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Copy of Letter sent to:

John Horning, Forest Guardians  
Joane Berde, Carson Forest Watch  
Sam Hitt, Wild Watershed

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED**

RE: Correction: Appeal #04-03-00-0002-A215, Agua Caballos Project, Carson NF, El Rito RD,  
FG-Horning, CFW-Berde, WW-Hitt

Dear:

My letter of August 26, 2004, incorrectly identified the project document as an environmental assessment. The document reviewed was a Final Supplemental Environmental Impact Statement, with the decision document being a Record of Decision. The following text shows this correction. The Appeal Reviewing Officer's letter was correct, and no new recommendation letter is needed.

This is my review decision on the appeal filed regarding the Record of Decision (ROD) and Final Supplemental Environmental Impact Statement (FSEIS) on the above-referenced project, which provides for harvest on 3,884 acres (mainly thinning and small wood removal) for 6.4 MMBF commercial volume; prescribed burning on 2, 065 acres; and old growth allocation and other activities on the El Rito Ranger District, Carson National Forest. Three miles of road construction, 16.7 miles of reconstruction, 20 miles of temporary roads, and 43 miles of existing road closures will be done as part of this project.

### **BACKGROUND**

Forest Supervisor Martin Chavez made a decision on April 13, 2004, for the Agua Caballos Project. The Forest Supervisor is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR § 215 appeal regulations.

Pursuant to 36 CFR § 215.17, an attempt was made to seek informal resolution of the appeal. The record indicates that informal resolution was not reached.

My review of this appeal has been conducted in accordance with 36 CFR § 215.18. I have reviewed the appeal record, including the recommendations of the Appeal Reviewing Officer. My review decision incorporates the appeal record.

### **APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The Appeal Reviewing Officer found that: a) the decision logic and rationale were generally clearly disclosed; b) the benefits of the proposal were identified; c) the proposal and decision are



consistent with agency policy, direction, and supporting information; and d) public participation and response to comments were adequate.

**APPEAL DECISION**

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm with instructions the Responsible Official's decision on the Agua Caballos Project.

I am hereby instructing the Responsible Official to add to the project record all the files referenced in the MIS report and FSEIS used as source data for the MIS population and habitat analysis. My review and findings highlight background data to be added, which is shown as "(filed at Forest, no PR #)," but is not meant to be an exhaustive list of all surveys, information, and data that were used.

This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR § 215.18(c)].

Sincerely,

/s/ Abel M. Camarena  
ABEL M. CAMARENA  
Appeal Deciding Officer,  
Deputy Regional Forester

Enclosure

cc: Mailroom R3 Carson, Martin D Chavez, Constance J Smith, Leonard Lucero

## REVIEW AND FINDINGS

of

**John Horning's, Sam Hitt's, and Joanie Berde's**

**Appeal #04-03-00-0002-A215**

**ISSUE 1: The Agua Caballos Project violates the National Forest Management Act (NFMA). The Agua Caballos Project fails to provide for the diversity of plant and animal communities in the planning area and fails to insure the maintenance of viable wildlife populations.**

**Contention A:** The Agua Caballos Proposed Projects largely fails to gather Management Indicator Species (MIS) population data and continues to rely on habitat conditions to estimate MIS population trends. The Forest Service selected eight species as MIS for this project. Of those, no population data was obtained for any within the project area and for three of the eight MIS, no population data was gathered forest-wide. The Carson Forest Plan obligates the Forest Service to monitor the populations of MIS to determine population trends and has specific population monitoring methods and intervals. Abert's squirrel population data shows the squirrel population is below minimum viability level and the proposed project will do further harm to habitat, food source, and nesting habitat. Breeding Bird Survey data cannot be used to determine Hairy Woodpecker population trends. Merriam's turkey population data is not provided, although it is selected as an indicator of old growth forest habitat and should be "commonly occurring species that can be monitored." Habitat for turkey is not identified.

**Response:** As referenced in the Appeal, the Forest Plan Monitoring Report (PR #3) identifies methods and frequency for monitoring of MIS and threatened, endangered, and sensitive (TES) species. This list of methods is not exclusive, but, rather, gives a small sample of protocols that could be followed. It is noted in the Wildlife Report and MIS Assessment (PR #314a) and the Final Supplement to the Final Environmental Impact Statement for the Agua Caballos Proposed Projects (PR #362) that the scale of monitoring varies by species, depends on whether the species is a habitat generalist or habitat specialist, and that the monitoring should be addressed at scales above the project level. This MIS Assessment makes a trend determination utilizing a variety of existing population data.

The Forest has recently (2003) initiated species studies for small mammals (baseline inventory PR #353), Abert's squirrel (population monitoring, PR #354), and red squirrel (population monitoring, PR #355). The findings of each of these studies emphasize the importance of continuing this type of work in the future, in order to better assess population trends. Population information on other MIS is being gathered from a variety of sources, including, but not limited to: the BISON-M, Biota Information System of New Mexico, local Forest and Regional data, Forest Service research, university research, other federal and state government agencies (Patuxent Wildlife Center breeding bird surveys), and an assortment of non-government organizations (Partners in Flight, NatureServe Explorer) (PR #314d).

The scale of these surveys is dependent upon the species being surveyed but should be conducted at a scale larger than the project level (PR #362). "Evidence from long-term censuses suggests

that few natural populations or communities persist at or near equilibrium on a local scale (Martin and Finch 1995)” (PR #362).

Court cases in the past 5 years have defined 36 CFR 219.19 requirements for analyzing the effects of Forest Service projects on Management Indicator Species (MIS). The first court case dealing with MIS was *Inland Empire Pub. Lands Council vs. United States Forest Serv.*, 88 F.3d 754, 762 n. 11 (9<sup>th</sup> Cir. 1996). Other cases include, *Sierra Club vs. Martin*, 168 F. 3d 1 (11<sup>th</sup> Cir., 1999) and *Forest Guardians v. United States Forest Serv.*, 180 F. Supp. 2d 1273, 1281 (D.N.M. 2001), Dombek, 185 F.3d at 1170. Recently the 10<sup>th</sup> Circuit Court ruled in *Utah Environmental Congress v. Bosworth* (UEC v. Bosworth) 06/23/2004. Throughout each of these cases the Forest Service has maintained that 36 CFR 219.19 pertains only to MIS population and habitat trends at the forest-wide level, not the project level.

On July 13, 2004, the Agua Caballos project on the Carson National Forest was appealed in part based on the *UEC v. Bosworth* decision in the Tenth Circuit Court of Appeals. The following discussion relates the Forest Service position that the tenets of *UEC v. Bosworth* have been met in the analysis of Agua Caballos and supporting documentation resides in the process record, contrary to the appellant’s allegations.

The Final Supplement to the Final Environmental Impact Statement for the Agua Caballos proposed project on the Carson National Forest (PR #362) analyzed the effects of the projects on eight MIS species; Abert’s squirrel, hairy woodpecker, Merriam’s turkey, red squirrel, plain titmouse, Rocky Mountain elk, resident trout, and aquatic macro-invertebrates.

The appellant has specific issues with the analysis for Abert’s squirrel, hairy woodpecker, Merriam’s turkey, and the red squirrel. However, in the interest of clarity, we discuss all eight MIS analyzed for the Agua Caballos project.

Background information utilized in the Agua Caballos analysis and referenced in the FSEIS is specifically listed here. If it is not assigned a PR # (Project Record number), then it is to be added to this record.

### **Abert’s squirrel**

Population data and trend - Analysis of population trend for the Abert’s squirrel was based on data from NatureServe database ([www.natureserve.org](http://www.natureserve.org)), which lists the Abert’s squirrel as globally secure, common, and abundant (online copy, no PR #); the BISON-M database (filed at Forest, no PR #), which reports the species as common throughout New Mexico and Arizona; and NMDG&F state-wide harvest data (“Analysis of New Mexico Dept of Game and Fish Small Game Harvest Surveys of 1999-2000,” May 2001, no PR #) which indicates a slight decline in numbers harvested.

A contract for forest-wide surveys was initiated in 2003 with Dr. Jennifer Frey (PR #354). Dr. Frey’s 2003 results indicate “extremely low” density estimates but goes on to say that Abert squirrel density was not significantly related to elevation, slope, aspect, habitat structure, site index, tree size, crown cover, or area (PR #354). This could be interpreted to mean non-habitat variables are the causal factor for the decline in densities (climate, for example). Data collected from adjacent states indicate that densities crashed in 2002, with continued declines in 2003. This may be due to the ongoing drought conditions.

The regional scale decline described by Frey (PR #354) has not been pinpointed to a single cause; therefore, to assume that the low numbers on the Carson are a result of Forest management decisions is premature. Additional surveys should enable the Forest to better understand the meaning of these low densities and help to define the habitat parameters most important to the species.

The wildlife biologist concluded from this data that Abert's squirrel population trend on the Forest is stable and would not noticeably decline as a result of the proposed project.

Habitat data and trend - Analysis of habitat trend for the Abert's squirrel was based on data from silvicultural exams (PR #10 and #21), field trips (PR #81, #92), and proposed harvest treatments (PR #233, #247, and #267) Note that PR #233 has only the cover page in the record, and the full report needs to be included.

Forest-wide estimates for occupied Abert's squirrel habitat on the Carson National Forest have increased from 53,220 acres to 63,190 since plan implementation (PR #362; p. 17). The wildlife biologist concluded from the data that Abert's squirrel habitat would exhibit a slight upward trend in condition. The selected Alternative G will treat a small (approximately 7 percent), or insignificant, percentage of habitats relative to the habitat available forest-wide (PR #362).

Summary – The Abert's squirrel population on the Carson National Forest is considered to be stable, but is likely lower than potential and is also directly related to both climate and habitat. Occupied or quality habitat for Abert's squirrel on the Forest has increased during the life of the Forest plan, but conditions still have room for improvement. Habitat conditions are considered to have a slight upward trend.

The nature of the projects over the last decade has generally shifted timber harvest from overstory and shelterwood final removals to thinning from below and group selections. The cumulative effect of these treatments is the basis for stating there is a slight upward trend in conditions (PR #362, p. 19). The expected upward trend for habitat should contribute to maintaining viable populations of Abert's squirrel on the Carson National Forest.

### **Red squirrel**

Population data and trend - Analysis of population trend for the red squirrel was based on data from NatureServe database ([www.natureserve.org](http://www.natureserve.org)), which lists the red squirrel as globally secure, common, and abundant (online copy, no PR #); the BISON-M database (filed at Forest, no PR #), which reports the species is fairly common in mixed-conifer forests throughout New Mexico and Arizona; and NMDG&F state-wide harvest data (“Analysis of New Mexico Dept of Game and Fish Small Game Harvest Surveys of 1999-2000,” May 2001, no PR #) which indicates a slight decline in numbers harvested.

Although only one year of data has been collected in Forest monitoring data in 2003 (PR #355), initial analysis indicates lower densities than were expected. However, this may be due to the ongoing drought conditions.

The wildlife biologist concluded from the data that the red squirrel population trend on the Forest is stable and would not noticeably decline as a result of the proposed project.

Habitat data and trend - Analysis of habitat trend for the red squirrel was based on data from silvicultural exams (PR #10 and #21), field trips (PR #81, #92), and proposed harvest treatments (PR #233, #247, and #267). Note that PR #233 has only the cover page in the record, and the full report needs to be included. Very few acres of red squirrel habitat have been harvested on the Carson National Forest since 1995, and less than 1 percent of forest-wide habitat will be treated by the proposed action (PR #362, p. 31). The wildlife biologist concluded from the data that red squirrel habitat would exhibit a slight upward trend in condition.

Summary – Red squirrel habitat on the Carson National Forest is in good condition and is stable. Taking into account the condition and trend of the red squirrel’s habitat on the forest, existing data, and field observations, the Carson is supporting stable and viable populations of red squirrel.

### **Hairy woodpecker**

Population data and trend - Analysis of population trend for the hairy woodpecker was based on data from the Nature Serve database ( [www.natureserve.org](http://www.natureserve.org) ), which lists the hairy woodpecker as globally secure and common (online copy, no PR #), and USGS Breeding Bird Surveys (see online interactive Route Data Summary for North American Breeding Bird Survey Trend Results by species <http://www.mbr-pwrc.usgs.gov/bbs/trend/rtehtm03a.html> , no PR #), which indicates the species is stable, abundant, and not declining. There is also an environmental study conducted by Eagle Environmental on adjacent BLM lands which estimated breeding pairs at a density of 4.5 per 100 acres (study on file at Forest, no PR #); and bird inventories on the Camino Real District (on file at Forest, no PR #) which found 22 individuals per square kilometer, and is adjacent to the project area. The Forest-level population monitoring data (PR #358) found individuals in every habitat type except alpine tundra, with a high of 16 individuals in pinon-juniper type. Hairy woodpecker is an indicator of snags and down woody material on the Carson National Forest. These habitat components are abundant and well distributed across the Forest (PR #362). Because of the broad distribution of habitat for this species, it is appropriate to conduct population surveys above the project level. The wildlife biologist concluded from this data that hairy woodpecker population trend on the Forest is stable.

Habitat data and trend - Analysis of habitat trend for the hairy woodpecker was based on data from silviculture exams (PR #10 and #21), field trips (PR #81, #92 - discussion on snags), and proposed harvest treatments (PR #233, #247, and #267). Note that PR #233 has only the cover page in the record, and the full report needs to be included. During the life of the Carson Forest Plan, there has been little change in the long-term trend of available habitat by seral condition, and little change in quality habitat related to management activities, given approximately 6 percent of potential hairy woodpecker habitat has been affected by management activities since 1986 (PR #362, p. 40).

Wildland fire and insect and disease infestations have created snags and improved habitat for hairy woodpecker. The wildlife biologist concluded from this data that hairy woodpecker habitat on the Forest would not noticeably change as a result of the proposed project and should contribute to an improving trend in habitat condition.

Summary – Although short-term effects on hairy woodpecker may occur as a result of the proposed project, no long term decline in population or habitat is expected. The projected stable trend for habitat should contribute to maintaining viable populations of hairy woodpecker on the Carson Nation Forest.

### **Merriam's turkey**

Population data and trend - It should be noted that no reliable technique for surveying turkey populations at landscape scales currently exists, nor is any method considered the “standard” by professional biologists (NMDG&F 2000 paper on Forest, no PR #). See same reference and discussion on wild turkey populations in New Mexico in an updated paper on file at the Forest, called, “Long Range Plan for the Management of Wild Turkey in New Mexico, 2001-2005,” New Mexico Dept. of Game and Fish, October 2002. That said, analysis of population trend for Merriam's turkey was based on data from USGS Breeding Bird Surveys (see earlier online address, no PR #) which indicates a population increase of 33 percent since 1966 for the western part of the United States. The Breeding Bird survey route assessment provides a broadscale assessment of population change for a species that is fairly wide-ranging. Information on transplantation of Merriam's turkey was obtained from the New Mexico Department of Game and Fish (NMGF). The Forest, along with NMGF and BLM, conducts yearly gobbler surveys to track population trends. Gobbler surveys from the Jicarilla District (Spring Gobbler Turkey Survey Data Summaries, 1997, 1998, 1999, 2004, Jicarilla RD, no PR #) indicate a steady to slightly increasing population since 1996. The wildlife biologist concluded from this data that Merriam's turkey population trend is increasing and should continue to increase as a result of the proposed project.

Habitat data and trend - Analysis of habitat trend for the Merriam's turkey was based on data from; silvicultural exams (PR #10 and #21), and proposed harvest treatments (PR #233, #247, and #267). Note that PR #233 has only the cover page in the record, and the full report needs to be included. The Final Supplement to the Final Environmental Impact State for the Agua Caballos Proposed Projects (PR #362) describes habitat for Merriam's turkey. Map N (PR #362) identified potential habitat distribution of the Merriam's turkey on the Carson National Forest and Map M identifies potential habitat distribution within the analysis area. Of the 222,000 acres of ponderosa pine forest that provides quality habitat for turkeys on the Carson National Forest, less than 2 percent is being treated in the proposed action (PR #362, p. 66). The wildlife biologist concluded from the data that Merriam's turkey habitat trend would continue upward as a result of the proposed project.

Summary – Although short-term effects on Merriam's turkey may occur as a result of the proposed project, overall population and habitat should continue a slight upward trend as a result of the proposed action. The expected upward trend for habitat should contribute to maintaining viable populations of Merriam's turkey on the Carson Nation Forest.

### **Plain titmouse –**

No management actions are occurring in plain titmouse habitat; therefore, no further analysis on population or habitat trend was conducted. (PR #362, p. 68)

### **Rocky Mountain elk**

Population data and trend - The present elk herd on the Carson was started with two small transplants on the Tres Piedras District in 1938 and 1939 (PR #362, p. 52). Analysis of population trend for Rocky Mountain elk was based on data from NMDG&F population estimates (PR #99), which are the summarized results of NMDG&F aerial surveys using the SIS (Sightability Index Survey) methodology. The wildlife biologist concluded from this data that the Rocky Mountain elk population trend on the Carson is stable and may be more dependent on harvest than on environmental conditions.

Habitat data and trend - Analysis of habitat trend for Rocky Mountain elk was based on data from silvicultural exams (PR #10 and #21), field trips (PR #81, #92), range report (PR #242), and proposed harvest treatments (PR #233, #247, and #267). Note that PR #233 has only the cover page in the record, and the full report needs to be included. The wildlife biologist concluded from this data that Rocky Mountain elk habitat trend would not change noticeably on the Forest as a result of the proposed project.

Summary – Although short-term effects on Rocky Mountain elk may occur as a result of the proposed project, no long-term change in population or habitat is projected. The proposed project will not have any effect on the population viability of Rocky Mountain elk on the Carson National Forest.

### **Resident trout**

Population data and trend - Resident trout, according to the Forest Plan, includes rainbows, browns, and the native Rio Grande cutthroat (PR #3). Analysis of population trend for resident trout was based on data from NMDG&F stocking reports (on file at Forest, no PR #), Forest trout survey data from Borracho Creek (PR #331) and the downstream Vallecitos River area (“Multiple Pass Depletion Trout Surveys- Site Information” data for the Vallecitos, no PR #), and aquatic macro-invertebrate surveys (PR #332). The fish survey data clearly shows persistent numbers of resident trout over the period 1984-2001 and that they are well distributed across the Forest. (See untitled summary table by survey year and stream name, no PR #; and fish surveys on file as “Multiple Pass Depletion Trout Surveys- Site Information” data for various streams on Forest, no PR #s).

The fish stocking program conducted by NMDG&F maintains fish numbers and contributes to the “residency” status of some species in some of the drainages. The Forest did complete surveys on the streams potentially affected by the proposed project (Vallecitos, a perennial stream, and Canada del Borracho, an intermittent stream). Even though fish numbers are low on these reaches, the appropriate scale for population trend is Forest-wide. The fisheries biologist concluded from this data and information that the resident trout population trend would likely remain stable, with no significant impacts from the proposed project.

Habitat data and trend - Analysis of habitat trend for the resident trout was based on data from silvicultural exams (PR #10 and #21), and proposed harvest treatments (PR #233, #247, and #267), New Mexico Environmental Department stream assessment (PR #234A), and watershed effects report (PR #156). Note that PR #233 has only the cover page in the record, and the full report needs to be included. The 2001 fisheries surveys were conducted within the proposed project area on the Canada del Borracho, an intermittent stream, and adjacent to the project area on the Vallecitos drainage. The Vallecitos drainage is downstream of the project area and is considered an impaired stream (303(d)). Temperature and sediment are

considered to be the limiting-factors; however, these impacts are being contributed by private and agricultural lands adjacent to the Forest (PR #234A).

Quality resident trout habitat on the Carson National Forest is considered stable and improved since the Forest Plan was implemented in 1986 (PR #362, p. 103). The Forest has been improving watershed and soil conditions through the closure of roads across the Forest (on average, 50 miles per year since 2000) as one example of actions that improve resident trout habitat. Habitat trends were also based on Forest fish surveys, which indicate population densities. Persistent presence of trout is an indicator of sufficient conditions to sustain resident trout. Information collected during the fish surveys summarizes size and weight of the fish collected. (See untitled summary table by survey year and stream name, no PR #; and fish surveys on file as “Multiple Pass Depletion Trout Surveys- Site Information” data for various streams on Forest, no PR #). Results of these surveys indicate healthy populations and, subsequently, stable habitat conditions. The fisheries biologist concluded from this data and information that the trend for resident trout habitat is stable and would not noticeably decline as a result of the proposed project.

Summary – Although short-term effects may occur as a result of the proposed project, stable and viable populations of resident trout will be maintained on the Forest.

### **Aquatic macro-invertebrates**

Population data and trend - Analysis of population trend for aquatic macro-invertebrates was based on baseline information collected on the Forest in 1982 (PR #314d, p. 116) and compared with a Forest analysis, provided in the Aquatic Macroinvertebrate Monitoring Report, supplied by Utah State University, March 13, 2002 (on file at Forest, no PR #), and data from Forest aquatic macro-invertebrate surveys (PR #314). The fisheries biologist concluded from this data that macro-invertebrate population trends appear to be stable, despite fluctuations in local populations.

Habitat data and trend –Analysis of habitat conditions and trends was based on the summary provided in the Aquatic Macroinvertebrate Monitoring Report, prepared by Utah State University, March 13, 2002 (on file at Forest, no PR #). Macroinvertebrate survey background data for this report is filed by year from 1998 on (filed at Forest, no PR #). This report uses a number of measurements to determine diversity of species as an indication of habitat condition. Information summarized by this report includes taxa richness, abundance, and number of families, family dominance, Shannon Diversity Index, biotic indices, and the USFS Community tolerance quotient/BCI. The latter index is used by both the Forest Service and Bureau of Land Management as an indicator of habitat condition. These different measures are used by the Forest to determine both habitat and population trends associated with macro-invertebrate populations forest-wide, and is the foundation for their determination that quality habitat on the Carson National Forest is considered stable or improved since Forest Plan implementation in 1986 (PR #314d, p. 116).

Summary – Although short-term effects may occur as a result of the proposed project, the Forest is maintaining viable populations of macro-invertebrates.

**Finding:** Information from these studies as described above is incorporated into the MIS analysis found in the Final Supplement to the FEIS (PR #362). The Forest used both habitat and

population information and determined trends in their analysis of effects to MIS species and adequately defended their use of an above-project scale process for these analyses. The Forest completed an analysis of MIS that was sufficient to ensure that minimum viable populations will be maintained.

**Contention B:** Red squirrel analysis does not state whether surveys were conducted in the project area.

**Response:** A contract for forest-wide surveys was initiated in 2003 with Dr. Jennifer Frey (PR #355). Red squirrel midden and habitat data were collected in 58 forest stands. Forest stands were identified and mapped by Carson National Forest using geographic information system (GIS). These included 32 Douglas-fir stands, 23 white fir stands, 16 blue spruce stands, 14 Engelmann spruce stands, 30 spruce-fir stands, and 1 aspen stand (PR #355). Neither the report nor the Final Supplement to the FEIS state whether any of these stands were located within the project area. Each of these 58 stands is identified by latitude/longitude in the survey report appendix II (PR #355, pp. 36-38). See Contention A response on population data sources.

**Finding:** The Forest completed contract surveys and an analysis of MIS that was sufficient to ensure that minimum viable populations will be maintained. The scale of analysis for populations was completed appropriately at a scale above that of the project level.

**Contention C:** The Terrestrial Ecosystem Survey rates mapping units in providing habitat to management indicator species (MIS) and this information was ignored.

**Response:** Although the Carson National Forest Terrestrial Ecosystem Survey does provide interpretations gauging the relative importance of each vegetative mapping unit as to its general potential to provide habitat for some management indicator species, these importance value ratings are intended for broad-scale analysis and planning. This broad-scale information is used by the specialists as the “first cut” to determine the relative importance of areas to MIS species. This then leads to more detailed evaluations of the areas if deemed important by the biologists (PR #4, p. 1 and Foreword). A much more detailed project-specific analysis for the MIS affected by the Agua Caballos project was required and was conducted and disclosed (see discussion in items A through F above).

**Finding:** Appropriate information was utilized in MIS evaluations and was not limited to the Forest Terrestrial Ecosystem Survey data.

## **ISSUE 2: The Project does not meet FS Policy to develop conservation strategies for all sensitive species that may be negatively affected by a proposed project (FSM 2621.2).**

**Contention A:** The New Mexico jumping mouse will be adversely affected by roads disrupting the wet meadow habitat. No mitigation measures were established for protection. Cumulative effects on wet meadow habitat were not considered or evaluated. No basic information on the mouse or inventories.

**Response:** There is no specific requirement that “all” sensitive species have a conservation strategy. Forest Service Manual (FSM) 2621.2 – Determination of Conservation Strategies, provides direction on how to proceed with a conservation strategy if the trend of a sensitive species is toward “endangerment” that would result in the need for federal listing. The information gathered from Frey’s report (2003) on small mammals (PR #353) will be used by the

Forest to assess the status of the species. Frey indicates that additional information needs to be gathered on this species before any recommendations are made.

The wildlife effects section of the ROD and FEIS (PR #323) describes the ongoing impacts of the Forest transportation system to wet meadows. One road, Forest Road 140, is used as an example of a road system that parallels a drainage. These types of roads limit runoff into wet meadows, possibly limiting habitat for the New Mexico jumping mouse. To address these identified concerns to meadow restoration and management, mitigation measures were identified relative to harvest (removal of encroaching conifers), proper road maintenance (to reduce sediment movement into meadows), and road location (PR #323).

**Finding:** To date, none of the inventory or monitoring reports indicates a trend toward endangerment of this species, which would be the trigger for proceeding with a conservation strategy. Identified concerns to the species will be mitigated during implementation of the projects. Additional information is being gathered to determine the status, per FSM 2621.2.

**ISSUE 3: The analysis relies on Management Recommendations for the Northern Goshawk (MRNG) that fail to meet the requirements of NEPA. The MRNG has been struck down by the 9th Circuit Court of Appeals.**

**Contention A:** Project uses MRNG guidelines to plan logging activities in two occupied goshawk territories (FSEIS, p. 84), with increased openings in canopy and logging of trees over 16 inches diameter.

**Response:** The Final Supplement to the Final Environmental Impact Statement for the Agua Caballos Proposed Projects (PR #362) states that the proposed project is consistent with the ROD Amendment to Forest Plans and Management Recommendations for the northern goshawk in the southwestern United States and with the habitat characterizations identified in Shuster (1980). The site-specific project analysis supports the protection and maintenance of goshawk habitat within the Agua Caballos project area (PR #362) through implementation of these projects. The proposed action will move goshawk habitat toward the desired conditions that will support nesting and foraging habitat across the landscape, as defined by the most recent science in Reynolds, 2004 (PR #357).

**Finding:** The project provides for appropriate management of goshawk habitat and is consistent with current science regarding habitat requirements and the Carson Land and Resource Management Plan (LRMP). The Ninth Circuit Court order of November 18, 2003, regarding the Final EIS for Amendment of Forest Plans in Arizona and New Mexico (1996) did not set aside or stay implementation of amended Forest Plans pending the issuance of a required supplemental environmental statement.

**ISSUE 4: The project is in violation of the Endangered Species Act (ESA) by an unlawful take of Mexican spotted owl.**

**Contention A:** The Agua Caballos project will degrade MSO critical habitat and result in an undetermined amount of take.

**Response:** The Forest adhered to ESA requirements to conference with the U.S. Fish & Wildlife Service on the impacts of implementation of this project to proposed critical habitat for the Mexican spotted owl (PR #352). It is the Forest's determination that the action will not result in

destruction or adverse modification of proposed critical habitat to be designated for a species (PR #352). The U.S. Fish & Wildlife Service concurred with this determination (PR #359).

**Finding:** The U.S. Fish & Wildlife Service concurred (PR #304) with the Forest Service determination of “not likely to adversely affect” and consultation was completed. Take is not assigned to critical habitat under the ESA.

**Contention B:** FS cannot continue to propose activities in the Region before consultation is complete and a valid incidental take permit has been issued.

**Response:** The Addendum to the BAE (PR #263) clearly describes each of the constituent elements and the impacts of the implementation of these projects to those elements. The biologist has determined that these projects in Agua Caballos may affect the habitat of the Mexican spotted owl, but is not likely to adversely affect the Mexican spotted owl or its habitat. This BAE was submitted to the FWS for concurrence (PR #263, letter to FWS dated February 16, 2000). FWS concurred with this determination on effects to the Mexican spotted owl (PR #304); therefore, no incidental take statement was required to be issued by the FWS. Considerations of Mexican spotted owl habitat needs were taken into consideration, and adjustments made to the proposed action, throughout the planning process (PR #28, 147, 169, 170, 176, 263, 362).

**Finding:** Per FSM 2672 and ESA regulations, the Forest prepared a BAE on effects of this project to listed species. The FWS concurred with these findings completing consultation.

#### **ISSUE 5: The project violates the Clean Water Act.**

**Contention A:** The proposed project allows for further degradation of the Rio Vallecitos, a stream that is 303(d) listed as a Water Quality Limited Segment. The NMED (New Mexico Environment Department) has stated that this project could negatively affect the Rio Vallecitos.

**Response:** The Southwestern Region of the Forest Service and the NMED have entered into a mutual agreement on roles and responsibilities to meet the objectives and goals of the Clean Water Act. This agreement covers procedures regarding Best Management Practices (BMPs) and is an opportunity for NMED participation in project planning and monitoring.

The Agua Caballos project planners acknowledged the partial attainment status of the Rio Vallecitos (PR #311) and identified potential erosion and water quality as a significant issue in the planning process (PR #323 FEIS, pp. 12-14). NMED was provided an opportunity to offer comments at many points during the planning process (PR #87, 203, 259, 323, and 344). NMED requested that BMPs be fully disclosed (PR #95) and monitored (PR #347) and supported the Forest Service in its decision to implement Alternative G (PR #347).

The FEIS contains an exhaustive list of BMPs (PR #323, FEIS, pp. 53-55) and the Record of Decision for the FSEIS (PR #362), confirms that implementation and effectiveness monitoring will occur on 30 soil and water BMPs (PR #323 FEIS, pp. 385-389). In addition to activity mitigation measures, the project, which is building or reconstructing less than 20 miles of road, will administratively or physically close 43 miles of road (ROD, PR #362, p.2). These road closures will significantly address the portion of water quality degradation in the Rio Vallecitos that can be attributed to National Forest System land, resulting in an improvement of water quality.

**Finding:** Procedures were followed and appropriate mitigation and monitoring is planned for this project. There will be no violation of the Clean Water Act.

**Contention B:** This project cannot proceed until a TMDL (Total Maximum Daily Load) plan for the Rio Vallecitos is developed by NMED.

**Response:** There is no federal or state requirement that all activities in 303(d) listed streams must cease until a TMDL plan is finalized. In fact, the court decision referenced by appellants (*Sierra Club v. Austin*, CV 03-22-M-DWM) is clearly counter to this contention.

**Finding:** Procedures were followed and appropriate mitigation and monitoring is planned for this project. There will be no violation of the Clean Water Act.