



September 20, 2018

USDA Forest Service  
Attn: Appeal Reviewing Officer  
1400 Independence Ave., SW  
EMC, Mailstop 1104  
Washington, DC 20250

Electronic Submission via e-mail: [appeals-chief@fs.fed.us](mailto:appeals-chief@fs.fed.us)

**Re: Notice of Appeal filed pursuant to Optional Appeal Procedures, 36 CFR 219.17(b)(3) (2012 Planning Rule) and 36 CFR 219.35, Appendix A (2000 Planning Rule, as amended July 2010) of: Coronado National Forest Final Land and Resource Management Plan and Final Environmental Impact Statement (MB-R3-05-15) issued June 22, 2018; Cal Joyner, Regional Forester as Deciding Officer.**

Appellant's Name and Address:

The Arizona Game and Fish Department  
5000 West Carefree Highway  
Phoenix, AZ 85086-5000  
602-942-3000

Dear Appeal Reviewing Officer:

The Arizona Game and Fish Department (Department) respectfully submits this Appeal of the **Coronado National Forest Final Land and Resource Management Plan (LRMP) (MB-R3-05-15)**. This Appeal focuses on five issues: (1) the FEIS and LRMP encroaches on state wildlife management authority by including standards regulating introduction/reintroduction of non-indigenous wildlife in Wilderness; (2) the LRMP regulates the introduction of non-indigenous species in areas adjacent to wilderness; (3) the LRMP requires Special Use Permits for animal collection in Special Management Areas; (4) the FEIS and LRMP fail to provide a guideline for the motorized transportation system that all roads open to the public be numbered and signed and that all closed roads be physically closed; and (5) the FEIS and LRMP fail to address key wildlife management concerns in its designation of Recommended Wilderness Areas.

In an effort to further discuss the issues presented here, and explore opportunities to resolve this appeal, the Department respectfully requests a formal meeting with Regional Forester Cal Joyner.

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**GOVERNOR:** DOUGLAS A. DUCEY **COMMISSIONERS:** CHAIRMAN, JAMES S. ZIELER, ST. JOHNS | ERIC S. SPARKS, TUCSON | KURT R. DAVIS, PHOENIX  
LELAND S. "BILL" BRAKE, ELGIN | JAMES R. AMMONS, YUMA **DIRECTOR:** TY E. GRAY **DEPUTY DIRECTOR:** TOM P. FINLEY

### **OBJECTION NO. 1**

The Department objects to the two standards and one guideline under Chapter 3, Management Areas, Wildlife in Wilderness, pages 106-107:

**“Standards**

1. Non-indigenous<sup>34</sup> species shall not be introduced into any wilderness area.
2. Reintroductions shall only occur when a species is determined to be indigenous to the area.

**Guideline**

1. Non-indigenous species should not be introduced into areas adjacent to wilderness areas when it is likely that individuals of that species will spread to wilderness areas during ordinary life processes.”

Footnote: <sup>34</sup> Determination of whether a species is indigenous will be made in consultation and coordination with State game management agencies.

The Department objected to these Standards and Guidelines in the Draft LRMP. The Final LRMP still contains these Standards and Guidelines. A “Management Approach” was added to the final LRMP at 107:

Cooperating with State game management agencies as outlined in policies and guidelines for fish and wildlife management in wilderness.

### **REASON FOR OBJECTION:**

The Forest Service has exceeded its authority in promulgating these Standards and Guidelines, which encroach upon the authority of the Commission and Department to manage fish and wildlife populations in Arizona as a public trust responsibility. As stated in 16 U.S.C. § 1133 of the Wilderness Act of 1964, “Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests”.

As these are Standards, they are absolute requirements. No variance is allowed except through a plan amendment.

The Department generally concurs with the concept that non-indigenous species should not be intentionally introduced into a wilderness area. Forest Service Policy on state wildlife agency terrestrial wildlife introductions in wilderness is set forth in *Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of Land Management*

*Wilderness* (as amended June 2006)<sup>1</sup>, developed jointly by the Forest Service, Bureau of Land Management and the Association of Fish and Wildlife Agencies in all National Forest wilderness units. Section F, Project Implementation, states:

## 12. Transplanting Wildlife

Transplants (removal, reintroduction, or supplemental introduction) of terrestrial wildlife may be permitted if necessary: (a) to perpetuate or recover a threatened or endangered species; (b) to restore the population of an indigenous species; or (c) *to manage wildlife populations in accordance with the States' wildlife populations objectives*. (Emphasis added).

The Arizona Game and Fish Department and Commission have the jurisdiction and responsibility for the protection and management of wildlife and fish populations in wilderness. Forest Service Manual at 2323.32. Application of CNF LRMP Standard 1, "Non-indigenous species shall not be introduced into any wilderness area" and Standard 2, "Reintroductions shall only occur when a species is determined to be indigenous to the area" completely eliminates (c) above, effectively restricting and diminishing the Commission and Department's statutory mandate to manage wildlife populations within designated Wilderness Areas of the Coronado National Forest. As an example, the Department has introduced Dusky Grouse in the Pinaleno Ecosystem Management Area. The Department also manages Merriam's turkeys in the Pajarita Wilderness and has transplanted Gould's turkeys to the sky islands in southern Arizona.

With respect to fish, Section F, Project Implementation of the *Policies and Guidelines* states:

## 10. Fish Stocking

Fish stocking may be conducted by the State agency in coordination with the Federal administering agency to perpetuate or recover a threatened or endangered species, or to reestablish or maintain indigenous fish species. Any species of fish introduced for management purposes prior to wilderness designation may be managed as indigenous fish species if the species is likely to survive. State agencies may continue to stock those waters traditionally stocked prior to wilderness designation.

The CNF Standard, as strictly applied, bars all stocking of non-indigenous game fish in designated wilderness without regard whether such stocking occurred before each wilderness designation. The Department stocked trout in Sabino Creek and Lemon Creek within the Pusch Ridge Wilderness before its 1978 designation as wilderness. The Department is authorized to continue stocking this game fish in these creeks if it elects to do so.

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<sup>1</sup> These Policies and Guidelines are attached as Appendix B to the *Master Memorandum of Understanding between the U.S. Department of Agriculture, Forest Service, Southwestern Region, and the Arizona Game and Fish Commission and Department*,

Nothing in the Wilderness Act authorizes the Forest Service to directly regulate the manner in which state wildlife agencies execute their wildlife management responsibilities, unless the activity involves a prohibited use. The *Policies and Guidelines* states in Section E, General Policy:

State fish and wildlife management activities that do not involve Wilderness Act prohibitions identified in Section 4(c) [of the Wilderness Act] or that are expressly authorized under specific wilderness acts are generally exempt from authorizations by the Federal administering agencies.

The six of the eight Wilderness Act Section 4(c) prohibitions are: temporary roads, use of motor vehicles, motorized equipment or motorboats, landing of aircraft, other forms of mechanical transport, and structures or installations, except as necessary to meet minimum requirements for administration of the wilderness.

The *Policies and Guidelines*, Section F, Project Implementation, Par. 12 does provide that terrestrial wildlife transplants and reintroductions are to be made in a manner compatible with the wilderness character of the area, and that such projects require advance written approval by the Federal administering agency.

The Department further objects to footnote 34 to Standard 1, which reads: "Determination of whether a species is indigenous will be made in consultation and coordination with State game management agencies".

The footnote appears to suggest that the Forest Service will determine whether a species is indigenous to the wilderness area, following consultation with the Department. But the *Policies and Guidelines*, Section E unequivocally states:

The State has the responsibility to make the determination as to which wildlife and fish species are indigenous.

Forest Service Manual (FSM), Title 2641 Wildlife and Fish Stocking and Introductions states: "The State has the responsibility to make the determination as to which wildlife and fish species are native or indigenous."

The *Master Memorandum of Understanding between the U.S. Department of Agriculture, Forest Service, Southwestern Region, and the Arizona Game and Fish Commission and Department*, states in Section II:

A. The U.S. Forest Service agrees:

13. To recognize the Commission's and Department's responsibility to make determinations as to which fish and wildlife species are native or naturalized to the state of Arizona, and in which areas of the state those species should be established or maintained.

This footnote unnecessarily puts the Forest and the Department at odds over management authority of State species in wilderness. Some species may not be considered "native" or "indigenous" because they are not genetically pure strains or because the species cannot be definitively shown to have historically occurred in the habitat where reintroductions are proposed. For instance, in the Pinalenos, five species of trout have historically been concurrently managed by the Department. Two of these are native to Arizona, but one of these may be a different species than historically occurred in the Pinalenos, and one or *all* may be considered "nonnative". The Department recognizes that "indigenous" species are often the most obvious choice for reintroduction but in some cases, native species may have been extirpated but similar species may fill an important ecosystem niche. This is especially true when taxonomic classifications are continually changing.

**HOW THE DECISION VIOLATES LAW, REGULATION OR POLICY:**

Both Standards exceed the authority of the Forest Service under Section 4(c) of the Wilderness Act and encroach on the Commission's authority to manage wildlife pursuant to A.R.S. § 17-231. The Standards further diminish the jurisdiction and management authority of the Arizona Game and Fish Department with respect to wildlife and fish in a manner contrary to Section 4(d)(7) of the Wilderness Act. The Standard is not in compliance with *Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of Land Management Wilderness* Section E, General Policy, and Section F, Project Implementation, and Paragraphs 10 and 12.

Footnote 34 to Standard 1 is not consistent with Forest Service policies, the Forest Service Manual, or the *Master Memorandum of Understanding*.

**SPECIFIC CHANGES SOUGHT:**

Amend the Standards as follows:

Standard 1. ~~"Non-indigenous"~~ Transplants or reintroductions of nonindigenous wildlife species into any wilderness area shall require advance written approval by the Coronado National Forest. Stocking of non-indigenous fish will be determined by the Department in coordination with the Coronado National Forest. The determination as to whether a species is indigenous will be made by the State."

Standard 2. [DELETE in its entirety].

## **OBJECTION NO. 2**

The Department objects to the guideline under Chapter 3, Management Areas, Wildlife in Wilderness, pages 106-107:

### **Guideline**

1. “Non-indigenous species should not be introduced into areas adjacent to wilderness areas when it is likely that individuals of that species will spread to wilderness areas during ordinary life processes.”

### **REASON FOR OBJECTION:**

Section 101(d) of the the Arizona Wilderness Act of 1984 provides:

The Congress does not intend that designation of wilderness areas in the State of Arizona lead to the creation of protective perimeters or buffer zones around each wilderness area. The fact that non wilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundaries of the wilderness area.

### **HOW THE DECISION VIOLATES LAW, REGULATION OR POLICY:**

The Guideline is not in conformance with the Arizona Wilderness Act of 1984, Public Law 98-406 that no buffer zones are to be created around designated wilderness areas.

### **SPECIFIC CHANGES SOUGHT:**

Delete the Guideline.

## **OBJECTION NO. 3**

The Department objects to the standards and guideline requiring a special use permit for “animal collection” in Chapter 4, Geographic Areas, pages 131, 136 and 144:

Page 131, Standard 2. Within South Fork of Cave Creek Zoological-Botanical Area:

- a. A special use permit is required for any plant or animal collection.

Page 136, Standard 1. Within Guadalupe Canyon Zoological-Botanical Area:

- a. A special use permit is required for any plant or animal collection.

Page 144, Guideline 3. Within the Wild Chile Botanical Area:

- d. A special use permit should be issued for any plant or animal collection (excluding traditional uses).

The Department objects to any requirement for a special use permit for “animal collection”. The Department requested this requirement be removed in comments to the Draft LRMP and EIS. The Forest responded:

*Zoological Botanical Areas are areas that the Forest Service has designated to ensure protection of specific biological and zoological communities. They are designated for a special feature such as a rare plant or animal. As such, requiring a special use permit allows the Forest Service to track any plant or animal collections that may have a bearing on the special features of the area. This does not eliminate the requirement to obtain State permission for animal collections in these small research natural areas.*

#### **REASON FOR OBJECTION:**

The requirement for a Forest Service special use permit for “any” animal collection does not appear to be authorized under the Forest Service’s regulations for special use permits, and encroaches on the Commission and Department’s authority to regulate take of wildlife in Arizona.

A Forest Service special use permit is not required for non-commercial recreational activities, including hunting and fishing. 36 C.F.R. § 251.50 (governing Forest Service special use permits) ; Forest Service Manual 2719. Recreational take of wildlife in Arizona, including take of game and nongame species (including amphibians and reptiles) requires a valid Department-issued hunting or fishing license. A state hunting or fishing license is required for any “collection of animals” on Forest Service lands. Except for live bait fish, the take of live wildlife for commercial purposes is prohibited statewide.

Any “take” of wildlife under an Arizona hunting or fishing permit is limited by Commission order authorizing an open season for that species in designated areas not otherwise closed to take, with prescribed bag and collection limits.

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<sup>2</sup> A Forest Service special use permit is also not required if the authorized officer determines that the proposed use “is regulated by a state agency . . . in a manner that is adequate to protect National Forest System lands and resources . . .” 36 C.F.R. § 251.50.

In addition to the Commission regulations and Orders which may already protect the wildlife species of concern to the Forest in these special management areas, the CNF may petition the Arizona Game and Fish Commission pursuant to A.R.S. § 17-304(B) and A.A.C.R. 12-4-610 for an order closing these Special Management Areas to hunting, fishing or trapping.

The LRMP has made no showing that state game and fish laws and regulations governing wildlife or “animal collection” will conflict with the protection of these special management areas. Forest Service Manual at 2643.1 (hunting and fishing on National Forest System Land subject to state fish and wildlife laws and regulations unless in conflict with federal law or land and resource management responsibilities).

Congress has expressed the intent that the states exercise primary authority for wildlife management and conservation on federal lands. See, *e.g.* Pub. L. 106-553, December 21, 2000, 114 Stat 2762; *Defenders of Wildlife v. Andrus*, 627 F.2d 1238, 1248 (D.C. Cir. 1980).

The Joint Policy Statement in the *Master Memorandum of Understanding between the U.S. Department of Agriculture, Forest Service, Southwestern Region, and the Arizona Game and Fish Commission and Department* states that the Forest Service is responsible for managing fish and wildlife habitat and sustainable ecosystems on National Forest System Lands for fish and wildlife, while the Department and Commission have statutory authority and public trust responsibility to manage fish and wildlife populations on Forest lands, including protection of such resources as a public trust. Section II (A)(3) of the MOU recognizes the Commission and Department as having “primary responsibility” for managing fish and wildlife populations consistent with state and federal law, and that the Department’s mandate to manage wildlife populations is to be incorporated where appropriate in Forest Land and Resource Management Plans.

#### **HOW THE DECISION VIOLATES LAW, REGULATION OR POLICY:**

A Forest Service special use permit is not required for hunting and fishing. 36 C.F.R. § 251.50. The regulation of hunting and fishing is the exclusive responsibility of the Department and Commission. Forest Service Policy, as expressed in the *Master Memorandum of Understanding*, recognizes the Commission and Department as having primary responsibility for wildlife population management and conservation on Forest Service lands.

#### **SPECIFIC CHANGES SOUGHT:**

Delete the references to “animal collection” in these two Standards and one Guideline for these special management areas.



#### **OBJECTION NO. 4**

##### **Motorized Transportation System**

The Forest is currently in the process of completing environmental assessments for changes to the motorized transportation system on all five districts. These changes will include closure of many miles of roads currently open to public use, and numerous roads not identified for analysis under the respective EA's. Guidelines in the Forest Plan are components with which a project or activity must be consistent. The Department has consistently requested that all open roads and motorized trails be signed/marked open by the current numbering system, and all roads and motorized trails to be closed or restricted be clearly marked as such.

The Forest responded to the Department's comment on the Draft LRMP requesting a guideline for such signage by stating "The Coronado adheres to national and regional guidance in relation to both publication of the MVUM and also signing related to Travel Management. While we understand the Department's position on the matter we are obligated to adhere to the standards set forth by the USFS in this regard." A guideline was not included in the LRMP.

The Department notes that the Forest does not state that adding such a guideline will violate the Travel Management Rule, national and regional guidance, or standards set forth by the USFS. The Department is not aware of any federal guidance restricting the marking of roads closed to public vehicular travel. In fact, the Sign and Poster Guidelines for the Forest Service (EM-7100-15, "Standards for Forest Service Signs and Posters") section 3A.5 provides guidance on signing routes closed and restricted to public use to wit: *"Selective exclusion signs give notice to road users that CFR orders exclude designated types of traffic from using a road. Selective exclusion signs may be used to supplement travel management decisions or designations on the Motor Vehicle Use Map."*

Chapter 6A of this same document provides examples of signs which may be used to clearly mark roads restricted through travel management decisions. Examples of signs provided include those in 6A3.B (1) such as No Motor Vehicles, No Public Motor Vehicles, etc. Moreover, the introduction to Chapter 6: Travel Management Signing states *"The objective of this chapter is to achieve agency-wide consistency in the use of signs to reinforce travel management decisions so that visitors traveling across the country can expect to encounter similar signing on all national forests and grasslands. Lack of consistency leads to confusion and undermines public support. Public acceptance of travel management decisions is essential to successful implementation of those decisions."* The Department could not agree more.

The Department believes the Forest has the ability to include a decision, in the form of a guideline, requiring projects implemented under the LRMP to clearly mark roads closed or restricting public motor vehicles or open to authorized traffic only. The Department further

believes such a guideline is necessary to eliminate confusion experienced by the public when they encounter unmarked closed or restricted routes.

### **SPECIFIC CHANGES SOUGHT:**

The Department requests inclusion of a guideline in the Forest Plan's Motorized Transportation System section in Chapter 2, page 76 as follows:

5. Roads, trails, and areas closed or restricted from public motorized vehicular travel through travel management decisions, or implementation level plans or projects, should be signed as appropriate following EM-7100-15, "Standards for Forest Service Signs and Posters." Additionally, closed areas which may invite vehicular travel, such as uninventoried or unauthorized routes visible on the ground, should be signed to the extent possible to avoid confusion by the visiting public.

### **OBJECTION NO. 5**

#### **Recommended Wilderness Area Designations**

The Department supports public land use that provides Arizona's public and resources with a net benefit, and opposes the conversion of public lands from multiple-use to land use designations that will result in a net loss of wildlife resources, wildlife-related recreational opportunities, and wildlife-dependent economic benefits.

Despite carefully crafted wilderness designation language and subsequent agreements through Memorandum of Understandings with Federal agencies, wilderness designations inevitably hamper or preclude the Department from achieving its management objectives in such areas, resulting in substantive and costly compliance hurdles that must be addressed before wildlife management actions can be implemented. Based upon its long history of difficulty with wildlife management in wilderness areas, the Department anticipates challenges, complications, or obstruction of its ability to implement the following types of management activities in areas with wilderness designations:

- Use of aircraft for translocations, monitoring, captures, surveys, and research (including overflights, landings, and drones)
- Wildlife research, surveys, scientific sampling, capturing/marketing, and radio telemetry
- Aquatic species management and monitoring including stocking, electrofishing methods, mechanical and chemical stream renovations, and barrier construction and repair.
- Construction, redevelopment, and maintenance of wildlife waters catchments using motorized and mechanized equipment

- Wildlife water catchment monitoring and water delivery by use of motorized vehicles, helicopters, pumps and hoses
- Habitat enhancement, creation and/or restoration projects using mechanized and motorized equipment and prescribed fire
- Emergency translocations and/or removal of fish and wildlife (i.e., due to fire, etc.) when necessary to conserve species of concern, retrieve dead or dying animals for disease testing, retrieve sick or wounded animals, or to prevent transmission of diseases or parasites affecting wildlife and humans. Staging various equipment and vehicles for emergency response
- Fencing to protect wildlife habitats and/or restrict wildlife where mechanized equipment would be required to be used
- Providing salt or other special wildlife habitat features
- Fence removal via mechanized tools
- Removal and/or control of targeted animal species by aerial or mechanized tools
- Aerial introduction, supplementation and translocation of native or naturalized fish and wildlife with mechanized tools
- Aerial predator control or mechanized tools
- Access to existing roads and trails to meet harvest objectives and distribute hunters
- Law Enforcement wildlife investigations and response to illegal wildlife activities by use of motorized equipment
- Creation of alternate access routes to public lands to mitigate private land closures

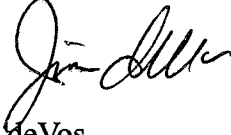
The restrictions outlined above have occurred due to inconsistent interpretations of allowable wildlife management activities in wilderness by USFS Regional offices, by individual Forests, and by USFS employees. In other instances, the Department has experienced significant delays and prohibitions due to inadvertent omissions of necessary wildlife management actions in the enabling and planning documents associated with a new wilderness area.

#### **SPECIFIC CHANGES SOUGHT:**

The Department opposes the recommended Wilderness Area Designations as they impact the Department's ability to fulfill its public trust responsibilities. The reviewing officer must remand the FEIS and LRMP to the deciding officer to comply with the CEQ requirements set forth in this appeal. The lands under the jurisdiction of CNF provide essential habitat for Arizona's wildlife and opportunities to the public for wildlife-dependent recreation. These non-mechanized designations will eliminate public motorized and mechanized access which is needed for management of wildlife resources in Arizona. For big game species, harvest of animals through lawful, regulated hunting is integral to meeting population and habitat objectives. Motorized and/or mechanized access by the public is essential to access hunting areas, provide sufficient dispersed camping associated with hunting, and retrieve legally-taken animals from the field.

The Department hereby submits this Appeal of Decision pursuant to 36 CFR 219.17(b)(3) (2012 planning rule) and 36 CFR 219.35, Appendix A (2000 planning rule, as amended July 2010).

Sincerely,



Jim DeVos

Assistant Director, Wildlife Management Division

**Citations**

Arizona Game and Fish Department. 2010. Letter to CNF, Comments on the Coronado National Forest Working Draft Land and Resource Management Plan (includes comment table). Dated April 27, 2010

Arizona Game and Fish Department. 2014. Letter to CNF, Comments on Draft Forest Land and Resource Management Plan and Environmental Impact Statement (includes comment table). Dated March 3, 2014.

USDA, Forest Service Coronado National Forest. 2018. Land and Resource Management Plan. Appendix J. Arizona Game and Fish Department Comment Letter and Responses. MB-R3-05-16. Dated April 2018.

USDA, Forest Service. 2013, EM7100-15. Sign and Poster Guidelines for the Forest Service.

United States of America, 88th Congress. 1964. Wilderness Act. Public Law 88-577 (16 U.S.C. 1131-1136) September 3, 1964.

USDA, Forest Service, 1995. Forest Service Manual, Washington.

Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of Land Management Wilderness. (AFWA/USFS/BLM Wilderness MOU.) June 30, 2006.

AGFD M18-06155414