



November 16, 2007

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Sent via certified mail

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Re: REQUEST FOR IMMEDIATE CLOSURE OF SEGMENTS OF THE SAN FRANCISCO AND BLUE RIVER CORRIDORS TO MOTORIZED RECREATION USE

Dear Supervisors:

On behalf of Amigos Bravos, Arizona Wilderness Coalition, the Center for Biological Diversity, Forest Guardians, the Gila Conservation Coalition, Grand Canyon Wildlands Council, New Mexico Wilderness Alliance, Sierra Club, Sky Islands Alliance, the Upper Gila Watershed Alliance, and the Wilderness Society we respectfully request that the Forest Service protect National Forest lands along the San Francisco and Blue Rivers (hereinafter "Frisco-Blue Area") by immediately closing these areas to motorized recreation.

Specifically, we are requesting that the Forest Service: (1) close the San Francisco River and its environs to motorized recreation use from the Apache-Sitgreaves National Forest (ASNF) boundary near Clifton to the Martinez Ranch (11.6 miles); (2) maintain the existing ASNF closure from the Martinez Ranch to the Arizona-New Mexico border (10.4 miles); (3) maintain the existing but distinct Gila National Forest (GNF) closure from the Arizona-New Mexico border to Mule Creek (6.6 miles); (4) close the San Francisco River and its environs to motorized recreation use from Mule Creek to the San Francisco Hot Springs (10.3 miles); (5) close the San Francisco River upstream from private land above the Hwy 180 ("Alma") bridge up to where the river crosses State Hwy 435/FR141 approximately 6 miles south of Reserve (19.2 miles); (6) close the San Francisco River through the "Frisco Box" upriver from private land at the northern terminus of FR 41 up to private land at the eastern terminus of FR 210 (5.9 miles); (7) maintain closure of the Blue River and its environs from its confluence with the San Francisco River up to the boundary of the Blue Range Primitive Area (14.6 miles); (8) close Big Dry Creek from its confluence with the San Francisco River to its intersection with Little Dry Creek and close Little Dry Creek from its intersection with Big Dry Creek to the gate that currently exists on FR 68 denoting a boundary between public and private land (4.6 miles). *See Appendix C, Map #2.* Please note that these requested closures (totaling 83.2 river miles and associated environs) do

not include private parcels throughout these areas and that we would expect the Forest Service to still maintain access for administrative purposes where necessary.

We also ask that the Forest Service:

- (1) Maintain the Frisco-Blue Area closures pending completion of the travel planning processes currently underway by the Apache-Sitgreaves and Gila National Forests;
- (2) During the travel planning process, designate the Frisco-Blue Area closures as permanently closed to motorized recreation use;¹ and,
- (3) Manage the Frisco-Blue Area for its outstanding ecological, biological, and quiet recreational values.²

We submit this request for three reasons.

First, immediate action is necessary to protect ecological, biological, and quiet-use recreational values from adverse motorized recreation impacts to the San Francisco and Blue rivers. *See* Executive Order 11644, § 9, as amended (obligating Forest Service to close areas suffering from considerable adverse impacts to motorized recreation use); 36 C.F.R. §§ 212.52(b) (same), 261.50 (providing discretionary authority to restrict motorized recreation use). The adversely impacted values consist principally of the rivers themselves, associated riparian systems, and several threatened and endangered species that call these river and riparian systems home. By prohibiting motorized recreation use, these closures serve to prevent further adverse impacts and help secure the ecological and biological integrity of the broader landscape, provide enhanced protection for an interconnected whole, and ensure continued access to the Frisco-Blue Area for quiet-use recreationists.

Second, by taking immediate action, the Forest Service ensures compliance with its myriad of legal responsibilities pursuant to, *inter alia*, the National Forest Management Act (“NFMA”), the Endangered Species Act (“ESA”), and the Clean Water Act (“CWA”). We have a difficult time envisioning how ongoing motorized recreation use in these areas is compatible with federal law. While these areas were designated for motorized recreation use, the validity of these designations is highly suspect given current conditions and the legally-protected ecological, biological, and recreational values that are paramount and have emerged, over time, in the Frisco-Blue Area. Furthermore, even if these designations somehow retain their legal validity, the Forest Service’s acquiescence to ongoing motorized recreational use will invariably “[l]imit” if not “prejudice” the choice of reasonable management options available to the Forest Service in future planning and decision-making processes. 40 C.F.R. §§ 1506.1(a)-(c). This is because

¹ As part of the travel planning process, the Forest Service should prepare a systematic assessment of these important riparian areas to gauge baseline water qualities, the presence and diversity of fish & wildlife, and otherwise assess ecological, biological, and quiet-use recreational values.

² Recommendations (2) and (3) are, of course, actions that should be considered through the Forest Service’s travel and forest planning processes. We articulate them here to illustrate our long-term vision and commitment to the Frisco-Blue Area. Moreover, our requested closures and recommendation (1) are expressly designed to ensure that recommendations (2) and (3) can be properly considered by the Forest Service.

ongoing motorized recreation use, by causing adverse impacts, will not only harm the ecological, biological, and recreational values of the Frisco-Blue Area, but brush up against if not exceed legal thresholds provided by federal law.

For example, if it has not already happened, the cumulative, persistent impact of ongoing uses of the Blue-Frisco Area may eventually violate the Forest Service's responsibility to "conserve endangered species and threatened species" and ensure that management does not "jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species...." 16 U.S.C. §§ 1531(c) (1), 1536(a) (2). As a consequence, future use authorizations in the Blue-Frisco Area may be prohibited because of cumulative adverse impacts caused by motorized recreation that could otherwise have been prevented. Additionally, conservation-oriented management options for the Frisco-Blue Area that we hope will be considered during the travel and forest planning processes could be limited or prejudiced by ongoing motorized recreational use because such use could unacceptably degrade resource values. 40 C.F.R. § 1506.1. As a principle of both ecology and common sense, it is far easier to prevent degradation to the Blue-Frisco Area before it happens than to attempt – with little guarantee of success – to repair it afterwards.

Third, there are extensive, existing opportunities for motorized recreation on both the GNF and ASNF. Specifically, the GNF has 7,500 miles of roads and trails with over 2/3 open to motorized use while the ASNF has 10,500 miles of roads and trails with over 1/3 open to motorized use (Forest Service 2006). Despite their significant size, the Forest Service only has the budget to maintain and enforce a fraction of these route systems; the GNF has a maintenance backlog of \$179,770,423 and the ASNF \$49,437,359 (Forest Service 2006). These opportunities are disproportionate to the amount of users, given that the Forest Service's own studies show that only 1.4% of users on the GNF and 4% of users on the ASNF come to the forest with primarily to ride ORVs (Kocis et. al 2002a; Kocis et. al 2002b). In addition, only 11.3% of visitors to the ASNF and 2.7% of those visiting the GNF even participated in off-road vehicle activities at all (Kocis et. al 2002a; Kocis et. al 2002b)

I. LEGAL FRAMEWORK & POLICY CONTEXT

Unmanaged – and improperly managed – motorized recreation use on our National Forests is a serious, intensifying threat to the health and integrity of our National Forests. Moreover, such use increasingly conflicts with our National Forest's quiet-use recreationists, whether hunters, anglers, hikers, kayakers, rafters, and backpackers – many of which are staff and members of the signatories to this letter. Forest Service Chief Dale Bosworth, explaining that unmanaged off-road vehicle use is a "major threat" affecting our nation's forests and should be "one of the highest priorities for the agency," said it best:

Each year, the national forests and grasslands get hundreds of miles of unauthorized roads and trails due to repeated cross-country use. We're seeing more erosion, water degradation, and habitat destruction. We're seeing more conflicts between users. We have got to improve our management so we get responsible recreational use based on sound outdoor ethics. How do these threats affect outdoor recreation? As I said,

our focus in the Forest Service is on protecting air and water, habitat for wildlife, scenery, and naturalness. That's what people come to the national forests to find—but increasingly they're not finding it. They're not finding it if forests are out of whack and unhealthy. They're not finding it if invasives and loss of open space are driving out our native species. And they're not finding it if stream banks are collapsed, trails eroded, and sensitive meadows degraded because we're not properly managing recreational use.

- Dale Bosworth, USFS Chief, “Ensuring the Future of Outdoor Recreation,” Partners Outdoors, Snowbird, UT (Jan. 11, 2004).

As Chief Bosworth explained, the rapid expansion of motorized vehicle use damages our National Forests.³ Motorized vehicle use carves unlawful, unauthorized routes and trails into our National Forests, triggers erosion and water quality degradation, fragments and degrades wildlife habitat, and creates serious conflicts amongst the hunters, anglers, hikers, kayakers, rafters, backpackers, and other users of our National Forests. Consequently, we implore the Forest Service to close these areas to motorized use – hopefully permanently but, at the least, pending the completion of the travel planning process.

II. THE FRISCO-BLUE AREA SHOULD BE IMMEDIATELY CLOSED TO MOTORIZED RECREATION TO PROTECT THE AREA'S OUTSTANDING ECOLOGICAL & QUIET RECREATIONAL VALUES

A. THESE AREAS HAVE OUTSTANDING ECOLOGICAL & QUIET-USE RECREATIONAL VALUES

The Frisco-Blue Area is a landscape-scale ecological and biological refuge, providing a home for extensive fish & wildlife populations; free-flowing, natural river systems; proximate riparian habitats; and interconnected watershed and forest habitats. See Appendix A & B and http://www.endangerearth.org/orv/Gila_NF/Gila_Big_Dry/. The high-quality nature of these ecological and biological values is reflected in specially-protected lands within the broader Frisco-Blue Area including the Blue Range Primitive Area, wilderness-quality lands contiguous to the Blue Range Primitive Area, several Roadless Areas, and several eligible Wild & Scenic River segments. These specially-protected lands, nestled within the broader landscape, collectively function as building blocks for a more cohesive, forward-looking, conservation-focused management regime in the Frisco-Blue Area.

³ In this document, because resource damage is potentially caused by all forms of motorized vehicles, not exclusive to “Off-Road Vehicles” we use the term “motorized vehicle” to include; off-highway vehicles (OHV), passenger cars, motorcycles, all-terrain vehicles (ATV) and off-road vehicles (ORV), as defined in Executive Order 11644, as amended (1972): “any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.”

The Frisco-Blue Area also provides unmatched opportunities for fishing, hunting and quiet-use recreation. In fact, these unmatched quiet-use recreation opportunities are intimately connected to the Frisco-Blue Area's high-quality ecological and biological values: if Frisco-Blue's ecological and biological values suffer adverse impact, the Frisco-Blue's quiet-use recreational values likewise suffer adverse impacts. Moreover, finding National Forest lands where high-quality, quiet-use recreational opportunities abound – without the conflict triggered by motorized recreation use on the same lands – is far too rare in our ever busier, ever more frantic, and ever more conflict-prone world. The Frisco-Blue Area provides a haven and refuge that reconnects people with the land and water that sustains us all and inspires our collective effort to live ethically and respectfully in our day-to-day lives. The roars of motorized off-road vehicles, and the scars these vehicles place on the landscape and in the hearts of the quiet users, are simply unacceptable in the Frisco-Blue Area. These lands should be left as untrammelled as possible to preserve our collective natural and cultural heritage.

The acute importance of the Frisco-Blue's ecological and biological values is demonstrated by the fact that since the GNF and ASNF Forest Plans were completed, the U.S. Fish & Wildlife Service designated critical habitat for the threatened loach minnow (*Tiaroga cobitis*), a species whose present range is estimated at only 10 percent of its historical range (Propst *et al.* 1988, p. 12). See 72 Fed. Reg. 13356 (March 21, 2007). In designating critical habitat, the U.S. Fish & Wildlife Service identified Complex 4 (the San Francisco and Blue Rivers Complex) as unique loach minnow habitat, stating that, “the Blue River system and adjacent portions of the San Francisco River constitute the longest stretch of occupied loach minnow habitat unbroken by large areas of unsuitable habitat (72 Fed. Reg. 13356 at 13387).

Several other ESA-listed species also inhabit this area and are entitled to protection pursuant to the Forest Service's responsibilities in the National Forest Management Act and the Endangered Species Act. These species, including the endangered Southwestern willow flycatcher (*Empidonax traillii extimus*), the Chiricahua leopard frog (*Rana chiricahuensis*) and the threatened Spikedace (*Meda fulgida*) would benefit from the conservation protections created by this closure.

The Southwestern willow flycatcher (“Flycatcher”) is a migratory riparian-obligate species that breeds in patchy to dense riparian habitats along streams or other wetlands, near or adjacent to surface water or underlain by saturated soil. Dramatic changes to southwestern rivers have, however, degraded this population, eliminating and modifying habitat necessary for the species recovery and very survival (USFWS 2002). According to the U.S. Fish & Wildlife Service, habitat loss and modification constitute the Flycatcher's greatest threat. Motorized recreation, by contributing to habitat loss and modification, and otherwise creating disturbance, also directly threatens the Flycatcher and impedes recovery efforts (USFWS 1995, 2002; Aitchison 1977; Blakesley and Reese 1988; Szaro 1980; Riffell *et al.* 1996).

An immediate closure would assist efforts to protect riparian corridors and therefore key distribution opportunities along the San Francisco and Blue Rivers. As detailed in the Flycatcher's 2000 Recovery Plan, recovery efforts (including the suggested control of off-road vehicles) should be focused on the following units – which greatly overlap our proposed closure

– because “substantial recovery value exists in these areas of currently or potentially suitable habitat (USFWS 2000)”:

- San Francisco River from junction of Forest Road 249 and U.S. Route 191 (AZ) to the confluence of Centerfire Creek (NM).
- San Francisco River from Deep Creek (upstream from U.S. Route 180 bridge) to San Francisco Hot Springs (NM).
- San Francisco River from the Arizona / New Mexico border in T2S R32E to west boundary of Apache-Sitgreaves National Forest T3S R30E (AZ).
- Blue River from Dry Blue Creek to San Francisco River (AZ).
- Tularosa River from Apache Creek to San Francisco River (NM)

Similarly, the Chiricahua Leopard frog (“Leopard frog”) is a riparian-obligate species that depends on a large variety of permanent aquatic habitats including springs, streams, man-made and natural ponds, and lakes. The final listing rule states that habitat modification, loss, and alteration pose a primary threat to the species as evidenced by the fact that riparian and wetland communities throughout the range of the leopard frog have been greatly altered and reduced in size. While the Leopard frog is still extant in the San Francisco and Blue Rivers, overall it is absent from 75% of its historical range and its populations appear to be few, small, isolated, and vulnerable to extirpation. *See* 67 Fed. Reg. 40790 at 40806, 40800 (June 13, 2002).

The Leopard frog’s 2007 Recovery Plan explains that a key cause of habitat loss and alteration is an increase in river sedimentation. Motorized vehicles increase bank instability and erosion, thereby increasing sedimentation. Sediment can alter primary productivity and fill interstitial spaces in streambed materials with fine particulates that impede water flow, reduce oxygen levels, and restrict waste removal, negatively impacting the frog (Chapman 1988).

The Spikedace, a threatened native minnow previously found in the San Francisco watershed, is also susceptible to damage due to increased erosion and siltation. This fish inhabits riffles and runs in shallow flowing waters over gravel, cobble, and sand bottoms. If sediment is deposited and interstitial gravel riffles occupied by the fish are filled in, it may interfere with successful egg deposition and incubation, and thus impact recruitment, population abundance, and age-class structure (Propst *et al.* 1986). Major threats to the fish include habitat alteration and modification, including that caused by excessive sedimentation and the destruction and alteration of riparian vegetation (Douglas *et al.* 1994). Activities (i.e., damming, motorized vehicle use, etc.) that alter natural flow regimes also negatively impact native fishes.

Spikedace recovery efforts center on establishing secure, self-reproducing populations in habitats from which the species has been extirpated. Once such populations are established it will be a clear indication that 1) the biology of the species and the factors negatively impacting it are well understood and 2) management strategies are effective enough that recovery is probable. However, recovery potential is good only if adequate suitable habitat within the present or

historical range is vigorously protected and therefore, available. The Spikedace's 1991 Recovery Plan suggests evaluating the San Francisco River as a potential for re-introduction (USFWS 1991). By imposing this closure, the Forest Service would protect against further alterations of hydrological flows and increased sedimentation that would otherwise induce further degradation of Spikedace habitat and thereby contradict the 1991 Recovery Plan.

The largest and healthiest herd of Rocky Mountain Bighorn Sheep in the Southwest also lives in the 1600-foot deep canyon of the San Francisco (Foreman and Wolke 1992). Common blackhawk, "an obligate riparian-breeding species associated with mature, streamside gallery forests," has a "small New Mexico population [that] is highly vulnerable to alterations or further losses of riparian forest habitat along perennial shallow streams (Schnell 1994)." "This species also has a limited tolerance for humans in breeding areas, where camping or other recreational activities may cause nest abandonment (Schnell 1994)." Beyond sheep and blackhawks, javelina, mountain lion, elk, bald eagle, peregrine falcon, zone-tailed hawks, osprey, Sonoran mountain king snake, Arizonan coral snake, lyre snake, and Gila monster, are also found along these sensitive riparian ecosystems (Foreman and Wolke 1992).

The health of the rivers inhabited by these species is contingent on the ecological and biological security of the broader Frisco-Blue landscape. As noted, the Frisco-Blue Area functions as a landscape-scale ecological and biological refuge, providing a home for extensive fish & wildlife populations; free-flowing, natural river systems; proximate riparian habitats; and interconnected watershed and forest habitats. The myriad of specially-protected lands within the Frisco-Blue Area reflect the landscape's high-quality ecological, biological, and quiet-use recreational values and serve as building blocks for a more cohesive, forward-looking, conservation-focused management regime in the Frisco-Blue Area.

On the ASNF in particular, specially-protected lands abound along the Blue River and its environs. Most notably, the one-of-a-kind Blue Range Primitive Area extends across 180,218 acres. Surrounding the Blue Range Primitive Area are 284,222 acres of ecologically and biologically valuable contiguous inventoried and uninventoried roadless and wilderness-quality lands, including the Pipestem, Mitch Peak, Lower San Francisco and Sunset Inventoried Roadless Areas ("IRAs"). For all of these wildlands, motorized recreation use would cause adverse impacts and could improperly preempt Congressional prerogatives to provide these areas with permanent congressional protection. *Parker v. U.S.*, 309 F.Supp. 593 (D.C. Colo. 1970), *aff'd*, *Parker v. U.S.*, 448 F.2d 793 (10th Cir. 1971).

Stretches of the Blue and San Francisco Rivers are also eligible for Wild and Scenic River designation. Specifically, the Blue River contains three eligible segments: (1) 4.5 miles from the Campbell Blue/Highway 191 Junction to Luce Ranch (eligible Scenic); (2) 19 miles from the Luce Ranch to the Smith Place (eligible Recreational) and (3) 30 miles from the Smith Place to the confluence with the San Francisco River (eligible Wild); the San Francisco River, along its Arizona reaches, contains two eligible segments: (1) 9 miles from the Arizona/New Mexico state line to Harden Cienega (eligible Wild); and (2) 13 miles from Harden Cienega to the National Forest boundary (eligible recreational but potentially wild).

Moreover, both the Blue and San Francisco Rivers are identified in the ASNF Forest Plans as “Priority 1 streams” due to their importance to riparian-dependent threatened and endangered species. As a consequence, the ASNF must “[g]ive preferential consideration to riparian area dependent resources (see [ASNF] glossary) in cases of unsolvable conflicts” and must “[m]anage to maintain or improve riparian areas to satisfactory riparian conditions (see [ASNF] glossary).” ASNF Forest Plan at 121-122; 16 U.S.C. § 1604(i). “Other resource uses and activities may occur” only “to the extent that they support or do not adversely affect riparian dependent resources.” *Id.* The riparian zones along the ASNF’s San Francisco and Blue Rivers – with cottonwood, willow, sycamore, walnut and mesquite (a total of thirty-two broad-leaved trees and shrubs) – are thus of very special biological importance. In addition, the upper stretches of the San Francisco that we have requested for closure (segments #5&6) contain both wilderness quality land and important habitat. Segment 5 includes 9.9 river miles within the Devils Creek Roadless area, is critical habitat for loach minnow and has several Chiricahua Leopard Frog sites while Segment 6 includes 4.9 miles through the Frisco Box IRA, is critical habitat for loach minnow, has several Chiricahua Leopard Frog sites and runs thru a Mexican spotted owl PAC.

The quiet-use recreational opportunities on these lands are highly valued and we work with a host of individuals and organizations who share these values, including birders, hikers, anglers, backpackers and rafters. Indeed, the recreational opportunities are based on the presence of the above-described ecological and biological values and the specially-protected wildlands on both the GNF and ASNF testify to this fact. For example, the Blue River provides peace and quiet to visitors, as well as lush cottonwoods and healthy riparian vegetation teeming with chattering bird communities that have made it an Audubon Society candidate for designation as an Important Bird Area. The San Francisco River provides a remote rafting opportunity when flows are high enough and is also popular for hiking, birding and swimming.

Culturally, the Blue River “has been a significant part of the life for the area since prehistoric times of the Mogollon culture until today” and “there are a number of historic homesteads along the river and a remote Ranger station of the early 1900’s (USDA 1993, p. 269).” Importantly, the “very limited access for vehicle use in the area” has limited, though not eliminated, resource damage (USDA 1993, p. 269). At least as of 1993, “the majority of the river remains uninventoried in terms of formal survey for heritage resources (USDA 1993, p. 270).”

B. AN IMMEDIATE CLOSURE WOULD PROTECT THE FRISCO-BLUE AREA’S ECOLOGICAL, BIOLOGICAL, AND QUIET-USE RECREATION VALUES AND PROTECT THE INTEGRITY OF THE TRAVEL PLANNING PROCESS

There are two related, but distinct types of adverse impacts caused by motorized recreation use to the Frisco-Blue Area that the Forest Service can remedy through an immediate closure. The first type of adverse impacts is the most obvious: impacts to the Frisco-Blue River’s ecological, biological, and recreational values. The second impact is less obvious but no less important: impacts that limit or prejudice conservation-oriented management opportunities that can and should be considered by the Forest Service in the travel and forest planning processes currently underway. Both types of adverse impacts are addressed below.

First, relative to the most obvious facet, the Frisco-Blue Area's outstanding ecological, biological, and recreational values, while resilient, are suffering from considerable, potentially irreparable, adverse motorized recreation use impacts including: (1) crushed vegetation; (2) increased cuts in the bank adding to erosion and increased sedimentation into the river; and (3) a proliferation of multiple, redundant motorized vehicle routes in the river corridor and on the shelves above the river. *See* Appendices A & B.

In particular, while the San Francisco River, upstream from the Blue River, remains relatively well-defined and vegetated, after its confluence with the Blue River, the lower San Francisco River channel becomes a progressively wider, sparsely vegetated expanse of cobble, gravel, boulder, and sand with a braided and shifting wide, shallow, low-flow channel. River terraces, which were only moderately eroded above the mouth of the Blue River, become small, eroding remnants of former river banks. Riparian vegetation is lacking in structural diversity, consisting primarily of seep willow, cottonwood, and nonnative salt cedar (*Tamarix* sp) (Foreman and Wolke 1992). While the lower San Francisco River above Martinez Ranch was closed to vehicle use in 1987, the river below Martinez Ranch is subject to a good deal of use and has several low-water crossings. In fact, between the RU Ranch and Clifton, the Forest Service boasts of the fact that the San Francisco River provides 26 water crossings within a mere 8.7 miles. *See* Appendix F, Rattlesnake Gap OHV Trail Information.

The presence of motorized vehicle use in the same areas of the river suffering degradation is an unlikely coincidence: in conjunction with grazing activities, motorized vehicle use in and adjacent to the river appears to be causing cumulatively significant adverse impacts. As discussed in a 2003 U.S. Fish & Wildlife Service Biological Opinion for the Blue and San Francisco Rivers prepared for 16 grazing allotments on the ASNF:

Human uses of the river and its watershed have resulted in extensive changes within the watershed and river channel over time. Although the proportional contribution of natural forces and human forces in stream channel erosion in the southwest has been widely debated, there is substantial evidence that human activities have been a major contributing factor (Duce 1918, Leopold 1924a, Leopold 1924b, Bryan 1925, Leopold 1946, Hastings 1959, Hastings and Turner 1980, Dobyys 1981, Bahre 1991).

Page 61. The Biological Opinion further states that:

Roads and trails along the river destroyed riparian vegetation, eroded terraces, destabilized streambanks, and channeled floodwaters into new areas thus eroding new channels or widening the existing channel...Numerous low-water ford crossings exist in the upper Blue River contributing to localized destabilization.... In the middle and lower Blue, unauthorized off road vehicle use continues to occur in the river bottom.

Page 63. As for the San Francisco River, the Biological Opinion concludes that:

Present uses of the San Francisco River watershed and valley bottom within the action area continue to contribute to the deteriorated condition of the river, although at a level reduced from that of the late 1800s to early 1900s. Road, and grazing activities within the watershed continue to contribute to erosion, vegetation change, and alteration of the hydrologic regime.

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On the GNF, in a letter dated October 17, 2007, the Center expressed its concerns over apparent illegal livestock trespasses. *See Appendix D: Gila NF Grazing Trespass Reporting.* While portions of the San Francisco and Blue Rivers have been closed to grazing since 1998, resulting in the recovery of vegetation and the riparian ecosystem as a whole, the system has not yet completely recovered and it is incumbent upon the Forest Service to prevent further illegal livestock trespasses. Regardless, adverse impacts from motorized recreation use are harming these recovery efforts and must be immediately addressed. Similar to the effects of grazing off-road vehicle use damages vegetation thereby exacerbating bank instability and leading to increased erosion and sedimentation. While an integrated, comprehensive solution to these impacts may be warranted, investment in such a solution does not excuse the need for immediate action.

It is on this count that the second, less obvious adverse impact caused by motorized recreation use in the Frisco-Blue Area comes into focus: the Forest Service may hamstring its ability to take future corrective action if immediate closures are not put in place. Immediate action ensures that an integrated, comprehensive solution can be considered and adopted through the travel or forest planning processes without being limited or prejudiced by adverse impacts.⁴ 40 C.F.R. § 1506.1. What is perhaps most troubling is that the Frisco-Blue Area may not be suffering from a static level of adverse impacts but, rather, from ever-intensifying adverse impacts. At some juncture, motorized recreation use and other human activities will – if they have not already – cause permanent, irreparable harm to the Frisco-Blue Area’s ecological, biological, and quiet-use recreation values. Immediate action would prevent such harm. Moreover, existing designation decisions and allowances for ongoing motorized use are, we believe, legally suspect and do not appear consistent with the Forest Service’s duty to prevent considerable adverse impacts (Executive Order 11644, § 9 as amended), do not appear to actually minimize impacts to ecological, biological, and quiet-use recreation values (Executive Order 11644, § 3, as amended), and do not appear to comport with significantly changed circumstances and new information – in particular ESA-based protections – for the Frisco-Blue Area (40 C.F.R. § 1502.9(c)(ii)). Immediate action would ensure that the Forest Service can properly address these issues through the travel and, if necessary, forest planning processes.

⁴ In this context, the GNF and ASNF’s travel planning processes should proceed cautiously given that travel planning is no longer conducted as part of broader NFMA forest planning. Instead, NFMA forest planning is a separate process. As we understand the Forest Service’s position, revised Forest Plans will constitute ‘strategic’ decisions while TMR decisions constitute ‘tactical’ decisions. Our concern, therefore, should be obvious: ‘tactical’ decisions should not compromise or delimit the reach of ‘strategic’ decisions before such ‘strategic’ decisions are identified and defined.

Our request thus reflects the common-sense proposition that an immediate closure would not forever preclude motorized recreation in the Frisco-Blue Area but, instead, merely maintain current ecological and biological conditions and give the area a temporary rest pending the completion of the travel planning and, if necessary, forest planning process. In so doing, the Forest Service can give the public an opportunity to advocate for the Frisco-Blue Area's long-term protection and restoration. For example, Don Hoffman has submitted recommendations to the ASNF asking the Forest Service to protect roadless- and wilderness-quality wildlands. *See* Appendix E: Don Hoffman Submissions to Forest Service, including comments and associated maps emailed to Evelyn Treiman on 10/20/2007. Adverse impacts from ongoing motorized recreation use could preclude these types of conservation-oriented management recommendations.

Our request also reflects concern over the possibility that the Forest Service is preemptively increasing interest in the Frisco-Blue Area for motorized recreation use and thereby encouraging, perhaps unwittingly, the motorized recreation community's use of this area. Such counterproductive action could create expectations of permanent use by the motorized recreation community and, as discussed above, cause adverse impacts to the Frisco-Blue Area's ecological, biological, and quiet-use recreation values.

In particular, on the GNF, it appears that the Forest Service may reach predetermined motorized designation decisions for the San Francisco River and Big Dry Creek (FR 68) prior to the completion of the travel planning process. Specifically, at a meeting with Glenwood District Ranger Pat Morrison and NEPA coordinator Lisa Mizuno, the District Ranger clearly stated that she had already made her decision about this area: she will keep Big Dry Creek open as a "road" available to motorized recreation use because she claims that it is the only public vehicular access to the San Francisco River on the GNF. This effectively guarantees motorized recreation use – legal or otherwise given the GNF's limited enforcement resources – in some portion of the San Francisco River. The Forest Service's apparent predetermined decision is compounded by the fact that the Mogollon Rim Trail Riders and the Gila Roads and Trails Association have posted signs along the river letting asking people to contact the Forest Service to request that it remain open. *See* Appendix A, Photo 17. Overall, this alignment of interests between the Forest Service and motorized recreation interests threatens to turn the travel planning process into a farce.

On the ASNF, local ATV riders have requested the creation and designation of a motorized recreation trail up the Blue River where, currently, it is closed to ORV use and where there is no trail, route, road or even a corridor, other than the river itself. *See* Appendix B, Photos 16-20. The Forest Service has unfortunately displayed this trail on its "public comment" maps on its travel management planning website and we have found the ASNF's response to our written concerns less than convincing.⁵ *See* Appendix C, Map # 5. Signs are also posted in nearby campgrounds on the ASNF touting the "Rattlesnake Gap Trail," including a portion that spans

⁵ On July 20, 2007, the Center for Biological Diversity, Sky Islands Alliance, Arizona Wilderness Coalition, Sierra Club, Grand Canyon Wildlands Council, White Mountain Conservation League, and White Mountain Audubon Society wrote Supervisor Zieroth to express their concerns that these maps did not properly reflect the Forest Service's travel planning and conservation responsibilities. On July 31, 2007, the Western Environmental Law Center, on behalf of the Center, submitted a follow-up letter expressing similar concerns as well as additional concerns based on a July 24, 2007 letter by Supervisor Zieroth's responding to the group's July 20, 2007 letter.

the length of the San Francisco River from Clifton to the Martinez Ranch which is described as having “more river crossings than miles.” *See* Appendix F, Rattlesnake Gap OHV Trail Information. These very same signs – stating that “because of this sensitive habitat for fish and other riparian life, this route could be subject to seasonal closures” – support our claims that these areas are sensitive, too sensitive, in our view, to be subject to the adverse impacts caused by motorized recreation use. *See* Appendix F, Rattlesnake Gap OHV Trail Information.

Again, unmanaged motorized recreation is, by the Forest Service’s own admonition, one of the four “major threats” to our National Forests. This threat is, right now, manifesting itself in the Frisco-Blue Area. We hope the Forest Service takes responsibility and acts now.

E. APPLICABLE LAW & FOREST SERVICE REGULATIONS AUTHORIZE IF NOT REQUIRE IMMEDIATE CLOSURE OF THE FRISCO-BLUE AREA

In submitting this request, our hope is that the U.S. Forest Service will work with us to secure both interim and long-term protection for the Frisco-Blue Area’s ecological, biological, and quiet-use recreational values. Such protection and restoration is fully in-line with the Forest Service’s authority and obligations.

The Forest Service may, by order, “close or restrict the use of described areas within the area over which he has jurisdiction.” 36 C.F.R. § 261.50. Such “[a]n order may close an area to entry or may restrict the use of an area by applying any or all of the prohibitions authorized in this subpart or any portion thereof.” *Id.* In addition, “each Forest Supervisor may issue orders which close or restrict the use of any National Forest System road or trail within the area over which he has jurisdiction. (36 C.F.R. § 261.50 (b)).”

Here, a closure can be affected through such an order but, importantly, is also required by law if the Forest Service “determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands” Executive Order 11644, § 9, as amended; *see also* 36 C.F.R. § 212.52(b). Notably, such mandatory closures must remain in effect “until such time as [the Forest Service] determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.” *Id.*

These legal authorities and responsibilities should be understood relative to the Forest Service’s broader legal authorities and responsibilities to protect the Frisco-Blue’s ecological, biological, and quiet-use recreational values – especially given that these values revolve heavily around water. The Organic Act of 1897 provides that National Forests are designed “to improve and protect the forest” and to “secure[e] favorable conditions of water flows...” 16 U.S.C. § 471. In fact, “[t]he legislative history of the 1897 Organic Act indicates that many congressmen considered watershed protection to be the paramount, if not exclusive, purpose of established forest reserves.” (“Wilkinson & Anderson”). The Multiple Use and Sustained Yield Act of 1960 (“MUSYA”) expressly states that a multiple use of National Forests includes “watershed ... purposes.” 16 U.S.C. § 528. NFMA, building off MUSYA, “complement[s] and expand[s] the directive of the 1897 Organic Act to protect watersheds.” Wilkinson & Anderson at 209. NFMA also, notably, mandates that the Forest Service “provide for diversity of plant and animal

communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives.” 16 U.S.C. § 1604(g)(3)(B).

These Forest Service-specific laws link to the CWA. The Forest Service is “subject to” and must “comply with” the CWA. 33 U.S.C. § 1313. Importantly, the CWA looks unkindly on ongoing resource degradation, providing a forward-looking objective “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251. To achieve this objective, the CWA authorizes each state to develop water quality standards for the state’s waters. 33 U.S.C. §§ 1311(b)(1)(C), 1313. Where waters fail to meet water quality standards, they are considered ‘impaired waters,’ listed in accord with 33 U.S.C. § 1313(d), and subject to Total Maximum Daily Loads. Where water quality standards are being met, the Forest Service does not have carte blanche authority to allow degradation to the point of impairment but must, instead, comply with anti-degradation protections for water quality. 40 C.F.R. §§ 131.12(a)(1)-(3). As explained by the Environmental Protection Agency, “Anti-degradation implementation is an integral component of a comprehensive approach to protecting and enhancing water quality.” EPA, Water Quality Standards Handbook, 2d. Ed. at 4-1 (Aug. 1994). Where FS actions involve a “discharge of a pollutant,” arguably encompassing road features or activities intended to direct runoff, the Forest Service must obtain a permit pursuant to the National Pollutant Discharge Elimination System. 33 U.S.C. § 1342.

The ESA is, here, also obviously relevant. As noted above, Forest Service must “conserve endangered species and threatened species” and must ensure that management does not “jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species....” 16 U.S.C. §§ 1531(c)(1), 1536(a)(2). In meeting these requirements, the ESA provides other significant protections to ESA-listed species that must be complied with. *See* 16 U.S.C. §§ 1531 *et seq.*

III. CONCLUSION

We, the undersigned groups, therefore respectfully ask the U.S. Forest Service to immediately close the unprotected lengths of Big Dry Creek (FR 68), the San Francisco River, the Blue River, and its adjacent corridors to motorized use, as described above and with the exception of necessary administrative access. We thank you for your prompt attention to this matter and look forward to a meaningful dialogue with the Forest Service. At the least, we would appreciate a timely, written response outlining the Forest Service’s plan to respond to our request. Please contact Chris Kassar (520.609.7685 or ckassar@biologicaldiversity.org) for further information or to arrange a meeting or field trip to discuss our request and recommendations for the Frisco-Blue Area.

Sincerely,

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Enclosure: CD with Appendices

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