderness “the science of wildlife management is peculiarly concerned with the perpetuation of primeval areas as check areas against which the practices in game production on lands under management can be measured.” It seems there was a general consensus, with fish and game agencies included, that wildlife in wilderness would be kept wild. The proposal by AGFD is one of “game production” rather than “perpetuation of primeval areas.”

The above examples are illustrative of the problems with the MRDG. It does not follow the prescribed two-step process. It also includes many other errors of fact. Most significantly, the document was not available for public review during the comment period. As such, any errors could not have been identified or corrected. Thus, the MRDG cannot be relied upon when making a decision.

In summary, the DEA and FONSI continue to misstate Wilderness policy and law. It also conflates the purpose of the Wilderness Act with the public uses of Wilderness areas. Wilderness character is confused with Wilderness characteristics and fails to consider non-Wilderness or non-mechanized options for this project.

**REMEDY: Withdraw the DEA and FONSI.**

**OBJECTION STATEMENT: Use of, and the Analysis of the Use of, Helicopters for this Project is Arbitrary and Capricious**

First, as Wilderness Watch noted in the August 29, 2014, comments at page 7, the analysis for this project at once indicates there are too many and too few bighorn sheep in the Wilderness areas of the Tonto National Forest. The PEA (see pages 26-27) analyzed the use of non-motorized, ground-based means of sheep management under the no-action alternative indicating that negative impacts to Wilderness areas would occur using these methods, then states that those non-mechanized methods would be ineffective for sheep management. The Forest Service cannot have it both ways – either non-mechanized methods for sheep management are feasible as analyzed in the no-action alternative or these methods are not feasible and therefore the analysis of the no-action alternative is completely meaningless. The illogical, inconsistent, and contradictory analysis demonstrates the arbitrary and capricious nature of the Forest Service approach to this project.

There is no analysis of, or citation for, the quantification in the DEA and FONSI for the estimated number of helicopter landings. There is no analysis of the impacts of helicopter use on Wilderness or Wilderness values. The rationale for eliminating the non-motorized options includes no citations, numbers, or real information as to why it should be eliminated as an option for this project.

The Forest Service made an unsubstantiated assumption that the Forest Service would be significantly limiting the AGFD's ability to meet bighorn sheep management objectives if the Department was not allowed to use helicopters to manage the sheep population within Wilderness areas for the next 10 years. PEA at 43. This statement, but not the concept, has been eliminated in the DEA/FONSI: "Under [the no action] alternative, the Tonto National Forest would not authorize the Arizona Game and Fish Department to land helicopters in wilderness areas for a 10 year timeframe. The Arizona Game and Fish Department may conduct bighorn sheep captures by use of chemical immobilization darts or drop nets within wilderness boundaries for limited site-specific and/or animal-specific purposes such as placement or recovery of a VHF/GPS radio tracking collar or for disease testing. Population reintroductions and augmentations would not occur." It is the last statement of this paragraph that clearly demonstrates the Forest Service has retained the concept that the AGFD will not be able to meet sheep population objectives within Wilderness, but again, this statement is made without any foundation or basis in reality. Given that the AGFD has in fact introduced sheep into the Pusch Ridge Wilderness of the Coronado National Forest in 2013 and again in November 2014 without the use of helicopter landings in the Wilderness, the statement that population augmentations would not occur is completely and clearly arbitrary and designed to unjustly paint the no action alternative as an impossibility.

As Sierra Club stated in its September 2, 2014 comments, it is likely the AGFD will find other ways to manage sheep populations such as going outside Wilderness areas, or by using less invasive methods. The AGFD has said exactly this in a recent interview with a reporter: "If we are able to go into wilderness areas of the Tonto Forest (pending approval of a permit), we could get 30 sheep from there because the population is sufficient" to withstand the removal of that many animals, Hart said. "If we have to go outside wilderness areas of the Tonto, the most we

could take would be 15 or 20 sheep. Then we would get the remaining sheep from the BLM lands near Quartzsite."<sup>8</sup>

**REMEDY: Withdraw the DEA and FONSI.**

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<sup>8</sup> [http://tucson.com/news/local/more-bighorns-being-relocated-to-catalinas/article\\_6ad8b428-5fbd-11e4-8d45-eb96ef32b5d7.html](http://tucson.com/news/local/more-bighorns-being-relocated-to-catalinas/article_6ad8b428-5fbd-11e4-8d45-eb96ef32b5d7.html)

## Issues Related to Biological Opinion

### **OBJECTION STATEMENT: The Biological Assessment was Not Available for Review or Comment During the Comment Period.**

Simply, the Biological Assessment (BA) was not available for review and public input during the comment period. Therefore, objectors were unable to comment upon this key document for this project and under the new Objection regulations are therefore not able to raise these issues as part of our objection. This is a violation of NEPA.

Despite the technical prohibition on our objecting the BA, we provide our concerns about the BA here and object to the FONSI based on information contained in the BA.

The BA indicates there are 23 bald eagle breeding areas, 32 actual and 49 potential golden eagle breeding areas, and 8 MSO PACs. BA at 19, 22, and 24-25. This is a significant number of nesting sites and PACs and the impacts of this project to these species, as well as Morafka's desert tortoise, are not adequately analyzed in this BA.

First, it is difficult to believe that a helicopter pilot, in hot pursuit of a sheep, will avoid landing or flying near eagle or MSO nesting sites or PACs. (The BA indicates throughout the document that these areas will be avoided.) Impacts from emergency landings are not addressed. The likelihood of impacts to these species from a "hot pursuit" or emergency type of landing are not addressed at all in the BA for these species, nor for Morafka's desert tortoise. For example, what happens if a sheep is netted and ends up in a location near an MSO PAC or eagle nesting site? Will the helicopter be required to land elsewhere and will the sheep then be carried a long distance (345-2000 feet) to the helicopter?

Second, we note that the Forest Service is required, via the Land and Resource Management Plan (LRMP) for the Tonto National Forest, to "cooperate" with appropriate State Fish and Wildlife agencies. BA at 5. However, this does not require the Forest Service to capitulate, or approve any and all projects proposed by the AGFD. This is an especially important distinction because the LRMP also requires the Forest Service to "prevent destruction or adverse modification of critical habitat for Threatened and Endangered species." BA at 5. The Forest Service has an obligation to the entire suite of species in the Tonto National Forest, not only those of particular interest or value to the AGFD. Specific to the management areas subject to this project, the Forest Service is required to "manage for wilderness values while providing for livestock grazing and recreation opportunities that are compatible with maintaining wilderness values, processes and protecting resources." BA at 6 citing management emphasis for Management Areas 1B, 3A, 4A, 6A, 4C, 5B, 3D, 6I, 2A, 3B, 3C AND 6B.

For Management Areas 2B and 6G, "the primary emphasis for this area is the preservation of naturally occurring flora, fauna, aesthetics and ecological processes while providing a very high quality white river running experience. Special consideration would be given to nesting bald eagle home range requirements...Other activities that are authorized by the Wilderness Act would be conducted so as to minimize their impacts on



wilderness character.” BA at 6. We address the impacts to wilderness character and the failure to comply with the Wilderness Act elsewhere in this letter. Here, we note that bald and golden eagles are located within the project area and that this project fails to preserve, and actually heavily manipulates, the naturally occurring fauna and ecological processes of the Wilderness area. Additionally, the helicopter flights are likely to negatively impact white water river running experiences in the Salt River Canyon and this issue has not been addressed anywhere in the BA or the EA for this project.

Third, the impacts to eagles are not adequately addressed. Juvenile bald eagles return to the Tonto National Forest in late summer - August and September. Hundreds of adult bald eagles return to the Tonto National Forest in October to begin nesting activities (page 18 of BA). Helicopter landings are scheduled to occur in November at the height of bald eagle courtship and nest building activity. BA at 18 Bald eagles occur in every one of the proposed landing areas for helicopters, both within and outside designated Wilderness areas. BA at 19.

The 2000 foot helicopter buffer for bald eagles is in place from December 1 to June 30, yet the BA notes that eagles can be in the area as early as August. BA at 19. Why is the buffer not in place during all times of year when eagles are known to be present in the project location?

The 2000 foot buffer also applies to foraging areas and the AGFD will be instructed to avoid foraging areas (streams and reservoirs near nests), but what will happen if the sheep to be monitored or captured are located in these same areas? Will the AGFD be required to abandon the monitoring or capture?

What will happen if funding does NOT permit continued monitoring of eagles by the non-game department of Game and Fish? BA at 19, “[a]s funding permits, the Arizona Game & Fish Nongame Raptor Management Program would continue to conduct monitoring on an annual basis for eagle occupancy and nesting sites (has occurred since the late 70’s), which would help to ensure occupied sites are known.”

“In 2007, the U.S. Fish and Wildlife Service (USFWS) codified the definition of ‘disturb’ under the BGEPA. Disturbance includes an action that ‘causes, or is likely to cause...injury to an eagle’ or interference with ‘normal breeding, feeding, or sheltering behavior’ causing a decrease in productivity or nest abandonment (USFWS 2007a, b).” This project will result in disturbance to bald and golden eagles, resulting in violations of the Bald and Golden Eagle Protection Act and not authorization for such disturbance is evident in the record.

Fourth, impacts to Mexican spotted owls (MSOs) are not adequately addressed. The BA states that “owls will react to noise disturbances by changing behavior and/or flushing from their perches (Delaney et al. 1999a; Swarthout and Steidl 2001, 2003). These behavioral responses may alter nesting and roosting activities, thus increasing vulnerability to predators and heat-related stress. Variables such as distance to and frequency of a noise disturbance, habitat type, topography, and sound source may

influence spotted owl responses (Delaney and Grubb 2004).” BA at 26. This begs the question as to how the Forest Service has made a “may affect but not likely to adversely affect” finding for this project. We elaborate below.

The following statements are not supported by any research or documentation: “The gradual increase in decibel levels from approaching aircraft is not expected to have negative impacts to prey delivery to the extent that sustained, sudden increases in noise, such as use of chain saws might have. In addition, helicopter noise would not be sustained long term and is expected to be of short duration due the nature of the operations which dictate expeditious completion of the mission(s) to minimize stress to sheep.” BA at 26. Upon what is the assumption that helicopter noise is less of a disturbance to MSO prey than chainsaws based? What is the anticipated duration of helicopter noise for each capture? What has the duration of helicopter noise in a specific location been thus far? (Note that AGFD used helicopters in the Tonto National Forest to capture sheep in November 2014.)

The information on helicopter noise, as compared to other types of noise, seems to be in conflict or uncertain: “While little research is available comparing the relative impact of various noise types, it is likely that persistent noises are more disruptive than infrequent disturbances, and intensity of disturbance is proportional to noise level (i.e., sound volume). There is also the potential for noise pollution (i.e., consistent noise-causing activities as opposed to the sporadic noise disturbances discussed above) to impact spotted owl nocturnal breeding and foraging habits. Because owls are active at night when it is difficult or impossible to see other owls, audio communication is a critical component of the owl’s social system (Frid and Dill 2002; e.g., territorial defense, pair bonding and maintenance, feeding nestlings, and post-fledging activities). Further, owls depend heavily on sound to locate and capture prey in near darkness (Payne 1971, Martin 1986, Norberg 1987). No studies have been conducted on the influence of habitat type (canyon vs. forest) on noise disturbance to owls. While both forest- and canyon-dwelling owls respond to human presence, potentially disruptive interactions between humans and owls may be more likely in canyons because canyons can amplify noises (especially in caves) and provide limited escape routes for owls. In addition, the number of sites in canyons that afford spotted owls adequate thermal protection for nesting and roosting may be more limited than in forested environments. Finally, canyons may lack visual barriers between owls and noise sources that are common in dense forests, and this also may influence owl responses. Noise impacts are most likely to occur at the level of individual owls and/or PACs, and they may be important to small isolated populations (USFWS, 2012).” BA at 27.

At the very least, this supports our request that the Forest Service prepare an EIS for this project rather than rely on an EA because there is a conflict and uncertainty in the science used as the basis to authorize this project.

The following statement is not supported by the information in the BA: “For the most part, the proposed action should have limited effects to Mexican spotted owls because AGFD will avoid flying through or over occupied or possibly occupied (nest/roost

recovery habitat) within the project area during the breeding season (see conservation measures). In addition, most flights that could occur near PACs (occupied) or suitable nesting habitat (nest/roost recovery habitat) would occur outside the breeding season. The overall avoidance of these areas during the breeding season should result in insignificant and discountable noise affects to owls.” BA at 27. It is unclear why the Forest Service discounts the possibility of flying through or over occupied or possibly occupied MSO habitat for two reasons: 1) it cannot be known where sheep will be located; and 2) MSO surveys are incomplete throughout Region 3 of the Forest Service, including on the Tonto National Forest making it impossible to know whether helicopters will in fact be flying through or over possibly occupied MSO habitat.

Additionally, for MSO the Forest Service has distinguished the impacts of flights during breeding season and says flights during this time will be avoided but has not provided the same protection for bald and golden eagles. This discrepancy should be explained.

Impacts to MSO are discounted because the Forest Service has relied on the assumption that few sheep collars will be retrieved over the life of this project: “Retrieval of radio collars is expected to be limited to one or two occurrences over the life of the project based upon past experience which will further reduce potential effects to MSO.” BA at 28. However, current information provided by AGFD in the meeting minutes for the Pusch Ridge Helicopter project indicate that collar failure rates are likely higher. These meeting minutes can be viewed here:

[http://www.azgfd.gov/w\\_c/CatBighornReintroProj.shtml](http://www.azgfd.gov/w_c/CatBighornReintroProj.shtml). See notes dated 2/25/2013, 3/5/2013, 4/11/2013 (collars have a 10-15% failure rate, 2-3 year lifespan for batteries), 8/5/2014 (discussing problems with project due to problems with collars.)

Noise impacts are apparently minimized because of the type of helicopter planned for use. Simply because AGFD “often” uses “Airbus Eurocopter AS350 B3 helicopters that are designed to produce less noise than conventional helicopters” does not mean that they will continue to use these types of helicopters nor that these types of helicopters will be available for sheep monitoring or captures for the next 10 years. BA at 27. The assumption that the use of these “quieter” helicopters cannot be relied upon to assume a reduced impact to species in the project area. Indeed, we cannot find any information available on the Airbus website for this particular helicopter that indicates it is any quieter than any other helicopter that AGFD might use. The “technical” information for this helicopter indicates that it is preferred for “hot and high” flights in “extreme” weather conditions, but nothing addresses its noise rating.

[http://www.airbushelicopters.com/site/en/ref/Characteristics\\_69.html](http://www.airbushelicopters.com/site/en/ref/Characteristics_69.html)

Additionally, video from the recent bighorn sheep capture at Canyon Lake, provided by AGFD, clearly shows multiple helicopters used for a single sheep capture/relocation. <https://www.youtube.com/watch?v=LnOSxWx9Z4M&index=2&list=UUASn7tMQBJvzAnOQ3yHoBWw> In this video at 1:07, 2:20, 2:53, you can see that one helicopter is used to film the helicopter that is actually engaged in netting and moving sheep. The use of multiple helicopters at a time for sheep monitoring and capture has not been analyzed. This analysis must be completed prior to the authorization of this project.

Fifth, for Morafka's desert tortoise the BA fails to address impacts to tortoises by sheep captured via net-gun. These sheep are running at full speed and when netted will fall in an unpredictable manner. There is no possible way to know whether a sheep will fall on a tortoise and what impacts such action will have on tortoises. This has not been adequately addressed in the BA.

Sixth, what is the result of the communication between the Tonto National Forest and the U.S. Fish and Wildlife Service regarding technical assistance on this project? BA at 19, 23, and 30: "We are subsequently seeking the U S Fish & Wildlife Service's Technical Assistance on our conservation measures and determination." We note that the BA is dated September 2014 and ask that any information or communicaitons between the U.S. Forest Service and the U.S. Fish and Wildlife Service regarding bald and/or golden eagles, MSO and Morafka's desert tortoise related to this project be disclosed immediately.

Seventh, the impact of this project on bighorn sheep has not been completed nor disclosed in the BA. This lack of analysis requires that the FONSI be withdrawn, the analysis completed, and a new decision made. It is our opinion that this project should not be authorized.

Eighth, the cumulative impacts section of the BA acknowledges that low-flying aircraft are a problem on the forest, and within Wilderness areas, but fails to then analyze the impacts of this project in light of those impacts. BA at 31. The commercial or recreational flights are having some undisclosed impact to the wildlife addressed in this BA and this information should be quantified, analyzed and the impacts disclosed. The same is true for the cumulative noise effects to all species in this BA related to the extremely high level of off-road vehicle use in the Tonto National Forest, some of which is known and documented to occur illegally within Wilderness areas.

Finally, because there is a finding of "may affect" for MSO the Forest Service should have consulted with the U.S. Fish and Wildlife Service. See page 5 of the BA: "5. Initiate consultation or conference with the FWS or NOAA Fisheries when the Forest Service determines that proposed activities may have an effect on threatened or endangered species." It does not appear that this has been done. Therefore, the FONSI for this project should be withdrawn.

**REMEDY: Withdraw the DEA/FONSI, complete an EIS that includes the Biological Assessment and any Biological Opinion from the U.S. Fish and Wildlife Service for public review and comment.**

## 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 10 years because wilderness values are being trammled, the level of impacts require the preparation of an EIS and wilderness values should not be trammled for a slightly more efficient management scheme proposed by the AGFD.

Sincerely,

(for)

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