

TO: Forest Supervisor and Reviewing Officer Kerwin S. Dewberry

This is an objection to the proposed South Fork Day Use Area project as described in the Draft Decision Notice of Coronado National Forest Douglas District Ranger Ruppel and Final Environmental Assessment (FEA) for the project publicized June 16, 2021 in the Herald/Review Cochise county edition.

We filed comments with the USFS on this proposed project (NEPA #56779) upon initial scoping (Nov. 3, 2019) and draft environmental assessment (Sept. 7, 2020).

We respectfully acknowledge the time and effort the USFS has dedicated to considering many aspects of this proposed project and reviewing the comments on it. However, we challenge the Draft Decision on five grounds:

- 1) The USFS's premise for action is a need for the "replacement" of a facility that has not existed for 7 years; the "baseline" for USFS consideration should be current facts, not the context pre-2014 or even of the 1930s. Environmental conditions and considerations have evolved. Therefore, the USFS has erred by not treating the South Fork Day Use project as new construction.
- 2) Even if USFS relies on a faulty premise of "replacement," it has failed to provide substantial evidence that the project is necessary.
- 3) The USFS has failed to offer substantial evidence of funding to maintain the new South Fork Day Use project and in fact suggests reliance on third-party private funding without specifying that commitment, raising the risk of an operational and maintenance hazard that would degrade South Fork.
- 4) The USFS Draft Decision is arbitrary and capricious because it ignores the need for an Environmental Impact Statement (EIS) for new construction in South Fork, a world-renowned birding location, which the USFS itself recognized in 1986 as a special Zoological-Botanical Area (ZBA). Furthermore, the South Fork ZBA is subsumed within a larger proposed ZBA for Cave Creek Canyon Birds of Prey which, according to the USFS "hosts the densest known population of nesting raptors in the U.S." Moreover, the construction, and the sparks it could ignite, would be during 25 years of extended drought and heat across the Southwest. If such conditions do not necessitate at least the precautionary step of an EIS, one could reasonably ask where and when USDA and USFS will apply the law.
- 5) The combination of these failures underscores that USFS has never treated "No Action" as a serious option. The USFS has in effect defined the construction project to exclude the alternative of not building and instead relying on existing facilities. Therefore, USFS assumes new risks and costs, including spending money for construction and regular maintenance from uncertain sources. The USFS imperative to build something that is not needed adds to a finding of arbitrary and capricious action.

1)The USFS Draft Decision mandates construction of a New Site, not a "replacement"; therefore, USFS bases its analysis on a faulty premise.

USFS states that its proposed new construction is a "replacement." But the Draft Decision in fact would "replace" facilities that have not existed since Hurricane Odile in 2014. In April 2018, four years after that hurricane, the USFS issued a Forest Plan (CNF Land & Resource

Management Plan MB-R3-05-15) that did not mention the lack of facilities in South Fork or the need to replace the picnic benches and parking destroyed by that storm. To the contrary, the USFS deemed the level of services “sufficient/adequate and no change necessary.” The USFS did not list South Fork among recommended projects. Now the USFS has determined that new construction on a new site is a “replacement”. The new location, unlike the pre-2014 site, is not even a trailhead.

When we and other commenters raised the objection that USFS was proposing a new structure at a previously undisturbed location, USFS responded that the new construction “does not deviate from the baseline conditions.” What baseline? The USFS’s own report of 2018 did not identify a need for replacement of facilities.

At the time that the modest tables and parking were built in South Fork (during the 1930s) environmental science was rarely considered. South Fork was not a ZBA, and there were no specific protections for Birds of Prey. Yet the USFS fails to recognize that changed circumstances require reassessment of facilities and consideration of other ways to accommodate visitors nearby, but outside, South Fork itself.

We have no objection to replacing the old picnic area where it was before, with the same placement of tables and a newly graded road to it. That would be a “replacement”.

We also have suggested that visitors could be directed to use existing or expanded toilets a half mile away at the Sunny Flat campground.

Since the alleged need for more facilities concerns only a few months each year of prime birding season, the USFS could consider relying on vans, running from the Visitor Information Center (VIC) 3 miles away, for visitors to South Fork. The U.S. Park Service has used this option to limit roads and parking at popular sites. Birding groups often use vans.

By basing its Draft Decision on a faulty premise of “replacement”, USFS unreasonably constrained its consideration of such alternatives and failed to consider the costs and risks of this new construction project at a previously undisturbed, natural location.

2) The USFS has not provided substantial evidence that the project is necessary.

We asked specifically in our comment filed Sept. 2020: “Why does Cave Creek Canyon, and especially the South Fork riparian area, need new construction?” The USFS IDT statement of June 2021 says “Per FSH 1909.15 Chapter 10 sec. 11.21, the Forest (sic) discusses the purpose and need through the relationship between the existing conditions and the desired conditions. The needs identified why the Forest (sic) is considering taking action. These needs identified resource conditions that are undesirable and need changing.”

This language suggests the need to attain some “desired conditions.” The FEA (p.2) claims “The need for this project is driven by the imbalance between visitor use and the level of services provided in the South Fork of Cave Creek Canyon.” The Draft Decision and FEA state that South Fork experiences “high visitor use [with] the number of visitors continuing to increase annually.”

Yet the USFS fails to provide any evidence of need specific to South Fork and provides minimal – certainly not substantial – evidence of the need for new facilities in all of Cave Creek Canyon.

The USFS provides no evidence of its own. The USFS refers to a “traffic ticker,” but does not indicate where it was, how long it was in place, or what it revealed. There is no log of USFS ranger hours directing traffic at South Fork. There is no record of trash collection specific to

South Fork. Because USFS does not have its own evidence, the Draft Decision references data kept by Friends of Cave Creek Canyon (FOCCC) at the VIC – three miles away from South Fork. Since these data begin in 2014-15, it cannot be the basis for comparison with pre-Hurricane visitation and the need for “replacement.” More importantly, the VIC is not in South Fork. The VIC is at the opening to the Canyon, three miles distant. The VIC hosts a gift shop, restrooms, live animal displays, a native garden, and parking – all of which would increase numbers of visitors. No one at the VIC registers visitors by state of origin, time spent in the Chiricahuas, or anything else. Many local events have been held at the VIC. Furthermore, the FOCCC, which submitted the data, has supported a South Fork Day Use project since January 2019. USFS has not faced the obvious conflict in relying solely on evidence submitted by an advocate for the project.

In the absence of any evidence about visitation in South Fork and questionable data about visitors to Cave Creek Canyon, USFS reaches for data on the population of Arizona, the southwest, and international tourism. If the U.S. Government justifies projects based on the growth of these data, it could rationalize any expansion. The USFS notably ignores that the population of the town of Portal, at the mouth of Cave Creek Canyon (the “community” the Forest Plan intends to oblige) has been falling.

Our call for specific evidence is important because USFS bases its construction plans upon conclusions about particular needs. We have no evidence that USFS’s new parking lot (11 bays) will prevent roadside parking or parking at the South Fork berm (about 1 mile away), or between FR42 and the proposed gate and new parking area.

Furthermore, the USFS does not provide data indicating that the portable toilets at the berm have been insufficient or poorly serviced, or any scientific data on water contamination traced solely to South Fork visitors. Ironically, the USFS owns and leases a cabin near the berm with an outhouse/privy that could be the source of water contamination.

The USFS notes that FOCCC is withdrawing support for the portable toilets – at the same time that some FOCCC members have called for a South Fork Day Use project. If the USFS is willing to consider new construction, it should be willing to consider the less costly, lower impact option of maintaining portable toilets by the berm. Indeed, the USFS already has a cabin at that location that could be part of the facilities, whether considered “replacement” or new.

Moreover, because USFS relies on third-party data from a location 3 miles distant from South Fork, it should be willing to consider options a half-mile distant from South Fork – specifically, the existing toilets and parking at Sunny Flat. In response to our suggestion of this alternative, USFS asserts: “The geographic boundary of this project is the South Fork of Cave Creek Canyon. Alternatives proposed outside of the South Fork of Cave Creek Canyon were eliminated as they do not address the purpose and need.” Therefore, USFS will rely on uncertain data from 3 miles away, but not consider use of a concrete alternative within a half mile. This is bureaucratic nonsense.

3). The USFS has failed to offer substantial evidence of funding to maintain the new South Fork Day Use [facility], and in fact raises the risk of an operations and maintenance hazard.

The Draft Decision acknowledges that its “[l]anguage regarding Operations and Maintenance (O &M) costs ... caused confusion and misinterpretation.” Furthermore, the Draft Decision states “it was speculative to assume the sustainability of funding sources from FOCCC

or the USFS in the timeframe analyzed.” Who, then, will pay for construction and O&M to ensure that the new site does not become a hazard, one that risks pollution or damage to the rare South Fork ecosystem?

As a “Day Use” project, USFS would need to monitor the new site regularly and prevent use at night. It will have to collect trash, check toilets, and assure gate closures. The USFS states that it will monitor “social trails”, which are a certainty given human nature and the temptation to investigate the creek from the parking/picnic area.

The Draft Decision refers to modified language in the FEA about O&M costs. The revision notes uncertainties about FOCCC funding. It then states, “Potential funding changes could result in negative impacts such as a decline in maintenance....” Precisely. As for assurance that USFS will pay for O&M to prevent such “negative impacts,” the FEA notes the USFS must “constantly evaluate” its “financial capacity.” The FEA acknowledges that potential changes “after 10 years would require a new NEPA analysis.” Within 10 years, South Fork’s rare ecosystem and location for rare and migratory birds could be lost. As noted below, USFS’s own assessment of these O&M risks and costs adds to the necessity of undertaking an EIS.

Furthermore, the FEA still seems to be relying on FOCCC for construction and O&M costs for at least 10 years. In its October 2019 newsletter FOCCC stated “This project will be paid for by FOCCC and the funds FOCCC raises.” Some members of FOCCC did not canvass other supporters before making this statement. We and (we believe) other supporters of FOCCC oppose the project and will not contribute to it. Recent communications from FOCCC now cast doubt on its financial commitment. Given the absence of a firm commitment to finance maintenance of the new facilities, the USFS risks creating a new budget expense to which it cannot commit.

4) The USFS Draft Decision is arbitrary and capricious because it ignores the need for an EIS for new construction in a world-renowned birding location, which the USFS itself has recognized as a Zoological-Botanical area.

The USFS Forest Plan of 2018 notes that “This special area supports unique flora and fauna, including essential habitats for threatened and endangered plants and animals.” The term “special areas” has particular implications for USFS: The Forest Plan defines the desired conditions for “all special areas” as “[g]enerally unmodified environments in which unique natural features are preserved” (emphases added).

Further, the USFS classifies South Fork Cave Creek as “scenic” versus recreation, while recognizing outstanding recreational benefits such as hiking trails. As the FEA explains, “recreation” is an additional objective, to be considered only if it can be increased without damage. Yet the South Fork Day Use project is a major new modification and facility that will cause damage.

The USFS has designated South Fork as a “world class birding site” and ZBA since 1986. The South Fork ZBA is within a proposed larger ZBA for Birds of Prey, backed by research that the canyon “harbors the densest known population of breeding raptors in the U.S.” The Birds of Prey ZBA is dependent upon “the rare riparian setting” — of which South Fork is a critical part.

The FEA conducted surveys for wildlife and flora during one of the worst droughts in 20 years. It cites a long list of possibly affected flora and fauna in the project area, concluding for most that the species “may”, but are “unlikely” to, be adversely affected by the project. The

FEA offers no reasons for its conclusions. It fails to consider that with a richly long list of at-risk species, at least one is likely to shift from the "may" to "will" be affected column.

Ironically, the USFS also states that the new Day Use site might "take some pressure off other sites in Cave Creek Canyon during the busy spring birdwatching season." Therefore, after repeatedly stressing that its proposal only pertains to the South Fork area, and not considering alternatives outside that area, the USFS justifies new construction at South Fork in order to lessen visitor impacts elsewhere.

The FEA also does not acknowledge current ecological conditions in South Fork and Cave Creek Canyon as a whole. The area is in the midst of a 25-year drought. Temperatures across the Southwest have topped records. Construction machinery and work often create sparks that could ignite. Work crews would add to the dangers.

If the conditions in such a rare zoological and ecological area – as USFS has found – do not necessitate at least the precautionary step of an EIS, one could reasonably ask when USDA and USFS will apply the law. By proceeding without an EIS, the USFS is acting arbitrarily and capriciously within the meaning of the Administrative Procedures Act (APA) and NEPA.

5) The combination of these failures underscores that USFS has never treated "No Action" as a serious option; its self-imposed imperative to build something adds to a finding of arbitrary and capricious action under the APA.

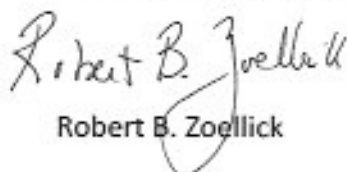
The Draft Decision states that it did not select "No Action" because such a course would not meet "the mission of the Forest Service" or "achieve the goals necessary to move toward desired conditions as described in the forest plan." Further, it concludes that "no commentators suggested viable alternatives to the draft proposed action that sufficiently addressed the purpose and needs of the project."

This is a tautology because the USFS has defined the project to exclude alternatives within a half mile – for example, at Sunny Flat campground.

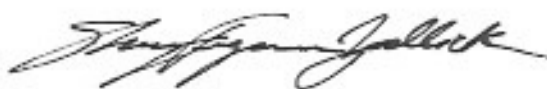
Further, the USFS does not explain why maintenance of the portable toilets at the berm on South Fork would not suffice.

The USFS then treats new construction of a parking lot and facilities over a mile away from the former picnic benches at a trailhead as a "replacement" for the loss of that site seven years ago. It relies on no evidence of its own and insubstantial evidence, gathered by an advocating party, from a location 3 miles distant. It fails to answer important questions of financing for O&M, which, if not provided, will create a hazard and degrade South Fork. While recognizing South Fork's rare ecological and zoological resources, USFS will construct without an EIS.

Unaccountably, USFS seems intent on building something – to spend money – because it has decided some action is necessary. Why not leave a rare natural area alone? Such an agency action is arbitrary and capricious within the meaning of the law.



Robert B. Zoellick



Sherry Ferguson Zoellick

July 18, 2021

627 Chain Bridge Rd. McLean VA 22101
703-248-0462