



United States  
Department of  
Agriculture

Forest  
Service

Santa Fe National Forest

Supervisor's Office  
11 Forest Lane  
Santa Fe, New Mexico 87508  
PH 505-438-5300 FAX 505-438-5391

**File Code:** 2350-5/7710

**Date:** July 1, 2010

Cyndi Tuell  
Center for Biological Diversity  
P.O. Box 710  
Tucson, AZ 85702-0710

Dear Ms. Tuell:

I received your request for an Emergency Closure Order for Forest Road (FR) 288 due to considerable adverse effects from motor vehicles.

Thank you for your interest in the natural resources on the Jemez Ranger District. We are currently engaged in the NEPA process for Travel Management and resource protection is driving the Travel Management process. Implementation of the Travel Management Rule is expected to improve resource conditions regardless of which alternative is chosen and implemented. We are required to consider and make available to the public a full environmental and social/economic analysis of a reasonable range of alternatives. We are committed to working openly and collaboratively with all parties to ensure a strong, effective and defensible result. A hastily prepared analysis, or one-sided decision, would likely result in the decision being invalidated, and the process would need to start over. This would only delay our progress toward more active management of motorized use.

I have considered the evidence in the petition and the district staff's knowledge of the situation. The adverse effects are more from a lack of road and trail maintenance than motorized use. I conclude that the effects are insufficient to warrant an immediate closure of FR 288.

District staff investigated the situation with the road, current closure order, signing, and other possible access routes to FR 288. Currently the road is open to motorized vehicles less than 40 inches. The gate extends across the entire road and does not have an opening for smaller vehicles. As a result, people with less than full-sized vehicles are driving around the gate, which has damaged vegetation and soil. District staff took measures to prevent more resource damage by replacing the lock that forest visitors vandalized to open the gate. They also placed rocks and logs in the drainage where vehicles are driving around the gate to minimize erosion.

Since the State has assigned to the New Mexico Department of Game and Fish the enforcement of the State OHV law, the Forest Service has been working with them on OHV patrols. On a recent Saturday, seven Game and Fish and Forest Service officers patrolled FR 289, 288, 287, 268, 36, 142, 10, 266, and 270. The officers saw 1 ATV and 4 motorcycles on FR 289. None of these were in violation of the law or our closure orders.



Beyond enforcing the closure order and ensuring that the gate remains locked, I do not believe that expending the considerable resources needed to either replace the gate (with one having an ATV-sized opening) or change the closure order (triggering new analysis under the National Environmental Policy Act) is warranted now. I expect to make a decision on Travel Management this year, and with it decide whether vehicles would be allowed on Forest Road 288. In the TM DEIS, this road is treated differently in the various alternatives, some closing it to OHV use and some allowing motorized vehicles  $\leq 50$  inches wide through the gate.

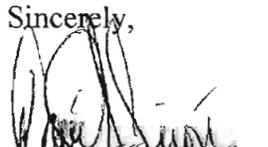
We are concerned about the erosion that may be affecting downstream resources beyond the gate. We are all anxious to complete the TM DEIS so that we can effectively implement the decision and begin restoring areas that we close to OHV use and begin maintaining roads and trails open to OHV use. In the case of Forest Road 288, for example, knowing whether the road is open to vehicles  $\leq 50$  inches or closed to all motorized use will dictate how the district manages it. If it is closed to all motorized use, full restoration would be needed. If some motorized use is allowed, then some restoration combined with trail maintenance would be appropriate.

Once the Travel Management designation decision is made, it will be time to set priorities for maintenance and restoration. We invite you to help us complete that work. We also hope to have help from volunteers in restoration and trail maintenance. We invite you to help us organize and manage the volunteer effort. The TM DEIS will be released soon. Your review and comments are very important to us, and we are looking forward to your input.

While the Jemez District is working travel management, they are addressing resource concerns in other locations on the district that are not dependent on the travel management decision. Worth highlighting is the staff's focus on correcting or minimizing recreation-related resource damage in riparian areas of the District as well as working on the Southwest Jemez Mountains Landscape Restoration (SWJM) project. The SWJM project is a proposal to treat 220,000 acres of the District and Valles Caldera National Preserve to improve ecosystem health and improve forest resilience to catastrophic wildfire. Information about the SWJM project is posted on the Santa Fe National Forest's web site. Projects in riparian areas include Respect the Rio, San Antonio and Peralta Watershed Improvement projects, and the East Fork Jemez Wild and Scenic River Recreation Management Project. This year, the State of New Mexico de-listed portions of the Rio Cebolla as a result of the District's efforts to improve water quality.

Again, I appreciate your concerns and look forward to working with you throughout the NEPA process for Travel Management as well as during implementation of the Travel Management decision.

Sincerely,



DANIEL J. JIRON  
Forest Supervisor

Enclosures

cc:

Bryan Bird, WildEarth Guardians

cc: Daniel Jiron  
M. Frazier MS  
D. Taliáferro



CENTER for BIOLOGICAL DIVERSITY

Because life is good.

## **JEMEZ EMERGENCY PROTECTION ORDER**

### **REQUEST**

#### **FOR NONDISCRETIONARY CLOSURE OF FOREST ROAD 288 IN THE JEMEZ RANGER DISTRICT, SANTA FE NATIONAL FOREST, TO ALL MOTORIZED VEHICLES DUE TO CONSIDERABLE ADVERSE EFFECTS FROM MOTORIZED VEHICLES**

**Executive Orders 11644 and 11989**

*Sent via email and certified mail this date*

June 1, 2010

Mr. Daniel J. Jiron,  
Forest Supervisor  
USDA Forest Service  
Santa Fe National Forest  
1474 Rodeo Road  
Santa Fe, New Mexico 87505  
[djiron@fs.fed.us](mailto:djiron@fs.fed.us)

Dear Mr. Jiron,

This Jemez Emergency Protection Order ("Protection Order") is a request for the nondiscretionary closure of Forest Road 288 in the Jemez Ranger District, Santa Fe National Forest (SFNF) to all motorized vehicles due to considerable adverse effects from motor vehicles. The Center for Biological Diversity has long been concerned with motorized uses of this road. We joined a citizen petition to close this road, along with 26 other routes, March 30, 2009. That petition was denied, in part, because there were reportedly "few problems with this closure as the gate is strategically placed in a location difficult to get to." See Forest Service 2009, Specific Comments in response to closure petition. We have been in contact with the Forest Service in the Jemez Ranger District related to ongoing concerns about this road throughout 2009.

On May 15, 2010, we presented recent evidence of violations of Forest Service Closure Order 10-147 at the New Mexico Department of Game and Fish OHV Board meeting at which Ruth Doyle and other Forest Service staff were present. The following week we were made aware of additional problems on Forest Road 288 including a broken Forest Service lock on a gate and evidence of unauthorized motor vehicle use (vehicles larger than 40 inches in width).

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We again ask for an immediate Forest Service closure order under Executive Order 11644, as amended by Executive Order 11989. The Santa Fe National Forest supervisor has a non-discretionary duty to immediately close motorized routes to off-road vehicles that are causing considerable adverse effects on soil, vegetation, wildlife, wildlife habitat, and cultural or historic resources until such time as the responsible official determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence. In the response to our closure petition on March 2009, the Forest Service did not refute our claims that considerable adverse effects were occurring on Forest Road 288, but rather relied upon the statement that few problems had occurred because of the strategically placed gate. Now, clearly, the reason for denying the portion of our March 30, 2009 petition asking for a closure of Forest Road 288 does not apply.

The preamble to Executive Order 11644 as amended, makes clear that it is the use of ORVs on public lands that are causing harm to public lands:

An estimated 5 million off-road recreational vehicles--motorcycles, minibikes, trial bikes, snowmobiles, dune-buggies, all-terrain vehicles, and others--are in use in the United States today, and their popularity continues to increase rapidly. The widespread use of such vehicles on the public lands--often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity--has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.

The text of the Executive Order makes clear that the duty to protect natural resources from the negative impacts of unmanaged ORVs is non-discretionary:

Section 1. *Purpose.* It is the purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be **controlled and directed** so as to protect the resources of those lands, to promote the safety of all users of those lands, and to **minimize conflicts** among the various uses of those lands.

**Sec. 9. *Special Protection of the Public Lands.*** (a) Notwithstanding the provisions of Section 3 of this Order, the respective agency head **shall**, whenever he 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, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.

*Emphasis added.* We therefore ask the Forest Service to immediately issue a closure order under the authority of Executive Order 11644 as amended by 11989. We incorporate by reference all sections of the Closure Petition submitted March 30, 2009 that relate to Forest Road 288, including but not limited to the following:



*Ineffective closure of FR 288 to motorized use resulting in considerable resource damage.*

**Forest Road 288** begins at FR 289 (St. Peter's Dome Road) and ends at Los Utes Springs in upper Capulin Canyon. FR 288 was closed to motor vehicles less than 40 inches in width in 1992 from the gate in section 16 to Los Utes Springs pursuant to 36 C.F.R. 261.50, 261.54(a) and 261.55(b) (USDA/SFNF 1992). As the photos clearly show, this closure has not been enforced and significant damage is occurring as a result.

This Protection Order stipulates that FR 288 be closed to all motorized vehicles until adverse effects have been identified and eliminated and effective measures implemented to prevent recurrence of resource damage. FR 288 is within the Dome Inventoried Roadless Area and provides access to sensitive heritage sites and to a population of Rio Grande Cutthroat Trout in Capulin Canyon. Soil erosion caused by motorized vehicles in this area is severe. According to the SFNF Terrestrial Ecosystem Survey, FR 288 occurs on unstable soils where wheeled off-road vehicles cause severe erosion and significant loss of site productivity. FR 288 crosses the stream in Capulin Canyon 4 times resulting in significant degradation of water quality and aquatic habitat. FR 288 is also in Essential and Occupied Jemez Mountain Salamander habitat crucial for the long-term persistence of viable salamander populations. According to the New Mexico Endemic Salamander Team, FR 288 is causing habitat fragmentation, loss and degradation based on photographic evidence and increased use on designated routes (NMEST 2008:2). The upper portion of FR 288 is designated seasonally open to all vehicles in the SFNF Travel Management Plan Proposed Action. In addition, according to NMGFD a 604 acre wildlife impact zone is

created by FR 282 resulting in a high degree of habitat fragmentation that reduces habitat effectiveness for elk, deer, black bear and turkey.  
3.4 total miles.

### **Additional information on Forest Road 288**

Letter to NM OHV Board, read aloud at the May 15, 2010 meeting:

Dear Members of the New Mexico Off-Highway Vehicle Board,

I apologize for not appearing in person and appreciate your acceptance of this letter in my stead. I would like to ensure that the OHV Board is aware of an incident of vandalism and illegal ORV use in the Jemez Ranger District of the Santa Fe National Forest and ask for your assistance in resolving this problem.

In the Santa Fe National Forest, Forest Road 288 has been the site of repeated vandalism and illegal motorized uses for many years. This road is currently being illegally used by members of the ORV community and I am asking the New Mexico OHV Board to take immediate steps, in cooperation with New Mexico Department of Game and Fish law enforcement officers and the Forest Service, to effectively close both access points of this road and this area to illegal ORV uses.

Forest Road 288 is within the Dome Inventoried Roadless Area, providing access to important heritage sites and a population of Rio Grand cutthroat trout in Capulin Canyon. This road crosses the canyon 4 times.

According to the New Mexico Endemic Salamander Team, this road is within occupied Jemez mountain salamander habitat and is causing habitat fragmentation, loss and degradation.

According to the Terrestrial Ecosystem Survey, this road is on unstable soils and off-road vehicle uses have caused significant loss of soil productivity in the Los Utes area.

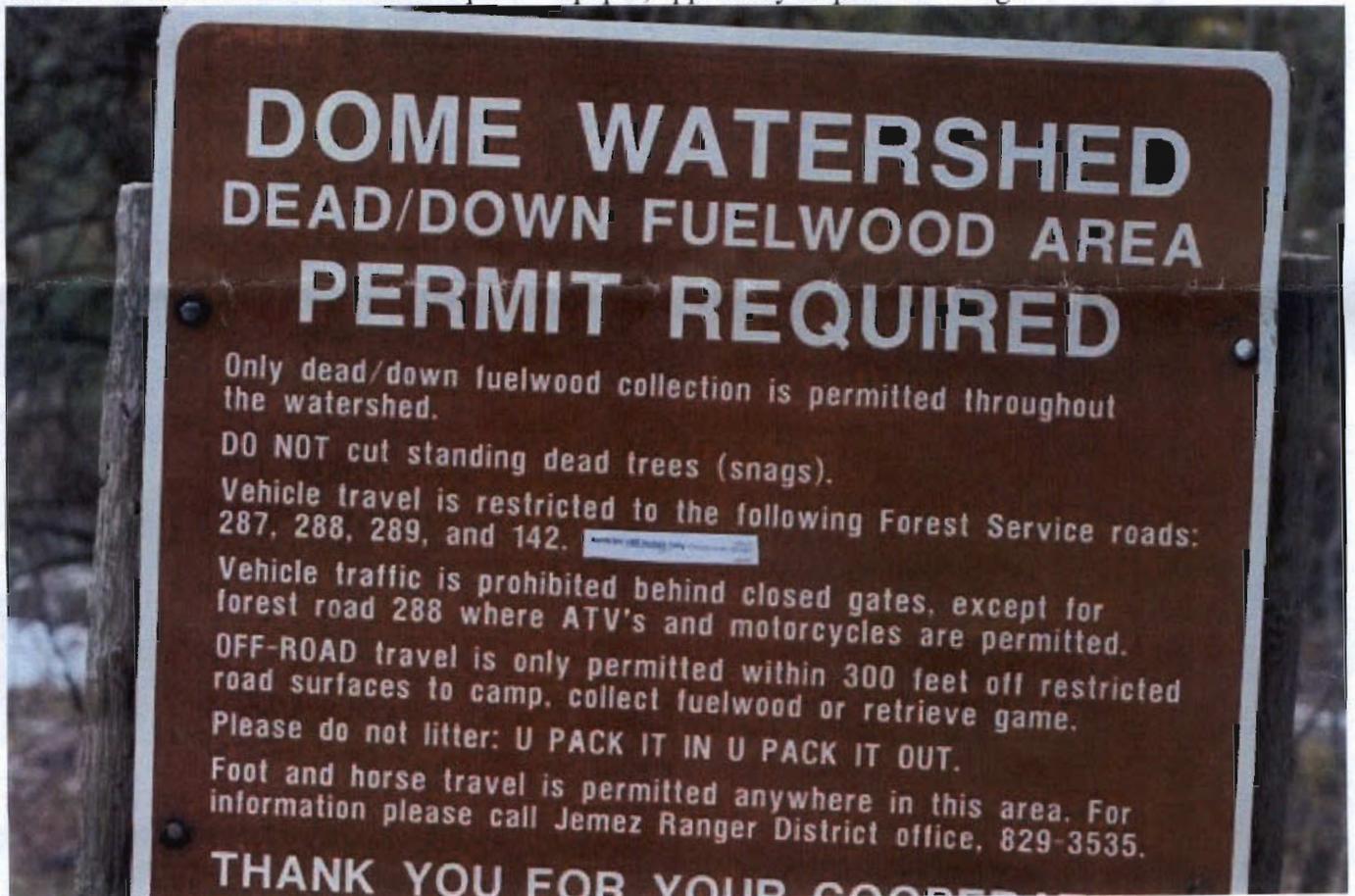
According to the New Mexico Department of Game and Fish, this road creates a 604 acre wildlife effect zone and a high degree of fragmentation, reducing habitat effectiveness for elk, deer, black bear and turkey.

In the fall of 2009, Sam Hitt, Kevin Stillman and I communicated with the Forest Service about the need to effectively close Forest Road 288 and to modify the sign on this road to reflect the current management decision to limit motorized uses to vehicles under 40 inches in width. At that time, Sam Hitt notified the Forest Service that despite a closed gate, there was a well-worn path around the gate that was clearly being used by vehicles larger than 40 inches wide.

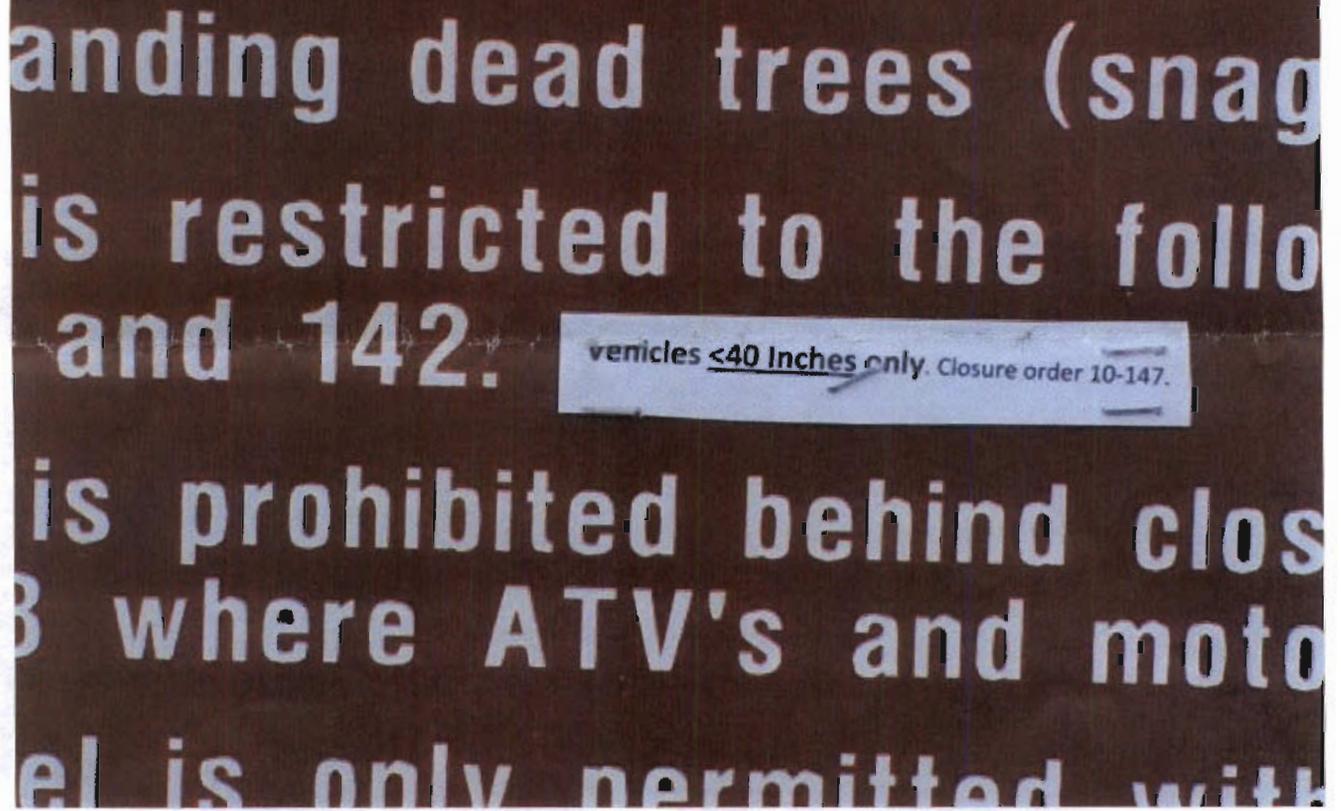
Mike Dechter, then the Project Planner for the Jemez and Cuba Ranger Districts of the Santa Fe National Forest, let us know that the Forest Service modified the sign and installed a post in the

ground to block vehicles over 40 inches wide. This is a picture of the sign, as modified by the Forest Service.

The modification consists of a small piece of paper, apparently stapled to the sign:



Here is a close up of the modification to the sign



standing dead trees (snag  
is restricted to the follo  
and 142.

vehicles <40 inches only. Closure order 10-147.

is prohibited behind clos  
3 where ATV's and moto  
el is only permitted with

In the winter months, Forest Road 289 is closed with a gate at the intersection of State Road 4, which serves to protect Forest Road 288 from illegal motorized uses and vandalism. However, as of May 2010, the gate at Forest Road 289 is open as a result of the winter travel restrictions being lifted. This has resulted in vandalism of the posts installed by the Forest Service in late 2009 and current, ongoing illegal ORV uses of Forest Road 288.

Here are two pictures of the recent vandalism:





I would like to suggest that the OHV Board, New Mexico Game and Fish and the Forest Service work cooperatively to implement a law enforcement strategy for this area. Part of this strategy should include a media campaign highlighting the need to comply with the few restrictions on ORVs that currently exist on Forest Service lands. This is especially important given the upcoming decision regarding travel management planning that will finally protect large areas of the Santa Fe National Forest from cross-country motorized uses. Voluntary compliance with the new rules will be key to successful implementation of the Travel Management Rule.

One of the first steps that can be taken is to install a Forest Service sign that includes the information on the "40 inches or less" restriction and meets Forest Service regulations. Clearly the piece of paper stapled to the existing sign is not effective.

Another suggestion I would like to offer is that if the motorized recreation community does not immediately begin to comply with the order restricting Forest Road 288 to vehicles 40 inches wide or less, or if vandalism of this gate or sign continues, the Forest Service implement a closure order for Forest Road 289 to all ATVs. In addition, the where Forest Road 288 comes out on FR 142 needs additional monitoring. Further, a regular schedule of monitoring and enforcement should be implemented to ensure the continued success of the closure.

Thank you for your time and consideration of this matter. It is extremely important to the Center for Biological Diversity and our more than 220,000 members and activists.

We look forward to your timely response.

/s/Cyndi Tuell

**Pictures of erosion behind gate on Forest Road 288:**



Broken Forest Service lock and open gate on Forest Road 288:





We look forward to your timely response to this closure petition.

Sincerely,

*Cyndi C. Tuell*

Cyndi Tuell  
Southwest Conservation Advocate  
Center for Biological Diversity