November 5, 2015

NOTICE OF APPEAL
Submitted electronically to: appeals-chief@fs.fed.us

USDA Forest Service
Attn: Appeal Reviewing Officer
1400 Independence Ave., SW
EMC-JAR, Mailstop 1104
Washington, D.C. 20250

Dear Forest Plan Revision Team:

This is an appeal of the Prescott National Forest Record of Decision and EIS for the Prescott Land Resource Management Plan. This is a Notice of Appeal filed pursuant to the Optional Appeal procedures. The legal notice was published on August 7, 2015 in the Daily Courier; the Plan was signed by Regional Forester Calvin Joyner on May 5, 2015. This appeal is submitted on behalf of Western Watersheds Project, Inc. Western Watersheds Project is a non-profit conservation organization based in Hailey, Idaho and with offices throughout the West. Members of Western Watersheds Project frequent the Prescott National Forest and take a keen interest in the sustained protection of its rangelands, soil productivity, wildlife habitat, water quality, cultural and natural resources, and scenic vistas. I represent Western Watersheds Project, and can be reached at:

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As a preliminary matter, our November 28, 2012 comments on this project were almost entirely ignored, and they should be incorporated with this appeal.

This Forest Plan, EIS, and background materials document many severe problems with the natural resources that are present, treasured, and supposed to be protected on the Prescott NF. Forest Service documentation shows 86 percent of the 97 subwatersheds on the Forest are at risk (BA at 10), less than 50 percent of the soils are in satisfactory condition, with the highest figures of impairment in riparian areas, and the highest amount of badly degraded soils in the fragile semi-desert areas (AMS at 10). These soils are feared to be "irreversibly disturbed." ("Some grassland areas are now considered non-restorable because site characteristics have changed, e.g. loss of topsoil.") *Id.* Of the 15 native species of fish once present on the Prescott NF, only nine remain, and many of those are in a precarious state indeed, persevering only in tiny, isolated habitats. The Forest Service has concluded that all native listed fish and both listed snakes face a "Likely to Adversely Affect" determination from implementation of this Plan.

The Forest Service responded by identifying watershed restoration (which includes soils) and fish habitat restoration as two of its five "Needs for Change." Plan at 5, 6.

Unfortunately, the approach taken to accomplish this need is unlawful, irresponsible, and insufficient. The Forest Service has scrapped most of the protections for soils and watersheds, fish, and riparian areas the 1986 Plan afforded, and substituted vague, pointless, redundant, and unenforceable measures that have not thus far been shown to stem the declines in watersheds, soils, and fish populations on the Prescott NF. The Forest Service has failed to show that these resources improved over the life of the previous Plan, and has failed to provide evidence that the new, weaker standards will do any better. The Plan essentially acknowledges that the old measures failed to achieve their objectives and has thus largely scrapped them and substituted a new regime of magical thinking in their place. It has not scrutinized the cause of the declines and has not provided measures to reverse those declines.

The Plan has not even provided a variety of ways that might be employed to fix the problems, and then picked one. The Plan is unlawful, insufficient, an embarrassment to the agency, and an affront to responsible resource management. It should be withdrawn and replaced with an honest accounting of why the Forest is in the condition it is in, and a responsible plan to protect soil productivity, watersheds, riparian habitat, and the fish populations that remain.

1. Failure to evaluate a reasonable range of alternatives.

The alternatives analysis is the “heart of the environmental impact statement.” 40 C.F.R. 1502.14. It is to “present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options.” *Id.* An EIS is to “rigorously explore and objectively evaluate all reasonable alternatives,” and “the existence of a viable but unexamined

alternative renders an environmental impact statement inadequate." The "touchstone" for courts reviewing challenges to an EIS under NEPA "is whether an EIS's selection and discussion of alternatives fosters informed decision-making and informed public participation." *ONDA* 625 F.3d at 1100.

Importantly, the stated goal of a project necessarily dictates the range of 'reasonable' alternatives." *Westlands Water District v. U.S. Dep't of the Interior,* 376 F.3d 853, 866 (9th Cir. 2004). That is, "reasonableness is judged with reference to an agency's objectives for a particular project." *Id.*

Here, two of the stated goals of the Plan are to improve watershed health and fish habitat. The Plan includes standards, objectives, and desired future conditions that are designed to do that. For example, water developments "should be avoided near streams or seeps and springs where there is a high risk of dewatering aquatic habitats." Plan at 79. And, "Year-long livestock grazing in riparian areas shall be avoided." Plan at 93.

But these measures are the same for every single alternative except the "No Action" alternative, which would not produce a new Forest Plan. Indeed, *all* the protective measures for *all* the action alternatives are the same, with the exception of two (out of 29) objectives that were added in the new alternative, Alternative E, and that involve an objective of aquiring legal access and instream water rights. (Both of these objectives could be attained regardless what alternative is selected.)

According to the Forest Plan at 5, a Forest Plan includes the following components: Desired Conditions, Objectives, Suitability of Areas, Special Areas, Standards, Guidelines, and a Monitoring Strategy.

But in this Plan, all action alternatives have the same Desired Conditions. EIS at 13.

And, in this Plan, all the Objectives, with the exception of the two in the new Alternative E, are the same.

Suitability of Areas are also all the same in this Plan, except that a few alternatives recommend different acreages of Wilderness, which would slightly alter the acres on which the suitability is applied.

Special Areas are the same in all action alternatives. EIS at 13.

Standards are the same for all action alternatives. EIS at 14.

Guidelines are the same for all action alternatives. EIS at 14.

The Monitoring Strategy is the same for all action alternatives. EIS at 14.

In short, every single "component" the Plan itself identifies, and everything that could possibly matter or somehow effect how these lands are protected, is the same in every single action alternative.

An example of a measure that could be incorporated in a different alternative would be to alter the standard given above, involving water developments. One alternative could state (as the selected Plan currently does) that water developments "should be avoided" if "there is a high risk of dewatering aquatic habtiats." A second could be more protective, and state that water developments "will be" avoided if "there is a moderate risk of dewatering aquatic habitats." Similarly, while one alternative might

prohibit year-long riparian grazing, another could prohibit summer-long riparian grazing as well, and therefore be more protective of riparian areas. Or a provision could be included that states, where livestock grazing is shown to impair a riparian area and that stream segment is in non-functioning condition, riparian grazing will be ceased until the stream recovers. There are many different ways to achieve the objectives to recover fish habitat and watersheds that could be employed or evaluated and, at the very minimum, considered. Grazing and further water withdrawals could be prohibited in the few areas where endangered fish still persist, or heightened cover and stubble-height measures could be added there. Road density could be reduced in these areas, or requirements could be employed that heightened riparian analyses be conducted when grazing is planned there.

But the current plan, which offers only one system of objectives, guidelines, standards, and monitoring, is unlawful and insufficient given the objectives of the project, because it does not evaluate a reasonable range of alternatives, as NEPA commands.

2. Hard look and Affected Environment.

NEPA requires the agency to take a "hard look" at the effects of its actions and to provide the needed data to determine what those impacts are. Here, the EIS and background documents do indicate, as noted above, that there are dramatic problems with the current conditions of this landscape, but no connection is drawn between the actions taken (or not taken) in the previous plan and the conditions of the natural resources on the Forest. Thus, it is impossible to draw any conclusions about whether this Plan is actually going to improve things, and to the extent the Forest Service does draw those conclusions, is arbitrary and capricious.

The former plan contained protective measures with specific, quantifiable objectives that were imported from the Regional Guide, and yet still fish habitat, riparian conditions, soil condition, and watershed condition has declined. Obviously, something needs to change, but is the cause of the decline that the former standards were too *strong*? The Forest Service seems to believe so, but gives no explanation for how this would be so. It is arbitrary and capricious to allege that improvement will occur without investigating the causes of the decline of these resources and making a connection to how the new, weakened standards will somehow improve them.

Worse, the Forest Service doesn't even know how much riparian forest there even is. The Forest Service declared to the USFWS in its Biological Assessment that there are 12,400 acres of riparian habitat and that this habitat is in very good condition, but the Plan acknowledges that this number is artificially high and, in fact, soils in these areas are in many cases impaired or worse. Plan at 21. The Plan admits that "additional information on the occurrence of riparian vegetation is needed to accurately estimate the spatial extent of the Riparian Gallery Forest." Plan at 21. Given that riparian forest is a central concern of the entire Plan, and also given that this plan is now nearly 15 years

overdue, the failure to even know the extent of this forest (and to fail to report that lack of knowledge to the USFWS) is an unlawful violation of the NEPA and NFMA.

3. Rangeland Capability and Suitability

The Prescott Forest Plan has completely failed to satisfy the NFMA's requirements with respect to grazing suitability and capability.

The 1982 NFMA regulations state that grazing suitability and capability "shall be determined" and that "the use of forage by grazing and browsing animals will be estimated. Lands in less than satisfactory condition shall be identified and appropriate action planned for their restoration." 36 CFR 219.20. Alternatives are to consider "direction for rehabilitation of ranges in unsatisfactory condition" and the lands are to be "managed in accordance with direction established in the Forest Plans." *Id.*

A review of the Prescott Plan reveals a wholesale failure to meet these requirements. There is no capability analysis because the Plan defers to the last planning round, but does not show what calculations were made in that round and does not defend those calculations, or reveal why they accurately represent capability. There is no direction for rehabilitation of ranges in unsatisfactory condition at all -- that requirement was in the former plan, but not in this one.

The Forest Service has simply imported its thirty year old capability and suitability analysis into the new plan, and deducted those areas which, in the interim, were found not to support livestock grazing. This is a violation of the NFMA. First, the Plan admits we have been in drought since 1997, which is more than half the time the previous Plan was in place. Second, climate change is likely to make that worse. Third, there is a great deal more information and better technology now than the Forest Service had in 1986. The Forest Service has not used such out-dated information for any other aspect of the Plan -- why this one? And, that 1986 analysis can not be scientifically supported: there is not even good evidence remaining of how it was undertaken. The NFMA and NEPA require a new analysis of capability and suitability that considers the current condition of the land given the multi-year drought and climate change, and that looks at other changes that have occurred such as invasive weed infestations and loss of riparian habitat, as well as soil productivity depletion.

4. Improper scales of Riparian

The Forest Plan's Desired Future Condition of Riparian areas uses a scale of 1000 acres or greater. Plan at 42. Riparian problems are rarely this widespread; there are likely fewer than 12,000 acres of riparian area on the entire National Forest, and a significant portion of those are along the Verde River, which is excluded from livestock grazing. By only considering scales greater than 1000 acres, chronic, persistent, and significant riparian damage will be overlooked.

Conclusion

The Forest Plan and its EIS and ROD should be withdrawn and a new EIS prepared that complies with law. A suitability and capability analysis must be ordered completed, and other portions of this Plan withdrawn or suspended until that analysis is done and has gone through notice, comment and appeal.

Sincerely,

/s Erik B. Ryberg

Erik B. Ryberg
Attorney for Western Watersheds Project