

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 APPEAL TO CALVIN JOYNER, THE REGIONAL FORESTER USDA FOREST
2 SERVICE REGION III, FROM A DECISION OF THE FOREST SUPERVISOR,
3 GILA NATIONAL FOREST
4

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6 New Mexico Off Highway Vehicle Alliance
7

8 APPELLANT

9)

10 v.)

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12 Kelly M. Russell)

13 Forest Supervisor)

14)

15 RESPONDENT)

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Notice of Appeal, Statement of Reasons,
and Request for Relief on Record of
Decision for Travel Management -
Gila National Forest

NOTICE OF APPEAL
STATEMENT OF REASONS
RELIEF REQUESTED

DATED this 21st day of July, 2014

By

Mark R. Werkmeister, P.E.
Board of Directors
New Mexico Off Highway Vehicle Alliance

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NOTICE OF APPEAL

Pursuant to 36 C.F.R. Part 215, the Appellant appeals Gila National Forest, Forest Supervisor Kelly M. Russell's Record of Decision for Travel Management (ROD), signed September 9, 2013 and published in the Silver City Daily Press on June 11, 2014. The ROD violates the National Environmental Policy Act (NEPA), the regulations promulgated by the Council on Environmental Quality (CEQ), and Forest Service Planning regulations. Consequently, the Appellant requests that the ROD be withdrawn and a new decision issued to correct the deficiencies identified herein.



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Reference: **Record of Decision for Travel Management on the Gila National Forest**

Enclosed is an appeal filed by the New Mexico Off Highway Vehicle Alliance (NMOHVA). NMOHVA is a statewide incorporated alliance of motorized off-highway vehicle enthusiasts that promotes responsible OHV recreation through education, safety training, land conservation and access, in cooperation with public and private interests, to ensure a positive future for OHV recreation in New Mexico.

We submit that NMOHVA's comments on the Travel Management Environmental Impact Statement (EIS) for the Gila National Forest were not adequately addressed. NMOHVA's primary concern is that the land be managed appropriately for continued motorized public access and that the purposes of the NEPA are fulfilled. We have demonstrated our interest and commitment to the Gila National Forest by very actively participating and providing input and comments on the Travel Management project process at every step.

Our interest in this Decision flows from our frequent use of the Gila National Forest for motor-vehicle-dependent recreation, our member's investment in the well-being of the Gila National Forest expressed via offers of volunteer work for the Forest Service, and our keen desire that the government, in this case the agency of the USDA Forest Service, make its land-use management decisions lawfully.

Respectfully,



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Statement of Reasons

Certain aspects of the ROD for Travel Management on the Gila National Forest are based on flawed or inadequate information. The agency misrepresented salient facts in the EIS’s analysis and conclusions and the resulting ROD put the agency in violation of NEPA and CEQ regulations. We, as part of the reviewing public, respectfully identified these material mistakes and process errors in our comments on the Draft EIS. The agency failed to remedy these errors in the Final EIS and failed to adequately address NMOHVA’s comments in the agency’s response to comments.

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RELIEF REQUESTED

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10 As shown in the Statement of Reasons, the ROD for Travel Management on the Gila
11 National Forest presents a decision based on an EIS that contains certain deficiencies
12 and arrives at inaccurate conclusions based on a document and project record
13 containing those deficiencies. The resulting ROD violates the NEPA, the regulations
14 promulgated by the CEQ, and Forest Service Planning regulations. NMOHVA hereby
15 requests the agency withdraw the ROD, correct the deficiencies in the EIS, reconsider
16 the corrected EIS, and that a new decision be issued to correct the deficiencies
17 identified herein.

18

1 APPEAL POINTS RAISED BY AGENCY VIOLATION OF
2 ENVIRONMENTAL DOCUMENT PREPARATION AND APPROVAL
3 REGULATIONS

4 AGENCY ADDED SIGNIFICANT NEW INFORMATION TO THE FINAL EIS:
5

6 The agency has added significant new information relevant to environmental concerns
7 and bearing on the project and its impacts. CEQ regulations clearly require the
8 issuance of a supplement when significant new information has been added to the
9 environmental documents:

10 —(c) *Agencies:*

11 (1) *Shall prepare supplements to either draft or*
12 *final environmental impact statements if:*

13 (i) *The agency makes substantial changes in the*
14 *proposed action that are relevant to environmental*
15 *concerns; or*

16 (ii) *There are significant new circumstances or*
17 *information relevant to environmental concerns and*
18 *bearing on the proposed action or its impacts.*¹
19
20

21 In this project, the agency has added significant new information to the environmental
22 documents between the Draft EIS and the Final EIS. This new information is significant
23 in both content and volume. The sheer volume of new information is evidenced by the
24 growth of Chapter 3 – Environmental Consequences from 217 pages in the Draft EIS to
25 a whopping 409 pages in the Final EIS. The addition of 192 additional pages, growing
26 the analytic section of the EIS by 88%(!), is stark evidence that a broad range of
27 additional data, information, analyses, and conclusions are being presented in the Final
28 EIS without an opportunity for the public to review and comment on the new information.
29 This large amount of new, previously undisclosed, information has the potential to
30 present significant information relevant to environmental concerns and bearing on this
31 project and its impacts.

32
33 One of many specific examples of these significant content changes in the information,
34 analysis, and subsequent conclusions is found in the Watershed and Soils section. In
35 the Draft EIS, the agency relied on the concept/methodology of “riparian risk zones”². In
36 the Final EIS, these risk zones have been dropped completely and the agency is now
37 using entirely new data/methodology: the 2011 Gila National Forest Riparian Map
38 (RMAP):
39
40

¹ 40 CFR 1502.9(c)(1)

² DEIS, page 81

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1 *—The 2011 Gila National Forest Riparian Map (RMAP) replaces the Riparian Risk Zone.*
2 *Reason: This new data provides an up-to-date, comprehensive, Forestwide coverage of riparian*
3 *information that was not completed prior to the Draft report.*”³
4

5 This is not a simple update to the “latest” dataset. This was a complete replacement of
6 a challenged methodology, the entire data set, and a wholly and newly derived set of
7 conclusions. The public was not given a chance to review and comment on the new
8 methodology or its appropriateness, the completeness and the accuracy of the new
9 data set, or the rationality or impact of the newly derived conclusions.

10
11 Here is another example of significant content changes from the same section. The
12 Final EIS changes the underlying assumptions and methodology for road density
13 calculations. Road density calculations are the basis of many subsequent analyses and
14 permeate the entire project document. The DEIS (Table 28) presents the density as
15 such:
16

Existing Forest Road Density in 6 th -code Watersheds	<ul style="list-style-type: none"> · 76 percent of the 6th-code watersheds have a road density of less than 1 mile of road per square mile of land (mi/mi²). · 20 percent of the 6th-code watersheds have a road density of 1 to 2 mi/mi². · 4 percent of the 6th-code watersheds have a road density of greater than 2 mi/mi²
--	---

17
18 The FEIS (Table 50) presents a radically different methodology and result:
19

Existing motorized route density in 6 th -code watersheds (Forest Service and non-Forest Service routes)	<ul style="list-style-type: none"> 43% of the 6th-code watersheds have a road density of less than 1.0 mile of road per square mile of land (mi/mi²). 51% of the 6th-code watersheds have a road density of 1 to 2.4 mi/mi² 6% of the 6th-code watersheds have a road density of greater than 2.4 mi/mi²
---	---

20
21
22 Again, this is no mere update of newer information. The methodology has changed
23 (now all routes, both FS and non-FS, in the FEIS are used to calculate density versus
24 only Forest routes in the DEIS), the calculations presented have changed (the ranges of
25 road density included in each category), and the results (the percentages) have all
26 changed. In fact, the changes in the results are so startling as to require further review
27 to ensure new and additional errors have not been introduced. But the public has been
28 denied its right and obligation to review and comment on this methodology and its
29 accuracy because this significant new information was first presented in the FEIS.
30

³ FEIS, p. 194

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Another blatant example of significant content changes is the addition of a whole new
2 section of the Recreation Analysis in Chapter 3: Recreation – Special Management
3 Areas. This was so much new information that it required an entirely new and additional
4 underlying specialist’s report: The inventoried roadless areas and wilderness study
5 areas report (USDA Forest Service 2013b2).⁴
6

7 Again, these are only three specific examples from the multitude available as the
8 agency has added 192 pages worth of new information, nearly doubling the volume of
9 the Chapter 3 analysis. This overwhelming and significant change, in both volume and
10 content, is in direct violation of CEQ regulations for the presentation of new information.
11 CEQ requires that a supplement go through the same NEPA-required process as the
12 original EIS:

13
14 *— Agencies shall:*
15 *(4) Shall prepare, circulate, and file a supplement*
16 *to a statement in the same fashion (exclusive of*
17 *scoping) as a draft and final statement unless alternative*
18 *procedures are approved by the Council.”⁵*
19

20 This new information, presented to the public for the first time in a non-compliant
21 method, invalidates the FEIS and its subsequent ROD. The agency has no option but
22 to withdraw the FEIS/ROD, issue a CEQ-compliant supplemental EIS, and publish the
23 supplemental EIS for public review and comment.

⁴ FEIS, p. 112

⁵ 40 CFR 1502.9 (c)(4)

1 INADEQUATE AGENCY PROCESS IN RESPONDING TO COMMENTS:
2

3 This appeal point applies to multiple comments submitted by NMOHVA.
4

5 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
6 agency has not provided specific responses to NMOHVA's substantive comments as
7 required by law.
8

9 CEQ regulations are clear and very specific:
10

11 ***§1503.4 Response to comments.***
12

13 *(a) An agency preparing a final environmental*
14 *impact statement shall assess and consider comments*
15 *both individually and collectively, and shall respond*
16 *by one or more of the means listed below, stating its*
17 *response in the final statement. Possible responses are*
18 *to:*

19 *(1) Modify alternatives including the proposed*
20 *action.*

21 *(2) Develop and evaluate alternatives not previously*
22 *given serious consideration by the agency.*

23 *(3) Supplement, improve, or modify its analyses.*

24 *(4) Make factual corrections.*

25 *(5) Explain why the comments do not warrant*
26 *further agency response, citing the sources, authorities,*
27 *or reasons which support the agency's position*
28 *and, if appropriate, indicate those circumstances*
29 *which would trigger agency reappraisal or further*
30 *response.*
31

32 Agency regulations re-state the CEQ requirements verbatim and add the following:
33

34 *—When the responsible official determines that a summary of responses is appropriate, the*
35 *summary should reflect accurately all substantive comments received on the draft EIS.*
36 *Comments that are pertinent to the same subject may be aggregated by categories.”⁶*
37

38 While the agency Handbook allows comments to be aggregated by categories, the
39 above agency Handbook citation, in no way, relieves the agency from meeting the over-
40 arching CEQ requirements of adequately responding to each substantive comment. The
41 agency's Handbook also requires that “the summary should reflect accurately all
42 substantive comments”. We assert that the agency, in aggregating and summarizing
43 comments by “Summary Statement”, has not reflected accurately the errors identified by
44 our substantive comments and has then not responded adequately to the errors
45 identified in those comments.

⁶ Forest Service Handbook 1909.15.20, page 19

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1
2 40 CFR 1503.4(a) provides multiple legal responses to a substantive comment. The
3 options detailed in 40 CFR 1503.4(a)(1) through (4) describe material changes/updates
4 to the EIS. This has not happened in the case of many of our comments. The
5 remaining option is 40 CFR 1503.4(a)(5) which requires the agency to provide an
6 explanation of why a comment does not warrant further agency response. Completely
7 ignoring, mistakenly grouping, or erroneously summarizing comments with others based
8 on broad topic areas are not CEQ-allowed responses.

9
10 The agency has aggregated the comments received under broad categories; in many
11 cases completely ignoring the specific and explicit issues raised in the NMOHVA-
12 submitted comments.

13
14 Given that the agency chose to bundle comments and respond to summary statements
15 instead of specific comments, it was impossible for us as commenters to accurately and
16 adequately ascertain whether the agency had attempted to respond to specific
17 comments describing specific process errors. Even with the “Letter/Comment #”
18 assigned in Appendix B and the commenters “key” in Appendix C, it was impossible to
19 equate each of our distinct comments with a specific response as there was no “Rosetta
20 stone” document provided to match summary statements with our specific comments.
21 This was especially true when a single commenter submitted a large number of
22 comments, some of them overlapping, and some of them addressing specific aspects of
23 general topics from different angles. The bottom line is we could not know whether
24 specific comments submitted were even addressed.

25
26 We FOIA’d for a “Rosetta stone” document (Case Number 2014 FS R3 04245) as soon
27 (6/25/14) as we determined that there was no sure way to match our submitted specific
28 comments with the agency’s Summary Statement responses. We received the
29 requested document⁷ on 7/11/14. This document delivery date substantially shortened
30 the timeframe available for the production of this appeal.

31
32 Throughout this document, we will refer to our comments by the agency-supplied “Letter
33 and Comment” number. Please note that Appendix B of the FEIS does not supply or
34 include all of these numbers. The complete list is only available via the “Comment by
35 Subject” document we obtained via FOIA. As not all of our submitted comments appear
36 in their entirety in their original form in Appendix B or the “Comment by Subject”
37 document, we have supplied a copy of our original comments as submitted in Appendix
38 A of this document.

39

⁷ DEIS TM Comments Grouped by Subject, available at
http://www.fs.usda.gov/wps/portal/fsinternet!/ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gDfxMDT8MwRydLAIcj72BTUwMTAwgAykeaxRtBeY4WBv4eHmF-YT4GMHkidBvgAI6EdleDXIvfdRtAJuM3388jPTdUvyA2NMMgyUQQAyrgQmg!!/dl3/d3/L2dJQSEvUUt3QS9ZQnZ3LzZfS000MjZOMDcxT1RVODBJN0o2MTJQRDMwODQ!/?project=24477 after FOIA response.

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1 Our ability to seek court-directed relief is reliant on our having first fully exhausted the
2 administrative process. Our ability to completely and thoroughly exhaust the
3 administrative process in an efficient and timely manner has been obstructed and
4 significantly hampered by the agency's not providing a clear and easily ascertainable
5 link between our comments and their responses. Our right as the public to appeal the
6 ROD has been furthered hampered and obstructed by having to obtain the "Rosetta
7 stone" document via a formal FOIA submittal and agency's less than timely response in
8 light of the 45 day appeal period. Therefore, we assert that the agency has failed to
9 adequately respond to our specific comments as required by 40 CFR 1503.4.
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APPEAL POINTS RAISED BY INADEQUATE AGENCY RESPONSE TO
COMMENTS SUBMITTED BY NMOHVA

INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-4c

40 CFR 1503.4 requires that the agency respond to all substantive comments. The agency has not provided an adequate response to our comment. NMOHVA’s comment 03022011-15-4c documents the error:

“ERROR: The DEIS fails to utilize the best available science and information available to the agency for the Economic analysis. This lack of science and data directly impacts the environmental consequences presented and the comparisons made and presented.”⁸

Instead of responding to the error described, the agency’s response focuses on refuting a single sample calculation used in the comment to illustrate the potential under-reporting of economic impact. The agency’s response invokes a reference not included in the FEIS’s list of references (another CEQ violation; all references used are to be listed in the FEIS). After looking up the reference from outside sources, it does, indeed, claim that the average visitor to the Gila spends less than the average visitor spends less than in the average Forest.

But the agency didn’t use the “better” information to update their estimated impacts, they simply continue to limit their analysis to IMPLAN. We fully understand “leakage” (which the agency explained in its response); we also understand the “ripple” or “multiplier” effect (which the agency neglected to mention in its response). But neither leakage nor ripple effect account for the differences between the agency’s DEIS report and our own “back of the napkin” calculation based on the NVUM report.

The point of the calculation in our comment was not on a different specific number. The point of our sample calculation was to illustrate that the numbers provided by the agency were so low as to demand some critical thinking and additional questions as described in the body of our comment:

“Which estimate is correct? Do they represent the same information? Why are the numbers so different? We don’t know. But a discrepancy of nearly 1000% between these two analyses would suggest that 56 jobs is not an accurate depiction of the economic impact and that the agency’s economic environmental effects analysis is contradicted by the agency’s own internally generated data.”⁹

⁸ Comment 03022011-15-4, see Appendix A for a copy of entire comment as submitted by NMOHVA
⁹ Comment 03022011-15-4, see Appendix A for a copy of entire comment as submitted by NMOHVA

1
2 And indeed, it appears that the initial numbers given by the agency in the DEIS were
3 badly in error as the total number of recreation-related jobs estimated by the agency in
4 the FEIS¹⁰ is now five times the “56 jobs” reported in the DEIS.

5
6 We assert that by focusing the response on one single sample calculation in our
7 comment, the agency missed the “bigger picture” of our error statement. The errors in
8 the economic impact analysis evidently corrected by the agency in the FEIS lend
9 additional credence to the over-arching concerns we identified in our error statement.
10 Lacking a complete response to the error statement, the agency’s response is still
11 inadequate.

12
13

¹⁰ FEIS, Table 213

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-5

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided adequate response to our comment. NMOHVA finds the
5 agency's response to Comment 03022011-15-5 to be inadequate because the agency
6 did not respond at all to the specific error clearly identified in our comment. Comment
7 03022011-15-5 contained the explicit and specific identification of this error:

8
9 **“ERROR:** The DEIS fails to disclose site specific analysis of cause-and-effect
10 that relates resource issues to motorized use. It fails to disclose how this
11 analysis was used to determine of motorized routes. The agency makes no
12 claims that the cost of obtaining this information is exorbitant.”¹¹

13
14 In the agency's response, the agency claims:

15
16 *—The Travel Management Rule does not require agencies to have a complete inventory of routes*
17 *before completing the designation process (70 FR 68268, 68269). ”¹²*

18
19 The agency is using the referenced pages in the Federal Register inappropriately and
20 out of context in their response. This is what the TMR Final Rule Publication in the
21 Federal Register actually states (emphasis added):

22
23 *—Response. The Department disagrees*
24 *that a complete inventory of user created*
25 *routes is required in order to*
26 *complete the designation process. As a*
27 *practical matter, such an inventory may*
28 *never be fully complete, as new routes*
29 *will continue to be created during the*
30 *inventory process. A complete*
31 *inventory would be very time consuming*
32 *and expensive, delaying*
33 *completion of route designation.*
34 *Advance planning based on public*
35 *involvement, careful design, and site specific*
36 *environmental analysis provide*
37 *the best hope for a sustainable, managed*
38 *system of motor vehicle routes and areas*
39 *addressing user needs and safety with a*
40 *minimum of environmental impacts.*
41 *As stated above, some user-created*
42 *routes would make excellent additions*
43 *to the system of designated routes and*
44 *areas. The Forest Service is committed*

¹¹ Comment 03022011-15-5, see Appendix A for a copy of entire comment as submitted by NMOHVA.

¹² FEIS, Appendix B, page 612

1 *to working with user groups and others*
2 *to identify such routes and consider*
3 *them on a site-specific basis.”*
4

5 As it clearly states in the Federal Register excerpt above, the agency is not required to
6 complete an inventory on all user-created routes and but is still expected to complete a
7 site-specific analysis of any and all routes considered for designation. This is a key
8 point! The agency has claimed to disclose site specific analysis only on those routes
9 proposed for designation, not all of the routes considered.

10
11 This project was focused entirely on travel management. The site-specific analysis of
12 the affected roads and trails was the seminal data required to make carefully considered
13 and defensible decisions on each individual route designation. The agency, within its
14 response to this comment, freely admits that while it physically examined some of the
15 routes in questions, it relied upon its GIS information (from INFRA) for its “analysis”.
16 This is the same INFRA data that is so unreliable that the OML-1 road inventory shrunk
17 from 1169 miles in the DEIS¹³ to only 530 miles in the FEIS¹⁴. We assert that this
18 further proves that the GIS-dependent method was (and is) so inaccurate and so
19 lacking the appropriate level of detail as to be insufficient. Furthermore, the agency has
20 not shown the cost of obtaining actual site-specific data for all routes considered for
21 designation was cost-prohibitive.

22
23 In fact, the agency admits that a complete ground-based inventory was not cost-
24 prohibitive in the recent past:

25
26 *—In arly 1992, the Gila National Forest initiated its GPS road inventory effort. The objective*
27 *was to GPS all roads found on Gila National Forest lands in order to update both the digitized*
28 *line-work in the map series and the corresponding characteristic data housed in the TIS*
29 *database. A road was defined as —A general term denoting a facility for the purposes of travel by*
30 *vehicles greater than 50 inches in width (FSM 2355.05)” (USDA Forest Service 1990). Any route*
31 *meeting the definition of a road was GPSed, updating both the —inventory record” and the map*
32 *line-work. The Forest completed the inventory process in 1998.¹⁵*
33

34 In its response, the agency invokes 40 CFR 1502.22(b) stating that it directs the
35 agencies what to do when the overall costs of obtaining needed information is
36 exorbitant. These CEQ regulations do, indeed, very clearly direct what the agency is to
37 do when costs of obtaining information would be exorbitant. Here is the referenced
38 regulation in its entirety:

39
40 *—h) If the information relevant to reasonably*
41 *foreseeable significant adverse impacts cannot be*
42 *obtained because the overall costs of obtaining it are*

¹³ DEIS, Table 19

¹⁴ FEIS, Table 19

¹⁵ Roads Report for the Final Environmental Impact Statement, p. 1

1 *exorbitant or the means to obtain it are not known,*
2 *the agency shall include within the environmental*
3 *impact statement:*
4 *(1) A statement that such information is incomplete*
5 *or unavailable; (2) a statement of the relevance*
6 *of the incomplete or unavailable information to evaluating*
7 *reasonably foreseeable significant adverse*
8 *impacts on the human environment; (3) a summary of*
9 *existing credible scientific evidence which is relevant*
10 *to evaluating the reasonably foreseeable significant*
11 *adverse impacts on the human environment, and (4)*
12 *the agency's evaluation of such impacts based upon*
13 *theoretical approaches or research methods generally*
14 *accepted in the scientific community. For the purposes*
15 *of this section, "reasonably foreseeable" includes*
16 *impacts which have catastrophic*
17 *consequences, even if their probability of occurrence*
18 *is low, provided that the analysis of the impacts is*
19 *supported by credible scientific evidence, is not*
20 *based on pure conjecture, and is within the rule of*
21 *reason."*
22

23 The agency, in the FEIS, does not disclose the required information for 40 CFR
24 1502.22(b)(1-4). The agency's response to our comment is incorrect and the agency
25 has not addressed the specific error identified in our comment. Therefore, the response
26 is inadequate.
27

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1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-6 and
2 03022011-15-7

3
4 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
5 agency has not provided an adequate response to our comment. NMOHVA's comment
6 03022011-15-6 documents a specific error:

7
8 **"ERROR:** The No Action Alternative does not meet the requirements of CEQ
9 regulations and does not accurately document the existing condition on the
10 Forest. Specifically, the no action alternative fails to clearly present the current
11 condition of many of the resources studied. This is in clear violation of 40 CFR
12 1502.15."¹⁶

13
14 For some reason, the agency assigned two different Letter/Comment numbers to this
15 single comment and provided two separate responses. The first response states:

16
17 *—The Forest's interpretation of the existing condition as being that shown in the INFRA database*
18 *(Maintenance Level 2 through 5 roads and motorized trails) precluded displaying the routes*
19 *provided by the public as part of alternative B."*¹⁷
20

21 This response completely misses the point of our error statement (we address the
22 agency's flippant interpretation of the CEQ's required baseline condition in the above
23 response elsewhere within this document). Our comment, and its very specific error
24 statement, identifies that the various resource conditions of the Forest were not fully and
25 accurately disclosed in the baseline condition/no action alternative. This is very and
26 distinctly different than our error statements in other comments that address the lack of
27 a complete disclosure of the CEQ's required present management direction or level of
28 management intensity (see our next appeal point). Therefore, the first agency's first
29 response to the error statement in our comment is completely inadequate.

30
31 The second agency response stated:

32
33 *—Each focal species and focal group has a write-up that describes what is known about the*
34 *species and its habitat on the forest. We acknowledge that for some species, the information is*
35 *limited (pages 138 to 203 DEIS). The wildlife section of the DEIS is a summary of the draft*
36 *wildlife specialist report; this report on pages 19 to 136 has a more complete species and habitat*
37 *write-up. All federally listed species and Forest Service sensitive species that occur on the Gila*
38 *are included as a focal species."*
39

40 The agency's response to the comment clearly illustrates that they either didn't read the
41 comment carefully enough to understand it (an obvious risk when the agency chose to

¹⁶ Comment 03022011-15-6, see Appendix A for a copy of entire comment as submitted by NMOHVA. Comment 03022011-15-7 as identified in the *DEIS TM Comments Grouped by Subject* document is an extract from the larger 03022011-15-6 document.

¹⁷ FEIS, Appendix B, p.664

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1 “summarize” groups of comments) or simply chose to ignore it. In our comment, we
2 didn’t assert that the agency provided no information on the specific species. We
3 asserted that the agency disclosed no information on how the resources were doing
4 under the current conditions. The error identified in our comment was not limited to
5 wildlife species although that is the example topic we chose to illustrate in the comment:
6

7 “Let’s examine the Wildlife section of Chapter 3 as an example.”
8

9 The FEIS adds no new insight into this fundamental question or even into how wildlife
10 species (some of the numerous natural resources that were inadequately considered
11 and whose baseline condition was not disclosed) were doing under the no action
12 alternative. This is not surprising. The agency apparently has no idea on how many of
13 the specific species are doing under the current condition. They openly admit as much
14 in the FEIS:
15

16 —*Sine Hubbard (1977) there have been a few more studies on the birds of the Gila River, but*
17 *aside from birds, work on other terrestrial vertebrates has been very limited.*”¹⁸
18

19 The FEIS provides no new information source on how birds, amphibians, reptiles, and
20 or other terrestrial wildlife are faring under the current condition of the forest. What are
21 the population trends? What is the trend of their habitat conditions?
22

23 How can the agency make an informed decision about effects to wildlife when they have
24 no idea of its current condition? We doubt that information is really that sparse as every
25 other agency entity that has undertaken travel management in New Mexico has been
26 able to display at least the current population and habitat trend for almost all of their
27 focal species. The agency has evidently chosen to not disclose this information in the
28 FEIS for the Gila National Forest. Without this information, the endless comparison of
29 road miles and acres of disturbance is completely meaningless.
30

31 The FEIS is still completely silent although the 2012 Management Indicator Species
32 (MIS) report¹⁹ that NMOHVA obtained via FOIA on 7/11/14 sheds some interesting light
33 on the MIS current population trends (all page numbers from the 2012 MIS Report):
34

35 Mule deer (p.17) –
36

37 Habitat trend – Stable (p. 13)
38

39 “*The population and numbers of deer observed are recently on a slight decline because of poor*
40 *recruitment related to drought. This decline is expected to be short term and consistent with*
41 *periodic fluctuations observed in the past.*”(p. 17)

¹⁸ FEIS, p. 258

¹⁹ GILA NATIONAL FOREST MANAGEMENT INDICATOR SPECIES CATRON, GRANT, HIDALGO, AND SIERRA COUNTIES, NEW MEXICO, 11/26/12

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Mearns Quail –

Habitat trend – Relatively Stable (p.19)

—...*the trend for the species on the Forest is thought to be stable.*” (p. 24)

Juniper Titmouse –

Habitat trend – Stable or improving (p.26)

—*long-term population trends for the plain titmouse appear to be stable at the Forest level.*” (p. 29)

Northern goshawk –

Habitat trend – Stable or improving (p. 31)

—...*northern goshawk population trends on the Gila National Forest appear to be stable.*” (p. 36)

Mexican spotted owl –

Habitat trend – Decreased habitat because of stand replacing fires.

—*the long-term population trend for MSO on the Gila National Forest appear to be cyclic, but stable.*” (p. 48)

Hairy woodpecker –

Habitat trend – Stable (p. 49)

—*The population trend for hairy woodpeckers on the Gila National Forest is predicted to be stable.*” (p. 55)

Common Black-Hawk -

Habitat trend – Improving (p. 56)

—*long-term population trends for the Common Black-Hawk appear to be stable or improving at the Forest level.*” (p. 61)

Beaver –

Habitat – Stable or increasing (p. 63)

—...*the long-term population trend for beaver on the Gila National Forest appears to be stable.*” (p.68)

1 Native Trout –

2

3 Habitat trend – Stable or increasing (p. 70)

4

5 —...*the population and associated habitat on the Gila National Forest is **stable and increasing***
6 *over the long term...*” (p. 82)

7

8 Based on the MIS report gained via FOIA, it appears that all habitat and population
9 trends of the MIS are stable and/or increasing with the exception of mule deer
10 population (attributed to drought) and MSO habitat (attributed to stand-replacing
11 wildfire).

12

13 Yet the agency has chosen not to disclose this information throughout the project
14 process including the FEIS. Why? We assert that the information was buried because
15 the MIS report clearly shows that in spite of almost unrestricted motorized cross country
16 travel and current motorized use of all system roads, OML-1 roads, decommissioned
17 roads, unauthorized roads, and all trails...the wildlife is doing just fine! This obviously
18 does not square with the agency’s obvious bias against motorized uses and was
19 therefore suppressed in the project’s environmental documents.

20

21 The agency has not responded adequately to the specific examples (wildlife species)
22 we provided in our comment. Of even more import, they have failed to respond to the
23 larger issue identified as the error in our comment. As such, the response provided is
24 totally inadequate.

25

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-8

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA finds the
5 agency's response to Comment 03022011-15-8 to be inadequate because the agency
6 did not respond at all to the specific error clearly identified in our comment. Comment
7 03022011-15-8 contained the explicit and specific identification of this error (emphasis
8 added):

9
10 **"ERROR:** The No Action Alternative does not meet the requirements of CEQ
11 regulations and does not accurately document the existing condition on the
12 Forest. **Specifically, the no action alternative presented does not accurately**
13 **portray the present management direction or level of management**
14 **intensity."**²⁰

15
16 There was absolutely no corresponding response by the agency. The FEIS, in
17 Appendix B. Response to Comments, provides no response at all in reference to
18 Comment 03022011-15-8 (a text search of FEIS Appendix B for the string "030220110-
19 15-8" easily confirms it).

20
21 None of the responses to any other comments refer to either "present management
22 direction" or "level of management intensity". None of the other responses to the
23 various "Summary Statements" address, in any form or fashion, the specific topic raised
24 in our comment.

25
26 Our comment specifically points out a clear and unequivocal CEQ requirement for the
27 portrayal of the existing condition on the Forest. The agency has completely failed to
28 address our comment and this CEQ requirement at all. "Completely ignoring" a
29 substantive comment is not within the five prescribed responses that 40 CFR 1503.4(a)
30 provides. The agency has thus has not provided a CEQ-compliant response to our
31 comment.

32

²⁰ Comment 03022011-15-8, see Appendix A for a copy of entire comment as submitted by NMOHVA.

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-9

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided adequate response to our comment. NMOHVA finds the
5 agency's response to Comment 03022011-15-9 to be inadequate because the agency
6 did not respond at all to the specific error clearly identified in our comment. Comment
7 03022011-15-9 contained the explicit and specific identification of this error:

8
9 **“ERROR:** The No Action Alternative does not meet the requirements of CEQ
10 regulations and does not accurately document the existing condition on the
11 Forest. Specifically, the agency has failed to adequately explore, define, and
12 document the existing condition in the No Action Alternative.”²¹

13
14 There was no corresponding response by the agency. The FEIS, in Appendix B.
15 Response to Comments, provides no reference to Comment 03022011-15-9 at all (and
16 a text search of FEIS Appendix B for the string “03022011-15-9” easily confirms the
17 complete lack of response).

18
19 Our original comment goes on to further explain this error in even greater detail:

20 “In the DEIS Summary, page ii, the agency states:

21 *“Alternative B is the no action alternative. It represents the existing condition, which is*
22 *our best estimate of where people are driving now.”*

23
24 The agency is not given the latitude of writing its own definition of what „no action“
25 means.”

26
27 The comment details specific missing resources in the DEIS analysis of the existing
28 condition:

29 “In spite of clear CEQ requirements that the „no action“ alternative is “*no change*”
30 *from current management direction or level of management intensity*”, the agency
31 has chosen to arbitrarily eliminate:

- 32
- 33 • 1169 miles of OML 1 roads
 - 34 • An unknown, but clearly acknowledged, amount of „unauthorized routes”
 - 632 miles of trails outside of wilderness areas”

35 The FEIS still contains the very same statement:
36

²¹ Comment 03022011-15-9, see Appendix A for a copy of entire comment as submitted by NMOHVA.

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1 *—Alternative B is the no action alternative. It represents the existing condition, which is our best*
2 *estimate of where people are driving now.”²²*

3
4 And the same specifically identified resources (with some corrections to mileages) are
5 still missing in the FEIS:

- 6 • 530 miles of OML 1 roads²³
7 • An unknown, but clearly acknowledged, amount of „unauthorized routes“²⁴
8 • 719 miles of trails outside of wilderness areas”²⁵

9 The agency’s usual response to this topic is to regurgitate Region 3 direction about
10 “system routes”. Our comment specifically challenged the validity of the Region 3
11 direction contradicting CEQ specific requirements:

12 “To counter the inevitable claim that Region 3 direction was to only include
13 INFRA documented routes, NMOHVA reminds the agency that the DEIS must
14 comply with not only Region 3 desires but, much more importantly, CEQ
15 requirements!”

16 The agency’s response to our specific challenge to their methodology on the existing
17 condition was silence. Again, “no response” is not a CEQ-compliant alternative. The
18 agency’s allowed response, lacking a correction in the FEIS, is very specific. The
19 remaining option is 40 CFR 1503.4(a)(5) which requires the agency to provide an
20 explanation of why a comment does not warrant further agency response. Completely
21 ignoring substantive comment is not an allowed response. The agency response
22 completely ignored the specific error statement in our comment and thus has not
23 provided a CEQ-compliant response.
24

²² FEIS, p. iv

²³ FEIS, Table 19, p. 48 (It is also interesting to note that this total is about half of that claimed in the DEIS. What happened to the rest of the mileage? Was the INFRA system information so inaccurate that a 200% error was given to the public in the DEIS?)

²⁴ FEIS, p. 14

²⁵ FEIS for Travel Management, Gila National Forest, page 58. Calculated as 719 = 735 miles of trail outside Wilderness - 16 miles of motorized trail.

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-12 and
2 03022011-15-13

3
4 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
5 agency has not provided a legal response to our comments. NMOHVA's comment
6 03022011-15-12 documents a specific error:

7
8 **“ERROR:** The DEIS uses a 600 foot width as a „riparian risk zone“ when the
9 disclosed data shows the average width of a riparian area to be far less. There is
10 no reason to create a „risk zone“ when there is actual data. The „risk zone“ is not
11 an accurate approximation for the indicator that the DEIS uses for the analysis.”²⁶

12
13 NMOHVA's comment 03022011-15-13 documents a different specific error:

14
15 **“ERROR:** The agency has purposely misrepresented the potential impacts of
16 roads to riparian zones by using overstating the „measurement“ indicators.”²⁷

17
18 The agency chose to respond to both comments with a single response. Since the
19 agency's response has made it clear that they have removed the challenged
20 methodology from the FEIS, we assume that the agency agreed with our two
21 comments. Unfortunately, in dropping the challenged methodology, the agency decided
22 to use an entirely new methodology and a completely new data set to complete the
23 analysis.

24
25 This is a very clear violation of CEQ requirements contained in 40 CFR 1502.9. The
26 public has now been denied its right to review and comment on the entirety of this new
27 methodology, the new data, and the subsequent analysis (see our appeal point titled:
28 AGENCY ADDING SIGNIFICANT NEW INFORMATION TO THE FINAL EIS). The
29 agency, therefore, has supplied an inadequate response to our comments and is still
30 not compliant with CEQ regulations.

31

²⁶ Comment 03022011-15-12, see Appendix A for a copy of entire comment as submitted by NMOHVA

²⁷ Comment 03022011-15-13, see Appendix A for a copy of entire comment as submitted by NMOHVA

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-15

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-15 documents a very specific error:

6
7 **“ERROR:** The agency has not disclosed what specific previous decisions pertaining to
8 route designation have been incorporated into the DEIS.”²⁸

9
10 The agency's response simply does not address the error identified in our comment:

11
12 *—Nothing in the TMR requires reconsideration of any previous administrative decisions that*
13 *allow, restrict, or prohibit motor vehicle use on NFS roads and NFS trails or in areas on NFS*
14 *lands and that were made under other authorities, including decisions made in land management*
15 *plans and travel plans (Federal Register Vol. 70, No. 216, page 68268). ”²⁹*

16
17 Therefore, the response is not an adequate or CEQ-compliant response.

18
19 This comment is fundamental to our assertion that this EIS is not a CEQ or even Travel
20 Management Rule compliant document. In the Final EIS, the agency makes this
21 statement:

22
23 *—The Travel Management Rule allows the responsible official to incorporate previous*
24 *administrative decisions regarding travel management made under other authorities, including*
25 *designations and prohibitions of motor vehicle use, in designating NFS roads, trails, and areas*
26 *on NFS lands for motor vehicle use (36 CFR 212.50(b)). Therefore, motorized roads or trails that*
27 *are designated as maintenance level 1 (ML1) closed roads and decommissioned roads are not*
28 *considered part of the existing open motorized system in alternative B and are not shown on the*
29 *alternative B maps.”³⁰*

30
31 The agency's response to our comment invokes the Federal Register publication of the
32 Final Rule. The agency fails to provide the whole “story” that the Final Rule makes
33 clear about previous designations. There are certain and specific requirements
34 contained in the Final Rule with which the agency has not complied.

35
36 The Final Rule makes it plain that previous designations can be incorporated into the
37 Travel Management Plan without further public involvement in only a single specific
38 case. If one continues reading the document referenced by the agency above, one
39 finds the additional requirements:

40
41 *—Some National Forests or Ranger*
42 *Districts have previous administrative*
43 *decisions, made under other authorities*

²⁸ Comment 03022011-15-15, see Appendix A for a copy of entire comment as submitted by NMOHVA

²⁹ FEIS, Appendix B, p. 612

³⁰ FEIS, p. 5

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1 with public involvement, which restrict
2 motor vehicle use over an entire Forest
3 or District to designated routes and
4 areas. In these cases, the responsible
5 official may, with public notice but no
6 further analysis or decisionmaking,
7 establish that decision or those
8 decisions as the designation pursuant to
9 this rule for the National Forest or
10 Ranger District, effective upon
11 publication of a motor vehicle use map.”³¹

12
13 These requirements are stated more formally in the TMR language itself:

14
15 —212.52 Public involvement.
16 (a) General. The public shall be
17 allowed to participate in the designation
18 of National Forest System roads,
19 National Forest System trails, and areas
20 on National Forest System lands and
21 revising those designations pursuant to
22 this subpart. Advance notice shall be
23 given to allow for public comment,
24 consistent with agency procedures
25 under the National Environmental
26 Policy Act, on proposed designations
27 and revisions. Public notice with no
28 further public involvement is sufficient
29 if a National Forest or Ranger District
30 has made previous administrative
31 decisions, under other authorities and
32 including public involvement, which
33 restrict motor vehicle use over the entire
34 National Forest or Ranger District to
35 designated routes and areas, and no
36 change is proposed to these previous
37 decisions and designations.”

38
39 The Final Rule makes three things clear. First, the decision must have been made with
40 public involvement. Second, the previous decision must have encompassed an entire
41 Forest or District. And finally, the previous decision must be adopted, in whole, without
42 any changes.

43
44 The agency, in their assertion at page 5 of the FEIS, has violated at least two of these
45 requirements. The administrative “decision” to designate the referenced roads was
46 made without public involvement (the agency has provided no NEPA-compliant
47 document that shows public involvement in the bulk designation of the OML-1 roads).
48 In addition, the agency is not adopting the previous designation without changes.
49 Instead, they are making changes (designating some of the OML-1 roads as open to
50 motorized use) to their claimed “previous designation”.

³¹ 70 FR 68268

1 But the statement in the FEIS now makes for a triple violation. More than just making a
2 false claim of being able to incorporate a previous designation, the agency is using this
3 claim of previous designation to avoid providing the public with a true and accurate
4 current condition (no action alternative). As described elsewhere in our comments and
5 this appeal (see our appeal point pertinent to Comment 03022011-15-6), this lack of a
6 CEQ-compliant no action alternative skews the entire analytical process and renders
7 the EIS wholly non-compliant.

8
9 Of even more import, the agency did not disclose this claim in the DEIS (it makes its
10 first appearance in the FEIS). The FEIS was the first disclosure of the agency's faulty
11 reasoning on why they could withhold essential route information from the public. They
12 had previously claimed only:

13
14 *—Alternative B is the no action alternative. It represents the existing condition, which is our best*
15 *estimate of where people are driving now.*"³²

16
17 This late disclosure, in the FEIS, deprived the public of its right to review and comment
18 on this fundamental and erroneous claim by the agency.

19
20 To recap, our comment on previous designations was made on a specific error that is
21 fundamental to the agency's structuring of the EIS and its no action alternative. The
22 agency has not responded to the specific error identified in our comment, rendering the
23 response completely inadequate. In addition, the agency has added a new fundamental
24 error in interpretation to the FEIS. The public has been denied the right to review and
25 comment on this new error.

³² DEIS, p. ii

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-18

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-18 documents the error:

6
7 **"ERROR:** The DEIS does not provide an analysis that is CEQ compliant or
8 based on the agency's own published guides. The DEIS depends on broad
9 generalizations while ignoring site specific analysis and empirical evidence
10 readily available on the Forest. The DEIS depends on general conclusions
11 based on study areas that do not accurately reflect the GNF's past, current, or
12 future condition."³³

13
14 The agency provided three separate attempts at responding to this comment. The first
15 is:

16
17 *—The wildlife section of the DEIS cites many authors that identify potential road/motorized use*
18 *effects to wildlife species. The specialist report even states that: —Not all species are negatively*
19 *impacted by motorized use (page 134 DEIS).” Wisdom et al. (2000) did a good job of condensing*
20 *and summarizing potential road effects; and therefore, was used to summarize potential direct*
21 *and indirect effects for this analysis. Wisdom research was not the only literature cited related to*
22 *potential effects to wildlife from motorized recreational use. Each focal group and focal species*
23 *has literature that refers to the potential effects of motorized recreation on wildlife (pages 134 to*
24 *207 DEIS). An extensive amount of time was spent reviewing the most up-to-date literature to use*
25 *the best available science for the DEIS.*

26
27 *This literature also included research completed in New Mexico and in similar habitat types that*
28 *occur on the Gila National Forest. We disagree with the author of this letter and feel the analysis*
29 *was relevant.*

30
31 *An example of local information used comes from the USFW 2010 document that is cited and*
32 *documents that: of the 68 Mexican Gray Wolf deaths on or adjacent to the Gila and Apache-*
33 *Sitgreaves National Forests between 1998 and 2009, 31 are associated with shooting and 12 with*
34 *vehicle collision (page 210 DEIS). These data also show proximity to roads causes direct and*
35 *indirect effects to terrestrial wildlife from motorized recreation.”³⁴*

36
37 The agency's response only further highlights the point of the original comment. The
38 agency has chosen to rely on studies on potential effects rather than the empirical
39 evidence within the Gila NF itself. Their response further augments our original
40 argument:

41
42 *—Wisdom et al. (2000) did a good job of condensing and summarizing potential road effects; and*
43 *therefore, was used to summarize potential direct and indirect effects for this analysis. Wisdom*
44 *research was not the only literature cited related to potential effects to wildlife from motorized*

³³ Comment 03022011-15-18, see Appendix A for a copy of entire comment as submitted by NMOHVA.

³⁴ FEIS, Appendix B, p. 755

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1 *recreational use. Each focal group and focal species has literature that refers to the potential*
2 *effects of motorized recreation on wildlife (pages 134 to 207 DEIS). ”*
3

4 The agency had no need to rely on literature for potential effects of motorized recreation
5 on wildlife. It had ample data within the subject forest on which to base its analysis. But
6 what example do they use? The agency uses data on wolf mortality. We assert that
7 this example is totally irrelevant to the general wildlife population. Furthermore, the
8 DEIS example referenced by the agency (p. 210) states that road density is the issue,
9 not motorized recreation. We further assert that wolf mortality is a special case and the
10 cause of mortality is federal agency insensitivity to the overwhelming rejection of wolf
11 introduction by the local populace.

12
13 The final “wolf” point is that the agency’s own analysis states that none of the action
14 alternatives, even Alternative C which provides for a much higher level of motorized
15 recreation, has any significant detrimental effect:

16
17 *“Carnivores: The incremental impacts of the action alternatives of travel management when*
18 *added to other past, present, and reasonably foreseeable actions of land ownership, mining,*
19 *grazing, vegetation management projects, and recreation activities are at levels that do not cause*
20 *significant affects to carnivores.”³⁵*
21

22 And this is the cumulative effect. It even includes the current state of impact caused by
23 the existing condition (as represented by the no action alternative)!

24
25 The second agency response to Comment 03022011-15-18 states:

26
27 *–The analysis is a cause-and-effect analysis at the forest level that analyzes the potential to affect*
28 *terrestrial species under the different alternatives using the best available data. Literature that is*
29 *referenced throughout the DEIS wildlife section documents that motorized use facilitated by*
30 *access routes affects wildlife (DEIS, pages 126 to 212). ”³⁶*
31

32 It is incredible to us (and non-compliant to CEQ requirements) that the agency’s
33 prejudice and predisposition is so great that they chose to rely on literature claiming a
34 “potential” for harm instead of the local forest’s empirical evidence to the contrary.

35
36 The response goes on to further claim:

37
38 *–Additionally, the agency did not ignore the site-specific data. Alternatives were developed by*
39 *specialists spending many hours and days looking at all the roads with potential to affect a*
40 *sensitive resource and then determining how it fit into one of the action alternatives. Therefore,*
41 *biologists spent a large amount of time comparing goshawk location and habitat data to our*
42 *existing road system and how it should be considered for each alternative.”*
43

³⁵ FEIS, p. 375

³⁶ FEIS, Appendix B, p. 767

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1 The fact that the specialists spent “many hours and days” looking at roads with the
2 “potential” to affect a sensitive resource (northern goshawk) and still were forced to
3 admit no significant cumulative impacts does not support the decisionmaker’s ultimate
4 selection or given reasons for the decision:

5
6 —based on the best available data collected from 1991-2011, northern goshawk
7 population trends on the Gila National Forest appear to be stable.”³⁷

8
9 —Cumulative Effects Assessment and Findings

10
11 Across the Gila National Forest, the incremental impacts of the proposed project and its
12 associated alternatives, when added to other past, present, and reasonably foreseeable future
13 actions, are at levels that do not cause significant effects to wildlife species or their habitat on the
14 forest.”³⁸

15
16 We will, once again, remind the agency that the above statement is taken from the
17 Wildlife Cumulative Effects Analysis. The Cumulative Effects Analysis is the sum
18 projected impact from the current situation (a forest open to cross country travel and all
19 of the current motorized use) plus even the most motorized of the action alternatives.
20 And the agency’s conclusion: “do not cause significant effects” to the goshawk (or any
21 of the other species)!!!

22
23 And the final agency response to Comment 03022011-15-18 focuses on MSO concerns
24 and regurgitates the same message:

25
26 —The analysis is a cause-and-effect analysis at the forest level that analyzes the potential to affect
27 terrestrial species under the different alternatives using the best available data.”³⁹

28
29 Our assertion remains: One doesn’t need to rely on literature for an analysis on
30 “potential to affect” when one has a 3.3 million acres forest with ample interface
31 between wildlife and motorized use to establish actual empirical evidence. And what
32 does that empirical evidence say:

33
34 —The incremental impacts of the action alternatives of travel management when added to other
35 past, present, and reasonable foreseeable actions of land ownership, mining, grazing, vegetation
36 management projects, and recreation activities are at levels that do not cause significant effects
37 to this species.”⁴⁰

38
39 And remember, cumulative effects include the past and present actions:
40

³⁷ GILA NATIONAL FOREST MANAGEMENT INDICATOR SPECIES, CATRON, GRANT, HIDALGO, AND SIERRA COUNTIES, NEW MEXICO, 11/26/2012

³⁸ FEIS, p. 375

³⁹ FEIS, Appendix B, p. 771

⁴⁰ FEIS, p. 380

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1 *—Cumulative wildlife assessments address the incremental impacts of an action when added to*
2 *other past, present, and reasonably foreseeable future actions.”⁴¹*
3

4 Even when the past effects of all motorized use are taken into account (including nearly
5 2.4 million acres of “open” forest that has experienced cross-country travel) and are
6 added to the most motorized intensive use projected for the future (Alternative C), the
7 universal result was clear (but evidently impossibly difficult for the agency to accept):
8

9 *—Across the Gila National Forest, the incremental impacts of the proposed project and its*
10 *associated alternatives, when added to other past, present, and reasonably foreseeable future*
11 *actions, are at levels that do not cause significant affects to wildlife species or their habitat on the*
12 *forest. More specifically, the incremental impacts of the action alternatives of travel management*
13 *when added to other past, present, and reasonably foreseeable actions of land ownership, mining,*
14 *grazing, vegetation management projects, and recreation activities are at levels that do not cause*
15 *significant affects to species of concern identified in this analysis.”⁴²*
16

17 The agency’s response to our comment completely ignores this fundamental truth
18 buried in the FEIS, does not portray the truthful situation existing on the Forest, and is
19 therefore inadequate.

⁴¹ FEIS, p. 369

⁴² FEIS, p. 375

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-20

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-20 documents a specific error:

6
7 **“ERROR:** The closure of the lower San Francisco river to motorized use in the
8 Preferred Alternative does not flow logically or rationally from the DEIS.”⁴³

9
10 Our comment goes on to explain in detail why the closure doesn't flow logically from the
11 analysis in the DEIS. The agency's response to our comment simply states:

12
13 *—The DEIS analysis is forestwide analysis. The area of the San Francisco River was analyzed,*
14 *but not specifically spoken to within the document. With the specific concern over this area,*
15 *analysis of the lower San Francisco River will be added to the FEIS.”⁴⁴*

16
17 The response is inadequate as well as conflicting. The first two sentences imply that
18 the reason the decision for closure doesn't flow logically is that the analysis was
19 conducted forestwide and the analysis for the San Francisco River was left out of the
20 document. That is categorically an inadequate explanation. The agency must agree as
21 the third sentence of the response states that the analysis for the lower San Francisco
22 River would be added to the FEIS.

23
24 We have carefully examined the FEIS. The only “addition” to the analysis of the
25 referenced area is the addition of a whole new section of the Recreation Analysis in
26 Chapter 3: Recreation – Special Management Areas. This was so much new
27 information that it required an entirely new and additional underlying specialist's report:
28 The inventoried roadless areas and wilderness study areas report (USDA Forest
29 Service 2013b2).⁴⁵

30
31 As we point out elsewhere in this document, the addition of significant new information
32 at this point of the process is not CEQ-compliant. Furthermore, this new information still
33 leaves almost all of the fundamental questions we raised in our comment unanswered.
34 The new information focuses entirely on the impacts of the closure to wilderness and
35 IRA values, completely ignoring the impacts on the social, historical, and cultural
36 impacts of depriving the motorized public to their historical access of this special area.

37
38 Our concerns, identified in our original comment, remain unanswered:

39
40 “Reviewing what the DEIS has disclosed:
41

⁴³ Comment 03022011-15-20, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁴⁴ FEIS, Appendix B, p. 716

⁴⁵ FEIS, p. 112

1 The initial Proposed Action included FSR 4223 L as designated to motorized
2 use. This is the proposal the public responded to with scoping comments.
3 The agency's analysis does not identify unacceptable natural resource impacts
4 from the current use of the route by motorized vehicles. Neither does it identify
5 any special recreational benefits or unique values.
6 The agency's analysis stated that there is a negative cumulative effect of fewer
7 open OHV routes available.

8
9 We find no logical and rational connection between what is disclosed in the
10 analysis of the DEIS and the proposed designation of FSR 4223 L in the
11 agency's preferred alternative."
12

13 Perusing the other responses to the public's comments revealed a shocking admission
14 by the agency:

15
16 ~~The San Francisco road~~ is similar in that it ~~is an old historic road that users created long~~
17 ~~ago.~~⁴⁶

18
19 "Old historic road"? Our careful examination of the Cultural Resources section of the
20 FEIS turned up not a single mention of the San Francisco road as a cultural or historical
21 resource, nor any analysis on how losing motorized access to the road would impact
22 users or the road itself.

23
24 We also found this reference to the National Historic Preservation Act within the
25 agency's response to comments:

26
27 ~~Instead, 'adverse effect' will be used as it is defined by the NHPA 36 CFR 8005.a.1:~~

28
29 ~~—...an adverse effect is found when an undertaking may alter, directly or indirectly, any~~
30 ~~of the characteristics of a historic property that qualify the property for inclusion in the~~
31 ~~National Register in a manner that would diminish the integrity of the property's~~
32 ~~location, design, setting, materials, workmanship, feeling or association. Consideration~~
33 ~~shall be given to all qualifying characteristics of a historic property, including those that~~
34 ~~may have been identified subsequent to the original evaluation of the property's~~
35 ~~eligibility for the National Register. Adverse effects may also include reasonably~~
36 ~~foreseeable effects that may occur later in time, be farther removed in distance or~~
37 ~~cumulative.~~

38
39 ~~Examples of such adverse effects include but are not limited to:~~

- 40
41 • ~~Physical destruction of or damage to all or part of the property~~
42 • ~~Alteration of a property, including restoration, rehabilitation, repair, etc.~~
43 • ~~Removal of the property from its historic location~~
44 • ~~Change of the character of the property's use or of physical features within the property's~~
45 ~~setting that contribute to its historic significance.~~

⁴⁶ FEIS, Appendix B, p. 705

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1 • *Introduction of visual, atmospheric, or audible elements that diminish the integrity of the*
2 *property's significant historic features.*"⁴⁷
3

4 The corrected reference is actually 36 CFR 800.5(a)(1). We assert that removing
5 motorized use from an "old historic road" could potentially "change the character of the
6 property's use...that contribute to its historic significance." We further assert that the
7 agency has not properly analyzed this potential impact in the Cultural Resources
8 section within the FEIS nor disclosed this analysis and its results.
9

10 The agency's response is non-responsive to our comment. The FEIS added significant
11 additional WSA/IRA information the public was unable to review and comment upon.
12 The agency has failed to analyze and disclose potential impacts to the character of a
13 historic road resulting from the removal of motorized use. We assert that the agency's
14 response to our comment was incomplete and inadequate and that the FEIS is not
15 CEQ-compliant.
16

⁴⁷ FEIS, Appendix B, p.583

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-21

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-21 documents a very specific and fundamental error:

6
7 **"ERROR:** The DEIS does not provide any evidence that the most fundamental
8 of analysis took place for this project: the route segment by segment analysis
9 that resulted in the agency's proposed designations."⁴⁸

10
11 There was no corresponding response by the agency. The FEIS, in Appendix B.
12 Response to Comments, provides no response in reference to Comment 03022011-15-
13 21 at all (a text search of FEIS Appendix B for the string "030220110-15-21" quickly
14 confirms the fact).

15
16 Comment 03022011-15-21 reveals the most fundamental error possible given the travel
17 management focused project under consideration. The agency has not provided any
18 disclosure of a methodology or analysis on a segment by segment basis of the routes
19 considered for designation. Lest the agency claim that Appendix L of the TAP is that
20 analysis, the agency has repeatedly claimed that the TAP is not a NEPA document and
21 only "informs" the EIS. If so, the EIS (both the Draft and the Final) is clearly lacking the
22 information that is required to be disclosed to the public.

23
24 The TAP also does not include the myriad of metrics that the EIS states were used in
25 analyzing the segments for potential designation. The TAP only covers a few (road
26 density, stream buffers) and provides no disclosure of methodology or results for
27 numerous parameters considered as part of the "fine filter"⁴⁹.

28
29 We submitted a specific comment. The agency assigned it a Letter/Comment number
30 and lists it in its *DEIS TM Comments Grouped by Subject* document that we obtained
31 via FOIA. As such, we determined that the agency failed to respond at all to Comment
32 03022011-15-21. Therefore, the agency has failed to respond as required by 40 CFR
33 1503.4.

34

⁴⁸ Comment 03022011-15-21, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁴⁹ TAP, p. 17

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-22

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-22 documents a very specific and fundamental error:

6
7 **"ERROR:** The agency's preferred alternative does not flow rationally or
8 reasonably from the disclosures made by the agency within the DEIS. The
9 agency has not identified unacceptable natural resource impacts within the GNF.
10 In spite of this, the agency's preferred alternative (Alternative G) closes over
11 three thousand miles of routes currently available for motorized recreation. Even
12 the action alternative that provides the most motorized opportunities (Alternative
13 C) closes nearly 1900 miles of existing roads and trails to motorized use."⁵⁰

14
15 There was no corresponding response by the agency. The FEIS, in Appendix B.
16 Response to Comments, provides no response in reference to Comment 03022011-15-
17 22 at all (a text search of FEIS Appendix B for the string "030220110-15-22" quickly
18 confirms the fact).

19
20 After reviewing the FEIS and ROD, we can confidently add that the decision also does
21 not flow rationally from the evidence provided in the FEIS. Once again, our original
22 comment details a fundamental flaw in how the EIS was prepared and presented. We
23 cannot find an agency response to this identified error.

24
25 We submitted a specific comment. The agency assigned it a Letter/Comment number
26 and lists it in its *DEIS TM Comments Grouped by Subject* document that we obtained
27 via FOIA. As such, we determined that the agency failed to respond at all to Comment
28 03022011-15-22. Therefore, the agency has failed to respond as required by 40 CFR
29 1503.4.

30
31
32

⁵⁰ Comment 03022011-15-22, see Appendix A for a copy of entire comment as submitted by NMOHVA

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-23

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided adequate response to our comment. NMOHVA finds the
5 agency's response to Comment 03022011-15-23 to be inadequate because the agency
6 did not respond at all to this comment. Comment 03022011-15-23 documented the
7 history of NMOHVA's unsuccessful attempt to obtain the Project Record Index for the
8 Travel Management project:

9
10 "ERROR: The agency has not made the Project Record for Travel Management
11 on the GNF available to the public for review in compliance with Freedom of
12 Information Act (FOIA) and Council on Environmental Quality (CEQ)
13 requirements."⁵¹

14
15 The comment carefully detailed NMOHVA's long and arduous campaign to obtain the
16 Project Record Index (a listing of the documents residing in the Project Record) for this
17 project. The comment only chronicled the history up to the date of the comment
18 submission (3/2/11).

19
20 We note again (as we did in the original comment) that the Project Record index is a
21 commonly and typically requested piece of information. Such information allows the
22 public to closely target specific document requests rather than having to utilize a
23 "shotgun" approach to document acquisition; saving time and effort both for ourselves
24 and the agency in responding to the request. We had pre-alerted the agency that we
25 would be requesting this information way back during the Scoping phase of the project:

26
27 *—To facilitate meaningful public involvement, we request that all of the DEIS, all of its*
28 *supporting maps, all of the underlying documents, and all of the citations used to support*
29 *the analysis document be available electronically to the public **on the day the comment***
30 ***period starts.** Thoughtful and substantive comments by the public are almost impossible*
31 *without the means to efficiently access all of the supporting documentation used in the*
32 *analysis and decision process. Having these documents readily available to the public at*
33 *the very beginning of the comment period helps support and foster the process*
34 *transparency and public participation that is so crucial to a successful NEPA process.*

35
36 *This fundamental tenet was formally recognized by Congress when they passed the*
37 *Electronic Freedom of Information Act (EFOIA) of 1996. It requires the agency to post,*
38 *electronically, any and all documents that they believe the public will request. We will*
39 *certainly request that all of the documents types listed above be made available to the*
40 *public so this scoping comment serves notice that the provisions of the EFOIA will be in*
41 *play.*"⁵²

42

⁵¹ Comment 03022011-15-23, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁵² Scoping comment submitted by NMOHVA, 10/21/09

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1 The saga continued until very recently as the agency finally published a Project Record
2 index on its website on or about 7/2/14. We are still waiting for the official response to
3 our FOIA for the same.

4
5 Since our original comment was submitted, we had continued to request the Project
6 Record index, knowing full well that it would be valuable information as we prepared for
7 any subsequent appeal of the ROD/FEIS. We again requested the index on 7/7/2011.
8 Again, the agency claimed the document didn't exist.⁵³

9
10 We waited two more years(!) and again requested the index on 9/11/13. We finally
11 received a Final Response to that FOIA from Region 3 five months later (2/7/14):

12
13 *—The Gila National Forest advises they are still in the process of developing the project record*
14 *index which is still in the "draft" stage; therefore, a final listing is not available for release.*
15 *Although we do not have a projected date, the requested document will be available with the*
16 *release of the final Environmental Impact Statement. Therefore, pursuant to the deliberative*
17 *process privilege of FOIA Exemption 5, 5 U.S.C. §552(b) (5), we are withholding the "draft"*
18 *project records for the DEIS for Travel Management.”⁵⁴*

19
20 Not only did the agency claim that the index was still not available to the public, they
21 now were also withholding all of the “draft” project records from the public due to
22 “deliberative process privilege of FOIA exemption 5”.

23
24 Note: This was a very strange and inconsistent response as the agency had furnished
25 other “deliberative” materials to us without complaint as part of a response to a 2/1/11
26 FOIA request (Case Number 6844).

27
28 The agency invited us to appeal the decision. We promptly appealed the rejected FOIA
29 to the Chief's Office.⁵⁵ We are still awaiting a decision (we have been advised on
30 6/26/14 that the paperwork is still sitting in the USDA's Office of General Counsel
31 awaiting approval).

32
33 Why does possessing a Project Record index or listing of the documents residing in the
34 Project Record matter? We submit four reasons: 1) It is required by the Freedom of
35 Information Act: “Each agency shall also maintain and make available for public inspection
36 and copying current indexes providing identifying information for the public as to any matter
37 issued, adopted, or promulgated after July 4, 1967.” 2) It is required of the agency to be
38 able to provide information it reasonable believes the public will request. We
39 specifically forewarned the agency in a formal scoping comment in 2009 that we would
40 be requesting such information. 3) It facilitates the public's ability to request
41 appropriate information and receive it in a timely manner. Our ability to comment on the
42 Draft EIS was significantly compromised due to the delay in receiving pertinent

⁵³ See Final Response to FOIA 11-1815-R, Appendix B.

⁵⁴ See Final Response to FOIA 2013-FS-R3-05354-F, Appendix B

⁵⁵ See FOIA Appeal, Appendix B

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1 information we requested. 4) It is the only way the public knows supporting information
2 not in the EIS is available (see our Appeal of the response to Comment 03022011-15-
3 31).

4
5 To recap: We are appealing the adequacy of the comment response on the basis that
6 the agency was completely unresponsive to 03022011-15-23. We submitted a specific
7 comment. The agency assigned it a Letter/Comment number and lists it in its *DEIS TM*
8 *Comments Grouped by Subject* document that we obtained via FOIA. As such, we
9 determined that the agency failed to respond at all to Comment 03022011-15-23.
10 Therefore, the agency has failed to respond as required by 40 CFR 1503.4.
11

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-24

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-24 documents a very specific error:

6
7 **“ERROR:** The agency misrepresents OML 1 roads and decommissioned roads
8 as „closed to travel by the public“ in the DEIS.”⁵⁶

9
10 Nowhere in its response does the agency explain why this is not a huge error:

11
12 *—Alternative B does not include unauthorized (user-created) routes, maintenance level 1 closed,*
13 *or decommissioned routes. Alternative B displays the existing motorized system for the Gila*
14 *National Forest which includes those roads that are classified as Maintenance Level 2 through 5*
15 *and designated motorized trails as recorded in the respective INFRA databases.”⁵⁷*

16
17 The specific error we identified has been carried forward in the Final EIS:

18
19 *—~~A~~ additional 524 miles of Maintenance Level 1 (ML-1) closed roads are available for*
20 *nonmotorized travel opportunities. These ~~—losed~~ roads” are roads in storage between*
21 *intermittent administrative uses **and closed to all vehicular traffic**, but may be available and*
22 *suitable for nonmotorized uses.”⁵⁸*

23
24 And the agency still admits, in the FEIS, that use on these roads is legal prior to Travel
25 Management implementation:

26
27 ***—Due to the forest being open to cross-country motorized travel,** unauthorized motorized use has*
28 *led to their continuous use.”⁵⁹*

29
30 Obviously, both of these statements cannot be true. The agency's response to our
31 comment is, therefore, nonsensical, non-CEQ-compliant, and inadequate.

32

⁵⁶ Comment 03022011-15-24, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁵⁷ FEIS, Appendix B, p. 664

⁵⁸ FEIS, p. 58 and 60

⁵⁹ FEIS, p. 14

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1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-25 and
2 03022011-15-29

3
4 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
5 agency has not provided an adequate response to our comment. NMOHVA's comment
6 03022011-15-25 documents a specific error:

7
8 **“ERROR:** The DEIS repeatedly ascribes all impacts to the natural environment
9 to motorized use, ignoring the impacts from all other forms of use on the
10 Forest.”⁶⁰

11
12 Comment 03022011-15-29 documents a similar error:

13
14 **“ERROR:** The agency has failed to disclose or analyze the current source of all
15 recreation use impact on wildlife. The agency has ascribed all current baseline
16 impact to motorized use in the analysis of Environmental Consequences to
17 Wildlife.”⁶¹

18
19 The agency leads off their responses with examples of their “boilerplate” statements:

20
21 *“Analyzing the effects of all forest uses is outside the scope of this analysis.”*⁶²

22
23 *“The evaluation of all recreation across the entire forest is beyond the scope of this analysis.”*⁶³

24
25 We are completely cognizant that Travel Management is limited in scope to designating
26 roads, trails, and areas for motorized use. But that neither limits nor confines the
27 agency to analyzing the current impacts in order to ascribe the impacts to the
28 appropriate use. It is asinine to ignore the source of impact to all resources when
29 motorized use is a subset of the larger universe of impact sources. And the agency fully
30 knows this. As an example, the agency uses many pages to describe climate change
31 on the southwestern landscape. It clearly doesn't ascribe all of the impacts of this
32 phenomenon to motorized use on the Gila National Forest. It makes no more sense to
33 ascribe all of the wildlife impacts to motorized use on the forest than it would to ascribe
34 global warming to only motorized use on the forest.

35
36 A single specific example of why allocating all “blame” for resource impacts on
37 motorized or recreational use is not a valid or rational direction for the agency to pursue
38 is found in the Water and Soils specialist report:

39
40 *—Impaired Waters – Appendix J lists the water bodies that have been currently listed as in non-*
41 *attainment of state water quality standards, and the probable causes of impairment. Currently*

⁶⁰ Comment 03022011-15-25, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁶¹ Comment 03022011-15-29, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁶² FEIS, Appendix B, p. 756

⁶³ FEIS, Appendix B, p. 757

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1 *there are 28 waterbodies (streams & lakes) within or adjacent to Forest system land that are not*
2 *meeting State water quality standards. The impaired water bodies are found throughout the*
3 *Forest. Approximately 49% are found within wilderness areas and 51% are found in non-*
4 *wilderness areas of the Forest.*⁶⁴

5
6 It also illustrates why Comment 03022011-15-25's identified error was not limited to just
7 wildlife species concerns. Obviously, finding 49% of the Gila's impaired waters in
8 wilderness areas that are non-motorized (and almost exclusively upstream from
9 motorized use) is a startling reminder of why assigning all resource impacts to
10 motorized use is a specious approach to the required science in an EIS. What should
11 be recognized as more startling is the aforementioned tidbit didn't make its appearance
12 in the FEIS document itself. The FEIS only states:

13
14 *—Impaired waters and outstanding national resource waters were analyzed separately to see*
15 *how the action alternatives compared to the no action alternative regarding impacts to streams*
16 *currently not meeting State Water Quality Standards or requiring the highest level of protection*
17 *water quality degradation.*⁶⁵

18
19 It is illuminating (and damning) that, with half of the impaired waters not even in
20 motorized areas, the agency still uses only "proximity" and stream crossings as the
21 indicators of impacts:

22
23 *—Analysis of effects to these waters was based on motorized routes and their proximity to*
24 *drainages, motorized cross-country travel near drainages, and stream crossings if drainages.*⁶⁶

25
26 Our comment 03022011-15-25 makes a careful and reasoned argument that the
27 foundational references used by the agency (Knight and Cole; Gaines) recognized that
28 all recreation has impacts to wildlife. It is illogical, inappropriate, and hugely prejudicial
29 to not make it clear in the agency's analysis that removing motorized use will not
30 remove all impacts to wildlife and attempt to parse impact to the appropriate and varied
31 sources.

32
33 The agency's lack of effort (and desire) to properly apportion impacts to the many
34 sources involved calls into question the agency's use of miles of road and acres of
35 disturbance as viable indicators. This is especially true given the agency's lack of
36 knowledge about current use patterns and numbers. The agency repeatedly admits it
37 doesn't have reliable user data for any use group. How can it possibly assume that all
38 of the recreation impact is from motorized use?

39
40 Our Comment 03022011-15-29 makes the case, using NVUM data, that the impact from
41 non-motorized recreationists on wildlife can be expected to be much greater than

⁶⁴ 6th Code Watershed, Soils, and Aquatics Cumulative Effects Analysis Report, p. 15

⁶⁵ FEIS, p. 220

⁶⁶ FEIS, p. 220

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1 motorized impacts simply due to the large number of users engaged in a wide variety of
2 non-motorized recreational pursuits.

3
4 The agency's cumulative effects analysis does not acknowledge that removing only
5 motorized recreation will not totally remove the total effects of recreation on wildlife, nor
6 will it stop non-motorized recreation from using roads and continuing to impact that
7 same wildlife. The cumulative effects analysis also does not try to apportion some
8 amount of the impact to other non-motorized recreational pursuits in spite of the NVUM
9 data that would rationally support such an assignment.

10
11 The agency's response to our identified errors and the supporting comment details is
12 non-responsive and nonsensical and is, therefore, inadequate.
13

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-26

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-26 documents a very specific and fundamental error:

6
7 **“ERROR:** The DEIS contains no rational connection between the cumulative
8 effects for recreation and the alternatives presented for consideration.”⁶⁷

9
10 Our comment goes on to further detail the error:

11
12 “None of the alternatives explored in the DEIS address the negative cumulative
13 effects identified for recreation: Fewer open routes for OHV use. Even
14 alternative B (no action) and Alternative C (2% reduction) contain massive and
15 real reductions from the true current existing condition on the GNF.”

16
17 After reviewing the FEIS and ROD, we can confidently add that the decision also does
18 not flow rationally from the disclosed cumulative effects for motorized recreation in the
19 FEIS. Our original comment details a fundamental flaw in how the environmental
20 documents for this project were prepared. The cumulative effects description and
21 conclusion for motorized recreation is one of the very few resources that has a negative
22 cumulative effect identified; yet every single one of the action alternatives considered in
23 detail further restricts that same motorized recreation. The decision rendered by the
24 Supervisor, quite obviously, also suffers from this same lack of sagacity.

25
26 The agency's response to our comment only reiterates that the agency undertook
27 updating the cumulative effects analysis for the project in the FEIS:

28
29 *—The final environmental impact statement (FEIS) updates the cumulative effects analysis for the*
30 *project. The analysis includes past, present, and reasonably foreseeable actions relating to each*
31 *of the issues and related indicators and discussion of the range of motorized and nonmotorized*
32 *road and trail opportunities provided by alternative. The FEIS also includes an evaluation of*
33 *effects to roadless characteristics on inventoried roadless areas (IRAs) and qualities of*
34 *wilderness character on wilderness study areas (WSAs).”⁶⁸*

35
36 While we assert that significant new information was added to the FEIS in a non-
37 compliant manner (see our Appeal of this topic elsewhere in this document), we
38 acknowledge that the agency did make some needed updates to the cumulative effects
39 analysis (our decision not to appeal Comment 03022011-15-14 reflects this). However,
40 the agency's updates do not address the error identified in Comment 03022011-15-26.
41 The FEIS still contains no rational connection between the negative cumulative effects
42 for motorized recreation and the alternatives presented for consideration. Therefore, the

⁶⁷ Comment 03022011-15-26, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁶⁸ FEIS, Appendix B, p. 618

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1 agency has failed to adequately respond as to our comment as required by 40 CFR
2 1503.4.
3

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-27

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-27 documents a specific error:

6
7 **“ERROR:** The DEIS equates the existence of the roads with the use of the
8 roads in its analysis of the Environmental Consequences.”⁶⁹

9
10 In its response, the agency merely reiterates that they had no reliable use data as the
11 justification for using the existence of roads as a proxy for use:

12
13 *—Miles of road were used as an indicator of potential effects, since we did not have any reliable*
14 *use information on our roads. Pages 134 and 136 of the DEIS discuss how traffic affects wildlife*
15 *and how miles of road were used as an indicator of potential effects.”⁷⁰*

16
17 The pages that the response referenced in the agency's response only serve to
18 strengthen the argument we made in our original comment. Page 136 describes how
19 “miles of routes” and “acres of influence” were being used to “analyze” the potential
20 harvest and disturbance on terrestrial wildlife. Yet, in our comment, we clearly pointed
21 out that all of the factors selected (disturbance and harvest) go to zero in a case of zero
22 use. The agency has completely missed that key point. Their response states:

23
24 *—The wildlife report acknowledges that the higher the level of use on a road, the greater potential*
25 *to affect a species. Current traffic count data does not exist.”*

26
27 Our point was not impact at the “higher level of use”, it is the lower level of use, or even
28 more importantly, a complete lack of use. Logic never seems to trouble the agency and
29 they stubbornly stuck with their identified “easy way out”.

30
31 Our original comment continued to make additional arguments that disprove the
32 agency's determination to use a road's existence as an acceptable proxy indicator for
33 impact caused by a road's use. The agency failed to respond at all to numerous points
34 in our comment and left the analysis factors and subsequent analysis indicators for
35 wildlife exactly the same in the Final EIS. Therefore, the agency response was
36 inadequate and non-responsive.

37

⁶⁹ Comment 03022011-15-27, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁷⁰ FEIS, Appendix B, p. 757

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-28

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-28 documents a very specific and fundamental error:

6
7 “**ERROR:** The agency has chosen to consider designation of existing routes that
8 are not in the baseline condition (no action analysis) and therefore have not been
9 analyzed or disclosed.”⁷¹

10
11 This is a fundamental error as CEQ clearly requires that the information be disclosed to
12 the public. This error is not limited to the routes that the agency has proposed to add to
13 the system (we know the agency claims that the analysis for these few routes is
14 included in the FEIS). The identified error also includes all of the unauthorized/OML-
15 1/decommissioned routes that the agency considered for inclusion in the action
16 alternatives. While only a few routes were ultimately singled out for inclusion in an
17 action alternative, those few routes were obviously selected from the much larger
18 universe of unauthorized/OML-1/decommissioned of which the agency had knowledge.

19
20 Our original comment documented the fact that the agency had information on many
21 unauthorized/OML-1/decommissioned routes, knew the public was using them in the
22 “current condition”, and failed to disclose the location and mileage of these routes.
23 Even more importantly from a CEQ requirement perspective, the agency completely
24 failed to disclose the methodology used to select some routes while discarding others
25 and results of that analysis of those routes.

26
27 The agency simple replies (again) that their “interpretation” of the existing condition is
28 exclusive of unauthorized, OML-1, and decommissioned routes and the bulk of the trails
29 outside of wilderness areas:

30
31 *—The Forest’s interpretation of the existing condition as being that shown in the INFRA database*
32 *(Maintenance Level 2 through 5 roads and motorized trails) precluded displaying the routes*
33 *provided by the public as part of alternative B.”⁷²*
34

35 Our comment and specific identified error didn’t ask for the “why”. Our comment asked
36 for the “what”. The failure to disclose the information the agency possessed on the
37 unauthorized/OML-1/decommissioned routes raises a host of other questions on the
38 legality of the project and its analysis. How were the “few” unauthorized/OML-
39 1/decommissioned routes that were proposed for designation selected from the “many”
40 unauthorized/OML-1/decommissioned routes that the agency considered? The
41 environmental documents do not disclose a methodology for the selection or the results
42 of that analysis; a clear violation of CEQ regulations! Why didn’t the agency include the
43 many unauthorized, OML-1, and decommissioned roads in the baseline condition? We

⁷¹ Comment 03022011-15-28, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁷² FEIS, Appendix B, p. 664

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1 have documented that they clearly knew these roads were receiving current use by the
2 public regardless of their system status. How can the baseline be accurate when there
3 are 530.9 miles of OML-1⁷³, and 641.7 miles of decommissioned roads⁷⁴, an
4 undisclosed (but significant mileage) of unauthorized roads, and at least 719 miles of
5 trails outside of wilderness areas⁷⁵ missing from the baseline condition? The agency
6 repeatedly admitted that at least some of these many miles were receiving use in the
7 current condition. How did this myriad of missing miles impact the formulation of the
8 alternatives considered in detail and the ultimate selection by the decisionmaker?
9
10 The agency evidently completely missed the point of our comment and provided a
11 response that did not adequately respond to our substantive comment. Therefore, the
12 agency has failed to respond as to our comment as required by 40 CFR 1503.4.
13

⁷³ FEIS, p. 48

⁷⁴ USDA Forest Service. 2010a. Roads specialist report, Table 9

⁷⁵ FEIS p. 58 Calculated as 719 = 735 miles of trail outside Wilderness - 16 miles of motorized trail.

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-30

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-30 documents a specific error:

6
7 **“ERROR:** The agency fails to disclose specific user and use data in the
8 Environmental Consequences section of the DEIS.”⁷⁶

9
10 In its response, the agency instead focuses on “user conflict”:

11
12 *–User conflict is not considered as an issue or separate indicator for the analysis. This topic will*
13 *be removed from table 16 summary of effects in chapter 2 of the FEIS. The FEIS clarifies how*
14 *user conflicts were considered under the Issue of Motorized Use as directed by the Travel*
15 *Management Rule.”⁷⁷*

16
17 This has absolutely nothing to do with the comment we submitted. The agency
18 acknowledges making changes to the Final EIS document. Unfortunately, those
19 changes do not address, in any conceivable way, the fundamental error we identified in
20 our comment. The acknowledged changes (actually additions) do, however, violate the
21 CEQ requirements about a supplement being required when additional new data needs
22 to be added to an EIS. This single response to Comment 03022011-15-30 identifies
23 several substantial additions to the EIS:

- 24
25 1) Indicators that allow comparisons of effects of each of the alternatives and
26 cumulative affects analysis.
27 2) 2011 NVUM data
28 3) A Recreation Facility Analysis Forest Niche description
29 4) Forest Plan Recreation Opportunity Spectrum data
30 5) An analysis of wilderness characteristics within two WSA's.

31
32 In fact, while researching this response, we note that an entirely new (and additional)
33 specialist report was added to the references and a large portion of its contents added
34 to the FEIS. This new specialist report is listed as *USDA Forest Service. 2013b2.*
35 *Inventoried Roadless Areas and Wilderness Study Areas. Unpublished report available from the*
36 *Gila National Forest. Silver City, NM.*

37
38 All of the above new items in the Final EIS strengthen the evidence that the agency has
39 clearly violated the CEQ requirements contained in 40 CFR 1502.9. The public has
40 now been denied its right to review and comment on any of this new information (see
41 our appeal point titled: AGENCY ADDING SIGNIFICANT NEW INFORMATION TO
42 THE FINAL EIS). This is, therefore, an additional reason that the agency has not
43 provided a CEQ-compliant response to our comment.

⁷⁶ Comment 03022011-15-30, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁷⁷ FEIS, Appendix B, p. 618

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1
2 Furthermore, the agency still has not provided the user and use date identified in our
3 comment as necessary to make a reasoned and defensible choice or stated a reason
4 why they need not. The agency has not provided any response to the error we
5 identified in Comment 03022011-15-30. Therefore, the agency has not provided an
6 adequate response to our comment.
7

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-31

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided adequate response to our comment. NMOHVA's comment
5 documents the specific error:

6
7 **"ERROR:** The maps issued with the DEIS are not detailed enough or accurate
8 enough to disclose what is being designated or why. As the agency has not
9 furnished any full list or matrix showing the road segments affected by the
10 proposed action, the public is forced to rely solely on the maps to determine what
11 routes are being closed and what routes are being left open. The maps fail to
12 provide the decision maker or the public with enough relevant information to
13 make rational, informed decisions on the proposed action and its alternatives."⁷⁸
14

15 The agency's response is:

16
17 *—Route designation tables were available upon request. Unfortunately, it appears from comments*
18 *that not all requests were correctly routed, and therefore, not fulfilled. We will make all attempts*
19 *to rectify this issue for the FEIS.*⁷⁹
20

21 NMOHVA finds the agency's response to Comment 03022011-15-31 to be inadequate
22 for four reasons:

23
24 1) Route designation tables were not readily available during the comment period for
25 the Draft EIS.

26
27 The public had no way of knowing that such tables even existed. There was no Project
28 Record index (see our appeal of the agency's response to Comment 03022011-15-23).
29 There was no listing of these tables at the agency website. There was no mention of
30 these tables in the specialist reports underlying the Draft EIS or in the DEIS itself.
31

32 2) The agency admits that even when these tables were specifically requested, they
33 were not always successfully delivered:

34
35 *—Unfortunately, it appears from comments that not all requests were correctly routed, and*
36 *therefore, not fulfilled.*"
37

38 3) The Final EIS is not an appropriate place to rectify this situation:

39
40 *—We will make all attempts to rectify this issue for the FEIS.*"
41

⁷⁸ Comment 03022011-15-31, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁷⁹ FEIS, Appendix B, page 613

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1 The Final EIS does not allow the public to review the information and make comments.
2 Commenting only happens during the Draft EIS stage. CEQ regulations require that the
3 appropriate information be made available to the public during that time period:
4

5 *—b) NEPA procedures must insure that environmental*
6 *information is available to public officials and*
7 *citizens before decisions are made and before actions*
8 *are taken. The information must be of high quality.*
9 *Accurate scientific analysis, expert agency*
10 *comments, and public scrutiny are essential to implementing*
11 *NEPA.*”⁸⁰
12

13 4) And finally, the FEIS includes no more information about “route designation tables”
14 than the DEIS did. We carefully searched the FEIS and there is still no reference to
15 “route designation tables” containing supporting information nor any other indication that
16 these tables exist. We also carefully searched the (finally available as of 7/2/14) Project
17 Record index. There are still no such “route designation tables” listed.
18

19 We have provide four reasons why the agency’s response to comment 03022011-15-31
20 is inadequate. Therefore, the agency has not provided the adequate response required
21 by 40 CFR 1503.4.
22

⁸⁰ 40 CFR 1500.1

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-32

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided adequate response to our comment. NMOHVA finds the
5 agency's response to Comment 03022011-15-32 to be inadequate because the agency
6 did not respond at all to the specific error clearly identified in our comment. Comment
7 03022011-15-32 contained the explicit and specific identification of this error:

8
9 **"ERROR:** The agency has not disclosed any information on the fundamental
10 element of this project. The route segment specific rationale on why routes are
11 being designated open or closed in the alternatives is essential to a meaningful
12 review by the public and a rational and defensible decision by the decision
13 maker. The agency has failed to disclose the essential and fundamental
14 information needed for a meaningful review or route designation."⁸¹

15
16 There was no corresponding response by the agency. The FEIS, in Appendix B.
17 Response to Comments, provides no response in reference to Comment 03022011-15-
18 32 at all (a text search of FEIS Appendix B for the string "030220110-15-32" quickly
19 confirms the fact).

20
21 Comment 03022011-15-32 reveals the most fundamental error possible given the travel
22 management specific project under consideration. The agency has not provided any
23 disclosure of why each route segment is being proposed for designation or not being
24 proposed for designation (results of an actual methodology and analysis). Lest the
25 agency once again claim that Appendix L of the TAP provides that disclosure, the
26 agency has repeatedly claimed that the TAP is not a NEPA document and only
27 "informs" the EIS. As such, the DEIS, and now the FEIS is clearly lacking the
28 information that is required to be disclosed to the public.

29
30 Furthermore, the TAP clearly did not include the myriad of metrics that the EIS states
31 were used in analyzing the segments for potential designation. It only covers a few
32 parameters (i.e. road density and stream buffers) and provides no disclosure of
33 methodology or results for the numerous parameters evidently considered as part of the
34 "fine filter"⁸².

35
36 In its response to other submitted comments, the agency merely reiterates that it
37 doesn't feel compelled to do site specific analysis on all of the routes because of cost
38 concerns. It completely ignores our assertion that the agency has not disclosed the
39 fundamental information needed by the public and the decisionmaker for a meaningful
40 review in the DEIS and FEIS and their underlying documents.

41

⁸¹ Comment 03022011-15-32, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁸² TAP, p. 17

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1 The agency claims to have visited “many” of the roads in question and that “*subsets of*
2 *routes, corridors, or areas were assessed specifically depending on the resource area*”.

3
4 The agency claims that a “*Description of analysis of the proposals can be found chapter 3 of*
5 *the DEIS and each specialist report.*” But even a cursory examination of Chapter 3 quickly
6 reveals that that the information we identified as necessary in our comment is nowhere
7 to be found.

8
9 We submitted a very specific comment. The agency dutifully assigned it a
10 Letter/Comment number and lists it in its *DEIS TM Comments Grouped by Subject*
11 document that we obtained via FOIA. But the FEIS, in Appendix B. Response to
12 Comments, provides no response in reference to Comment 03022011-15-32. As such,
13 we determined that the agency failed to respond at all to Comment 03022011-15-32.
14 Therefore, the agency has failed to respond as required by 40 CFR 1503.4.

15
16

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-34

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-34 documents the error:

6
7 "ERROR: The designation of routes leading to private in-holding parcels give
8 preferential treatment to the owner's of the in-holding parcels at the expense of
9 the public."⁸³

10
11 The agency's response to Comment 03022011-15-34 (which was bundled with our
12 Comment 03022011-15-33) states:

13
14 *—Also, the Forest considered comments from landowners recommending closure of roads that led*
15 *to their property. Examples include trespass, not primary access to property, gates being left*
16 *open, and impacts to private land resources.*⁸⁴

17
18 This response is inadequate to Comment 03022011-15-34. All the response does is
19 admit that the agency did exactly what we accused them of doing in the comment. We
20 assert that is illegal to give preferential treatment to the owners of in-holding parcels at
21 the expense of the public's access to adjacent public land. The agency claims reasons
22 of trespass, gates being left open, and impacts to private land resources, etc. This is
23 patently ridiculous. The agency is not responsible for the security of an in-holding or
24 any illegal activity that takes place on that in-holding.

25
26 If a house were burglarized on a typical street or county road, the agency managing that
27 road doesn't (and couldn't possibly) limit access to the street or road to only the
28 residents. Why does the agency think it can do differently or has some obligation to
29 "protect" the property of the in-holders?

30
31 We assert that, in fact, the agency is using the in-holder requests as excuse to illegally
32 deny public access to public lands via public roads as stated in our comments.
33 Providing an illegal "reason" to close such roads is an inadequate response to our
34 comment.

35

⁸³ Comment 03022011-15-34, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁸⁴ FEIS, Appendix B, p. 536

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-35

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-35 documents the error:

6
7 **“ERROR:** The Social and Economic specialist report identifies fundamental
8 gaps in information that render its conclusions flawed. The agency has made no
9 attempt to obtain the necessary data to fill those gaps. The report also identifies
10 conflicts between the results disclosed and the actual situation and fails to
11 address significant issues identified in the DEIS.”⁸⁵

12
13 This statement covers a number of fundamental errors we further defined in the body of
14 our comment. The agency, in its response, addresses only a single (very narrow) item
15 identified in our comment:

16
17 *–Commenter misunderstands the term ~~total economic value.~~ While National Visitor Use*
18 *Monitoring (NVUM) allows the agency to estimate the market consequences of recreation on the*
19 *Gila NF, NVUM does not contain information on the non-market value of recreation on the Gila*
20 *NF. Total economic value includes both market and non-market values.”⁸⁶*

21
22 Ignoring all of the other aspects of the error identified in our comment makes for (at
23 best) a partial response and renders the response inadequate.

24
25 We note other obvious problems with the agency's FEIS and its response. The
26 agency's response doesn't acknowledge any corrections, changes, or new information
27 added to the FEIS. But an examination of the Social and Economic Section in Chapter
28 3 reveals significant and material changes. The DEIS claims that that motorized
29 recreation accounted for 2-3 jobs in the four county area⁸⁷:

30
31 Table 13 shows that motorized recreation activities on the Forest contribute approximately 3 jobs
and \$64,243 in labor income to the local economy, annually.

Table 13. Employment and Labor Income Effects by Activity Type, Motorized, No Action.

		Employment Effects (full and part time jobs)					Labor Income (2008 dollars)				
		Direct	Indirect	Induced	Total Secondary	Total	Direct	Indirect	Induced	Total Secondary	Total
Motorized	OHV Use										
	Local Day	0	0	0	0	0	1,755	528	272	800	2,555
	Local OVN	0	0	0	0	0	1,310	341	197	538	1,848
	Local	0	0	0	0	0	3,066	869	469	1,338	4,403
	NonLocal Day	0	0	0	0	0	602	181	93	274	877
	NonLocal OVN	0	0	0	0	0	2,869	747	432	1,179	4,048
	NonLocal	0	0	0	0	0	3,472	928	525	1,453	4,925
	NP	0	0	0	0	0	113	34	17	51	164
Driving for Pleasure	Local Day	2	0	0	0	2	21,762	7,152	3,426	10,579	32,341
	Local OVN	0	0	0	0	0	2,009	551	303	853	2,862
	Local	2	0	0	0	2	23,771	7,703	3,729	11,432	35,203

⁸⁵ Comment 03022011-15-35, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁸⁶ FEIS, Appendix B, p. 723

⁸⁷ USDA Forest Service. 2010j. Social and economic specialist report. Unpublished report available at the Gila National Forest, Silver City, NM, p. 24

1 The FEIS⁸⁸ now claims 73-138 jobs related to motorized recreation activities:
 2

Table 213. Recreation-related employment and income by alternative

Employment and Income	Alt. B	Alt. C	Alt. D	Alt. E	Alt. F	Alt. G
Jobs related to motorized recreation activities	73 - 138	68 - 128	47 - 89	37 - 69	53 - 101	53 - 100
Labor income from motorized recreation activities (\$000s)	\$1,532,501 -\$2,884,365	\$1,419,096 -\$2,670,922	\$988,463 - \$1,860,415	\$769,316 - \$1,447,951	\$1,117,193 -\$2,102,702	\$1,107,998 -\$2,085,396

3
 4
 5 That is one whopper of a change from DEIS to FEIS! The only update in information
 6 that the agency has disclosed is they used the newly available NVUM data. We find it
 7 impossible to believe that an update in NVUM data would possibly result in a 4200%
 8 change in employment related to motorized recreation activities. What other changes,
 9 new information, or corrections were made to the Social and Economic report? The
 10 agency has not disclosed any.

11
 12 While the agency still is using road mileage available as a proxy for the estimated
 13 impacts of the alternatives, the updated (corrected?) employment and labor income
 14 figures make any discrepancies and “unknowns” in the original assumption
 15 underestimated by the same 4200%! It makes the unanswered charges in our original
 16 comment even more pertinent and germane to our assertion that the public and the
 17 decisionmaker did not have the required data with which to make a careful review and
 18 reasoned choice among the alternatives.

19
 20 The bottom line is that, once again, the agency has failed to provide an adequate
 21 response to the comment.
 22

⁸⁸ FEIS, p. 446

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-37

2

3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-37 documents a very specific error:

6

7 **"ERROR:** The Social and Economic analysis does not meet the requirements of
8 FSM 1900 Chapter 1970. It does not include a description of the „desired social
9 and economic conditions“.”⁸⁹

10

11 Once again, the agency response to the comment simply does not address the specific
12 error identified in the comment. Our comment asserted that the EIS did not identify a
13 “desired social and economic condition”. The DEIS did not and the FEIS still does not.
14 Instead of responding to that error, the agency has chosen to focus on how the desired
15 social and economic conditions statement is required to be developed. The “how” is
16 immaterial when the “what” is still missing. The FEIS still does not meet the
17 requirements of FSM1900 Chapter 1970. The agency's response to the comment
18 remains inadequate as it did not address the error identified.

19

⁸⁹ Comment 03022011-15-37, see Appendix A for a copy of entire comment as submitted by NMOHVA

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-38

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-38 documents a very specific error:

6
7 **“ERROR:** The agency has buried, obscured, and obfuscated the simple truth of
8 its conclusions to the point that the public and the decisionmaker cannot find,
9 follow, or rationally connect them to the evidence presented. CEQ requires that:

10
11 *—Environmental impact statements shall be written in plain language and may use*
12 *appropriate graphics so that decisionmakers and the public can readily understand*
13 *them.”⁹⁰*

14
15 The agency has “summarized” the comment as thus:

16
17 *—The DEIS needs to provide clear and concise discussion of direct, indirect and cumulative*
18 *effects. Table 16 does not clearly distinguish direct, indirect, and cumulative effects”*

19
20 Since the agency so badly missed the point of our comment in its summary, it is not
21 surprising that the “response” is equally far from the mark in adequately responding.
22 The “fixes” to Table 16 did nothing to better inform the public and the decisionmaker of
23 the agency's conclusions of “very little impact even under current conditions” which was
24 the thrust of our comment. The FEIS remains a work that “badly buries, obscures, and
25 obfuscates the simple truth of its conclusions” and the agency's response to our
26 comment is still wholly inadequate.
27

⁹⁰ Comment 03022011-15-38, see Appendix A for a copy of entire comment as submitted by NMOHVA

1 INADEQUATE AGENCY RESPONSE TO LETTER/COMMENT 03022011-15-40

2
3 40 CFR 1503.4 requires that the agency respond to all substantive comments. The
4 agency has not provided an adequate response to our comment. NMOHVA's comment
5 03022011-15-40 documents a very specific and fundamental error:
6

7 **“ERROR:** The agency has decided to analyze user conflict in its travel
8 management planning process. We contend that the Travel Management Rule
9 prevents a complete range of alternatives and a rational assessment of „user
10 conflict“ as required under NEPA. Under the TMR, reduction of „user conflict“ is
11 always achieved by formulating alternatives which ban only the motorized user,
12 because no other decision is allowed. The restriction of decision options results
13 in a severely distorted analysis that misinforms the decisionmaker, restricts the
14 allowed options, and prevents the decisionmaker from selecting a rational and
15 CEQ-compliant decision.”⁹¹
16

17 Once again, the agency either didn't bother to critically read our comment for its content
18 or chose to ignore the error identified. The agency apparently decided to bundle this
19 comment with our other comments concerning user conflict. The agency's chosen
20 course of action has left this comment with no applicable or viable response.
21

22 The agency clearly agrees that user conflict (errors we brought up in other comments) is
23 not an appropriate item as an issue or as a basis for analysis in the EIS:
24

25 *–User conflict is not considered as an issue or separate indicator for the analysis. This topic will*
26 *be removed from table 16 summary of effects in chapter 2 of the FEIS.”⁹²*
27

28 *–Noise and user conflicts are not considered as an issue or a separate indicator for this analysis.*
29 *This topic will be revised in the FEIS and recreation report.”⁹³*
30

31 But the agency missed the point of Comment 03022011-15-40. The damage, in terms
32 of preventing a full range of alternatives to be considered, had already been done.
33 “Fixing” the FEIS by removing user conflict from Table 16 does absolutely nothing to
34 address the specific and distinct error we identified in 03022011-15-40. Lacking the
35 ability to make a correction in the FEIS and providing absolutely no explanation as to
36 why the comment “does not warrant a further agency response”⁹⁴, the agency has not
37 provided an adequate response to this comment.
38

⁹¹ Comment 03022011-15-40, see Appendix A for a copy of entire comment as submitted by NMOHVA

⁹² FEIS, Appendix B, p. 618

⁹³ FEIS, Appendix B, p. 628

⁹⁴ 40 CFR 1503.41(a)(5)

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APPENDIX A – NMOHVA’s Original Submitted Comments

Comment 03022011-15-4c (Werkmeister Comment 2 – Economic Data Doesn’t Add Up)

March 2, 2011

Forest Supervisor
Attn: Travel Management
3005 E. Camino del Bosque
Silver City, NM 88061

Dear Responsible Official,

I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance (NMOHVA) and am representing that organization and the undersigned organizations in providing these comments on the Draft Environmental Impact Statement for Travel Management on the Gila National Forest (DEIS). NMOHVA and the undersigned organizations represent motorized recreationists in New Mexico including 4WD enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed in this DEIS provides important recreational resources to the members of the public we represent.

We appreciate the opportunity to comment on the DEIS and take the responsibility of reviewing the DEIS for compliance with the National Environmental Policy Act, Council for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management Rule (TMR) with the utmost seriousness.

ERROR: The DEIS fails to utilize the best available science and information available to the agency for the Economic analysis. This lack of science and data directly impacts the environmental consequences presented and the comparisons made and presented.

DISCUSSION: In presenting its analysis of the Economic impacts of the various alternatives being considered, the agency failed to make use of the best available science and pertinent existing agency data. Under the Data Sources⁹⁵, the agency lists *National Visitor Use Monitoring Study* information. The agency utilizes this data source for information including an estimate of the number of visitors to the GNF⁹⁶.

But when it comes to estimating how much economic impact these visitors have on the Forest, the agency claims it does not know⁹⁷ (emphasis added):

⁹⁵ DEIS for Travel Management, Gila National Forest, page 247.
⁹⁶ DEIS, p. 46
⁹⁷ USDA Forest Service. 2010j. Social and economic specialist report. Unpublished report available at the Gila National Forest, Silver City, NM., page 26.

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1
2 —In sum, recreation on the Forest is estimated to support approximately 56 jobs and \$1,158,203
3 in labor income in the local economy, annually. **However, these figures do not capture the entire**
4 **economic value of recreation on the Forest.** Many visitors are willing to pay more than required
5 to participate in recreational activities on the Forest. The difference between willingness to pay
6 and actual cost is known as consumer surplus. Although consumer surplus is not captured in the
7 market, it does represent a real economic value to the users. Estimates of consumer surplus by
8 recreation activity on the Gila National Forest are not available; therefore, **the total economic**
9 **value of recreation on the Forest cannot be measured.** Nevertheless, it is important to note that
10 the estimates of jobs and income do not completely capture the economic consequences of Forest
11 recreation.”
12

13 But even a casual search of the agency’s own documentation shows that the *National*
14 *Visitor Use Monitoring Study* includes the very information the agency claims not to
15 possess: The most recent National Report⁹⁸, in its executive summary, states
16 (emphasis added):
17

18 —Visits to National Forest lands are an important contribution to the economic vitality of rural
19 communities. **Spending by recreation visitors in areas surrounding National Forests amounts**
20 **to nearly \$13 billion each year. Visitors who live more than 50 miles from the forest account**
21 **for the bulk of these contributions; they spend \$10 billion annually. As visitor spending ripples**
22 **through the US economy, it contributes over \$14 billion to GDP, and sustains a little more than**
23 **224,000 full and part time jobs.”**
24

25 Is the agency claiming that this published information represents some „national“
26 average that somehow doesn’t apply to the local Forest? Or do they doubt the source?
27 It would seem reasonable, rational, and prudent to ascribe this national-level information
28 to the Economic effects analysis for the GNF. The agency has no issue citing other
29 visitor information contained in the National Report. It has no shied away from ascribing
30 environmental impacts observed in various other Forests scattered across the nation.
31

32 Some quick work with the calculator yields this vital and pertinent information:
33

34 Total estimated economic impact from Forest visitor/Total number of national visitors=\$
35 Impact/Visitor

36
37 \$14,000,000,000/173,000,000 visitors=\$80.92/visitor
38

39 Multiplying this economic impact by the GNF’s 359,000 visitors⁹⁹ yields a result of over
40 \$29 million! What impact do the various Alternatives have on this figure? Again, the
41 agency claims it does not know. The agency states¹⁰⁰ (emphasis added):
42

⁹⁸ National Visitor Use Monitoring Results USDA Forest Service National Summary Report Data collected FY 2005 through FY 2009, p 2.

⁹⁹ DEIS, p. 46

¹⁰⁰ DEIS, p. 257

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 —*A the assumptions section noted at the beginning of the analysis, the precise relationship*
2 *between miles of road and economic impacts is unknown. It is assumed that jobs and income*
3 *increase with more miles of road, and decrease with fewer miles of road.*”
4

5 But the acknowledged „*imprecise relationship*” between economic impacts and the miles
6 of route mileage designated as open doesn’t stop the agency from making an „analysis”
7 and calculating an impact¹⁰¹:
8

9 —*In nm, recreation on the Forest is estimated to support approximately 56 jobs and \$1,158,203*
10 *in labor income in the local economy, annually.*”
11

12 Nor does it stop the agency from drawing a conclusion¹⁰²:
13

14 —*However, according to the economic impact analysis, none of the alternatives will significantly*
15 *affect jobs and income.*”
16

17 But the *National Visitor Use Monitoring Study* data raises some disturbing questions.
18 The Forest Service’s national study calculation of jobs across the national, scaled for
19 the GNF’s visitation level, yields a lot more jobs at risk.
20

21 224,000 jobs nationally/173,000,000 visitors nationally= 0.001295 jobs/visitor
22

23 Applied to the GNF:
24

25 0.001295 jobs/visitor x 359,000 visitors = 464 jobs
26

27 Which estimate is correct? Do they represent the same information? Why are the
28 numbers so different? We don’t know. But a discrepancy of nearly 1000% between
29 these two analyses would suggest that 56 jobs is not an accurate depiction of the
30 economic impact and that the agency’s economic environmental effects analysis is
31 contradicted by the agency’s own internally generated data.
32

33 Before the agency dismisses the much higher numbers in the *National Visitor Use*
34 *Monitoring Study*, consider this: The *National Visitor Use Monitoring Study* data is to be
35 used¹⁰³ for exactly the purpose presented herein:
36

37 *Finally, visitor spending profiles and visitation patterns are used to document the contribution*
38 *that Forest Service recreation visitation makes to the economic well-being of both forest-*
39 *dependent communities, and to the nation.*
40

¹⁰¹ USDA Forest Service. 2010j. Social and economic specialist report. Unpublished report available at the Gila National Forest, Silver City, NM., page 26.

¹⁰² DEIS for Travel Management, Gila National Forest, page 257.

¹⁰³ National Visitor Use Monitoring Results USDA Forest Service National Summary Report Data collected FY 2005 through FY 2009, page 7.

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 It is clear that the agency has not utilized and disclosed even its own best available
2 science (its own data and study) in estimating the economic impact of this project on the
3 GNF's surrounding communities. The agency's own data suggests the negative
4 economic impacts may be many times greater than the information presented in the
5 DEIS. The data presented in the DEIS potentially grossly underestimates the economic
6 environmental effects of the alternatives considered and the conclusions offered.

7
8 At the very least, presenting a definitive conclusion that states „none of the alternatives
9 will significantly affect jobs and income" is reckless and arbitrary and contradicts the
10 agency's own statements in the supporting documentation¹⁰⁴:

11 —...*herefore, the total economic value of recreation on the Forest cannot be measured.*
12 *Nevertheless, it is important to note that the estimates of jobs and income do not completely*
13 *capture the economic consequences of Forest recreation."*

14
15 How does the agency get from "*the total economic value of recreation on the Forest*
16 *cannot be measured*" to "*none of the alternatives will significantly affect jobs and*
17 *income*"? The simple truth is: It can't.

18
19 **RESOLUTION:** Correct the DEIS. If the agency cannot determine which of these
20 analyses more truly reflects the anticipated impact of the project, provide both data sets
21 and associated conclusions. If the agency, because of the range of range in the results
22 from the two sets of data, cannot definitively determine the economic impact, the
23 agency must clearly state the limits of their knowledge¹⁰⁵. To do any different severely
24 taints the information presented to the public and the decision maker and jeopardizes
25 the integrity of the subsequent decision.

26
27
28 Thank you for the opportunity to comment.

29
30 Sincerely,

31 

32 Mark Werkmeister, PE
33 NMOHVA Board of Directors
34 1700 Willow Road NE
35 Rio Rancho, NM 87144
36 505-891-0296
37 mark.r.werkmeister@intel.com

38
39 Temporary Address through 3/23/11:
40 Apt. 1704, Shama Luxe, 128 Jinma Rd.

¹⁰⁴ USDA Forest Service. 2010j. Social and economic specialist report. Unpublished report available at the Gila National Forest, Silver City, NM., page 26

¹⁰⁵ 40 CFR 1502.22(b)

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Dalian Development Zone, People's Republic of China
2 Email: mark.r.werkmeister@intel.com
3 Telephone: 138 4260 2510
4

5 On behalf of:

6
7 Mogollon Apache Gila (MAG) Riders
8 Jo Anne Blount
9 POB 165
10 Glenwood, NM 88039
11

12 Gila Roads and Trails Alliance (GRATA)
13 James T. Baruch
14 POB 17
15 Mimbres, NM 88049
16

17 Gila Trail Riders Association (GRTA)
18 Grant Gose
19 2205 Johnson Rd.
20 Silver City, NM 88061
21

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-5 (Werkmeister Comment 3 – No Analysis)

2
3 March 2, 2011

4
5 Forest Supervisor
6 Attn: Travel Management
7 3005 E. Camino del Bosque
8 Silver City, NM 88061
9

10 Dear Responsible Official,

11
12 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
13 (NMOHVA) and am representing that organization and the undersigned organizations in
14 providing these comments on the Draft Environmental Impact Statement for Travel
15 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
16 organizations represent motorized recreationists in New Mexico including 4WD
17 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
18 in this DEIS provides important recreational resources to the members of the public we
19 represent.
20

21 We appreciate the opportunity to comment on the DEIS and take the responsibility of
22 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
23 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
24 Rule (TMR) with the utmost seriousness.
25

26 **ERROR:** The DEIS fails to disclose site specific analysis of cause-and-effect that
27 relates resource issues to motorized use. It fails to disclose how this analysis was used
28 to determine of motorized routes. The agency makes no claims that the cost of
29 obtaining this information is exorbitant.
30

31 **DISCUSSION:** The agency makes note of how they performed the „analysis“ contained
32 within this DEIS¹⁰⁶:
33

34 *“Notes on Effects Analysis*

35
36 *This draft environmental impact statement examines effects on a forestwide scale.
37 Effects are discussed at the national forest level rather than the site-specific effect of
38 each road, trail, or area. Trends of effects are adequate because we don't know
39 everything, such as number of hunters who use motorized vehicles to retrieve big game
40 species or locations of all invasive plant species.”*
41

42 NMOHVA asserts that the agency’s admitted lack of knowledge is not an excuse for
43 clearly not meeting the requirements of CEQ. The agency contends that presenting

¹⁰⁶ DEIS, p. 43.

1 mere trends of effects is „adequate“ because the agency“s doesn“t know „everything“.
2 We disagree. More importantly, the CEQ disagrees.

3
4 The CEQ lays out very specific rules for what is required of the agency. The agency is
5 not required to know „everything“. They are, however, required to provide information
6 „that is essential to a reasoned choice among alternatives“. In fact, the CEQ
7 requirements¹⁰⁷ clearly direct the agency what information it is to provide:

8
9 *“(a) If the incomplete information relevant to reasonably foreseeable significant adverse*
10 *impacts is essential to a reasoned choice among alternatives and the overall costs of*
11 *obtaining it are not exorbitant, the agency shall include the information in the*
12 *environmental impact statement.”*

13
14 NMOHVA asserts that when the Preferred Alternative closes nearly 1000 miles of
15 existing OML 2 routes to motorized use, there can“t possibly be any more relevant
16 information than WHY the agency proposes to remove motorized use from these
17 specific routes. NMOHVA expected to find analysis that clearly showed motorized use
18 on these routes was causing unmitigated and unacceptable harm to Forest resources.

19
20 In closely examining Chapter 3 of the DEIS and all of its underlying specialists reports
21 and reports incorporated by reference, what did we find? We found no analysis of any
22 cause-and-effect. We found no linkage between unacceptable resource impact and the
23 use of roads by motorized users. We found nothing at all that provides any evidence
24 that any meaningful analysis was ever completed or disclosed as required of the
25 agency.

26
27 What we found was an Environmental Consequences chapter chock full of comparisons
28 in mileage, areas, and percentages between the various alternatives. But mere
29 comparisons of mileage are not analysis.

30
31 CEQ requirements for the Environmental Consequences are very clear. 40 CFR
32 1502.16 states (emphasis added):

33
34 ***§1502.16 Environmental consequences.***

35
36 ***This section forms the scientific and analytic***
37 ***basis for the comparisons under §1502.14. It shall***
38 ***consolidate the discussions of those elements***
39 ***required by sections 102(2)(C)(i), (ii), (iv), and (v) of***
40 ***NEPA which are within the scope of the statement***
41 ***and as much of section 102(2)(C)(iii) as is necessary***
42 ***to support the comparisons. The discussion will include***
43 ***the environmental impacts of the alternatives***
44 ***including the proposed action, any adverse environmental***

¹⁰⁷ 40 CFR 1502.22(a)

1 *effects which cannot be avoided should the*
2 *proposal be implemented, the relationship between*
3 *short-term uses of man's environment and the maintenance*
4 *and enhancement of long-term productivity,*
5 *and any irreversible or irretrievable commitments of*
6 *resources which would be involved in the proposal*
7 *should it be implemented. **This section should not***
8 ***duplicate discussions in §1502.14.***
9

10 40 CFR 1502.16 clearly states that Chapter 3 should not duplicate information
11 described in 40 CFR 1502.14. The requirements for alternatives and their comparisons
12 are described in detail in 40 CFR 1502.14. Per CEQ explicit requirements, Chapter 2
13 should contain comparisons; Chapter 3 should contain the scientific and analytic basis
14 on which Chapter 2's comparisons are based.
15

16 What scientific and analytic basis should we expect to find in Chapter 3? The CEQ
17 published an informative handbook, Considering Cumulative Effects Under the National
18 Environmental Policy Act. While the handbook is not meant to establish new or specific
19 requirements, it provides valuable guidance on what an analysis for cumulative effects
20 would typically involve. The handbook states in its executive summary (page vi):
21

22 *Determining the cumulative environmental*
23 *consequences of an action requires delineating*
24 *the cause-and-effect relationships between the*
25 *multiple actions and the resources, ecosystems,*
26 *and human communities of concern. Analysts*
27 *must tease from the complex networks of possible*
28 *interactions those that substantially affect the*
29 *resources.*
30

31 The theme of cause-and-effect relationships is further developed in Chapter 4 of the
32 Handbook. It says:
33

34 *In preparing any assessment, the analyst*
35 *should gather information about the cause-and-effect*
36 *relationships between stresses and resources.*
37 *The relationship between the percent*
38 *of fine sediment in a stream bed and the emergence*
39 *of salmon fly (Figure 4- 1) is an example of*
40 *a model of cause and effect that can be useful*
41 *for identifying the cumulative effects on a*
42 *selected resource. Such a model describes the*
43 *response of the resource to a change in its*
44 *environment.*
45

46 One might then reasonably expect a plethora of cause-and-effect relationships
47 populating Chapter 3's discussion of Environmental Consequences. We would expect
48 models that describe (not hypothesize) the response of a resource to a change in its

1 environment. One might expect to see data: data on resource impacts, data on the
2 amount and type of use occurring on the routes, and empirical comparisons of resource
3 impact on high usage and low usage routes.

4
5 Any reviewer will be sorely disappointed in the subject DEIS. There are very few cause-
6 and-effect relationships explored. There are no models that describe the response of a
7 resource to a change in the environment. There is absolutely no data presented. One
8 can't even find the most fundamental data such as how many users of various
9 recreation modes are using the routes being considered for designation. The few
10 „cause-and-effect statements“ that exist in the DEIS are broad generalizations like that
11 in the Wildlife section of Chapter 3 found on page 134:

12
13 *“For over 80 years, biologists have recognized roads as a potential threat to wildlife*
14 *species (Gagnon et al. 2007). Not all species are negatively impacted by motorized use*
15 *(Trombulak and Frissell 2000), but the majority of the literature does support the general*
16 *conclusion that road and motor vehicle use negatively affects the biotic integrity of both*
17 *terrestrial and aquatic ecosystems (Trombulak and Frissell 2000).”*

18
19 The agency then states the objective of the analysis (again on page 134):

20
21 *“The objective of this analysis is to evaluate the potential effects of the different*
22 *alternatives to different wildlife species or groups of wildlife species known or likely to*
23 *occur on the Gila National Forest within the context of specific road and travel conditions*
24 *that exist on the forest.”*

25
26 But what does the analysis boil down to? After several pages of linking the opinion of
27 various „experts“ from environments outside of southwestern forests and (very
28 dubiously) consolidating their „factors“, it comes down to this on page 136:

29
30 *“For this analysis, two separate analysis indicators were typically used to analyze the*
31 *potential effects (harvest and disturbance) of motorized travel and recreation on*
32 *terrestrial wildlife on the Gila National Forest. These indicators were: (1) total miles of*
33 *routes within an analysis area and (2) the potential “Acres of Influence” for a species or*
34 *group of species (focal species).”*

35
36 Merely calculating lengths and areas and comparing these basic calculations in almost
37 endless tables does not constitute analysis by anybody’s measure, least of all the CEQ!
38 The agency egregiously breaks in own stated objective. Let’s look at it again (emphasis
39 added):

40
41 *“The objective of this analysis is to evaluate the potential effects of the different*
42 *alternatives to different wildlife species or groups of wildlife species known or likely to*
43 *occur on the Gila National Forest **within the context of specific road and travel***
44 ***conditions that exist on the forest.”***

45
46 NMOHVA challenges the agency to show a single, solitary scrap of true analysis in the
47 Wildlife section of this DEIS that analyzes the EFFECTS of motorized use on the Gila’s

1 wildlife within the context of SPECIFIC road and travel conditions that exist on this
2 Forest.

3
4 Analysis? CEQ regulations demand better. Remember that 40 CFR 1502.16 says that
5 the Environmental Consequences are supposed to provide „the scientific and analytic
6 basis“ for the comparisons of the alternatives. Calculations of lengths and areas are
7 neither scientific nor analytic. Read the „cause-and-effect“ statements above
8 again. Ask yourself, “Is this science? Does the information presented in Chapter 3
9 provide any scientific cause-and-effect analysis that forms the credible basis of the
10 comparisons between the Alternatives in Chapter 2?”

11
12 CEQ requires scientific and analytic standards be applied, documented, and
13 presented. 40 CFR 1502.24 states:

14
15 **§1502.24 Methodology and scientific accuracy.**
16 *Agencies shall insure the professional integrity,*
17 *including scientific integrity, of the discussions and*
18 *analyses in environmental impact statements. They*
19 *shall identify any methodologies used and shall make*
20 *explicit reference by footnote to the scientific and*
21 *other sources relied upon for conclusions in the statement.*
22

23 We conclude, based on reading Chapter 3, that there was no analysis applied in this
24 DEIS. There is no cause-and-effect relationships explored, analyzed, documented, or
25 presented. This DEIS is an empty shell populated by endless comparisons of „impacts“
26 based purely on calculated mileage, acreage, and proximity.

27
28 The overall costs to obtain this missing critical information, in either dollars or time, have
29 not been claimed by the agency to be exorbitant. And the DEIS states on page 10 that
30 the agency is not willing to rush or eliminate other required resource information due to
31 time or costs (emphasis added):

32
33 *“The first motor vehicle use map may not have all the roads, trails, and areas shown in*
34 *the record of decision for two reasons. **First, the cultural resource survey and***
35 ***clearance for routes and areas requiring review under Section 106 of the National***
36 ***Historic Preservation Act may not be finished at the time the decision is made.***
37 *Second, the cultural resource survey and clearance may determine that some proposed*
38 *routes and areas would cause adverse effects. In such cases, we would close the route*
39 *or area to vehicles, and the routes and areas would not be shown on the map at all, or*
40 *until an acceptable strategy for mitigating the adverse effects was developed as required*
41 *by Section 106.*

42
43 ***It could take the Forest Service up to 3 years to phase in all the cultural resource***
44 ***surveys and clearances needed to implement the decision. Until then, not all the***
45 ***routes and areas depicted in the record of decision would be on the motor vehicle use***
46 ***map.”***
47

1 If the implementation of the decision can wait for up to three years due to time and
2 resource constraints, the same is true of the data collection, analysis, and the decisions
3 that determine that implementation.

4
5 And, again, the agency has not claimed that the costs of doing site specific analysis is
6 exorbitant anywhere in the draft EIS. If the agency claims that the costs of obtaining the
7 information are exorbitant, CEQ defines exactly what information the agency must
8 provide as part of the DEIS in 40 CFR 1502.22(b):

9
10 *“(b) If the information relevant to reasonably*
11 *foreseeable significant adverse impacts cannot be*
12 *obtained because the overall costs of obtaining it are*
13 *exorbitant or the means to obtain it are not known,*
14 *the agency shall include within the environmental*
15 *impact statement:*

16
17 *(1) A statement that such information is incomplete*
18 *or unavailable; (2) a statement of the relevance*
19 *of the incomplete or unavailable information to evaluating*
20 *reasonably foreseeable significant adverse*
21 *impacts on the human environment; (3) a summary of*
22 *existing credible scientific evidence which is relevant*
23 *to evaluating the reasonably foreseeable significant*
24 *adverse impacts on the human environment, and (4)*
25 *the agency's evaluation of such impacts based upon*
26 *theoretical approaches or research methods generally*
27 *accepted in the scientific community. For the purposes*
28 *of this section, "reasonably foreseeable" includes*
29 *impacts which have catastrophic*
30 *consequences, even if their probability of occurrence*
31 *is low, provided that the analysis of the impacts is*
32 *supported by credible scientific evidence, is not*
33 *based on pure conjecture, and is within the rule of*
34 *reason.”*

35
36 In closing, the cause-and-effect relationship between site specific resource concerns
37 and motorized use is absolutely critical information for providing the decision maker and
38 the public with the knowledge they need to make an informed decision that is
39 compelling, credible, and defensible. The DEIS does not disclose this critical
40 information or explain why this information cannot be obtained. Without it, the DEIS
41 falls far short of meeting CEQ requirements and the decision maker’s needs.

42
43 **RESOLUTION:** Withdraw the DEIS. Complete an analysis of the cause-and-effect
44 relationship between the motorized routes on the Gila National Forest and their impact
45 on the myriad of resources in the natural and human environment. Submit a DEIS with
46 a real analysis so that the decision maker has real information on which to base a
47 defensible decision.

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Thank you for the opportunity to comment.

2

3 Sincerely,

4



5

6 Mark Werkmeister, PE

7 NMOHVA Board of Directors

8 1700 Willow Road NE

9 Rio Rancho, NM 87144

10 505-891-0296

11 mark.r.werkmeister@intel.com

12

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15 Dalian Development Zone, People's Republic of China

16 Email: mark.r.werkmeister@intel.com

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18

19 On behalf of:

20

21 Mogollon Apache Gila (MAG) Riders

22 Jo Anne Blount

23 POB 165

24 Glenwood, NM 88039

25

26 Gila Roads and Trails Alliance (GRATA)

27 James T. Baruch

28 POB 17

29 Mimbres, NM 88049

30

31 Gila Trail Riders Association (GRTA)

32 Grant Gose

33 2205 Johnson Rd.

34 Silver City, NM 88061

35

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-6 (Werkmeister Comment 4 - No Condition Described in No
2 Action Alternative)

3
4 March 2, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

10
11 Dear Responsible Official,

12
13 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
14 (NMOHVA) and am representing that organization and the undersigned organizations in
15 providing these comments on the Draft Environmental Impact Statement for Travel
16 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
17 organizations represent motorized recreationists in New Mexico including 4WD
18 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
19 in this DEIS provides important recreational resources to the members of the public we
20 represent.

21
22 We appreciate the opportunity to comment on the DEIS and take the responsibility of
23 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
24 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
25 Rule (TMR) with the utmost seriousness.

26
27 **ERROR:** The No Action Alternative does not meet the requirements of CEQ regulations
28 and does not accurately document the existing condition on the Forest. Specifically, the
29 no action alternative fails to clearly present the current condition of many of the
30 resources studied. This is in clear violation of 40 CFR 1502.15.

31
32 **DISCUSSION:** In the published DEIS, the agency has disregarded 40CFR1502.15:

33
34 *—§1502.15 Affected environment.*

35
36 *The environmental impact statement shall succinctly describe the environment of the area(s) to be*
37 *affected or created by the alternatives under consideration. The descriptions shall be no longer*
38 *than is necessary to understand the effects of the alternatives. Data and analyses in a statement*
39 *shall be commensurate with the importance of the impact, with less important material*
40 *summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements*
41 *and shall concentrate effort and attention on important issues. Verbose descriptions of the*
42 *affected environment are themselves no measure of the adequacy of an environmental impact*
43 *statement.”*

44
45 Let's examine the Wildlife section of Chapter 3 as an example. The description of the
46 Affect Environment runs from page 126 to page 134. Nowhere, throughout these pages,
47 does the DEIS disclose the MOST IMPORTANT INFORMATION: What is the current

1 condition of the subject species on the Forest? The Affected Environment contains
2 exhaustive lists of all the Protected, Endangered, Threatened, and Sensitive (PETS)
3 species. It contains lists of all of the other species „examined: the Management
4 Indicator Species (MIS), the species of Migratory Birds, and even a special „catch-all“
5 category that includes any other species identified by scoping but not on any other lists
6 (although it then never identifies any species in this category). It describes how many
7 species of the various types of fauna have been found and catalogued on the GNF. It
8 even describes the long history of biologist activity on the Forest (in clear violation of the
9 CEQ regulations on keeping the DEIS concise¹⁰⁸). It goes through a long description of
10 the „analysis“ that includes this (p. 134):

11
12 *—The objective of this analysis is to evaluate the potential effects of the different alternatives to*
13 *different wildlife species or groups of wildlife species known or likely to occur on the Gila*
14 *National Forest within the context of specific road and travel conditions that exist on the forest.”*
15

16 What the agency is missing, in both the description of the analysis and the disclosure in
17 the Wildlife section of the DEIS is the current effects/impacts on the resources (wildlife)
18 of the no action alternative. The CEQ requires the effects of ALL of the alternatives,
19 including the no action alternative, to be disclosed. Without this all important baseline of
20 CURRENT EFFECTS, all of the various other means of comparison are completely
21 meaningless.

22
23 The no action alternative is required to be included in the DEIS to serve as a baseline
24 for comparison¹⁰⁹.

25
26 *—it should present the environmental impacts of the proposal and the alternatives in comparative*
27 *form, thus sharply defining the issues and providing a clear basis for choice among options by*
28 *the decisionmaker and the public.”*
29

30 The CEQ is very clear that the Environmental Consequences chapter is to form (and
31 inform the reader of) the basis for comparison:

32
33 *—§1502.16 Environmental consequences.*

34
35 *This section forms the scientific and analytic basis for the comparisons under §1502.14.”*
36

37 In other Chapter 3 sections analyzing effects, the current condition of some of the
38 resources under the no action alternative are disclosed. Examples that clearly state the
39 current state of the resource under the no action alternative include (emphasis added):
40

41 Roads:
42

¹⁰⁸ 40 CFR 1502.2(c)

¹⁰⁹ 40 CFR 1502.14

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 —*Based on both of these databases, **the safety concerns are relatively low for the current road***
2 *system under alternative B. The safety concern for all action alternatives (C through G) would*
3 *be the same as alternative B.” (p.47)*
4

5 Watershed and Soils:

6
7 —*Cross-country travel impacts on water quality on the Gila National Forest can range from high*
8 *to low, but **in general are typically minimal.**” (p.91)*
9

10
11 —*Currently, the Gila National Forest has seen minimal adverse impacts related to cross-*
12 *country travel for dispersed camping and big game retrieval. Cross-country use on this forest is*
13 *infrequent and dispersed enough that few permanent tracks are created, based on forest staff*
14 *observations.” (p.94)*
15

16 —*Limiting cross-country travel will reduce adverse cumulative watershed impacts slightly, as **this***
17 *activity currently has minimal impacts across the forest.” (p.99)*
18
19

20 Aquatics:

21
22 —*Although localized degraded habitats continue to be present, the **overall forest trend for***
23 *aquatic habitat and species is positive.” (p.126)*
24
25

26 Sensitive Plants:

27
28 —*Motorized routes and trails were not included in this analysis. **The effects of road systems and***
29 *sensitive plants are discountable due to the disturbance that already exists with the roads and or*
30 *trails.” (p.222)*
31
32

33 Cultural and Traditional Practices:

34
35 —*Because the Gila National Forest is a greater distance from many tribal lands and reservations,*
36 *longer drive times are required to access the forest. This creates inherently greater economic*
37 *costs for tribal members traveling to the Gila National Forest (gas, vehicle, motel, food, etc.).*
38 ***This situation will remain essentially unchanged under all alternatives, including the existing***
39 *condition.” (p.259)*
40

41 All of these current conditions are extremely pertinent to logical comparisons. In a
42 nutshell: If the current no action alternative is having little or no impact on the resource,
43 there is no logical reason to „reduce“ that impact if the action also has a potential
44 negative impact on another resource like recreation or economic well-being.
45

46 All of the comparisons in Chapter 2 are meaningless without the disclosure of an
47 accurate baseline. An accurate baseline is not just a defined „amount“ of road or trail. It
48 is a disclosure of the current impact on a specific resource and WHAT impact the

1 current condition is having on that resource. We again reference the agency back to its
2 own Wildlife analysis objective:

3
4 *—The objective of this analysis is to evaluate the potential effects of the different alternatives to*
5 *different wildlife species or groups of wildlife species known or likely to occur on the Gila*
6 *National Forest within the context of specific road and travel conditions that exist on the forest.”*
7

8 A conclusion that Alternative XXX is „more“ and Alternative YYY is „less“ is completely
9 meaningless unless we know the impacts *“within the context of specific road and travel*
10 *conditions that exist on the forest.”* Alternative E has less roads than Alternative C. So
11 what? If the no action alternative doesn’t have enough (or too many) roads, what does
12 „more“ or „less“ mean? To put it in the terms specific to this DEIS: Does it matter that
13 there are less roads in Alternative E than Alternative C if the impact of roads in the no
14 action alternative is negligible? If the trends for population and habitat for the species
15 analyzed is trending upward or is stable, what is the logic to potentially negatively
16 impact access, motorized recreation, or economic health?
17

18 The main issue with the published DEIS is that we cannot tell what difference it will
19 make if any of the action alternatives are implemented. The public is being told by the
20 agency that it must give up at a significant portion of its forest access. We cannot tell
21 whether this loss will improve wildlife so much that the recreational and economic
22 values that accrue from the present access should be discarded. The agency won’t (or
23 can’t) tell the public and the decision maker that the wildlife population or habitat will be
24 improved by any definable amount -- 50 percent? 10 percent? Not at all? We read
25 only vague claims that the action alternatives will (or may) improve wildlife’s
26 condition. There is no analytical assessment for the reviewer or the decision maker to
27 gauge whether giving up a significant portion of access is worth the improvement.
28

29 It is vitally important to remember the purpose of a NEPA analysis¹¹⁰ is to:

30
31 *—at in the widest range of beneficial uses of the environment without degradation, risk to health*
32 *or safety, or other undesirable and unintended consequences”*
33

34 Without a clear understanding of the state of the resources under the current (no action
35 alternative) condition, any comparisons of „more“ or „less“ are completely meaningless
36 and specious. CEQ regulations require compliance with all the tenets of an accurate
37 baseline. This includes an accurate and complete disclosure of all resource conditions
38 under the current (no action) condition. Then, and only then, can the decision maker
39 and the public review the analysis and its comparisons and make logical and defensible
40 decisions.
41

42 **RESOLUTION:** Unfortunately, the DEIS as presented lacks the necessary disclosure of
43 the resource state under the baseline conditions for many of the resources. The

¹¹⁰ The National Environmental Policy Act, Sec. 101(b)(3) [42 USC § 4331].

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 resulting lack of an accurate baseline to which to compare the action alternatives
2 renders the DEIS so inadequate as to preclude a meaningful analysis¹¹¹. The agency
3 has no choice but to circulate a revised draft with the required accurate baseline.
4

5 Thank you for the opportunity to comment.

6
7 Sincerely,
8

9 

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23 On behalf of:

24
25 Mogollon Apache Gila (MAG) Riders
26 Jo Anne Blount
27 POB 165
28 Glenwood, NM 88039
29

30 Gila Roads and Trails Alliance (GRATA)
31 James T. Baruch
32 POB 17
33 Mimbres, NM 88049
34

35 Gila Trail Riders Association (GRTA)
36 Grant Gose
37 2205 Johnson Rd.
38 Silver City, NM 88061
39

¹¹¹ 40 CFR1502.9

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-8 (Werkmeister Comment 5 – Faulty No Action Alternative)

2
3 March 2, 2011

4
5 Forest Supervisor
6 Attn: Travel Management
7 3005 E. Camino del Bosque
8 Silver City, NM 88061
9

10 Dear Responsible Official,

11
12 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
13 (NMOHVA) and am representing that organization and the undersigned organizations in
14 providing these comments on the Draft Environmental Impact Statement for Travel
15 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
16 organizations represent motorized recreationists in New Mexico including 4WD
17 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
18 in this DEIS provides important recreational resources to the members of the public we
19 represent.
20

21 We appreciate the opportunity to comment on the DEIS and take the responsibility of
22 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
23 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
24 Rule (TMR) with the utmost seriousness.
25

26 **ERROR:** The No Action Alternative does not meet the requirements of CEQ regulations
27 and does not accurately document the existing condition on the Forest. Specifically, the
28 no action alternative presented does not accurately portray the present management
29 direction or level of management intensity.

30 **DISCUSSION:** In the DEIS Summary, page ii, the agency states:

31 *“Alternative B is the no action alternative. It represents the existing condition, which is our best*
32 *estimate of where people are driving now.”*

33 Equating a *“best estimate of where people are driving now”* to the existing condition
34 clearly does not comply with CEQ regulations defining the requirements for the No
35 Action alternative. Starting with the over-arching CEG regulation in 40 CFR 1502.14:

36 *—§1502.14 Alternatives including the proposed action.*

37
38 *This section is the heart of the environmental impact statement. Based on the information and*
39 *analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental*
40 *Consequences (§1502.16), it should present the environmental impacts of the proposal and the*
41 *alternatives in comparative form, thus sharply defining the issues and providing a clear basis for*
42 *choice among options by the decisionmaker and the public. In this section agencies shall:*

1
2 (d) Include the alternative of no action.”
3

4 For further guidance, we first turn to CEQ’s well-known and always consulted *Appendix*
5 *B: Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act*
6 *Regulations*. Question #3 of the Forty Questions gets right to the heart of the matter
7 (emphasis added):
8

9 “3. No-Action Alternative. What does the “no action” alternative include? If an agency is
10 under a court order or legislative command to act, must the EIS address the “no action”
11 alternative?”

12 **A. Section 1502.14(d) requires the alternatives analysis in the EIS to “include the**
13 **alternative of no action.”** There are two distinct interpretations of “no action” that must
14 be considered, depending on the nature of the proposal being evaluated. **The first**
15 **situation might involve an action such as updating a land management plan where**
16 **ongoing programs initiated under existing legislation and regulations will**
17 **continue, even as new plans are developed. In these cases “no action” is “no**
18 **change” from current management direction or level of management intensity. To**
19 **construct an alternative that is based on no management at all would be a useless**
20 **academic exercise. Therefore, the “no action” alternative may be thought of in terms of**
21 **continuing with the present course of action until that action is changed. Consequently,**
22 **projected impacts of alternative management schemes would be compared in the**
23 **EIS to those impacts projected for the existing plan. In this case, alternatives would**
24 **include management plans of both greater and lesser intensity, especially greater and**
25 **lesser levels of resource development.”**

26 The answer for Question #3 goes on to state:

27 “In light of the above, it is difficult to think of a situation where it would not be appropriate
28 to address a “no action” alternative. Accordingly, the regulations require the analysis of
29 the no action alternative even if the agency is under a court order or legislative
30 command to act. **This analysis provides a benchmark, enabling decisionmakers to**
31 **compare the magnitude of environmental effects of the action alternatives. It is**
32 **also an example of a reasonable alternative outside the jurisdiction of the agency**
33 **which must be analyzed. Section 1502.14(c).** See Question 2 above. Inclusion of such
34 an analysis in the EIS is necessary to inform the Congress, the public, and the President
35 as intended by NEPA. Section 1500.1(a).”

36 The CEQ regulations do not impart the agency with the latitude to redefine what is
37 meant by No Action. The answer to Question #3 states that “no action” is “no change”
38 from current management direction or level of management intensity. It does not
39 provide the leeway to make the comparisons to the agency’s estimations of where they
40 think people are driving. The CEQ specifically states that the comparisons are to be
41 made to the current management direction or level of management intensity.

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1 By page 2 of the DEIS, the agency has already started to mix the term „existing
2 direction” with that of „existing condition”. The agency also creates an entirely different
3 definition of what it considers the „existing direction” to be¹¹²:

4 —*In general terms, the existing direction includes the National Forest System roads, trails and*
5 *areas currently managed for motor vehicle use, plus the restrictions, prohibitions and closures on*
6 *motor vehicle use existing on a unit (Southwestern Region Travel Management Rule Guidelines,*
7 *June 2008). This direction describes the existing system as that shown in the INFRA databases.”*
8

9 Let us be clear. CEQ does not specifically require the use of either term but they are
10 very clear what is to be considered as the „no action” alternative no matter which term is
11 used:

12
13 —*„no action” is no change’ from current management direction or level of management*
14 *intensity.”*
15

16 The current direction for the Gila National Forest is that virtually all the land outside of
17 Wilderness and Research Natural Areas is open to motorized use. Current
18 management intensity has allowed use even where the agency has roads categorized
19 in their database as closed to the public. Motorized use is currently allowed on OML 1
20 roads, decommissioned roads, and unauthorized roads unless specifically not allowed.
21 This is by virtue of the Gila National Forest being an „open” Forest.

22 The agency freely admits that widespread motorized use is occurring outside of open
23 OML 2-5 roads and the 16 miles of motorized trails (emphasis added):

24 —*Reopening roads: Reopening of roads includes both closed and decommissioned roads. Due to*
25 *the forest being open to cross-country motorized travel, unauthorized motorized use has led to*
26 *their continuous use. Most do not need any work to allow passage except for NFS Road 3050*
27 *(0.2 mile) where existing berms would be removed or reworked to allow passage and maintain*
28 *drainage features.” (p. 14)*
29

30 —*Hunters are user groups that specifically benefit from closed and decommissioned roads*
31 *since they allow for easier cross-country access to more remote areas of the forest from the open*
32 *road system for hunting and big game retrieval.” (p. 51)*
33

34 *Some unauthorized routes have become established on remnant logging roads or other*
35 *formerly managed roads that are no longer part of the National Forest System, but were never*
36 *obliterated and remain on the landscape. Some routes have developed as a result of firewood*
37 *harvest, while others have developed through recurring use. (p. 53)*
38

39 —*In most instances, this cross-country travel is for connecting existing routes or for access to*
40 *points of interest.” (p. 53)*
41

¹¹² DEIS, p. 2

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 *“An undetermined number of unauthorized routes exist which are not included in any current*
 2 *inventory.”* (p. 84)

3
 4 *–Because the Gila National Forest allows motorized cross-country travel, most proposed*
 5 *routes, even though unauthorized, are currently being used.”* (p. 200)

6
 7 *–The amount of unauthorized routes is difficult to measure accurately.”* (p. 222)

8 And, as mentioned at page 14 above, the agency plans to designate a significant
 9 amount of OML1 roads, decommissioned roads, and unauthorized routes as open
 10 under the various alternatives:

11
 Table 5. Changes to road system in miles

Features of the Alternatives	Alt. B*	Alt. C	Alt. D	Alt. E	Alt. F*	Alt. G
Add unauthorized routes to NFS roads open to all vehicle types	0	8	6	2	6	6
Reopen NFS maintenance level 1 closed or decommissioned roads to all vehicle types	0	4	1	1	1	1
Change vehicle type on NFS roads to highway legal vehicles only	0	28	28	28	28	28
Change time of year on NFS roads to be designated seasonally open for all vehicle types, April 1 through September 1	3	1	3	3	3	3
Change time of year on NFS roads to be designated seasonally open for all vehicle types, September 1 through February 28	0	0	8	0	0	0
Close open NFS roads to all motorized vehicle uses	0	143	1,225	1,853	889	909

12 * Alternative B = no action, Alternative F = modified proposed action

1

Table 8. Changes to motorized trails in miles

Features of the Alternatives	Alt. B*	Alt. C	Alt. D	Alt. E	Alt. F*	Alt. G
Add unauthorized routes as NFS trails and designate for motorized vehicles less than 50 inches in width	0	61	34	0	53	51
Convert NFS closed or decommissioned roads to NFS trails for motorized vehicles less than 50 inches in width	0	30	15	0	23	23
Convert open NFS roads to NFS trails for motorized vehicles less than 50 inches in width	0	35	67	0	90	92
Shared use of NFS horse and foot trail by motorcycles (single track)	0	51	0	0	0	0
Add unauthorized routes as NFS trails and designate for motorcycles (single track)	0	13	0	0	0	0
Close open NFS motorized trails to motorized use	0	1	7	15	1	1

2

* Alternative B = no action, Alternative F = modified proposed action

3

The agency demonstrates its own confusion over the use of the terms „closed“, decommissioned, and OLM 1 roads in the Roads Specialist report (p.10):

4

5

6

Table 3. Existing Gila NFS roads by operational maintenance level

Operational Maintenance Level	Miles
1 - Basic Custodial Care (Closed or Decommissioned)	1169
2 - Open to high-clearance vehicles	4196.3
3 - Suitable for Passenger Cars at lower speeds, typically single lane with turnouts	261.7
4 - Moderate Degree of User Comfort, typically double lane with aggregate surfacing	130.7
5 - High Degree of User Comfort, typically a paved double lane road	24.2
Total Miles	5781.9

7

And yet, in the Glossary of the same Roads Specialist report, it makes this distinction (emphasis added):

9

—*Closed road. A road placed in storage between intermittent uses. The period of storage must exceed 1 year. These roads are not shown on motor vehicle use maps. They are closed to all vehicular traffic but may be available and suitable for non-motorized uses. A closed road is not the same as an obliterated or decommissioned road. A closed road may be opened again for use at some time in the future. (Region 3 Transportation Glossary)*”

10

11

12

13

14

15

16

And this is not some mere typographical error; the confusion rears its head again on page 14 of the Roads Report:

17

18

1

Table 9. Miles of NFSRs to be shown on MVUM

Operational Maintenance Level (OML)	NFTS Alt B Miles	Alt C Miles	Alt D Miles	Alt E Miles	Alt F Miles	Alt G Miles
decommissioned	641.7	637.7	638.2	638.2	638.2	638.2
1	527.3	702.3	1,820.8	2,383.3	1,505.5	1,527.3
2	4,196.3	4,036.5	2,917.2	2,351.0	3,230.6	3,210.1
3	261.7	261.7	261.2	261.2	261.3	261.3
4	130.7	130.7	130.7	130.7	130.7	130.7
5	24.2	24.2	24.2	24.2	24.2	24.2

2

3 The obvious reason for this confusion is that the agency KNOWS OML 1 roads,
 4 decommissioned roads, and unauthorized routes all get regular motorized use by the
 5 public because the current management direction and management intensity on the
 6 Gila National Forest allows it.

7 Finally, there is the seminal regulatory document for the forest, the Gila National Forest
 8 plan. This duly NEPA-approved decision is the document that directs and governs the
 9 current management direction and management intensity on the GNF. Page 22 of the
 10 original document states:

MANAGEMENT PRESCRIPTION The following Standards and Guidelines will apply uniformly throughout the Gila
 APPLICABLE TO ALL National Forest.
 AREAS EXCEPT
 WILDERNESS

RESOURCE	ACTIVITY	STANDARDS AND GUIDELINES
RECREATION	A01	The Forest will be open to CRV use except in designated wilderness and where specified closed within management areas. Additional areas will be closed if significant resource damage is occurring or is likely to occur.

11

12 This was subsequently amended in 1987 to read:

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MANAGEMENT PRESCRIPTION The following Standards and Guidelines will apply uniformly throughout the Gila National Forest.
 APPLICABLE TO ALL
 AREAS EXCEPT
 WILDERNESS

RESOURCE	ACTIVITY	STANDARDS AND GUIDELINES
RECREATION	A01	<p>ORV POLICY - During the travel management process, Forest personnel will determine which roads, trails and areas will be open to motorized vehicle use and which will be restricted or closed. The public will be involved in this process. Priority areas will be identified and scheduled within one year and the travel management process completed on these areas within three years. The following criteria below will be used. Exceptions to motorized vehicle restrictions can be granted by permit only. Restrictions and closures will be reviewed annually and the public will be notified of any change.</p> <p>Restricted - (definition) - Road, trail or area could be closed to motorized vehicle use, could be restricted to certain types of vehicle, motorized use could be restricted to specific periods, etc.</p> <p>Criteria to be used in designating open, closed or restricted roads, trails and areas are:</p> <ol style="list-style-type: none"> 1. Management emphasis of a specified area 2. Level of conflict between existing types of use 3. Required resource protection 4. Seasonal constraints 5. Special needs of users and management
	A01	Off-road vehicle implementation plan will be updated whenever changes occur as a result of travel management planning.
	A01	Recreation use of riparian zones will be managed to avoid damage to riparian resources.

1

2 The GNF has made no forest-level off-road vehicle implementation plan updates so the
 3 current management direction and management intensity remains: *"The Forest will be
 4 open to OHV use except in designated wilderness and where specified closed in
 5 management areas."*

6 CEQ regulations are clear. The DEIS requires a no action alternative and that
 7 alternative must accurately disclose the current management direction and
 8 management intensity. An accurate no action alternative is required so that the public
 9 and the decision maker can use it in making a rational, reasoned consideration of the
 10 benefits and risks and their associated trade-offs of this project. An accurate no action
 11 alternative includes ALL of the routes currently open to motorized public use. The
 12 agency has not done this with the subject DEIS.

13 **RESOLUTION:** Unfortunately, the lack of a CEQ compliant and accurate no action
 14 alternative baseline so fundamentally skews the resulting comparisons with the action
 15 alternatives that the current DEIS is rendered useless. The draft EIS is so inadequate

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 as to preclude a meaningful analysis¹¹³. The agency has no choice but to prepare and
2 circulate a revised draft of the DEIS that both meets CEQ regulations and accurately
3 depicts the baseline condition of the Forest.
4

5 Thank you for the opportunity to comment.
6

7 Sincerely,
8

9 

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23 On behalf of:
24

25 Mogollon Apache Gila (MAG) Riders
26 Jo Anne Blount
27 POB 165
28 Glenwood, NM 88039
29
30

¹¹³ 40 CFR 1502.9

Appeal of the Record of Decision for Travel Management on the Gila National Forest

- 1 Gila Roads and Trails Alliance (GRATA)
- 2 James T. Baruch
- 3 POB 17
- 4 Mimbres, NM 88049
- 5
- 6 Gila Trail Riders Association (GRTA)
- 7 Grant Gose
- 8 2205 Johnson Rd.
- 9 Silver City, NM 88061
- 10

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-9 (Werkmeister Comment 6 – Faulty No Action Issue #2)

2
3 March 2, 2011

4
5 Forest Supervisor
6 Attn: Travel Management
7 3005 E. Camino del Bosque
8 Silver City, NM 88061
9

10 **Dear Responsible Official,**

11
12 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
13 (NMOHVA) and am representing that organization and the undersigned organizations in
14 providing these comments on the Draft Environmental Impact Statement for Travel
15 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
16 organizations represent motorized recreationists in New Mexico including 4WD
17 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
18 in this DEIS provides important recreational resources to the members of the public we
19 represent.
20

21 We appreciate the opportunity to comment on the DEIS and take the responsibility of
22 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
23 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
24 Rule (TMR) with the utmost seriousness.
25

26 **ERROR:** The No Action Alternative does not meet the requirements of CEQ regulations
27 and does not accurately document the existing condition on the Forest. Specifically, the
28 agency has failed to adequately explore, define, and document the existing condition in
29 the No Action Alternative.

30 **DISCUSSION:** In the DEIS Summary, page ii, the agency states:

31 *“Alternative B is the no action alternative. It represents the existing condition, which is our best*
32 *estimate of where people are driving now.”*

33 The agency is not given the latitude of writing its own definition of what „no action“
34 means. Starting with the over-arching CEG regulation in 40 CFR 1502.14:

35 *—§1502.14 Alternatives including the proposed action.*

36
37 *This section is the heart of the environmental impact statement. Based on the information and*
38 *analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental*
39 *Consequences (§1502.16), it should present the environmental impacts of the proposal and the*
40 *alternatives in comparative form, thus sharply defining the issues and providing a clear basis for*
41 *choice among options by the decisionmaker and the public. In this section agencies shall:*
42

43 *(d) Include the alternative of no action.”*

1
2 For further guidance, we first turn to CEQ’s well-known and always consulted *Appendix*
3 *B: Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act*
4 *Regulations*. Question #3 of the Forty Questions gets right to the heart of the matter
5 (emphasis added):
6

7 “3. *No-Action Alternative*. What does the “no action” alternative include? If an agency is
8 under a court order or legislative command to act, must the EIS address the “no action”
9 alternative?

10 **A. Section 1502.14(d) requires the alternatives analysis in the EIS to “include the**
11 **alternative of no action.”** There are two distinct interpretations of “no action” that must
12 be considered, depending on the nature of the proposal being evaluated. **The first**
13 **situation might involve an action such as updating a land management plan where**
14 **ongoing programs initiated under existing legislation and regulations will**
15 **continue, even as new plans are developed. In these cases “no action” is “no**
16 **change” from current management direction or level of management intensity.** To
17 construct an alternative that is based on no management at all would be a useless
18 academic exercise. Therefore, the “no action” alternative may be thought of in terms of
19 continuing with the present course of action until that action is changed. **Consequently,**
20 **projected impacts of alternative management schemes would be compared in the**
21 **EIS to those impacts projected for the existing plan.** In this case, alternatives would
22 include management plans of both greater and lesser intensity, especially greater and
23 lesser levels of resource development.”

24 In spite of clear CEQ requirements that the „no action“ alternative is “no change” from
25 current management direction or level of management intensity”, the agency has
26 chosen to arbitrarily eliminate:

- 27
- 28 • 1169 miles of OML 1 roads¹¹⁴
 - 29 • An unknown, but clearly acknowledged, amount of „unauthorized routes“¹¹⁵
 - 632 miles of trails outside of wilderness areas¹¹⁶

30 The rest of the DEIS proliferates and perpetuates this „sleight of hand“ at presenting the
31 alternatives. To counter the inevitable claim that Region 3 direction was to only include
32 INFRA documented routes, NMOHVA reminds the agency that the DEIS must comply
33 with not only Region 3 desires but, much more importantly, CEQ requirements!

34 The document contains numerous examples of why the distinction is important. In
35 numerous instances throughout the DEIS, Alternative B (the no action alternative) is
36 presented as the „existing condition“. Here is a typical example from the Wildlife section
37 of the Environmental Consequences (p. 137):

¹¹⁴ Table 19, DEIS for Travel Management, Gila National Forest.

¹¹⁵ DEIS for Travel Management, Gila National Forest, page 19.

¹¹⁶ DEIS for Travel Management, Gila National Forest, page 50. Calculated as 632 = 1577 - (1577 x 59%) -16 miles of motorized trail.

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 —*For federally listed species and some Southwestern Region sensitive species, the analysis*
2 *indicators also analyze the change in identified management areas by alternative from the*
3 *existing condition (i.e., critical habitat, protected activity centers, post-fledgling areas, occupied*
4 *sites, etc.).”*

5
6 But the statement is false. The numerous comparisons made in Chapters 2 and 3 are
7 between the alternatives and the agency-defined „existing direction”, not the existing
8 condition as claimed. And because the description of the no action alternative is wrong,
9 every single one of the comparisons made throughout the document is inaccurate.

10
11 Lest the agency claim that comparing the existing direction somehow gives a „better”
12 baseline as „people aren”t driving” on the rest of these routes, we want to point out that
13 the agency doesn”t use the same approach in presenting areas as it does routes. While
14 the agency has apparently chosen to give itself permission to only include open system
15 routes that are driven on for inclusion in the „current direction”, it does not hesitate to
16 include ALL of the available open cross country area. It includes the entire area
17 currently available for cross country travel even though it freely admits, in many places
18 within the DEIS, that cross country travel is relatively limited:

19
20 —*Approximately 2.4 million acres are available for motorized cross-country travel. Even though*
21 *these acres permit motorized cross-country travel, it may not be possible to drive on all of them*
22 *due to slope, terrain, or thick vegetation.” (p. 4)*

23
24 —*Tough the public has the opportunity to practice motorized dispersed camping anywhere*
25 *under alternative B, the reality is, they typically do not.” (p. 61)*

26
27 —*Cross-country use on this forest is infrequent and dispersed enough that few permanent tracks*
28 *are created, based on forest staff observations.” (p. 94)*

29
30 —*Under the no action alternative, the forest (2,441,804 acres) is open to motorized cross-country*
31 *travel and motorized dispersed camping, although many areas are not actually available due to*
32 *steep slopes, rocky conditions, and/or dense timber.” (p. 103)*

33
34 It is clear that the agency has chosen to apply different methodology when moving from
35 the subject of routes to the subject of areas within the DEIS. And more importantly, it
36 has not disclosed that they are applying methodology to the subjects differently. This
37 misleads both the decision maker and the public when they are considering and
38 weighing the various alternatives.

39 Put another way, the agency has chosen to use two different methodologies in
40 describing the „existing direction”:

- 41 1) Routes – Use the “best estimate of where people are driving now.”
42 2) Areas – Use all of the acreage available, even where the agency says people
43 clearly aren”t driving.

44 The DEIS states (p. 4):

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1 —*Sine 2006, the database for roads and motorized trails (INFRA) has been updated using*
2 *information received from the public, field verification, and database corrections. Several*
3 *iterations of existing direction maps have been produced since 2006. These are all in the project*
4 *record. The most recent is included in the map packet. This is the map depicting alternative B (no*
5 *action) and summarized in table 1.*”

6 If the database has been updated several times since 2006 with information from both
7 the public and the agency’s own field verification, why are not all motorized routes that
8 are being used included in the no action alternative? Why has the agency not disclosed
9 the current and acknowledged state of motorized use on the Forest? Why must the
10 public and the decision maker guess as to the current use and impacts of that use on
11 the resources?

12 The no action alternative is required to show the forest as it is currently being managed
13 AND used by the public. The no action alternative was intended by CEQ to reflect the
14 current ground conditions. The public and the local counties have vigorously
15 maintained over the past five year that the agency’s maps for travel management do not
16 include a great number of roads that are in general public use and where the agency
17 has allowed that use. NMOHVA asserts that the no action alternative grossly under-
18 represents the current ground conditions.

19
20 In 2004, the agency issued a „All Travelways” map to the public¹¹⁷. This map shows far
21 more routes than any of the Existing Direction or even All Roads maps the agency
22 issued after starting the TMR implementation process. Unless the agency can produce
23 a NEPA-compliant closure order for all of the „extra” routes shown on the All Travelways
24 map, all of these routes are clearly acknowledged to be in use by the public since 1989
25 (the data of the data on the 2004-issued map).

26
27 We have, within this comment, established that the agency has admitted its actions
28 have been irregular and inconsistent and management has been implemented and
29 communicated unevenly. Alternatives are presented to designate significant mileage of
30 OML 1 roads, decommissioned roads, and unauthorized routes even though the agency
31 knows these roads are coded as closed in the database. We can find no criteria or
32 analysis that documents how the agency decided which of these „closed” roads to
33 designate as open routes.

34
35 There is no explanation of what the agency means by „to the best of our knowledge”.
36 How did the agency decide which OML 1 and decommissioned roads were in use by
37 the public? We see no methodology or evidence of analysis for making this
38 determination. Why only these particular roads? The presented alternatives include
39 some OML 1 road, decommissioned roads and unauthorized routes. If some of these
40 roads and routes qualify for designation, all of them qualify to be considered for
41 designation and therefore all should be included in the no action alternative.

¹¹⁷ all_travel_ways_roadless.pdf

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1 Why is it so important that all of the potential roads and routes be included in the no
2 action alternative? The no action alternative is the baseline to which all of the action
3 alternatives are compared against again and again throughout this document. Without
4 an accurate, meaningful baseline, and a full and complete accounting of the current
5 condition and impacts this baseline condition is having on the Forest's resources, the
6 comparisons are fatally flawed. They cannot provide an accurate and meaningful
7 disclosure in the differences of the various alternatives.

8 40 CFR 1502.1 captures the purpose of the EIS ever so clearly:

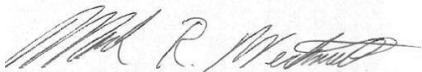
9 *"It shall provide full and fair discussion of significant environmental impacts and*
10 *shall inform decisionmakers and the public of the reasonable alternatives which would*
11 *avoid or minimize adverse impacts or enhance the quality of the human environment."*
12

13 Without an accurate baseline for the public and the decision maker to use in making a
14 rational, reasoned consideration of the benefits and risks and their associated trade-
15 offs, the DEIS misses its CEQ –required mark by a wide margin.
16

17 **RESOLUTION:** Unfortunately, the lack of a CEQ compliant and accurate no action
18 alternative baseline so fundamentally skews the resulting comparisons with the various
19 action alternatives that the DEIS is rendered useless. The draft EIS is so inadequate as
20 to preclude a meaningful analysis¹¹⁸. The agency has no choice but to prepare and
21 circulate a revised draft of the DEIS that both meets CEQ regulations and accurately
22 depicts the baseline condition of the Forest.
23

24 Thank you for the opportunity to comment.

25 Sincerely,
26

27 

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34

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40

¹¹⁸ 40 CFR 1502.9

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 On behalf of:
2
3 Mogollon Apache Gila (MAG) Riders
4 Jo Anne Blount
5 POB 165
6 Glenwood, NM 88039
7
8 Gila Roads and Trails Alliance (GRATA)
9 James T. Baruch
10 POB 17
11 Mimbres, NM 88049
12
13 Gila Trail Riders Association (GRTA)
14 Grant Gose
15 2205 Johnson Rd.
16 Silver City, NM 88061
17

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-12 (Werkmeister Comment 10a – Faulty Analysis of Riparian
2 Risk Zones)

3
4 March 2, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

10
11 Dear Responsible Official,

12
13 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
14 (NMOHVA) and am representing that organization and the undersigned organizations in
15 providing these comments on the Draft Environmental Impact Statement for Travel
16 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
17 organizations represent motorized recreationists in New Mexico including 4WD
18 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
19 in this DEIS provides important recreational resources to the members of the public we
20 represent.

21
22 We appreciate the opportunity to comment on the DEIS and take the responsibility of
23 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
24 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
25 Rule (TMR) with the utmost seriousness.

26
27 **ERROR:** The DEIS uses a 600 foot width as a „riparian risk zone“ when the disclosed
28 data shows the average width of a riparian area to be far less. There is no reason to
29 create a „risk zone“ when there is actual data. The „risk zone“ is not an accurate
30 approximation for the indicator that the DEIS uses for the analysis.

31
32 **DISCUSSION:** in the Watershed and Soils Affected Environment, the DEIS makes this
33 statement (p. 81):

34
35 *—In an effort to quantify acres and location of riparian areas that may be most at risk to negative*
36 *impacts from motorized vehicles, a riparian risk zone was considered for this analysis. Using*
37 *existing riparian width data from Riparian Area Survey and Evaluation System (RASES) data, the*
38 *average width of forest riparian areas is 155 feet, with a median width of 90 feet. About 97*
39 *percent of all riparian areas assessed with RASES have a width of 500 feet or less. Four*
40 *drainages have reaches measuring over 500 feet, including Mogollon Creek, Gallinas Canyon,*
41 *Gila River, and South Diamond Creek. Very limited miles of roads are found within these*
42 *drainages.”*

43
44 *Based on the above information, it was determined that a 300-foot buffer on either side of*
45 *perennial and intermittent drainages would be suitable to use as a riparian risk zone, knowing*
46 *that a few exceptions occur across the forest where the riparian zone goes beyond a 600 foot total*
47 *width. Although still not quantifying acres of riparian areas found on the forest, the 300-foot*

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 *buffer captures the majority of riparian areas while at the same time providing some level of*
2 *buffer protection beyond the true riparian zone.”*

3
4 NMOHVA asserts that there are several issues with the assumptions and methodology
5 in the above paragraphs.

6
7 Issue #1 – The agency actually HAS data on the widths of the riparian zones. The
8 RASES data gives actual riparian zone widths for 326 specific reaches on perennial and
9 intermittent streams. It doesn’t need to use a „riparian risk zone” to quantify acreages.

10
11 Issue #2 – The „riparian” risk zone is approximately four times as wide as the average
12 riparian width as documented in the RASES database. The average width is 155 feet.
13 Using a 300 foot buffer on either side of the drainages gives a 600 foot width. This is a
14 multiplier of 3.87, hardly an insignificant multiplier or a mere „conservative” factor.

15
16 Issue #3 – The RASES data actually shows the median (the center of distribution) to
17 only be 90 feet, a mere 0.15 of the „riparian risk zone” now applied to all of the perennial
18 and intermittent drainages.

19
20 Issue #4 – The use of the 600 foot „riparian risk zone” is „justified” by the agency as
21 being used to cover 97% of the riparian zones as only four reaches are wider than the
22 600 feet (even though the agency admits that roads within those even wider reaches
23 are minimal to the point of being negligible).

24
25 —*Four drainages have reaches measuring over 500 feet, including Mogollon Creek, Gallinas*
26 *Canyon, Gila River, and South Diamond Creek. Very limited miles of roads are found within*
27 *these drainages.”(p. 81)*

28
29 —*This risk zone is assumed to be inclusive of more than 97 percent of all riparian areas across*
30 *the forest, minus four of the larger riverine systems.” (p. 84)*

31
32 Issue #5 – The agency is using a concept of a „riparian risk zone” to “captures the
33 majority of riparian areas while at the same time providing some level of buffer
34 protection beyond the true riparian zone.” But the original need in the Affected
35 Environment statement was “*an effort to quantify acres and location of riparian areas*
36 *that may be most at risk to negative impacts from motorized vehicles,*” not create a wide
37 enough swath to cover every possible piece of riparian acreage.

38
39 —*The riparian risk zone does not constitute the true acres of riparian areas on the forest, but*
40 *rather presents a conservative estimate of acres where riparian vegetation would be found*
41 *within.” (p. 88)*

42
43 Issue #5 is particularly troubling as it moves the original intent of „*quantifying acreage*” to
44 „*providing some level of buffer protection beyond the true riparian zone.*” This is
45 extremely important as the Methodology and Analysis process described in the Water
46 and Soils specialists” report states the Criteria for Measure to be:

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 —Criteria for measure:

- 2 • Acres of disturbance from motorized routes within identified wetland, wet meadows
3 and riparian risk zones.”

4
5 The agency is no longer “quantifying acres and location of riparian areas”. The use of
6 the riparian risk (buffer) zone with this agency selected criteria for measure has just
7 increased the measured „impact” approximately four-fold. Remember: The agency was
8 attempting to quantify acreage in riparian areas, not acres of „riparian risk zones”.
9 Assuming an even distribution of roads across the 600 foot swaths of „risk zone”, the
10 actual mileage of roads identified if the actual average width was used would only be
11 26% of those identified under the agency’s methodology.

12
13 —Tables that summarize the proposed changes in acres of motorized routes by alternative that
14 may impact riparian and wetlands areas—as well as the proposed changes in potential acres that
15 may be impacted by motorized dispersed recreation, motorized big game retrieval, and motorized
16 areas—are found in the watershed and soils specialist report (USDA Forest Service 2010d).” (p.
17 88)

18
19 And sure enough, the Tables now show considerably „extra” impact as the widths of the
20 actual riparian zones have been extended out to a full 600 foot corridor along each
21 drainage¹¹⁹:
22

Table 21. Miles and acres of motorized routes within riparian risk zone

Forestwide Miles and Acres of Roaded Disturbance within Riparian Risk Zones	Miles	Change in Miles from No Action	% Increase or decrease from No Action	Acres	Change in Acres from No Action	% Increase or decrease from No Action
Alternative B – No Action	302			454		
Alternative C	302	<-1	0	436	-18	-4%
Alternative D	209	-93	-31%	318	-136	-30%
Alternative E	163	-139	-46%	254	-200	-44%
Alternative F	246	-56	-19%	372	-82	-18%
Alternative G	242	-60	-20%	366	-88	-19%

23
24 Each of the quantities in the „Miles” column are overstated because they are a measure
25 of the length of route in the „riparian risk zone” rather than the actual length of route in
26 the actual acreage of riparian area (the original intent). The mileage of roads affected is
27 now approximately four times (x4) of the actual mileage of roads in the riparian areas.
28 This is an unwarranted and unacceptable of artificially increasing the measured „impact”.

29
30 The agency didn’t have to use a buffer or riparian risk zones. The agency didn’t even
31 have to use the average width of the riparian zone. IT HAS THE ACTUAL RASES

¹¹⁹ Watershed and Soils Specialist Report, p.53

1 DATABASE WIDTHS for all 326 reaches. IT CAN USE THE ACTUAL WIDTHS to
2 identify which roads actually physically occupy riparian acres¹²⁰.
3

Riparian Condition	
	<ul style="list-style-type: none">- 132 reaches assessed using proper functioning condition (PFC) assessment- 54 percent of these in proper functioning condition- 36 percent of these functional at risk (FAR)- 10 percent of these nonfunctional- 64 percent currently meeting forest plan standards of PFC or FAR - Upward Trend- 326 reaches inventoried using RASES- Average riparian width across forest is 155 feet- Median riparian width across forest is 90 feet

4
5
6 It is illogical and nonsensical to use „buffers“, „risk zones“, or even „averages“ when the
7 agency HAS THE ACTUAL DATA! The resulting over-inflated impact of mileage in
8 riparian zones is now mis-informing the decision maker and the public.
9

10 And the agency knows it. It states so on page 88:

11
12 *—The riparian risk zone does not constitute the true acres of riparian areas on the forest, but*
13 *rather presents a conservative estimate of acres where riparian vegetation would be found*
14 *within.”*
15

16 Conservative estimate? When you throw a nearly 4x multiplier of the actual known
17 quantity, the result it is FAR more than conservative. It is clear misrepresentation of the
18 facts. Using a „risk zone to create a „conservative estimate“ is a specious argument at
19 best. Obviously using a larger area makes it easier to claim that the riparian vegetation
20 would be „found within“. Why stop there? Why not the entire Forest, or even the whole
21 state of New Mexico?
22

23 Facetious? Not really, it would make the same argument and have the same problem.
24 The conservative estimate INCREASES the acreage and artificially increases the route
25 mileage found within. And again, the agency has no logical reason to use buffer zones
26 or even estimates. They have the actual width data!
27

28 **RESOLUTION:** The agency has the actual riparian widths. Use them to calculate the
29 riparian acreages so that the actual length of routes within the riparian areas can be
30 calculated for each alternative (including the no action alternative). Update the DEIS
31 with this factual information. Disclose the actual mileage of routes within the riparian
32 areas. Inform the decision maker and the public of the facts when the agency
33 possesses factual data.
34

35 Thank you for the opportunity to comment.

36
37 Sincerely,

¹²⁰ DEIS, Table 28, p. 83

Appeal of the Record of Decision for Travel Management on the Gila National Forest



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3 NMOHVA Board of Directors
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14
15 On behalf of:

16
17 Mogollon Apache Gila (MAG) Riders
18 Jo Anne Blount
19 POB 165
20 Glenwood, NM 88039

21
22 Gila Roads and Trails Alliance (GRATA)
23 James T. Baruch
24 POB 17
25 Mimbres, NM 88049

26
27 Gila Trail Riders Association (GRTA)
28 Grant Gose
29 2205 Johnson Rd.
30 Silver City, NM 88061

31
32
33

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-13 (Werkmeister Comment 10b – More Faulty Analysis of
2 Riparian Risk Zones)

3
4 February 4th, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

10
11 Dear Responsible Official,

12
13 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
14 (NMOHVA) and am representing that organization in providing these comments on the
15 Draft Environmental Impact Statement for Travel Management on the Gila National
16 Forest (DEIS). NMOHVA represents motorized recreationists in New Mexico including
17 4WD enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF)
18 analyzed in this DEIS provides important recreational resources to the members of the
19 public we represent.

20
21 We appreciate the opportunity to comment on the DEIS and take the responsibility of
22 reviewing the DEIS for compliance with the National Environmental Policy Act, CEQ
23 regulations, Forest Plans, and the Travel Management Rule (TMR) with the utmost
24 seriousness.

25
26 **ERROR:** The agency has purposely misrepresented the potential impacts of roads to
27 riparian zones by using overstating the „measurement“ indicators.

28
29 **DISCUSSION:** in the Watershed and Soils Affected Environment, the DEIS makes this
30 statement¹²¹:

31
32 *—In an effort to quantify acres and location of riparian areas that may be most at risk to negative*
33 *impacts from motorized vehicles, a riparian risk zone was considered for this analysis. Using*
34 *existing riparian width data from Riparian Area Survey and Evaluation System (RASES) data, the*
35 *average width of forest riparian areas is 155 feet, with a median width of 90 feet. About 97*
36 *percent of all riparian areas assessed with RASES have a width of 500 feet or less. Four*
37 *drainages have reaches measuring over 500 feet, including Mogollon Creek, Gallinas Canyon,*
38 *Gila River, and South Diamond Creek. Very limited miles of roads are found within these*
39 *drainages.”*

40
41 *Based on the above information, it was determined that a 300-foot buffer on either side of*
42 *perennial and intermittent drainages would be suitable to use as a riparian risk zone, knowing*
43 *that a few exceptions occur across the forest where the riparian zone goes beyond a 600 foot total*
44 *width. Although still not quantifying acres of riparian areas found on the forest, the 300-foot*

¹²¹ DEIS, p. 81

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1 *buffer captures the majority of riparian areas while at the same time providing some level of*
2 *buffer protection beyond the true riparian zone.”*
3

4 NMOHVA contends there are at least three errors that result in the potential risk from
5 motorized routes to riparian zones to grossly be overstated in the DEIS:
6

7 Error #1 - The agency admits that they possess a detailed database called RASES that
8 identifies each of the 326 stream reaches that constitute the riparian areas¹²². They
9 know they know the width of the transect for each of the stream reaches¹²³. With this
10 wealth of data, there is no logical or rational need to identify a „riparian buffer zone” to
11 ensure that all of the riparian acreage was identified.
12

13 The selection of a 600 ft wide zone is purported to be based on the data from RASES.
14 But an examination of Table 8 in the Watershed and Soils Specialist report shows that
15 over half of the transect widths associated with these stream reaches are less than 100
16 feet wide. The result is that for 183 stream reaches, the riparian acres have been
17 overstated by at least 600% because of the use of „riparian risk zones”. This error is
18 totally avoidable. The stated „logic” for selecting 600 ft is that it would cover everything.
19 But the width they selected was needed for only 4 of the 326 reaches (1.2% of the
20 number). They even admitted that the four wider reaches didn’t have significant road
21 mileage in them anyway¹²⁴:
22

23 —*Note: A GIS review of the four wide-bottomed drainages with riparian widths exceeding 600*
24 *feet indicated very limited miles of roads were not captured within the riparian risk zone. All*
25 *roads adjacent to Gallinas Creek were captured by the buffer. No roads were present adjacent to*
26 *or within South Diamond Creek. Less than 0.10 mile was outside of the riparian risk zone*
27 *adjacent to Mogollon Creek (at the confluence of Mogollon Creek and Gila River).*
28 *Approximately 1.5 miles of motorized routes were not captured in the Gila River mainstem by the*
29 *riparian risk zone”*
30

31 But the agency blithely applied it to the other 98.8% of the reaches anyway. The
32 magnitude of this error is undeniable and unacceptable. Even if all the other 322 areas
33 were the average width of 155 feet, the overstatement of riparian acreage would at
34 387%!
35

36 Error #2 - There is nothing in their task statement that directs the agency to create these
37 „risk zones”. Remember, it was *“an effort to quantify acres and location of riparian areas*
38 *that may be most at risk to negative impacts from motorized vehicles*¹²⁵” that the agency
39 originally set out to quantify. There is a fundamental flaw in the logic of the
40 analysis. The analysis is supposed to assess the real physical size of the existing
41 riparian areas. The acreage of the riparian areas is data from the real world. „Riparian

¹²² Watershed and Soils Specialist Report, p. 12.

¹²³ Watershed and Soils Specialist Report, Table 8 and Chart 1.

¹²⁴ Watershed and Soils Specialist Report, p. 14.

¹²⁵ DEIS, p. 81

1 risk zone" acreage is NOT data from the real world. A „risk zone“ is only a concept, an
 2 idea.
 3 Buffer zone acreage must not be added to riparian acreage BEFORE the analysis, as if
 4 buffer zones were physically part of the riparian area. Buffer zones are not a natural
 5 resource to be protected. Buffer zones are a management strategy. They should not
 6 be confused with the initial measurement of the riparian zones. Buffer zones are an
 7 option as a corrective or preventative policy measure AFTER the riparian areas are
 8 analyzed, and AFTER the analysis proves that corrective or preventative measures are
 9 needed. The agency has confused analysis techniques with management measures.

10
 11 Remember, the agency admits that it isn't just trying to ensure all of the acreage of the
 12 riparian zone is captured¹²⁶:

13
 14 *—the 300-foot buffer captures the majority of riparian areas while at the same time providing some*
 15 *level of buffer protection beyond the true riparian zone”*

16
 17 The agency freely admits that it is trying to add „protection“ before it has even analyzed
 18 the resource to see if it needs additional protection! The „riparian risk zone“ is so ill-
 19 conceived that it doesn't even accomplish logical protection of the riparian areas. Under
 20 the 600 ft buffer zone, the largest riparian areas (the four largest, that are 500 plus feet
 21 wide) get less than 50 feet of additional protection on each side. Consider a riparian
 22 area of the median width, 90 feet. It also gets a 600 foot buffer zone with the result that
 23 it gets an additional 255 feet of protection on each side. Finally, consider a narrow
 24 riparian area of only 20 feet. These smallest riparian strips get an additional 290 feet of
 25 protection on each side. The irrational consequence of the agency's buffer zone
 26 scheme is that the largest riparian areas get the least „extra“ protection, and the smallest
 27 ones get the most extra protection. This is highly illogical, since the largest riparian
 28 provide the most habitat.

29
 30 The only thing the misapplied buffer zone protection scheme accomplishes is to grossly
 31 overstate the amount of riparian area and by extension, grossly overstate the mileage of
 32 roads that present a risk to riparian areas.

33
 34 Error #3 – A careful review of the DEIS turns up this important item¹²⁷:

35

Riparian Condition	<small>of 25 reaches for riparianity which may be linked indirectly to roads</small> • 132 reaches assessed using proper functioning condition (PFC) assessment • 54 percent of these in proper functioning condition • 36 percent of these functional at risk (FAR) • 10 percent of these nonfunctional • 64 percent currently meeting forest plan standards of PFC or FAR - Upward Trend • 326 reaches inventoried using RASES • Average riparian width across forest is 155 feet • Median riparian width across forest is 90 feet

126 Watershed and Soils Specialist Report, p. 13.

127 DEIS, Table 28, p.83

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1
2 Proper Functioning Condition assessments have been completed on 132 stream
3 reaches. The following table provides a summary of PFC ratings across the Forest to
4 date. Ratings of Proper Functioning Condition and Functional at Risk – Upward Trend
5 are considered to be meeting Forest Plan standards. Sixty-four percent of the reaches
6 inventoried using the PFC method are currently meeting Forest Plan standards.

7
8 This means that of the 132 streams where assessment is complete, 84 of them are
9 functioning well and 48 are below standard. It would be logical to extrapolate that
10 statistic to all 326 stream reaches, with this result:

11
12 209 stream reaches meeting standards
13 117 stream reaches functioning below standard
14

15 The „analysis“ marches forward, ignoring this significant information. It blindly applies
16 the 600 foot riparian risk zone to ALL reaches, including the 64% that are already
17 currently functioning properly! The analysis falsely assumes that all roads within the
18 600 foot riparian risk zone pose a risk, even though its own data has just proven that it
19 can“t possibly be true. The 600 foot riparian risk zone methodology is wrong because
20 well over half the reaches are functioning well despite the roads which are undoubtedly
21 nearby. This bears repeating: The DEIS and the underlying Watershed and Soils
22 Specialist Report itself provides the data that disproves the very methodology that the
23 agency is using.

24
25 The data that 64% of the stream reaches function properly is incontrovertible. It is safe
26 to presume that there are roads near at least some of those properly functioning stream
27 reaches. The analysis does not state otherwise. The real analysis would have next
28 asked: “What is the difference between properly functioning streams and poorly
29 functioning streams?” But the agency ignores that obvious question. It also ignores
30 the other obvious questions: “How many roads are near those properly functioning
31 reaches? How many miles? How close are they?” Here is an opportunity to learn if
32 roads really do correlate to stream function and under what conditions.

33
34 The 600 foot “risk zone” methodology is undeniably erroneous. It is wrong even if only
35 because it has been applied improperly to all streams, including those that are identified
36 with proper function. This produces the bizarre conclusion that roads near properly
37 functioning stream reaches are somehow posing a risk to those streams. If the roads
38 are negatively impacting streams, why are two-thirds of the streams doing fine under
39 current conditions?

40
41 This is certainly an element of bizarre humor in this willful blindness. The unfortunate
42 result is that agency is so busy demonizing roads, it misses a real opportunity to
43 actually learn something from the analysis. A diligent scientist would ask: “What
44 combination of risk factors produces results supported by the empirical data?” The
45 inescapable conclusion is that the agency is more interested in its motorized witch-hunt
46 than in science.

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1
2 **RESOLUTION:** Use the data the agency admits they possess. Complete a real
3 analysis on the stream reaches and their associated roads to establish cause-and-effect
4 backed up with empirical data. Use the analysis results to craft alternatives that provide
5 the decision maker with a range of risk versus value options from which to choose.
6 Leave the witch hunts to the history books.

7
8 Thank you for the opportunity to comment.

9
10 Sincerely,

11
12 Mark Werkmeister, PE
13 NMOHVA Board of Directors
14 1700 Willow Road NE
15 Rio Rancho, NM 87144
16 505-891-0296
17 mark.r.werkmeister@intel.com

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24
25 On behalf of:

26
27 Mogollon Apache Gila (MAG) Riders
28 Jo Anne Blount
29 POB 165
30 Glenwood, NM 88039

31
32 Gila Roads and Trails Alliance (GRATA)
33 James T. Baruch
34 POB 17
35 Mimbres, NM 88049

36
37 Gila Trail Riders Association (GRTA)
38 Grant Gose
39 2205 Johnson Rd.
40 Silver City, NM 88061

41
42

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-15 (Werkmeister Comment 12 – Previous Designations)

2
3 March 2, 2011

4
5 Forest Supervisor
6 Attn: Travel Management
7 3005 E. Camino del Bosque
8 Silver City, NM 88061
9

10 Dear Responsible Official,

11
12 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
13 (NMOHVA) and am representing that organization and the undersigned organizations in
14 providing these comments on the Draft Environmental Impact Statement for Travel
15 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
16 organizations represent motorized recreationists in New Mexico including 4WD
17 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
18 in this DEIS provides important recreational resources to the members of the public we
19 represent.
20

21 We appreciate the opportunity to comment on the DEIS and take the responsibility of
22 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
23 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
24 Rule (TMR) with the utmost seriousness.
25

26 **ERROR:** The agency has not disclosed what specific previous decisions pertaining to
27 route designation have been incorporated into the DEIS.
28

29 **DISCUSSION:** The DEIS states it incorporates certain previous decisions for the
30 designation of some routes and does not include those decisions within the Proposed
31 Action¹²⁸:
32

33 *—Previous Decisions*

34
35 *The Travel Management Rule allows the responsible official to incorporate previous*
36 *administrative decisions regarding travel management made under other authorities, including*
37 *designations and prohibitions of motor vehicle use, in designating NFS roads, trails, and areas*
38 *on NFS lands for motor vehicle use (36 CFR 212.50(b)). Therefore, the existing miles of*
39 *designated road system that are not being closed or changed are not included in the proposed*
40 *action; only the changes to the transportation system are included.”*
41

¹²⁸ DEIS, p. 5.

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 The only place in the DEIS and the underlying documents that specifies other areas that
2 are closed to off road travel is in Roads specialist report. It lists those areas in the
3 current GNF LRMP that are closed to motorized of-road use¹²⁹:
4

5 *—d. Motorized off-road use is prohibited in the following areas:*

6
7 *Wilderness areas (LRMP)*

8 *Tularosa Wetlands (LRMP management area 6A, Page 173)*

9 *Gila River Bird Management Area (LRMP management area 7A, Page 201)*

10 *Fort Bayard (LRMP management area 7C, Page 211 & 212)*

11 *Silver City Watershed (LRMP management area 7D, Page 215-217)*

12 *Funny Rocks Area (LRMP management areas 9A, Page 252 & 253 & 9B, Page 259)*

13 *San Francisco River – area below Mule Creek will be closed to motorized vehicle use year round.*
14 *(LRMP management areas 4B, Page 131 and 4C, Page 139)”*

15
16 The TMR states¹³⁰ that previous decisions can be incorporated:

17
18 *—The responsible official may incorporate previous administrative decisions regarding travel*
19 *management made under other authorities, including designations and prohibitions of motor*
20 *vehicle use, in designating National Forest System roads, National Forest System trails, and*
21 *areas on National Forest System lands for motor vehicle use under this subpart.”*
22

23 But the TMR still requires the agency to disclose the previous decisions being
24 incorporated, with one single exception¹³¹

25
26 *—Public notice with no further public involvement is sufficient if a National Forest or Ranger*
27 *District has made previous administrative decisions, under other authorities and including public*
28 *involvement, **which restrict motor vehicle use over the entire National Forest or Ranger District***
29 *to designated routes and areas, and no change is proposed to these previous decisions and*
30 *designations.”*
31

32 The agency is specifically exempted from providing further public involvement only if a
33 previous motor vehicle use decision was made for an entire Forest or Ranger District.
34

35 The GNF has no prior forest-wide or ranger district-wide motor vehicle use decisions
36 other than the area prohibitions listed in the LRMP above. Any other prior decisions
37 being incorporated are less than forest-wide or ranger district-wide. Therefore, these
38 decisions do not qualify for the exemption from public involvement. The DEIS must
39 provide the opportunity for public involvement on these decisions. The DEIS must
40 provide the full documentation on any other prior decisions being incorporated.
41

¹²⁹ USDA Forest Service. 2010a. Roads specialist report. Unpublished report available from the Gila National Forest, Silver City, NM., p.3

¹³⁰ 36 CFR Part 212.50(b)

¹³¹ 36 CFR 212.52(a)

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 **RESOLUTION:** The agency must disclose to the decision maker and the public all of
2 the specific previous decisions it is incorporating into the DEIS and what routes are
3 affected (designated) by those previous decisions. Furthermore, if those „previous
4 decisions“ were not made under a NEPA process, the prior decisions cannot be
5 incorporated into („tiered to“) the DEIS. All of the routes affected by such decisions must
6 be fully analyzed in this DEIS.
7

8 Thank you for the opportunity to comment.
9

10 Sincerely,



11
12 Mark Werkmeister, PE
13 NMOHVA Board of Directors
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41

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-18 (Werkmeister Comment 15 – No Analysis at All)

2
3 March 2, 2011

4
5 Forest Supervisor
6 Attn: Travel Management
7 3005 E. Camino del Bosque
8 Silver City, NM 88061
9

10 Dear Responsible Official,

11
12 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
13 (NMOHVA) and am representing that organization and the undersigned organizations in
14 providing these comments on the Draft Environmental Impact Statement for Travel
15 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
16 organizations represent motorized recreationists in New Mexico including 4WD
17 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
18 in this DEIS provides important recreational resources to the members of the public we
19 represent.
20

21 We appreciate the opportunity to comment on the DEIS and take the responsibility of
22 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
23 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
24 Rule (TMR) with the utmost seriousness.
25

26 **ERROR:** The DEIS does not provide an analysis that is CEQ compliant or based on the
27 agency's own published guides. The DEIS depends on broad generalizations while
28 ignoring site specific analysis and empirical evidence readily available on the Forest.
29 The DEIS depends on general conclusions based on study areas that do not accurately
30 reflect the GNF's past, current, or future condition.
31

32 **DISCUSSION:** The subject of this DEIS is Travel Management. What is needed for a
33 Travel Management planning effort is a route-by-route evaluation that provides cause-
34 and-effect relationships between the roads and trails and the natural and social
35 resources. This would provide a basis for a reasonable rationale for making a
36 designation decision on each route. This is required because this Decision will
37 determine the status of each and every route and the fate of motorized use on each of
38 those routes.
39

40 The only route-oriented site-specific material we find referenced in the DEIS is the TAP
41 and its Appendixes. By our count, the TAP's Appendix L lists just over 9200 segments
42 in the six Districts. It lists a column called „Proposal Notes“ which appear to provide
43 some potential reasons to designate or not designate a specific route. The agency's

1 INFRA database extract¹³² lists some 7000+ segments. When comparing these two
2 sources, the total number of line items are different, the mileages for many of the
3 segments listed are different, and the INFRA database gives no resource impact
4 specifics on each route segment and its impact on the social or natural environment.
5 The database entries (attribute tables) linked to the GIS data do not always appear in
6 either of the two databases. The information disclosed to the public in these route
7 segment lists does not provide a comprehensive, rational analysis of the cause-and-
8 effect links between the roads and trails and their impact on either the social or the
9 natural environment.

10
11 The sum total of the rest of the „analysis“ on route segments in the DEIS consists of
12 endless comparisons of length and acreage. The values used in these comparisons
13 were generated by GIS overlays. NMOHVA asserts that this does not provide an
14 analysis that meets CEQ or agency standards.

15
16 We will identify relevant questions pertaining to the route analysis within the agency’s
17 DEIS and answer each of those questions to provide guidance.

18
19 1. What is an analysis? We examine the integrity of the scientific methods used in this
20 DEIS by reading Chapter 3 and its underlying references. What scientific and analytic
21 basis should we expect to find in Chapter 3? The Council on Environmental
22 Quality(CEQ) published an informative handbook, Considering Cumulative Effects
23 Under the National Environmental Policy Act. While the handbook is not meant to
24 establish new or specific requirements, it provides valuable guidance on what an
25 analysis for cumulative effects might involve. The handbook states in its executive
26 summary (page vi):

27
28 *“Determining the cumulative environmental consequences of an action requires*
29 *delineating the cause-and-effect relationships between the multiple actions and the*
30 *resources, ecosystems, and human communities of concern. Analysts must tease from*
31 *the complex networks of possible interactions those that substantially affect the*
32 *resources.”*

33
34 The theme of cause-and-effect relationships is further developed in Chapter 4 of the
35 Handbook. It says:

36
37 *In preparing any assessment, the analyst should gather information about the cause-*
38 *and-effect relationships between stresses and resources. The relationship between the*
39 *percent of fine sediment in a stream bed and the emergence of salmon fly (Figure 4- 1)*
40 *is an example of a model of cause and effect that can be useful for identifying the*
41 *cumulative effects on a selected resource. Such a model describes the response of the*
42 *resource to a change in its environment.*

43

¹³² 0306_204220_II_ROAD_LINEAR_EVENTS_0306_02_11_2009_16_58_12_File_1.xls

1 One might then reasonably expect a plethora of cause-and-effect relationships
2 populating Chapter 3's discussion of Environmental Consequences in the DEIS. We
3 would expect to see models that describe (not hypothesize) the response of a resource
4 to a change in its environment.

5
6 To further illustrate the requirements of an environmental analysis, please refer to
7 REVIEW OF: METHODS TO COMPLETE WATERSHED ANALYSIS ON PACIFIC
8 LUMBER LANDS IN NORTHERN CALIFORNIA. This document was prepared for the
9 National Marine Fisheries Service by Dr. Leslie M. Reid, USDA Forest Service Pacific
10 Southwest Research Station (October 28, 1999). This review provides specific
11 guidance on how to develop an analysis that is accurate, complete, and has scientific
12 integrity.

13
14 From that document (page 8-9) Issue 2: Identifying, Quantifying and Demonstrating
15 Cause and Effect (Relationship):

16
17 *"... for a significant relationship to be found, data must be accurate enough that variance is*
18 *sufficiently low to allow the relationship to be identified."*

19
20 While the review is for a watershed study, Dr. Reid's point is that the key elements of an
21 analysis of the human effects on the environment are human action or
22 activity, environmental change over time, and a provable (or reasonably identifiable)
23 relationship between them. An analysis needs ALL THREE of those elements to be
24 reasonable, valid, and defensible. The data also needs to be site specific. Dr. Reid
25 continues:

26
27 *—Application of data from elsewhere will necessarily increase the variance of the model results to*
28 *the point that absence of statistically significant relationships is almost guaranteed."*

29
30 Based on both CEQ guidance and the agency's own published standards, this DEIS
31 lacks the fundamental ingredients needed for a scientifically credible analysis. The
32 agency provides only proximity as the analytical foundation for its decisions on each
33 road or trail. Yet proximity does not constitute an analysis. Proximity is not evidence of
34 effects.

35
36 Dr. Reid's review states that relationships should be statistically significant. By contrast,
37 the agency does not demonstrate any empirical data or numerical relationships at all.
38 For example, we find no factual or empirical information that tells us why the suitable
39 habitat near roads is occupied by plant communities or animal species that prefer that
40 habitat. That is, it is the *habitat* that supports the plants and communities, and the road
41 or trail happens to pass through the habitat. For example, the plants are there because
42 of slope, soil type, moisture, and/or exposure. The animals are there because of
43 forage. The connection (or lack of connection) between the presence of the road and
44 the presence of the plants or wildlife is not examined in the DEIS, nor in the Specialists
45 Reports.

1 Moving back to Considering Cumulative Effects Under the National Environmental
2 Policy Act, CEQ provides more guidelines. We learn at page v of the Executive
3 Summary that the handbook (emphasis added):

4
5 *"...presents practical methods for addressing coincident effects (adverse or beneficial) on*
6 *specific resources, ecosystems, and human communities of all related activities, **not just the***
7 *proposed project or alternatives that initiate the assessment process."*

8
9 By contrast, the published DEIS almost universally excludes all other actions and
10 naturally occurring events, and as noted above, it uses only proximity as the measure
11 that there could even be an effect.

12
13 We cannot allow this extremely non-substantive methodology to prevail in the NEPA
14 process. Why? At any given time, humans will always be in proximity to an animal or a
15 bird or a plant. The next logical step is to prohibit all human access to all public lands,
16 simply because we will be too close to a natural resource.

17
18 2. Why is proximity the primary standard used by the agency? The DEIS states
19 concern for the impact of roads on Mexican Spotted Owl territory¹³³:

20
21 *—The plan also states that noise produced from vehicles may disturb spotted owls at important*
22 *nesting and roost sites. Gaines et al. (2003) reviewed studies on the northern spotted owl and*
23 *determined that road and trail associated factors that were likely to affect spotted owls were*
24 *collisions, disturbances at a specific site, physiological responses, edge effects, and snag*
25 *reduction."*

26
27 In the TAP¹³⁴, we learn:

28
29 *—The Forest also used road density at a watershed scale to assess impacts to wildlife. Impacts*
30 *include such things as: displacement, home range modification, creating barriers to movement,*
31 *and increased fragmentation. Road densities at varying scales may also be used to determine*
32 *cumulative impacts to wildlife.*

33
34 *Road densities were estimated primarily for Forest lands. Road densities were underestimated in*
35 *watersheds that extended off of Gila National Forest lands where current road data was*
36 *unavailable. Watersheds were classified by the road densities found within them. Road density*
37 *was classified into three ranges that were also used in the Forest-wide Roads Analysis Report*
38 *(2003) for assessment of watershed condition, which were:*

39
40 *0 - 2 mi/sq mi*
41 *2 - 3 mi/sq mi*
42 *>3 mi/sq mi"*
43

¹³³ DEIS, p. 167

¹³⁴ Gila National Forest Travel Analysis Process (TAP), p. 12

1 But the above „method“ is not cause-and-effect methodology. It is a very simple
2 cataloguing of proximity. The obvious failure of this methodology is that it fails to
3 predict the empirical data of where the MSO actually live on the Gila National Forest.
4 The DEIS“s „analysis“ relies on the Gaines citation even in the face of conflicting
5 evidence--a thriving species in known sites next to a high usage road, such as NM59¹³⁵.
6



7
8
9
10

¹³⁵ TAP, Appendix J, Draft Black Range District Basemap Wildlife Density MAP
(black_range_wilderness_section_density.pdf)

1
2 And that is exactly what has happened. The literature cited for the GNF isn't as useful
3 at predicting what might happen as simply observing what IS happening on the GNF.
4 The agency simply ignores the empirical evidence presented. Many naturally-occurring
5 activities are sited next to a road or motorized trail.

6
7 The above paragraph from the TAP³ exemplifies our concern with the proximity
8 methodology used in the DEIS. There is no end to the activities that must be curtailed if
9 simple proximity is the only standard. Apparently it does not matter that the species is
10 thriving next to a road or trail (goshawk, falcon, elk, turkey, woodpecker, mourning
11 dove). It does not matter that the known cause of decline is not roads and trails (pinion
12 jay). It does not matter if the agency isn't even sure that there is a decline (owl). The
13 only standard is proximity.

14
15 That is not an analysis. There is no analysis within this DEIS or its project record even
16 remotely resembling the guidelines set forth by the agency or by the CEQ. The agency
17 uses only proximity to claim effects. The effect may be bad, it may be good, or, as the
18 empirical evidence on the GNF often shows, it more than likely makes no
19 difference. But we cannot tell from this DEIS.

20
21 The substitution of proximity for a real analysis based on the GNF's own empirical data
22 has created numerous conflicts between the abundant empirical evidence on the Forest
23 and the bulk of the „analysis“ presented in the DEIS

24
25 3. Why does the published DEIS rely solely on broad generalizations in cited literature
26 for its claim that "roads are bad for the wildlife"?

27
28 At page 134-135, the DEIS presents a long list of „road associated factors and effects“
29 attributed to *Wisdom et al, 2000, "Source habitats for terrestrial vertebrates of focus in*
30 *the interior Columbia basin: broad-scale trends and management implications." Gen.*
31 *Tech. Rep. PNW-GTR-485. Portland, OR: U.S. Department of Agriculture, Forest*
32 *Service, Pacific Northwest Research Station.*

33
34 All the claims in this DEIS that roads are bad apparently originate from this
35 research. Yet in reading the Wisdom research, we learn that the study area
36 encompasses 145 million acres and crossed three state lines. It has thousands of miles
37 of multi-lane highways and paved multi-lane roads in its road-density calculations. It
38 includes large tracts of private, municipal, urban, suburban, ex-urban, and agricultural
39 lands as well as the federal lands. In the Wisdom research, under "major Findings and
40 Implications at (unpaginated) page 8 and again on page 137, the reader is reminded
41 that the habitats under study are generally agreed to be in "widespread decline." Roads
42 are cited as a "facilitator" of human activities that cause the declines. That human
43 activity is, of course towns and homes, businesses, farming, and so forth. The roads
44 that directly affect the wildlife are the multi-lane highways and multi-lane paved roads.
45 That is a possibility in such a highly-developed and far-flung geographic area.

1 The Gila National Forest, as reported in the Travel Management DEIS, differs
2 significantly from the Columbia Basin. The differences are as follows:

- 3
- 4 1. The GNF is comprised of a mostly contiguous block of federal lands totaling
5 about 3.3 million acres with an inner core of almost a million acres of Wilderness.
6 The potential for Columbia Basin type of development to occur in the GNF is
7 zero.
- 8 2. There are no housing developments, either urban, suburban, or ex-urban, in the
9 GNF. There are no "ranchettes" cheek-by-jowl and splitting up the forest.
- 10 3. No new road construction is proposed.
- 11 4. There are just 24 miles of paved roads under GNF jurisdiction with less than a
12 thousand miles of paved roads in or accessing the GNF.
- 13 5. In the Air Quality Report, no declines like those in the Columbia Basin are
14 reported.
- 15 6. In the Aquatic Specialist Report, no declines appear like those in the Columbia
16 Basin are reported.
- 17 7. In the Wildlife Specialist report, no declines like those in the Columbia Basin are
18 identified.
- 19 8. At page 209 of the DEIS, we learn that instead of the wide-spread declines of
20 wildlife populations and habitats seen in the Columbia Basin(emphasis added):

21
22 —*Cumulative Effects Findings*

23
24 *Across the Gila National Forest, the incremental impacts of the proposed project and its*
25 *associated alternatives, when added to other past, present, and reasonably foreseeable future*
26 *Chapter 3. Affected Environment and Environmental Consequences 210 DEIS for Travel Management, Gila National*
27 *Forest actions, are at levels that do not cause significant effects to wildlife species or their*
28 *habitat on the forest.”*

29
30 In short, the Columbia Basin study area and the GNF are not comparable. But the
31 agency has chosen, once again, to rely on outside sources rather than depend on the
32 empirical evidence readily available on the GNF. Reliance on scientific literature that
33 does not directly relate to the GNF has created a conflict between the empirical
34 evidence on the Forest and the bulk of the „analysis“ presented in the DEIS.

35
36 We have detailed the shortcomings of the „analysis“ in the DEIS based on both CEQ
37 regulations and the agency’s own published reports. We have carefully pointed out why
38 depending on broad generalizations in cited literature while ignoring the specific, local,
39 and empirical evidence on the Forest leads to indefensible „rationale“. We have laid out
40 the dangers of depending on information from other locales to draw inferences for this
41 Forest. We have shown how the predicted outcomes from literature derived from other
42 places are contradicted by the empirical evidence readily available on the GNF.

43
44 **RESOLUTION:** Do the required analysis. Establish specific and observable cause-and-
45 effect relationships. Stop relying on proximity as a proxy for scientific analysis. Use
46 readily available local and site-specific empirical evidence. Ensure that the scientific

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 literature cited applies to the conditions readily observable on the GNF. Unfortunately,
2 the DEIS's analysis is so lacking as to preclude a meaningful analysis. The agency has
3 no choice but to circulate a revised draft with the required analysis completed so the
4 decision maker and the public have rational connections between the alternatives and
5 observable conditions to review and weigh.

6
7 Thank you for the opportunity to comment.

8
9 Sincerely,



10
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13 1700 Willow Road NE
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24 On behalf of:

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39 Silver City, NM 88061
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Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-20 (Werkmeister Comment 17 – Lower San Francisco)

2
3 March 2, 2011

4
5 Forest Supervisor
6 Attn: Travel Management
7 3005 E. Camino del Bosque
8 Silver City, NM 88061
9

10 Dear Responsible Official,

11
12 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
13 (NMOHVA) and am representing that organization and the undersigned organizations in
14 providing these comments on the Draft Environmental Impact Statement for Travel
15 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
16 organizations represent motorized recreationists in New Mexico including 4WD
17 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
18 in this DEIS provides important recreational resources to the members of the public we
19 represent.
20

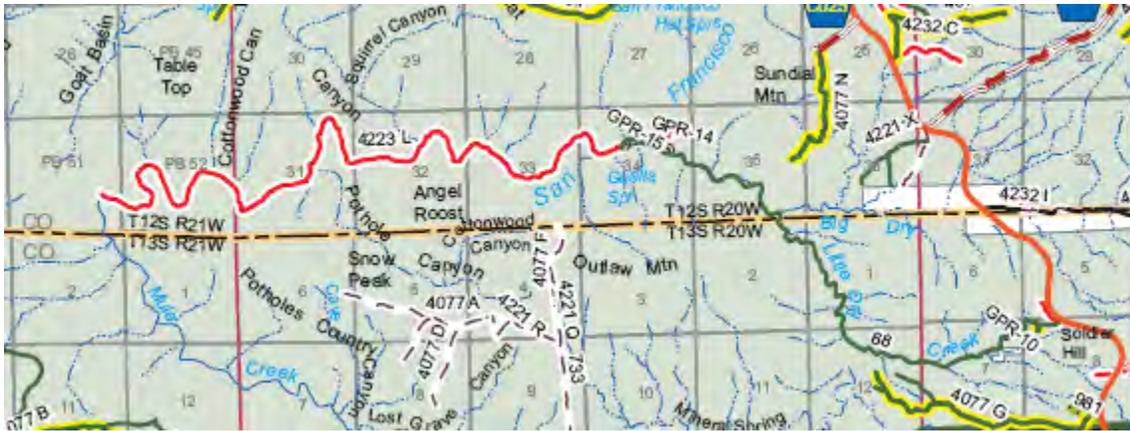
21 We appreciate the opportunity to comment on the DEIS and take the responsibility of
22 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
23 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
24 Rule (TMR) with the utmost seriousness.
25

26 **ERROR:** The closure of the lower San Francisco river to motorized use in the Preferred
27 Alternative does not flow logically or rationally from the DEIS.
28

29 **DISCUSSION:** Alternative G (the agency's „preferred" alternative) identifies the route
30 along the lower San Francisco river (4223 L) below its confluence with Little Dry Creek
31 as closed to motorized vehicles¹³⁷:
32

¹³⁷http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/47532_FSPL_T2_031903.pdf

Appeal of the Record of Decision for Travel Management on the Gila National Forest



1
2
3

1 This contrasts sharply with existing condition documented in Alternative B¹³⁸:
2



3
4
5 The DEIS is silent on why the agency, in its preferred alternative, has chosen to
6 designate this particular road segment as „Closed to all motorized vehicle use“. It is
7 open in the no-action alternative and in Alternative C.
8

9 This route was open in Alternative A, the agency’s original proposed action (it is also
10 open in Alternative F, the alternative that the agency’s asserts is „very similar“ to
11 Alternative A¹³⁹). At the time of the release of the Proposed Action, this alternative was
12 just that: the agency’s proposed action. It stands to reason that the proposed action
13 would represent the agency’s best effort at an appropriate action at that time. It is also
14 reasonable to assume that the current Preferred Alternative is the agency’s current „best
15 effort“. What is not logical is the change in the designation of route segment 4223L.
16 What changed between the release of the proposed action and the release of the DEIS“
17 preferred alternative? Why was this route segment removed from the preferred
18 alternative? The DEIS is silent, disclosing no specific reason why the route segment
19 was removed.
20

21 Turning to the DEIS analysis for key resource concerns (Watershed and Soils, Aquatics,
22 and Wildlife), we find no evidence that unacceptable resource impacts are occurring for
23 this route -
24 .

25 In Watershed and Soils¹⁴⁰:

26
27 *—Overall, no increase in adverse cumulative impacts to soil resources, riparian and wetland*
28 *resources, and water quality or quantity would be expected with implementation of any of the*
29 *action alternatives.”*
30

¹³⁸ http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/47532_FSPL_T2_031895.pdf

¹³⁹ DEIS, p. 31

¹⁴⁰ DEIS, p. 100

1 In Aquatics¹⁴¹:

2
3 *The net effect of past programs and activities was a reduction in aquatic habitat quantity and*
4 *quality from pristine conditions. However, these effects are highly variable and localized. In*
5 *general, present programs and activities are at best reducing impacts or not increasing impacts*
6 *at worst, with the net effects combining to reduce negative effects to aquatic resources.*
7

8 In Wildlife¹⁴²:

9
10 *—Across the Gila National Forest, the incremental impacts of the proposed project and its*
11 *associated alternatives, when added to other past, present, and reasonably foreseeable future*
12 *actions, are at levels that do not cause significant effects to wildlife species or their habitat on the*
13 *forest.”*
14

15 In all three cumulative effects analysis sections for these three key natural resource
16 concerns, we find no statements from the agency that the current existing condition is
17 causing unacceptable adverse impacts. There is no specific mention that motorized
18 use on this particular route segment is causing unacceptable impacts. As the agency
19 has not disclosed specific data or analysis on each route segment, we are forced to rely
20 solely on the general statements above.

21
22 The Wildlife summary goes on to say¹⁴³:

23
24 *—This analysis shows that if the effects of all open roads are considered (private, county, State,*
25 *and Federal), there are localized areas of concern under several of the action alternatives for*
26 *species like ungulates, wide ranging carnivores, and the Chiricahua leopard frog.”*
27

28 We do not find the lower San Francisco River route segment identified as an area of
29 concern for any of these three issues. It is not listed in the „high road density“ sections
30 of concern on Table 141:
31

¹⁴¹ DEIS, p. 125

¹⁴² DEIS, p. 209

¹⁴³ DEIS, p. 209

Table 141. Comparison of 6th-code watershed road densities by alternative

5 th -Code Watershed	6 th -Code Watershed within Each 5 th -Code Watershed	Road Density	Alternative					
			B	C	C	E	F	G
Negrito Creek	150400040602	mi/mi ²	2.85	2.85	1.79	0.99	2.31	2.31
Upper San Francisco River	150400040106	mi/mi ²	2.52	2.51	1.97	1.79	2.03	2.07
	150400040109	mi/mi ²	1.98	1.99	1.65	1.38	1.79	1.79
	150400040102	mi/mi ²	1.90	1.90	1.84	1.80	1.84	1.84
	150400040107	mi/mi ²	1.78	1.77	1.56	1.34	1.61	1.57
Tularosa River	150400040207	mi/mi ²	2.38	2.34	2.03	1.85	2.09	2.03
	150400040201	mi/mi ²	2.01	2.01	1.54	1.54	1.73	1.54
	150400040203	mi/mi ²	1.89	1.88	1.66	1.58	1.69	1.66
Alamocito	130202080401	mi/mi ²	2.25	2.25	1.53	1.22	1.99	1.92
	130202080404	mi/mi ²	2.14	2.13	1.63	1.63	1.63	1.63
	130202080403	mi/mi ²	1.91	1.84	1.38	1.16	1.35	1.35
Middle Fork Gila River	150400010302	mi/mi ²	2.13	2.13	1.30	0.84	1.55	1.81
	150400010301	mi/mi ²	2.05	2.05	1.43	1.09	1.55	1.55
	150400010303	mi/mi ²	1.93	1.93	1.36	0.71	1.69	1.69
Mangas Creek	150200030701	mi/mi ²	1.98	1.91	1.50	1.31	1.50	1.50

Grey areas denote alternatives with higher road densities and potentially higher rates of exposure between humans and wide ranging carnivores.

1
 2
 3 The watershed containing the route does not have high road density, so it would not be
 4 of concern for ungulates and wide-ranging carnivores. In fact, the area is has very low
 5 road densities according to the road density map for the Glenwood Ranger District
 6 published with the TAP¹⁴⁴.

¹⁴⁴ Draft Glenwood Ranger District Basemap Wildlife Density,
http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5108696.pdf



The TAP itself lists no resource concerns for FSR4223 L.

This leave concerns about the Chiricahua leopard frog (CLF) as the only potential impact identified in the Wildlife section. The same TAP map identifies occupied habitat for specific species, including the CLF. The only occupied CLF habitat is in the watercourse of Little Dry Creek, the tributary of the Lower San Francisco River that is staying open to motorized vehicles even in the agency's preferred alternative. The DEIS discloses no compelling CLF concern on the Lower San Francisco River.

This route has been utilized by a wide range of users for many years. The agency closed the river from the confluence with Mule Creek to the state line in March of 1987. It has been aware of the public's use of the route since at least that time. The closure order¹⁴⁵ stated:

—This prohibition is necessary to avoid recreational conflicts between motorized and nonmotorized users in the identified area .”

We cannot find any specific statement of risks or use conflicts for the route in the DEIS. We next looked for statements about the benefits of the route and also came up with nothing. The DEIS fails to acknowledge the unusually high recreation value of the routes to a broad spectrum of users. The DEIS fails to identify that the road along the lower San Francisco is not „just another route“.

The DEIS does not reflect what the public told the agency in scoping, comments which show how highly the route is valued:

—San Francisco River to the Bird Sanctuary. Leave this road open to all vehicles from the confluence of Big Dry to the Bird Sanctuary where is now closed. We started using this road in the early 60's and found evidence of a road then where it hadn't washed out. Although you are

¹⁴⁵ ORDER, SPECIAL CLOSURE, GILA NATIONAL FOREST 06-89

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 *saying that this road is user created, we believe that a road existed during the mining days as a*
2 *way to from Clifton to Mogollon.*¹⁴⁶

3
4 *—I want analyzed the route down the Little Dry/Big Dry/ San Francisco river on to the Mule*
5 *Creek crossing for year-round motorized dispersed camping with open access to safe parking*
6 *above the designated route to allow for escape during storms and flash flooding.*
7 *Also of great value is the ability to get out into the Forest wherever any of us needs to go for the*
8 *purpose of taking photographs of our beautiful land. This must not be curtailed by closure of our*
9 *historic roads and trails. In short, the different values of use of our wonderful forest are a very*
10 *long list and must not be taken from us as this truly is Our National Forest.*¹⁴⁷

11
12 The scoping comments demonstrate that people have a high sense of attachment; both
13 to the place and to the route itself. They show a high value placed on preserving
14 motorized access on this route.

15
16 The Recreation section, unlike the analysis for natural resource concerns in the DEIS,
17 highlighted a serious negative cumulative effect¹⁴⁸:

18
19 *—All of the new decisions and implementation of past land use and travel management decisions*
20 *are generally resulting in fewer opportunities for cross-country OHV uses and fewer open routes*
21 *for OHV use.”*

22
23 The preferred alternative only exacerbates this negative cumulative effect. The agency
24 has also not disclosed that Catron County has filed a formal RS2477 assertion on the
25 route. The agency may not formally recognize the assertion but an assertion
26 demonstrates the route is so important to local people that the County is seeking to
27 acquire control of the access on this route from the agency to ensure its continued use.

28
29 Reviewing what the DEIS has disclosed:

- 30
31 1) The initial Proposed Action included FSR 4223 L as designated to motorized
32 use. This is the proposal the public responded to with scoping comments.
33 2) The agency’s analysis does not identify unacceptable natural resource impacts
34 from the current use of the route by motorized vehicles. Neither does it identify
35 any special recreational benefits or unique values.
36 3) The agency’s analysis stated that there is a negative cumulative effect of fewer
37 open OHV routes available.

38
39 We find no logical and rational connection between what is disclosed in the analysis of
40 the DEIS and the proposed designation of FSR 4223 L in the agency’s preferred
41 alternative.

¹⁴⁶ Gila_Scoping_All_Comments110609, p. 254

¹⁴⁷ Gila_Scoping_All_Comments110609, p. 273

¹⁴⁸ DEIS, p69

1
2 Our search for a logical connection between what is disclosed in the DEIS and the
3 proposed designation of FSR 4223 L as closed to motorized access highlights a major
4 issue: There is no way to know why this route, or any other route, is closed or open in
5 any of the presented alternatives. The DEIS has no tables or lists showing each route
6 and the factors that led to the designation as closed or open for each route. The only
7 document showing individual routes with agency comment is Appendix L in the TAP.
8 We know from prior experience that the agency will deny that reasons came from the
9 TAP. They claim the TAP merely „informed“ the DEIS. The public is left to search
10 through the generalized discussions in the DEIS where we find only statements
11 intended to apply forest-wide. There is no route-specific analysis or rationale disclosed
12 for the public or the decision maker to weigh.

13
14 **RESOLUTION:** Restore the motorized vehicle access to the Lower San Francisco
15 River (FSR 4223 L) in the agency’s preferred alternative to remain consistent and
16 rationally connected to the analysis and conclusions presented in the DEIS. Disclose
17 the methodology, criteria, data, and analysis that led to the proposed designation for
18 this and every other route segment affected by this project. Without site specific
19 information, data, and analysis on each route segment, the public and the
20 decisionmaker is left to rely solely on generalized resource statements in the DEIS.
21 These statements do not rationally support the closure of the lower San Francisco or
22 any of the other nearly 1000 miles of OML 2 roads slated for closure under the preferred
23 alternative.

24
25 Thank you for the opportunity to comment.

26
27 Sincerely,



28
29 Mark Werkmeister, PE
30 NMOHVA Board of Directors
31 1700 Willow Road NE
32 Rio Rancho, NM 87144
33 505-891-0296
34 mark.r.werkmeister@intel.com

35
36 Temporary Address through 3/23/11:
37 Apt. 1704, Shama Luxe, 128 Jinma Rd.
38 Dalian Development Zone, People’s Republic of China
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40 Telephone: 138 4260 2510

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 On behalf of:
2
3 Mogollon Apache Gila (MAG) Riders
4 Jo Anne Blount
5 POB 165
6 Glenwood, NM 88039
7
8 Gila Roads and Trails Alliance (GRATA)
9 James T. Baruch
10 POB 17
11 Mimbres, NM 88049
12
13 Gila Trail Riders Association (GRTA)
14 Grant Gose
15 2205 Johnson Rd.
16 Silver City, NM 88061
17
18

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-21 (Werkmeister Comment 19 – No Analysis #3)

2
3 March 2, 2011

4
5 Forest Supervisor
6 Attn: Travel Management
7 3005 E. Camino del Bosque
8 Silver City, NM 88061
9

10 Dear Responsible Official,

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12 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
13 (NMOHVA) and am representing that organization and the undersigned organizations in
14 providing these comments on the Draft Environmental Impact Statement for Travel
15 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
16 organizations represent motorized recreationists in New Mexico including 4WD
17 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
18 in this DEIS provides important recreational resources to the members of the public we
19 represent.

20
21 We appreciate the opportunity to comment on the DEIS and take the responsibility of
22 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
23 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
24 Rule (TMR) with the utmost seriousness.

25
26 **ERROR:** The DEIS does not provide any evidence that the most fundamental of
27 analysis took place for this project: the route segment by segment analysis that
28 resulted in the agency's proposed designations.

29
30 **DISCUSSION:** Our examination of this DEIS raise several important questions:

- 31
32 1) What is an analysis?
33 2) What is the standard of proof or evidence that a route should be closed to
34 motorized use?
35 3) How can we determine whether or not the agency has completed an appropriate
36 analysis for this DEIS?
37

38 CEQ regulations call for the agency to complete a thorough and complete analysis, an
39 accurate and scientific analysis. *"The information must be of high quality. Accurate
40 scientific analysis, expert agency comments, and public scrutiny are essential to
41 implementing NEPA."*¹⁴⁹ The analysis is required to be done with integrity, using
42 established scientific method¹⁵⁰.

¹⁴⁹ 40 CFR 1500.1(b)

¹⁵⁰ 40 CFR 1502.24

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1
2 —~~A~~gencies shall insure the professional integrity, including scientific integrity, of the discussions
3 and analyses in environmental impact statements. They shall identify any methodologies used and
4 shall make explicit reference by footnote to the scientific and other sources relied upon for
5 conclusions in the statement.”
6

7 In addition to the agency making a good faith effort to present site-specific facts if the
8 facts can be reasonably obtained, it must also fully disclose what it knows and what it
9 doesn't know¹⁵¹:

10
11 —*If the information relevant to reasonably foreseeable significant adverse impacts cannot be*
12 *obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not*
13 *known, the agency shall include within the environmental impact statement:*

- 14
15 (1) *A statement that such information is incomplete or unavailable;*
16 (2) *a statement of the relevance of the incomplete or unavailable information to*
17 *evaluating reasonably foreseeable significant adverse impacts on the human*
18 *environment;*
19 (3) *a summary of existing credible scientific evidence which is relevant to evaluating the*
20 *reasonably foreseeable significant adverse impacts on the human environment, and*
21 *(4) the agency's evaluation of such impacts based upon theoretical approaches or*
22 *research methods generally accepted in the scientific community.”*
23

24 Furthermore, CEQ regulations call for the agency to disclose evidence that the
25 appropriate analysis has been completed. It is not enough to complete an appropriate
26 analysis; the agency must present evidence that such an analysis has taken place¹⁵²:

27
28 “**Environmental impact statements shall be concise, clear, and to the point, and shall be**
29 **supported by evidence that agencies have made the necessary environmental**
30 **analyses.”**
31

32 The National Environmental Policy Act (NEPA) and subsequent Council on
33 Environmental Quality put significant demands on the agency in the preparation of a
34 DEIS. Why? It is to “insure that environmental information is available to public officials
35 and citizens before decisions are made and before actions are taken.”¹⁵³ Real science
36 is hard work!

37
38 The most difficult argument to present is the one which contends that something which
39 *should* be included is, in fact, missing. This is exactly the situation with this DEIS. The
40 DEIS is missing:

- 41
42 • An accurate and complete analysis of the current condition including the current
43 condition of the resources (both social environment and natural environment).

¹⁵¹ 40 CFR 1502.22(b)

¹⁵² 40 CFR 1500.2(b)

¹⁵³ 40 CFR 1500.1(b)

1 This current condition should be represented by an accurate „no action“
2 alternative.

- 3 • Identification and documentation of resource impacts,
- 4 • Assignment of rational cause-and-effect linkages between those resource
5 impacts and activities, action, and events,
- 6 • Evidence that any of the above analysis actually took place

7
8 In a nutshell, this DEIS provides no evidence that the analysis process called for by the
9 requirements of NEPA and CEQ ever took place.

10
11 Returning to our three initial questions:

12
13 1) What is an analysis?

14
15 Assignment of rational cause-and-effect linkages between resource impacts and
16 activities, action, and events,

17
18 2) What is the standard of proof or evidence that a route should be closed to
19 motorized use?

20
21 Unacceptable impacts on the human (social and natural) environment or risks to that
22 environment that outweigh the benefits.

23
24 3) How can we determine whether or not the agency has completed an appropriate
25 analysis for this DEIS?

26
27 The most obvious evidence would be a matrix listing ALL of the affected route segments
28 with a listing of the risks and benefits assigned to each one of them. These would be
29 accompanied by the rationale employed to make the specific designation proposal.

30
31 Lacking any evidence that a segment by segment route analysis took place, the public
32 and decisionmaker are left without the most fundamental information to review and base
33 their decision. This lack of evidence of fundamental analysis may explain why the
34 information presented in the DEIS (natural resources are stable or trending upward)
35 does not rationally support the result (the closure of at least 1200 miles in the least
36 restrictive action alternative).

37
38 **RESOLUTION:** Provide the evidence that an analysis took place on the fundamental
39 elements of this project: The route segments and their impact on the environment.
40 Provide the public and the decisionmaker with a matrix of all the affected route
41 segments, their current condition, the effects they are having on the environment (both
42 natural and social), and the associated proposed designation. Until this information is
43 provided, the DEIS is so inadequate that it precludes a meaningful review¹⁵⁴. The

¹⁵⁴ 40 CFR 1502.9

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 agency has no choice but to circulate a revised draft with the analysis evidence for
2 comment and consideration.

3
4 Thank you for the opportunity to comment.

5
6 Sincerely,

7 

8 Mark Werkmeister, PE
9 NMOHVA Board of Directors
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21 On behalf of:

22
23 Mogollon Apache Gila (MAG) Riders
24 Jo Anne Blount
25 POB 165
26 Glenwood, NM 88039
27

28 Gila Roads and Trails Alliance (GRATA)
29 James T. Baruch
30 POB 17
31 Mimbres, NM 88049
32

33 Gila Trail Riders Association (GRTA)
34 Grant Gose
35 2205 Johnson Rd.
36 Silver City, NM 88061
37

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-22 (Werkmeister Comment 20 – Alternatives Provide Not
2 Rational Connection to Env Consq)

3
4 March 2, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

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11 Dear Responsible Official,

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18 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
19 in this DEIS provides important recreational resources to the members of the public we
20 represent.

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22 We appreciate the opportunity to comment on the DEIS and take the responsibility of
23 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
24 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
25 Rule (TMR) with the utmost seriousness.

26
27
28 **ERROR:** The agency's preferred alternative does not flow rationally or reasonably from
29 the disclosures made by the agency within the DEIS. The agency has not identified
30 unacceptable natural resource impacts within the GNF. In spite of this, the agency's
31 preferred alternative (Alternative G) closes over three thousand miles of routes currently
32 available for motorized recreation. Even the action alternative that provides the most
33 motorized opportunities (Alternative C) closes nearly 1900 miles of existing roads and
34 trails to motorized use.

35
36 **DISCUSSION:** The Environmental Consequences section of the DEIS provides ample
37 documentation that the existing roads and trails that are open to motorized use are not
38 creating unacceptable impacts on legitimate natural or social resources. Specifically:

39
40 Roads -

41
42 Safety:

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 —Based on both of these databases, the safety concerns are relatively low for the current
2 road system under alternative B. The safety concern for all action alternatives (C through
3 G) would be the same as alternative B.”¹⁵⁵
4
5

6 Cost and Maintenance:

7
8 —The overall maintenance costs do not vary greatly between alternatives when using the
9 region’s economic assessment tool (USDA Forest Service 2006) (table 22).”¹⁵⁶
10

11 Air Quality –

12
13 —In general, air quality conditions on the Gila National Forest—including the three wilderness
14 areas—are very good and there are no violations of the National Ambient Air Quality Standards.
15 While there is room for improvement, visibility in this area is some of the least impaired in the
16 Nation.”¹⁵⁷
17

18 Soils –

19
20 —The effects to soils by motorized uses on native surface routes are directly related to the impact
21 the road footprint has on the landscape, as well as the impact the vehicle has both directly, and
22 indirectly, on the ground itself. This project will result in a change in the levels of use of a
23 particular road, however, no alternative poses decommissioning or obliteration of any roads to
24 return them to a more natural state.”¹⁵⁸
25

26 Water –

27 Riparian and Wet Lands:

28
29 —Personal observations (Koury and Natharius 2010) on the Gila National Forest indicate that
30 adverse effects to riparian areas and wetlands from travel off of designated routes are minimal.
31 Travel off of designated routes is mostly infrequent and/or a one-time occurrence, with little
32 compaction occurring or permanent tracks created.”¹⁵⁹
33
34

35 Water Quality:

36
37 —Cross-country travel impacts on water quality on the Gila National Forest can range from high
38 to low, but in general are typically minimal.”¹⁶⁰
39

40 Road and Trail Condition Impacts on Watershed Health:

155 DEIS, p. 47.

156 DEIS, p. 48.

157 DEIS, p. 73

158 DEIS, p. 85

159 DEIS, p. 89

160 DEIS, p. 91

1 —*For this portion of the analysis, closed roads are still considered land disturbance with the*
2 *potential to impact watershed health across the forest”.*¹⁶¹
3

4 **Overall Watershed and Soils:**

5
6 —*Considering all natural and human impacts that have occurred and continue to occur on 5th-*
7 *code watersheds across the Gila National Forest, cumulative effects on these watersheds have not*
8 *surpassed a threshold that threatens to undermine their resilience to change”.*¹⁶²
9

10 **Aquatic Habitat –**

11
12 —*Although localized degraded habitats continue to be present, the overall forest trend for*
13 *aquatic habitat and species is positive.*¹⁶³
14

15 **Wildlife Habitat –**

16
17 —*Across the Gila National Forest, the incremental impacts of the proposed project and its*
18 *associated alternatives, when added to other past, present, and reasonably foreseeable future*
19 *actions, are at levels that do not cause significant effects to wildlife species or their habitat on the*
20 *forest.*¹⁶⁴
21

22 **Invasive Species –**

23
24 *An assortment of past and present ground disturbing activities such as utility corridors, roads,*
25 *trails, developed campgrounds, livestock grazing, timber removal, recreation uses, wildland*
26 *burning, road construction and developed rangeland structural improvements such as stock*
27 *ponds and pipelines have contributed to the spread of invasive plants. These types of ground*
28 *disturbance in conjunction with other forest uses and activities from other vectors (such as*
29 *animals, hiking, mountain biking and motorized use) will cumulatively affect the spread of*
30 *invasive plant species within the analysis area.*¹⁶⁵
31

32 **Sensitive Plants –**

33
34 —*There are currently no threatened, endangered, proposed, or species of concern found within*
35 *the Gila National Forest boundary.*¹⁶⁶
36

37 —*Motorized routes and trails were not included in this analysis. The effects of road systems and*
38 *sensitive plants are discountable due to the disturbance that already exists with the roads and or*
39 *trails.*¹⁶⁷
40

¹⁶¹ DEIS, p. 93

¹⁶² DEIS, p. 99

¹⁶³ DEIS, p. 126

¹⁶⁴ DEIS, p. 209

¹⁶⁵ DEIS p. 226

¹⁶⁶ DEIS, p 212

¹⁶⁷ DEIS, p. 222

1 Cultural Resources –

2
3 —@ the Gila National Forest, most cultural sites exhibit some level of vandalism or looting, so
4 the presence of this type of disturbance is not necessarily related to access provided by motorized
5 routes or motorized dispersed camping.¹⁶⁸
6

7 —In summary, when the cumulative effects of travel management are added to effects of past,
8 present, and reasonably foreseeable projects, there should not be an increase in effects to
9 cultural resources across the forest, and these effects should not be adverse.¹⁶⁹
10

11 In fact, the only resource that was identified to have a significant negative impact from
12 this proposed action was motorized recreation:

13
14 *All of the new decisions and implementation of past land use and travel management decisions*
15 *are generally resulting in fewer opportunities for cross-country OHV uses and fewer open routes*
16 *for OHV use.*¹⁷⁰
17

18 Yet, the alternatives presented by the DEIS do not address this significant negative
19 impact. Instead all alternatives further reduce the motorized opportunity resource. To
20 recap the agency's proposed project described by this DEIS:

21
22 There is no documented unacceptable resource impacts being created by the existing
23 motorized use on the GNF but ALL of the action alternatives dramatically reduce
24 motorized access. There is documented impact to the resource of motorized access
25 but all of the presented alternatives exacerbate the issue by further reductions of
26 motorized use. The proposed action and its alternatives do not flow logically or
27 rationally from the DEIS.
28

29 **RESOLUTION:** The only rational and logical outcome of the project as presented
30 would be to close cross country travel (to meet the requirements of the TMR) and leave
31 all other existing routes open to motorized travel unless the route segments are
32 specifically identified as creating unacceptable resource impacts. Since the closure of
33 cross country travel is bundled with significant closures in all of the alternatives
34 presented, the agency has failed to analyze the only rational outcome from its
35 environmental consequences analysis. The lack of analysis of the only rational
36 possibility precludes a meaningful review of this document by the public, deprives the
37 decisionmaker of a rational decision, and renders this document in violation of CEQ
38 requirements¹⁷¹. The agency has no choice but to prepare and circulate a revised
39 draft.¹⁷²
40

¹⁶⁸ DEIS, p. 229

¹⁶⁹ DEIS, p. 247

¹⁷⁰ DEIS, p. 69

¹⁷¹ 40 CFR 1501.2(c); 40 CFR 1502.2(d),(e), and (g); 40 CFR 1508.25(b)(2)

¹⁷² 40 CFR 1502.9, 40 CFR 1503.4(a)(1)

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Thank you for the opportunity to comment.

2

3 Sincerely,

4 

5 Mark Werkmeister, PE

6 NMOHVA Board of Directors

7 1700 Willow Road NE

8 Rio Rancho, NM 87144

9 505-891-0296

10 mark.r.werkmeister@intel.com

11

12 Temporary Address through 3/23/11:

13 Apt. 1704, Shama Luxe, 128 Jinma Rd.

14 Dalian Development Zone, People's Republic of China

15 Email: mark.r.werkmeister@intel.com

16 Telephone: 138 4260 2510

17

18 On behalf of:

19

20 Mogollon Apache Gila (MAG) Riders

21 Jo Anne Blount

22 POB 165

23 Glenwood, NM 88039

24

25 Gila Roads and Trails Alliance (GRATA)

26 James T. Baruch

27 POB 17

28 Mimbres, NM 88049

29

30 Gila Trail Riders Association (GRTA)

31 Grant Gose

32 2205 Johnson Rd.

33 Silver City, NM 88061

34

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-23 (Werkmeister Comment 21 – Project Record Review

2
3 March 2, 2011

4
5 Forest Supervisor
6 Attn: Travel Management
7 3005 E. Camino del Bosque
8 Silver City, NM 88061
9

10 Dear Responsible Official,

11
12 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
13 (NMOHVA) and am representing that organization and the undersigned organizations in
14 providing these comments on the Draft Environmental Impact Statement for Travel
15 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
16 organizations represent motorized recreationists in New Mexico including 4WD
17 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
18 in this DEIS provides important recreational resources to the members of the public we
19 represent.

20
21 We appreciate the opportunity to comment on the DEIS and take the responsibility of
22 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
23 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
24 Rule (TMR) with the utmost seriousness.

25
26 **ERROR:** The agency has not made the Project Record for Travel Management on the
27 GNF available to the public for review in compliance with Freedom of Information Act
28 (FOIA) and Council on Environmental Quality (CEQ) requirements.

29
30 **DISCUSSION:** The agency is required to make indexes of their records available to the
31 public¹⁷³ to assist the public in making reasonable requests for information:

32
33 *–Each agency shall also maintain and make available for public inspection and copying*
34 *current indexes providing identifying information for the public as to any matter issued,*
35 *adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available*
36 *or published.”*
37

¹⁷³ The Freedom of Information Act 5 U.S.C. § 552, As Amended By Public Law No. 104-231, 110 Stat. 3048, Section 552(a)(2)

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 NMOHVA's Scoping comment, submitted and acknowledged by the agency on
2 10/21/09, forewarned the agency what documents would be required to be made readily
3 available to the public during the review of the DEIS:

4
5 —*To facilitate meaningful public involvement, we request that all of the DEIS, all of its supporting*
6 *maps, all of the underlying documents, and all of the citations used to support the analysis*
7 *document be available electronically to the public **on the day the comment period***
8 ***starts.** Thoughtful and substantive comments by the public are almost impossible without the*
9 *means to efficiently access all of the supporting documentation used in the analysis and decision*
10 *process. Having these documents readily available to the public at the very beginning of the*
11 *comment period helps support and foster the process transparency and public participation that*
12 *is so crucial to a successful NEPA process.*

13
14 *This fundamental tenet was formally recognized by Congress when they passed the Electronic*
15 *Freedom of Information Act (EFOIA) of 1996. It requires the agency to post, electronically, any*
16 *and all documents that they believe the public will request. We will certainly request that all of*
17 *the documents types listed above be made available to the public so this scoping comment serves*
18 *notice that the provisions of the EFOIA will be in play."*

19
20 In spite of this notice, the agency has not complied with the requirements of the FOIA as
21 amended by Public Law No. 104-231 (E-FOIA). On 1/9/2011, NMOHVA requested an
22 electronic listing of all of the documents in the Project Record:

23
24 —*Hllo Lisa,*

25
26 *We are engaged in our review of the DEIS for Travel Management on the Gila National Forest.*
27 *Please send me an **electronic listing of all the documents in the Project Record** so that we might*
28 *determine which documents will be of further use for our review. We also request that you send*
29 *me:*

30
31 *An electronic copy of the forest level management indicator species analysis for the Gila National*
32 *Forest.*

33 *An electronic copy of the forest level migratory bird analysis for the Gila National Forest.*

34
35 *As time is of the essence, please respond to this request as quickly as possible. Please use the*
36 *email address listed below for all correspondence.*

37
38 *Thank you.*

39
40 *Mark R. Werkmeister, P. E.*
41 *Board of Directors*
42 *New Mexico Off Highway Vehicle Alliance"*

43
44 The response from the agency was delayed as they treated this simple request for
45 information as a full-blown FOIA request. We finally received the reply on 1/27/11 (18
46 days later, almost a third of the 60 day comment period available to the public). After
47 waiting those 18 days for a reply, here was the „index“ the agency supplied:

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 —*The Gila National Forest Travel Management Planning project record is in a draft form and*
2 *will not be final until the decision on the EIS is completed. Materials are still deliberative, but in*
3 *general, the final project record would include items related to:*

- 4
- 5 • *Notices found in the Federal Register*
- 6 • *Schedule of Proposed Actions (SOPA)*
- 7 • *Records of public, interest groups, and other agencies involvement (e.g. comments)*
- 8 • *Announcements of public participation and records of the events*
- 9 • *External communications (e.g. letters, emails, mailing lists)*
- 10 • *NEPA documents (proposed action, DEIS, FEIS) and maps provided to the public during*
11 *the different comment periods*
- 12 • *Documents referenced in Scoping, DEIS, and FEIS documents*
- 13 • *Analysis documents including specialist reports and associated references and data”*
- 14

15 The above list of materials is not an index as it provides no guidance on what specific
16 documents are contained in the Project Record. We note that the 18 days that elapsed
17 between our initial request and the agency’s response was more than adequate to
18 CREATE the entire index we had requested.

19

20 We responded the next day with a sample of the Project Record Index that the Santa Fe
21 National Forest used during its DEIS. The response from the agency, dated 2/2/11,
22 stated:

23

24 —*The Forest does not have a project record index nor one like the Santa Fe's available at this*
25 *time.”*

26

27 NMOHVA contends that this response puts the agency in a non-compliant position with
28 respect to 5 U.S.C. 552. NMOHVA further contends that the agency is not compliant
29 with the over-arching CEQ regulations¹⁷⁴

30

31 —*Make environmental impact statements, the comments received, and any underlying documents*
32 *available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C.*
33 *552)”*

34

35 NMOHVA made a formal FOIA request for certain specific records in the Project Record
36 on 2/2/11. By then the public comment period was almost half expended:

37

38 —*We have attempted to procure the information we have need to review the Gila National Forest*
39 *Travel Management Draft EIS through simple and timely requests directly to the*
40 *Forest. However, they are treating all requests, even for information that the public can*
41 *reasonably be expected to ask for, as FOIA requests. This has slowed the agency response time*
42 *and wasted valuable time as we wait for access to documents in the project record. We have*
43 *asked for a Project Record Index so we could better target our requests and not tie up valuable*
44 *agency time looking through documents we may not need. We were told that the Project Record*

¹⁷⁴ 40 CFR 1506.6(f)

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 *Index does not exist. But we need certain specific information that is likely to be in the Project*
2 *Record for this project.*

3
4 *Therefore, pursuant to the Freedom of Information Act (—FOIA”), 5 U.S.C. Section 552, the New*
5 *Mexico Off Highway Vehicle Alliance (NMOHVA) requests copies of the following records: (As*
6 *used herein, —records” means every kind of document or record of any nature whether produced*
7 *or archived on paper, electronic media, or other media and as fully encompassed by such term as*
8 *it is used in the Freedom of Information Act.)*

9
10 *All records describing or documenting site specific analysis of routes (road, trail, OML1 route,*
11 *or unauthorized route) associated with this project or referenced by this project with the*
12 *exception of the TAP documents posted on the Gila Travel Management web site.*

13 *All records, including meeting minutes and documentation describing, documenting, or*
14 *referencing the identification of concerns, issues, significant issues, or project alternatives and*
15 *any documentation related to decisions derived from those concerns, issues, significant issues, or*
16 *project alternatives with the exception of those documents already posted on the Gila Travel*
17 *Management web site.*

18 *All electronic maps that have been posted on the Gila Travel Management web site since 2005*
19 *(including those shown on the attached _snaps’) with the exception of those maps currently posted*
20 *and available to the public on the website.*

- 21
22
 - 23 *1. All records describing or documenting site specific analysis of routes (road, trail, OML1*
24 *route, or unauthorized route) associated with this project or referenced by this project*
25 *with the exception of the TAP documents posted on the Gila Travel Management web*
26 *site.*
 - 27 *2. All records, including meeting minutes and documentation describing, documenting, or*
28 *referencing the identification of concerns, issues, significant issues, or project*
29 *alternatives and any documentation related to decisions derived from those concerns,*
30 *issues, significant issues, or project alternatives with the exception of those documents*
31 *already posted on the Gila Travel Management web site.*
 - 32 *3. All electronic maps that have been posted on the Gila Travel Management web site since*
33 *2005 (including those shown on the attached _snaps’) with the exception of those maps*
34 *currently posted and available to the public on the website.”*

35 Today we FINALLY received a response to this latest formal FOIA request. It is now 52
36 days after our initial request. We have STILL NOT received the Project Record index
37 that is required to be readily available upon request. The additional documentation that
38 we requested is now in our hands with only five days left in the comment period.
39 NMOHVA contends that the agency did not meet the requirements of the E-FOIA and
40 CEQ requirements. The agency has not acted with good faith by making a reasonable
41 and timely response to our request for Project Record information vital to our review of
42 the DEIS. Time is rapidly running out in the public’s DEIS comment period and we still
43 do not have access to the requested index.

44
45 Denied the knowledge of exactly what is in the project record, NMOHVA was forced to
46 FOIA for the information with a much broader „shotgun” request. This further delayed
47 the agency response as they needed to respond with diligent and detailed searches of
48 the Project Record rather than by simply pulling and transmitting a specific document.

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 By forcing a broad FOIA, the agency has further denied important public access and
2 knowledge of the underlying documents to the DEIS.

3
4 NMOHVA continued to engage the agency on this matter „real time“ in the form of email
5 to provide the agency the opportunity to „make right“ and provide timely information on
6 the project. NMOHVA is specifically making this comment to establish standing on this
7 matter so it can be encompassed in the administrative appeal and any necessary
8 subsequent legal challenge to the agency“s handling of the Project Record for this
9 project.

10
11 **RESOLUTION:** In order to comply with the Freedom of Information Act and CEQ
12 regulations, the agency has no choice but to re-issue the DEIS, provide the Project
13 Record index and records required in a prompt and timely manner, and provide the
14 public at least 45 days to comment with the required reasonable access to the entire
15 Project Record.

16
17 Thank you for the opportunity to comment.

18
19 Sincerely,

20 

21 Mark Werkmeister, PE
22 NMOHVA Board of Directors
23 1700 Willow Road NE
24 Rio Rancho, NM 87144
25 505-891-0296
26 mark.r.werkmeister@intel.com

27
28 Temporary Address through 3/23/11:
29 Apt. 1704, Shama Luxe, 128 Jinma Rd.
30 Dalian Development Zone, People“s Republic of China
31 Email: mark.r.werkmeister@intel.com
32 Telephone: 138 4260 2510

33
34 On behalf of:

35
36 Mogollon Apache Gila (MAG) Riders
37 Jo Anne Blount
38 POB 165
39 Glenwood, NM 88039

40
41 Gila Roads and Trails Alliance (GRATA)
42 James T. Baruch
43 POB 17
44 Mimbres, NM 88049

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1
2 Gila Trail Riders Association (GRTA)
3 Grant Gose
4 2205 Johnson Rd.
5 Silver City, NM 88061
6

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-24 (Werkmeister Comment 22 – Mischaracterizing OML-1
2 Roads

3
4 March 2, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

10
11 Dear Responsible Official,

12
13 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
14 (NMOHVA) and am representing that organization and the undersigned organizations in
15 providing these comments on the Draft Environmental Impact Statement for Travel
16 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
17 organizations represent motorized recreationists in New Mexico including 4WD
18 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
19 in this DEIS provides important recreational resources to the members of the public we
20 represent.

21
22 We appreciate the opportunity to comment on the DEIS and take the responsibility of
23 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
24 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
25 Rule (TMR) with the utmost seriousness.

26
27 **ERROR:** The agency misrepresents OML 1 roads and decommissioned roads as
28 „closed to travel by the public“ in the DEIS.

29
30 **DISCUSSION:** On page 46 of the DEIS, the agency states:

31
32 *—National Forest System roads are categorized by operational maintenance levels (OML) (table*
33 *19). OML 2–5 roads are those that are open to travel, while OML 1 roads are closed to travel by*
34 *the general public.”*

35
36 This is a false statement. OML 1 roads are not closed to travel by the general public for
37 a Forest that is open to cross country travel unless the OML 1 road is closed to
38 motorized travel by a specific order. The agency makes that clear in other places within
39 the DEIS:

40
41 *“Reopening roads: Reopening of roads includes both closed and decommissioned roads. Due to*
42 *the forest being open to cross-country motorized travel, unauthorized motorized use has led to*
43 *their continuous use.”¹⁷⁵*

¹⁷⁵ DEIS, p. 14

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1
2 —The Gila National Forest's road system inventory includes an additional 1,194 miles of roads
3 that are classified as either closed or decommissioned. Hunters are user groups that specifically
4 benefit from closed and decommissioned roads since they allow for easier cross-country access to
5 more remote areas of the forest from the open road system for hunting and big game
6 retrieval."¹⁷⁶

7
8 —The forest is currently open to motorized cross-country travel, except in wilderness areas and
9 where specified closed within certain management areas. Since there are currently no
10 restrictions on motorized use within this area, the whole 2,441,804.3 acres of land can be
11 considered a motorized area."¹⁷⁷

12
13 —use of motor vehicles is essentially unrestricted outside of designated wilderness and areas
14 closed by forest order"¹⁷⁸

15
16 —While there are 15.8 miles of National Forest System Trails for ATVs and motorcycles, use
17 of motor vehicles is essentially unrestricted outside of designated wilderness and areas
18 closed by forest order, since the forest would continue to be open to motorized cross country
19 travel."¹⁷⁹

20
21 The agency knows that the public can use closed and decommissioned roads legally.
22 In 2004 (prior to the issuance of the TMR), the agency made a map¹⁸⁰ available to the
23 public that showed many of the OML 1 and decommission roads on the GNF. This map
24 plainly categorized these routes as „All Travelways“ in the heading for the map. Here is
25 a side by side comparison of the „All Travelways“ map and the agency's Alternative B
26 map:
27

¹⁷⁶ DEIS, p. 51

¹⁷⁷ DEIS, p. 53

¹⁷⁸ DEIS, p. 57

¹⁷⁹ Recreation Specialist Report, p. 8 (unpaginated)

¹⁸⁰ all_travel_ways_roadless.pdf

Table 15. Overview of the key elements of the alternatives

Key Elements	Alternative					
	B	C	D	E	F	G
Miles of roads open to the public	4,604	4,266	2,977	2,332	3,343	3,323
Miles of motorized trails (less than 50 inches in width)	16	204	125	0	182	182
Miles of single-track (motorcycle) trails	0	64	0	0	0	0
Miles of routes for administrative use or by written authorization only	0	183	354	439	298	299
Total percent change in motorized roads and trails	0%	-2%	-33%	-50%	-24%	-24%

1
2
3
4
5
6

And, because the „analysis“ disclosed in Chapter 3 is merely a nearly endless comparison of mileages between the alternatives, every single one of the total percent change values through the DEIS is wrong: An example:

Table 30. Miles of NFS motorized routes within 300 feet of perennial and intermittent streams and rivers

	Alt. B	Alt. C	Alt. D	Alt. E	Alt. F	Alt. G
Miles of NFS motorized roads	298	230	138	102	179	175
Miles of NFS administrative roads	0	42	61	58	52	52
Miles of NFS motorized trail <50 inches	4	14	7	0.32	14	14
Miles of NFS administrative motorized trail <50 inches	0	1	3	3	1	1
Motorized NFS 2-wheel vehicle trail	0	15	0	0	0	0
Total Miles of NFS Motorized Routes	302	302	209	163	246	242
Change in number of miles of NFS motorized routes expressed as a percent (+ or -) of the no action alternative		0%	-31%	-46%	-19%	-20%

7
8
9
10
11

Why is this important? It is fundamental to the choice the decisionmaker will have to make. The DEIS decision is an act of weighing impacts between alternatives; making choices between what is being given up (access, recreation) versus what is being

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 gained (natural resource protection). The DEIS, as written, misinforms the decision
2 maker on what is being „given up“ as they have under-stated the amount of roads
3 currently legal to travel by almost 1200 miles. This misrepresentation is absolutely
4 material to the risk versus benefit decision being disclosed by this DEIS.

5
6 **RESOLUTION:** Re-issue a corrected document. Provide an accurate disclosure of the
7 number of miles or route that are currently legal for the public to travel. Recalculate all
8 of the associated mileages and percentages in the various comparisons throughout the
9 DEIS. Provide accurate information to the decision maker and the public as required by
10 CEQ regulations.¹⁸¹

11
12 Thank you for the opportunity to comment.

13
14 Sincerely,

15 

16 Mark Werkmeister, PE
17 NMOHVA Board of Directors
18 1700 Willow Road NE
19 Rio Rancho, NM 87144
20 505-891-0296
21 mark.r.werkmeister@intel.com

22
23 Temporary Address through 3/23/11:
24 Apt. 1704, Shama Luxe, 128 Jinma Rd.
25 Dalian Development Zone, People’s Republic of China
26 Email: mark.r.werkmeister@intel.com
27 Telephone: 138 4260 2510

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29 On behalf of:

30
31 Mogollon Apache Gila (MAG) Riders
32 Jo Anne Blount
33 POB 165
34 Glenwood, NM 88039

35
36 Gila Roads and Trails Alliance (GRATA)
37 James T. Baruch
38 POB 17
39 Mimbres, NM 88049

40
41 Gila Trail Riders Association (GRTA)

¹⁸¹ 40 CFR 1500.1(b)

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Grant Gose
2 2205 Johnson Rd.
3 Silver City, NM 88061
4

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-25 (Werkmeister Comment 23 – DEIS Ascribes All Impacts to
2 Motorized Use)

3
4
5 March 2, 2011

6
7 Forest Supervisor
8 Attn: Travel Management
9 3005 E. Camino del Bosque
10 Silver City, NM 88061

11
12 Dear Responsible Official,

13
14 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
15 (NMOHVA) and am representing that organization and the undersigned organizations in
16 providing these comments on the Draft Environmental Impact Statement for Travel
17 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
18 organizations represent motorized recreationists in New Mexico including 4WD
19 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
20 in this DEIS provides important recreational resources to the members of the public we
21 represent.

22
23 We appreciate the opportunity to comment on the DEIS and take the responsibility of
24 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
25 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
26 Rule (TMR) with the utmost seriousness.

27
28 **ERROR:** The DEIS repeatedly ascribes all impacts to the natural environment to
29 motorized use, ignoring the impacts from all other forms of use on the Forest.

30
31 **DISCUSSION:** In the Wildlife section of the Environmental Consequences Chapter, the
32 DEIS explains the factors used in the agency's „analysis process“:

33
34 — *Analysis Factors*

35
36 *Knights and Cole (1995) developed a conceptual model of the responses of wildlife to*
37 *recreational activities. They grouped recreational impacts into four groups: harvest, habitat*
38 *modification, disturbance, and pollution. Liddle (1997) grouped road impacts into three groups:*
39 *disturbance type 1 occurs when an animal sees, smells, hears, or perceives the presence of a*
40 *human, but no contact is made, and it may or may not alter behavior; disturbance type 2 is when*
41 *habitat is changed in some way; and disturbance type 3 involves human actions in which there is*
42 *direct damaging contact with the animal. Gaines et al. (2003) grouped Wisdom et al. (2000),*
43 *Knight and Cole (1991), and Liddle (1997) classification schemes as described in table 53. We've*
44 *further grouped the two analysis factors into harvest/direct effects and disturbance/indirect*
45 *effects in table 53.”*
46

1 There are several obvious items wrong with the first citation cited. It is „Knight“ , not
2 „Knights“ and the referenced study is dated „1991“, not „1995“ (check the list of
3 references in Section 4!). In addition, the authors of the reference cited recognized
4 (and studied) exactly what the agency apparently does not: Responses by wildlife are
5 not limited to motorized recreational activities; these responses are caused by all
6 recreational activity. Please note that the title of the study is „Effects of recreational
7 activity on wildlife in wildlands“, not „Effects of motorized recreational activity on wildlife
8 in wildlands“.

9
10 The agency also cites *Gaines et al (2003)*. In fact, the agency likes the *Gaines* citation
11 so much that it cites this reference no less than nine times, each time in reference to
12 disturbance zones. But Gaines, too, was studying the cumulative effects of linear
13 recreation on wildlife. His study of linear recreation included both motorized and non-
14 motorized. Gaines recognized that wildlife is impacted by all use, not just motorized
15 recreation. In his summary, Gaines makes it very clear (emphasis added)¹⁸²:

16
17 *—The most common interactions reported in the literature that we reviewed between*
18 *nonmotorized trails and focal wildlife species were displacement and avoidance, which*
19 *altered habitat use, and disturbance at a specific site during a critical period. The interactions*
20 *of the focal species and motorized or nonmotorized trails were quite similar.*
21 ***Depending on the wildlife species, some were more sensitive to motorized trail use,***
22 ***whereas others were more sensitive to nonmotorized trail use. Based on our current***
23 ***understanding, both forms of recreation have effects on wildlife.”***

24
25 As Gaines notes, some species are more sensitive to non-motorized use than to
26 motorized use. For species sensitive to non-motorized use, removing the motorized use
27 results in no reduction at all in the disturbance zone. For other species, removing
28 motorized use results in only varying degrees of improvement.

29
30 Unlike Knight and Cole or Gaines, the agency’s „analysis“ universally fails to even
31 acknowledge the fact that improvement is only incremental. Motorized use is only one
32 of the many sources of human disturbance, yet it is the ONLY factor acknowledged in
33 Table 55:

¹⁸² Gaines, W. L.; P. H. Singleton; and R. C. Ross. 2003. Assessing the cumulative effects of linear recreation routes on wildlife habitats on the Okanogan and Wenatchee National Forests. Gen. Tech. Rep. PNW-GTR-586. U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station, p. iv

Appeal of the Record of Decision for Travel Management on the Gila National Forest

Table 55. Summary of the harvest indicator, disturbance zone, and analysis area that is used to analyze the effects of the different alternatives to ungulates

Focal Species	Motorized Activity	Harvest Indicator	Disturbance Zone	Analysis Area
Elk	Motorized trail or OHV use	Route Miles	300 m	Core elk habitat mapped by NMDGF*
Elk	Motorized roads	Route Miles	650 m	Core elk habitat mapped by NMDGF
Pronghorn	Motorized trail or OHV and roads	Route Miles	200 m	Core pronghorn habitat mapped by NMDGF
Bighorn sheep	Motorized trail or OHV and roads	Route Miles	200 m	Core bighorn sheep habitat mapped by NMDGF
Deer	Motorized trail or OHV and roads	Route Miles	200 m	Desert shrub and piñon-juniper and shrub oak woodland

*New Mexico Department of Game and Fish

1
2
3 Yet the agency blithely carries on its „analysis“ as though there is no impact to wildlife
4 from any other form of use. This, of course, is patently ridiculous, and directly contrary
5 to the conclusions in *Gaines* and many other studies. Before the agency claims that
6 this DEIS is only considering impacts from motorized use, we will note that agency
7 clearly acknowledges that other use will continue on these routes even after motorized
8 use has been discontinued¹⁸³:

9
10 —~~N~~ alternative curtails any nonmotorized activities; the change is where people can drive to get
11 to places in the forest to do these activities. System roads and motorized trails would also be open
12 for people to walk, hike, bike, or ride horses.”

13
14 The cited *Gaines* research clearly establishes that disturbance zones will continue to
15 exist as the result of non-motorized use. The agency, in the DEIS itself, reveals that it
16 knows that wildlife will continue to be impacted by harvest even if motorized use is
17 removed¹⁸⁴:

18
19 —~~I~~nters are user groups that specifically benefit from closed and decommissioned roads since
20 they allow for easier cross-country access to more remote areas of the forest from the open road
21 system for hunting and big game retrieval.”

22
23 Non-motorized use will continue on these routes and the impacts of the disturbance
24 zones and harvest will continue. The amount of impact may (or not) change but the
25 impacts will never go to zero based on the very citations (*Knight and Cole*, *Gaines et al*,
26 etc.) the agency references. The DEIS is silent on the non-motorized uses as a source
27 of disturbance. It presents the „impacts“ to the wildlife as being removed if the
28 motorized use is removed.

183 DEIS, p. 13

184 DEIS, p. 51

1 In each of a long series of ten summary tables¹⁸⁵, covering every facet of the wildlife
2 population, the agency carefully lays out the disturbance zone and harvest indicator for
3 motorized use as the only factors considered in its analysis. The only metrics
4 (indicators) considered in these impacts is „total miles of routes“ and „acres of
5 influence“¹⁸⁶.

6
7 — *Analysis Indicators*

8
9 *For this analysis, two separate analysis indicators were typically used to analyze the potential*
10 *effects (harvest and disturbance) of motorized travel and recreation on terrestrial wildlife on the*
11 *Gila National Forest. These indicators were: (1) total miles of routes within an analysis area and*
12 *(2) the potential —Acres of Influence” for a species or group of species (focal species).”*
13

14 The agency has completely failed to take into account the ongoing impact that the other
15 uses on those same routes will continue to „wreak“ on the wildlife after motorized use is
16 removed. The disturbance zone may be a narrower or wider, but the disturbance zone
17 from the linear feature will still exist. Harvest will continue to be an impact to the
18 species, whether the roads and trails are being used by motorized vehicles or not.

19
20 The analysis also fails to disclose that motorized use represents a very small fraction of
21 habitat disturbance. The non-motorized users are not restricted to designated routes
22 and will continue to potentially disturb 100% of the habitat. As we have calculated,
23 routes occupy approximately one half of one percent of the Forest area. Even adding
24 the disturbance zone widths, it is obvious that motorized uses restricted to routes impact
25 a tiny fraction of the habitat compared to non-motorized uses allowed on 100% of the
26 habitat. The analysis fails to recognize the „refuge“ issue. Areas between motorized
27 routes are refuges for wildlife. But there is no refuge from the non-motorized user. The
28 analysis fails to disclose that removing motorized use will result in a very, very small
29 reduction in overall disturbance from human users.

30
31 The analysis also fails to discuss if this small reduction provides any significant benefit
32 to the species that will impact its long term viability. The impact to harvest may get
33 larger or smaller, but it will still exist at some level. The agency completely fails to
34 disclose this to the decision maker and the public. This lack of disclosure impacts the
35 decision maker’s ability to make a rational and defensible decision as the impacts
36 resulting from the removal of motorized use on the wildlife have not been accurately
37 portrayed. Use of the routes on the Forest will continue. Impacts on the wildlife as
38 measured by disturbance zones and harvest will continue as some level. The removal
39 of motorized use will have a much smaller effect than represented in the DEIS.

40
41 **RESOLUTION:** Provide the differential in impact from harvest and disturbance zones
42 impacts between the current condition and after motorized use is removed. Clearly
43 disclose this difference on each of the summary tables. If the agency cannot determine

¹⁸⁵ DEIS, Tables 55, 63, 69, 78, 86, 102, 106, 119, 128, 135.

¹⁸⁶ DEIS, p. 136.

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 this differential impact, the agency is required to explicitly disclose what it does not
2 know along with the relevance of the incomplete or unavailable information¹⁸⁷.

3
4 Thank you for the opportunity to comment.

5
6 Sincerely,

7 

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20
21 On behalf of:

22
23 Mogollon Apache Gila (MAG) Riders
24 Jo Anne Blount
25 POB 165
26 Glenwood, NM 88039

27
28 Gila Roads and Trails Alliance (GRATA)
29 James T. Baruch
30 POB 17
31 Mimbres, NM 88049

32
33 Gila Trail Riders Association (GRTA)
34 Grant Gose
35 2205 Johnson Rd.
36 Silver City, NM 88061
37

¹⁸⁷ 40 CFR 1502.22

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-29 (Werkmeister Comment 27 – All Wildlife Impact Ascribed to
2 Motorized Use)

3
4 March 2, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

10
11 Dear Responsible Official,

12
13 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
14 (NMOHVA) and am representing that organization and the undersigned organizations in
15 providing these comments on the Draft Environmental Impact Statement for Travel
16 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
17 organizations represent motorized recreationists in New Mexico including 4WD
18 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
19 in this DEIS provides important recreational resources to the members of the public we
20 represent.

21
22 We appreciate the opportunity to comment on the DEIS and take the responsibility of
23 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
24 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
25 Rule (TMR) with the utmost seriousness.

26
27 **ERROR:** The agency has failed to disclose or analyze the current source of all
28 recreation use impact on wildlife. The agency has ascribed all current baseline impact
29 to motorized use in the analysis of Environmental Consequences to Wildlife.

30
31 **DISCUSSION:** Data collected as part of the National Visitor Use Monitoring effort on
32 the GNF is cited as a data source in the Social and Economic Specialist Report¹⁸⁸.

33
34 *“Forest visitor data from 2006 National Visitor Use Monitoring (NVUM), a nationally-*
35 *standardized survey protocol. The scope for effects is the Gila National Forest; 2006 is the most*
36 *current survey and will be considered indicative of the present.”*

37
38 Table 4 in the specialist report¹⁸⁹ shows the various activities that visitor’s claimed as
39 their primary activity. „Driving for pleasure“ and „OHV Use“ were listed as the only two
40 primary activities focused on motorized use of the roads and trails. „Driving for
41 pleasure“ was listed as the primary activity for 3.51% of the respondents and it was
42 estimated that this activity resulted in an estimated 10,439 primary visits. „OHV Use“

¹⁸⁸ Social and Economic Specialist Report, p. 5

¹⁸⁹ Social and Economic Specialist Report, p. 10

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 was lower at 0.08% and resulted in 2,379 primary visits. While „primary visits“ is not a
2 perfect indicator of total use, it can be said these motorized activities accounted for
3 12,818 visits or an average of just over 35 visits a day.

4
5 The same report identifies many other activities that will continue even if motorized use
6 was eliminated from the current system routes. Many of them would put visitors in
7 contact with wildlife. For some of them, contact with wildlife is the primary intent. Let’s
8 list each along with their associated „primary visits“:

9

10 Activity	# of Primary Visits
11 Hunting*	46,843
12 Hiking/Walking	43,185
13 Viewing Wildlife*	32,329
14 Gathering Forest Products	12,075
15 Horseback riding	9,250
16 Backpacking	7,673
17 Primitive Camping**	3,093
18 Nature Study	2,171
19 Bicycling	625

20
21 Total 157,244

22 * Contact with wildlife is the intent of the activity.

23 **Included because the DEIS specifically included dispersed
24 camping as a motorized activity¹⁹⁰

25
26 These activities total over 150,000 primary visits or an average of 430 per day.
27 Activities whose focus intentionally puts them in direct contact with wildlife (hunting and
28 viewing wildlife) total 79,172 or 217 per day. These „wildlife contact“ activities alone
29 account for more than six times the amount of primary visits than do motorized
30 activities.

31
32 Scientific literature cited in the analysis of the Environmental Consequences for wildlife
33 explicitly includes statements that non-motorized recreation activities have similar
34 impacts to wildlife. The Summary section of *Gaines et al (2003)* (cited nine times in the
35 Wildlife section, each time in reference to disturbance zones) says this about the
36 impacts on wildlife from non-motorized recreation (emphasis added):

37
38 *—The most common interactions reported in the literature that we reviewed between*
39 *nonmotorized trails and focal wildlife species were displacement and avoidance, which*
40 *altered habitat use, and disturbance at a specific site during a critical period. The interactions*
41 *of the focal species and motorized or nonmotorized trails were quite similar.*
42 *Depending on the wildlife species, some were more sensitive to motorized trail use,*
43 *whereas others were more sensitive to nonmotorized trail use. Based on our current*
44 *understanding, both forms of recreation have effects on wildlife. ”*

¹⁹⁰ DEIS, p. 134

1
2 The cited Gaines literature recognizes what the DEIS does not: All recreational activity
3 has impact on the wildlife. It is not solely attributable to motorized recreation. The
4 analysis methodology employed in the Wildlife section to ascertain „impacts“ to wildlife
5 from motorized use completely fails to account for all of this other contact/impact to
6 wildlife from non-motorized activity.

7
8 The analysis process methodology used by the agency is described in the DEIS¹⁹¹:

9
10 *—For this analysis, two separate analysis indicators were typically used to analyze the potential*
11 *effects (harvest and disturbance) of motorized travel and recreation on terrestrial wildlife on the*
12 *Gila National Forest. These indicators were: (1) total miles of routes within an analysis area and*
13 *(2) the potential „Area of Influence“ for a species or group of species (focal species). Indicators*
14 *were selected for project effects based on an extensive review of literature on the interaction*
15 *between wildlife and motorized routes. Disturbance from motorized routes affect wildlife beyond*
16 *the immediate road prism, into an area that can be referred to as a disturbance zone. This zone*
17 *differs for each species, based on its tolerance to disturbance (Trombulak and Frissell 2000,*
18 *Gaines et al. 2003).“*
19

20 Motorized use is not the only activity impacting wildlife. „Type 1“ activity described by
21 Table 53¹⁹² continues even after motorized travel is removed. Other recreation activity
22 remains on the landscape and impacts wildlife even after motorized activity is removed.
23 The argument that there will be „less“ or „more“ impact between alternatives has no
24 basis of comparison because the agency has not or cannot differentiate how much of
25 the baseline activity is coming from motorized and how much is coming from non-
26 motorized sources.

27
28 The agency makes no attempt to disclose how much of the current baseline wildlife
29 impact will remain after motorized use has been removed from the routes designated as
30 non-motorized. Likewise, the agency makes no attempt to disclose how much of the
31 current baseline wildlife impact originates from non-route activities. Without these
32 baseline disclosures, choosing an alternative based on „more“ or „less“ impact is
33 meaningless and specious. „More“ than what? „Less“ than what? If non-motorized
34 activities are having more than six times (based on the number of primary visits) the
35 impact on wildlife that motorized use is having, is removing motorized use having any
36 significant, appreciable, or even detectable benefit at all? The agency has failed to
37 disclose this key information.

38
39 **RESOLUTION:** Clearly differentiate and disclose the current impact of motorized use
40 on wildlife and the current impact of non-motorized use on wildlife in the baseline
41 conditions. If the agency cannot differentiate between the impacts cause by motorized
42 use and non-motorized use in the current baseline condition, the agency must explicitly
43 disclose what it does not know and the relevance that this missing or incomplete

¹⁹¹ DEIS, p. 136

¹⁹² DEIS, p. 53

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 information has on the analysis of the baseline condition and the action alternatives¹⁹³.
2 Comparisons of „more“ and „less“ impacts are not valid if the decision maker and the
3 public don“t understand the context of the increase or decrease compared to the
4 baseline condition.

5
6 Thank you for the opportunity to comment.

7
8 Sincerely,

9 

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23 On behalf of:

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25 Mogollon Apache Gila (MAG) Riders
26 Jo Anne Blount
27 POB 165
28 Glenwood, NM 88039

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30 Gila Roads and Trails Alliance (GRATA)
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32 POB 17
33 Mimbres, NM 88049

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35 Gila Trail Riders Association (GRTA)
36 Grant Gose
37 2205 Johnson Rd.
38 Silver City, NM 88061
39

¹⁹³ 40 CFR 1502.22

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-26 (Werkmeister Comment 24 – Negative Cumulative Affects
2 (sic) for Recreation)

3
4 March 2, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

10
11 Dear Responsible Official,

12
13 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
14 (NMOHVA) and am representing that organization and the undersigned organizations in
15 providing these comments on the Draft Environmental Impact Statement for Travel
16 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
17 organizations represent motorized recreationists in New Mexico including 4WD
18 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
19 in this DEIS provides important recreational resources to the members of the public we
20 represent.

21
22 We appreciate the opportunity to comment on the DEIS and take the responsibility of
23 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
24 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
25 Rule (TMR) with the utmost seriousness.

26
27 **ERROR:** The DEIS contains no rational connection between the cumulative effects for
28 recreation and the alternatives presented for consideration.

29
30 **DISCUSSION:** The DEIS is required to disclose the cumulative impact of the project
31 per Council on Environmental Quality (CEQ) regulations¹⁹⁴:

32
33 *—Cumulative impact is the impact on the environment which results from the incremental impact*
34 *of the action when added to other past, present, and reasonably foreseeable future actions*
35 *regardless of what agency (Federal or non-Federal) or person undertakes such other actions.*
36 *Cumulative impacts can result from individually minor but collectively significant actions taking*
37 *place over a period of time.”*

38
39 CEQ provides further guidance on Cumulative Effects in a more detailed publication:
40 *Considering Cumulative Effects Under the National Environmental Policy Act.* This
41 document states:

42
43 *—Determining the cumulative environmental consequences of an action requires delineating the*
44 *cause-and-effect relationships between the multiple actions and the resources, ecosystems, and*

¹⁹⁴ 40 CFR 1508.7

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 *human communities of concern. Analysts must tease from the complex networks of possible*
2 *interactions those that substantially affect the resources.”*
3

4 In the Recreation section of the DEIS, the agency identifies an adverse cumulative
5 effect of the action alternatives considered¹⁹⁵:

6
7 *—All national forests in the Southwestern Region are either in the process of travel management*
8 *planning or implementing existing travel management plans. The Bureau of Land Management*
9 *has also made decisions to designate routes for OHV use. All of the new decisions and*
10 *implementation of past land use and travel management decisions are generally resulting in*
11 *fewer opportunities for cross-country OHV uses and fewer open routes for OHV use. These past*
12 *decisions include the establishment of wilderness and other areas that prohibit motor vehicle*
13 *recreation, reducing the motor vehicle access to the forest. Although these past decisions are not*
14 *part of current planning for the —Gila National Forest Travel Management Plan,” they are*
15 *relevant because they are part of the cumulative effects of the travel management plan.”*
16

17 In fact, the cumulative effect for the Recreation section of the Environmental
18 Consequences is one of the few sections that identifies a negative cumulative effect for
19 the proposed action or any of its alternatives.

20
21 The Council on Environmental Quality’s (CEQ) publication on analyzing cumulative
22 effects points out the importance of using cumulative effects to help craft alternatives¹⁹⁶:

23
24 *—The process of analyzing cumulative effects can be thought of as enhancing the traditional*
25 *components of an environmental impact assessment: (1) scoping, (2) describing the affected*
26 *environment, and (3) determining the environmental consequences. **Generally it is also critical to***
27 ***incorporate cumulative effects analysis into the development of alternatives for an EA or EIS.***
28 ***Only by reevaluating and modifying alternatives in light of the projected cumulative effects can***
29 ***adverse consequences be effectively avoided or minimized. Considering cumulative effects is***
30 ***also essential to developing appropriate mitigation and monitoring its effectiveness.”***
31

32 None of the alternatives explored in the DEIS address the negative cumulative effects
33 identified for recreation: Fewer open routes for OHV use. Even alternative B (no
34 action) and Alternative C (2% reduction) contain massive and real reductions from the
35 true current existing condition on the GNF. Neither of these alternatives addresses the
36 loss of motorized recreational opportunity on nearly 1200 miles of OML 1 and
37 decommissioned roads, an unspecified amount of unauthorized roads, and 632 miles of
38 existing trail outside of wilderness areas. Even the least restrictive alternative available
39 (Alternative B modified to eliminate cross country travel, thus complying with the TMR)
40 would further contribute to the negative cumulative effects identified in the Recreation
41 section.
42

¹⁹⁵ DEIS, p.69

¹⁹⁶ Considering Cumulative Effects Under the National Environmental Policy Act, p. v

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 **RESOLUTION:** Create and analyze an alternative that materially addresses the
2 identified negative cumulative Recreation effects identified in the DEIS. The CEQ
3 direction is clear: Alternatives should be developed in light of the projected cumulative
4 effects. The analysis correctly identified a negative cumulative effect and has failed to
5 provide an effective means of avoiding it or minimizing it. Instead, ALL of the
6 alternatives presented by the DEIS further exacerbate the adverse effect. Fashioning
7 an alternative that provides more motorized routes and enhanced OHV trails is needed
8 to meet the expectations of CEQ and provide the decision maker with a full set of
9 choices that flow rationally from this DEIS.

10
11 Thank you for the opportunity to comment.

12
13 Sincerely,

14 

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41 Grant Gose
42 2205 Johnson Rd.
43 Silver City, NM 88061
44

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-27 (Werkmeister Comment 25 – Equating Roads with
2 Motorized Use V1)

3
4
5 March 2, 2011

6
7 Forest Supervisor
8 Attn: Travel Management
9 3005 E. Camino del Bosque
10 Silver City, NM 88061

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12 Dear Responsible Official,

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20 in this DEIS provides important recreational resources to the members of the public we
21 represent.

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24 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
25 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
26 Rule (TMR) with the utmost seriousness.

27
28 **ERROR:** The DEIS equates the existence of the roads with the use of the roads in its
29 analysis of the Environmental Consequences.

30
31 **DISCUSSION:** The analysis methodology presented in the Wildlife section of Chapter 3
32 of the DEIS does not analyze „motorized travel“ as claimed (emphasis added):

33
34 *–For this analysis, motorized travel includes motorized travel on roads, motorized travel on*
35 *trails or OHV use, cross-country motorized travel (including motorized big game retrieval), and*
36 *motorized dispersed camping. The objective of this analysis is to evaluate the potential effects of*
37 *the different alternatives to different wildlife species or groups of wildlife species known or likely*
38 *to occur on the Gila National Forest within the context of specific road and travel conditions*
39 *that exist on the forest.”*

40
41 The DEIS analyzes the mileage of roads in an area and the acres of disturbance zone
42 in an area. More miles of roads does not equal more effects from „motorized travel“.
43 The analysis fails to differentiate between the two, and instead conflates the roads
44 themselves with the use of roads.

1 Roads are a physical entity that exist on the ground all the time whether used or
2 not. Under the agency's methodology, a high clearance road that may be used by only
3 two vehicles per week is considered to have the same effects as the graded OML 3 or
4 OML 4 road to a major developed recreation area used by hundreds of vehicles per
5 week.

6
7 Motorized use is a short-lived activity, whose effect is largely dependent on intensity of
8 use. A high clearance road used by two vehicles per week is clearly and empirically
9 different than a graded OML 3 or OML 4 road used by hundreds of vehicles per week.
10 Yet the analysis presented by the agency in the Wildlife section of Chapter 3 entirely
11 ignores any discussion of intensity of use or any accounting for it in its estimate of
12 impacts. The Wildlife specialist report clearly makes the distinction between the
13 existence of the roads and the use of the roads in the significant issues identified
14 (emphasis added)¹⁹⁷:

15
16 *Issues identified during scoping related to terrestrial wildlife species*

17
18 *Motorized Routes*

19
20 *The proposed motorized routes specifically the type, extent, **level of use** and location of motorized*
21 *routes may lead to resource, recreation, social and economic impacts.*

22
23 But then the agency completely neglects to address or disclose the level of use in the
24 Environmental Consequences analysis. The analysis also fails to consider thresholds
25 for tolerance of disturbance. It fails to even acknowledge the potential cumulative effects
26 of greatly concentrating human activity onto fewer miles of road. There are many
27 studies (including those cited within the DEIS such as *Gaines et al (2003)* that is cited
28 nine times) that show effects are directly related to the intensity of use (such as vehicle
29 count). The agency either has no vehicle use data to present and study or it has failed
30 to disclose this data.

31
32 This excerpt from the DEIS¹⁹⁸ clearly shows this muddled thinking which confuses roads
33 with motorized use of roads:

34
35 *—Research related to road effects to federally listed and Southwestern Region sensitive species in*
36 *this region of the Forest Service is limited; the focal species approach uses information related to*
37 *different groups of species to help evaluate the potential effects of motorized use to similar*
38 *species in the group.*

39
40 *Analysis Indicators*

41
42 *For this analysis, two separate analysis indicators were typically used to analyze the potential*
43 *effects (harvest and disturbance) of motorized travel and recreation on terrestrial wildlife on the*

¹⁹⁷ Wildlife Report and Biological Evaluation, p.19

¹⁹⁸ DEIS, page136.

Appeal of the Record of Decision for Travel Management on the Gila National Forest

Gila National Forest. These indicators were: (1) total miles of routes within an analysis area and (2) the potential “Area of Influence” for a species or group of species (focal species). Indicators were selected for project effects based on an extensive review of literature on the interaction between wildlife and motorized routes.”

Yet the same analysis in Chapter 3 has just identified the factors of wildlife response in Table 53 of the DEIS:

Table 53. Responses of wildlife to various disturbance factors

Road and Trail Associated Factors	Knight and Cole Recreation Activity	Liddle	Combined Analysis Factors
Disturbance, displacement, avoidance, harassment	Disturbance	Disturbance type 1	Disturbance
Physiological response	Disturbance	Disturbance type 1	Disturbance
Habitat loss and fragmentation	Habitat modification	Disturbance type 2	Disturbance
Negative edge effects	Habitat modification	Disturbance type 2	Disturbance
Snag and downed log reductions	Habitat modification	Disturbance type 2	Disturbance
Barriers to animal travel or movement	Habitat modification	Disturbance type 2	Disturbance
Route for competitors and predators	Habitat modification	Disturbance type 2	Disturbance
Collisions	Harvest	Disturbance type 3	Harvest
Harvest or collection facilitated by motorized travel	Harvest	Disturbance type 3	Harvest

You will note that the „disturbance factor“ for the first two and last two items on the list (the disturbance „type 1“ and „type 3“) depend entirely on the intensity of use. These factors go to ZERO if the roads are not being used. Yet the agency, by using total miles of routes in the area and the acreage of disturbance zones in the area as the ONLY indicators, has made their analysis entirely dependent on the existence of roads instead of the intensity of use of the roads.

The other obvious major fallacy of the agency’s chosen analysis method is that the roads themselves aren’t going to go away. The existence of the roads will continue. In fact, even the use of the roads will continue by other users as motorized use is the only type of use that would stop¹⁹⁹:

—No alternative curtails any nonmotorized activities; the change is where people can drive to get to places in the forest to do these activities. System roads and motorized trails would also be open for people to walk, hike, bike, or ride horses.”

¹⁹⁹ DEIS, p. 13

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1
2 The roads will still be there. Only the intensity of use will change if motorized use is
3 removed, the very thing that the agency is not analyzing. Ironically and irrationally, it is
4 the one thing the agency needed to gather to provide pertinent information to the
5 decision maker and the public.

6
7 **RESOLUTION:** Apply an appropriate analysis methodology to the wildlife
8 Environmental Consequences section. Choose a method that incorporates the intensity
9 of use of the roads, both with and without motorized use, into the analysis. If the
10 agency has no information on the intensity of use on the routes, clearly disclose this gap
11 in information and the relevance of the unavailable information to evaluating reasonably
12 foreseeable significant adverse impacts on the human environment as required by the
13 CEQ²⁰⁰. Ensure that the decision maker and the public have a Wildlife analysis that
14 clearly connects cause (including the use of roads) with effects (impacts on the wildlife
15 species and habitat) and adequately defines, explores, and documents that relationship.
16 Then, and only then, will the decision maker and the public be supplied the necessary
17 information to make a rational and defensible decision that balances the risks to the
18 natural environment versus the value of continued motorized use.

19
20 Thank you for the opportunity to comment.

21
22 Sincerely,



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36
37 On behalf of:

38
39 Mogollon Apache Gila (MAG) Riders
40 Jo Anne Blount
41 POB 165
42 Glenwood, NM 88039

²⁰⁰ 40 CFR 1502.22

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1
2 Gila Roads and Trails Alliance (GRATA)
3 James T. Baruch
4 POB 17
5 Mimbres, NM 88049
6
7 Gila Trail Riders Association (GRTA)
8 Grant Gose
9 2205 Johnson Rd.
10 Silver City, NM 88061
11

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-28 (Werkmeister Comment 26 – Alternatives Use Elements Not
2 in Base Condition)

3
4 March 2, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

10
11 **Dear Responsible Official,**

12
13 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
14 (NMOHVA) and am representing that organization and the undersigned organizations in
15 providing these comments on the Draft Environmental Impact Statement for Travel
16 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
17 organizations represent motorized recreationists in New Mexico including 4WD
18 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
19 in this DEIS provides important recreational resources to the members of the public we
20 represent.

21
22 We appreciate the opportunity to comment on the DEIS and take the responsibility of
23 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
24 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
25 Rule (TMR) with the utmost seriousness.

26
27 **ERROR:** The agency has chosen to consider designation of existing routes that are not
28 in the baseline condition (no action analysis) and therefore have not been analyzed or
29 disclosed.

30
31 **DISCUSSION:** The agency states that the no action alternative (Alternative B) is their
32 „best guess“ of where people are driving²⁰¹:

33
34 *“Alternative B is the no action alternative. It represents the existing condition, which is our best
35 estimate of where people are driving now.”*

36
37 Alternative B contains 4,604 miles of roads and 16 miles of motorized trail²⁰², the sum
38 total of the agency’s „best estimate“ of where people are driving now.

39

²⁰¹ DEIS, p. ii

²⁰² DEIS, Table 1, p. v

Appeal of the Record of Decision for Travel Management on the Gila National Forest

Table 1. Comparison of motorized system resulting from changes to alternative B, no action (asterisk means item will not be shown on the motor vehicle use map)

	Alternative B (No Action)	Alternative C	Alternative D	Alternative E	Alternative F (Modified Proposed Action)	Alternative G
Miles of roads designated open to the public for motor vehicle use	4,604	4,266	2,977	2,332	3,343	3,323
Miles of motorized trails (less than 50 inches in width)	16	204	125	0	182	182

Further examination of the DEIS²⁰³ reveals that the 4,604 miles of road contains only OML 2-5 roads.

Table 21. Breakdown of road miles by operation maintenance level and alternatives, and a comparison of the change of total open road miles (OML 2-5 roads) by alternative (MPA = modified proposed action)

Operation Maintenance Level (OML)	Alt. B (No Action)	Alt. C	Alt. D	Alt. E	Alt. F (MPA)	Alt. G
Decommissioned	642	638	638	638	638	638
1	527	702	1,821	2,383	1,506	1,527
2	4,196	4,037	2,917	2,351	3,231	3,210
3	262	262	262	262	262	262
4	131	131	131	131	131	131
5	24	24	24	24	24	24
Total OML 2-5 Miles¹	4,613	4,453	3,333	2,767	3,647	3,626
Percent change from alt. B of OML 2-5 roads		-4%	-28%	-40%	-21%	-21%

¹The total OML 2-5 miles includes 9 miles of roads under Gila National Forest management that are outside the forest boundary.

Table 21 clearly equates the agency's „best estimate“ of where people are driving (4,604 miles) with only the OML 2-5 roads (4,604 miles). It specifically excludes the 1,169 miles of OML 1 and decommissioned roads, and an undisclosed amount of unauthorized roads and other trails. The agency then contradicts itself by identifying the public driving on the closed and decommissioned roads and unauthorized routes throughout the DEIS.

ML1 roads and decommissioned roads:

“Reopening roads: Reopening of roads includes both closed and decommissioned roads. Due to the forest being open to cross-country motorized travel, unauthorized motorized use has led to their continuous use. Most do not need any work to allow passage except for NFS Road 3050 (0.2

²⁰³ DEIS, Table 21, p.48

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 *mile) where existing berms would be removed or reworked to allow passage and maintain*
2 *drainage features.*²⁰⁴
3

4 —*Hunters are user groups that specifically benefit from closed and decommissioned roads since*
5 *they allow for easier cross-country access to more remote areas of the forest from the open road*
6 *system for hunting and big game retrieval.*²⁰⁵
7

8 Unauthorized routes:

9
10 —*Some unauthorized routes have become established on remnant logging roads or other formerly*
11 *managed roads that are no longer part of the National Forest System, but were never obliterated*
12 *and remain on the landscape. Some routes have developed as a result of firewood harvest, while*
13 *others have developed through recurring use.*²⁰⁶
14

15 —*In most instances, this cross-country travel is for connecting existing routes or for access to*
16 *points of interest.*²⁰⁷
17

18 —*An undetermined number of unauthorized routes exist which are not included in any current*
19 *inventory.*²⁰⁸
20

21 —*The amount of unauthorized routes is difficult to measure accurately.*²⁰⁹
22

23 The agency may not have information on all of the unauthorized routes. But they did
24 collect information about them from the public:²¹⁰
25

26 —*Since 2006, the database for roads and motorized trails (INFRA) has been updated using*
27 *information received from the public, field verification, and database corrections.*²¹¹
28

29 The agency has failed to disclose any of the information they do possess about the
30 mileage or location of the unauthorized routes in the DEIS.
31

32 The DEIS also claims that there are only 16 miles of trail receiving motorized use. This
33 is contradicted elsewhere in the DEIS²¹¹:
34

35 —*There are 1,577 miles of trail opportunities on the forest, with 59 percent of these trails located*
36 *within wilderness areas. There are currently few prohibitions on motorized use of the single-track*
37 *system in the general forest area; however, evidence of motorized use of single-track trails is*
38 *limited.*²¹¹
39

204 DEIS, p. 14

205 DEIS, p. 51

206 DEIS, p. 53

207 DEIS, p. 53

208 DEIS, p. 84

209 DEIS, p. 222

210 DEIS, p. 4

211 DEIS, p. 50

1 You will note that the agency uses the phrase, “evidence of motorized use of single-
 2 track trails is limited.” The agency clearly avoids saying that the use is “absent” or “not
 3 allowed.”

4
 5 Then, with the baseline condition and its subsequent analysis of impacts containing only
 6 4,604 miles of road and 16 miles of trail, the agency turns around and proposes adding
 7 significant amounts of mileage to the motorized route system from OML 1 roads,
 8 decommissioned roads, unauthorized routes, and existing system trails as summarized
 9 in the DEIS in Tables 5, 7, and 8 on pages 24-26:
 10

Table 5. Changes to road system in miles

Features of the Alternatives	Alt. B*	Alt. C	Alt. D	Alt. E	Alt. F*	Alt. G
Add unauthorized routes to NFS roads open to all vehicle types	0	8	6	2	6	6
Reopen NFS maintenance level 1 closed or decommissioned roads to all vehicle types	0	4	1	1	1	1

11
 12

Table 7. Road and trail miles for use as “periodic administrative use” or “by written authorization only”

Features of the Alternatives	Alt. B*	Alt. C	Alt. D	Alt. E	Alt. F*	Alt. G
Change open NFS roads	0	170	337	423	286	286
Reopen closed or decommissioned NFS roads	0	5	5	5	5	5
Add unauthorized routes	0	4	5	5	3	3
Total road miles	0	179	341	433	294	294
Change open NFS roads to ATV only	0	2	4	3	2	2
Change open NFS motorized trail	0	0	1	1	0	0
Add unauthorized routes to NFS motorized trail system	0	2	2	2	2	2
Total motorized trail miles	0	4	7	6	4	4

13 * Alternative B = no action, Alternative F = modified proposed action

1

Table 8. Changes to motorized trails in miles

Features of the Alternatives	Alt. B*	Alt. C	Alt. D	Alt. E	Alt. F*	Alt. G
Add unauthorized routes as NFS trails and designate for motorized vehicles less than 50 inches in width	0	61	34	0	53	51
Convert NFS closed or decommissioned roads to NFS trails for motorized vehicles less than 50 inches in width	0	30	15	0	23	23
Convert open NFS roads to NFS trails for motorized vehicles less than 50 inches in width	0	35	67	0	90	92
Shared use of NFS horse and foot trail by motorcycles (single track)	0	51	0	0	0	0
Add unauthorized routes as NFS trails and designate for motorcycles (single track)	0	13	0	0	0	0
Close open NFS motorized trails to motorized use	0	1	7	15	1	1

* Alternative B = no action, Alternative F = modified proposed action

2
3 It is important to note that these suggested designations of closed, decommissioned,
4 and unauthorized routes, and system trail are not limited to „open to public“. There is
5 also significant mileage being proposed for designation as open to administrative use.

6
7 The lack of disclosure on the analysis methodology and its results leaves some gaping
8 holes in the route designation logic and leaves important questions unanswered. The
9 DEIS does not provide any list or map of the closed roads, decommissioned roads,
10 unauthorized routes, or system trail segments which it considered designating or how
11 the determination was made. It is not disclosed why these particular and specific miles
12 of route were chosen to be considered for designation in some of the alternatives and
13 not in other alternatives. Clearly some of the decisions on what routes will be
14 considered had already been made. The DEIS states²¹²:

15
16 *Because the Gila National Forest allows motorized cross-country travel, most proposed routes,*
17 *even though unauthorized, are currently being used.*

18
19 It was not disclosed what other route segments were considered and rejected for
20 consideration for designation. It was not disclosed what methodology or criteria were
21 used in these determinations. All that is provided to the decision maker and the public
22 are the results: specific segments of closed roads, decommissioned roads,
23 unauthorized routes, and system trails appearing in the matrices and maps of specific

²¹² DEIS, p. 185

1 alternatives. All that is disclosed is the output of the process. CEQ requires that the
2 agency disclose the methodologies used²¹³.
3

4 In addition to not disclosing the analysis process or methodology used to select these
5 routes segments, the agency has also explicitly admitted the no action alternative truly
6 does not include a “*best estimate of where people are driving now.*” The no action
7 Alternative should include everything appearing in the action alternatives unless the
8 route segment considered is presented as one that has never before been driven. That
9 is clearly not the case. There is no logical or rational way to claim a route can be
10 included in an action alternative and legitimately excluded from Alternative B.
11

12 If a portion of a category or subset of routes (e.g. OML-1 routes) qualifies as a „pool of
13 candidates“ for potential route designations, and the agency selected some „candidate“
14 routes and rejects others, the agency needs to disclose how they selected from the
15 pool. And if all the criteria discussed in Affected Environment and Cumulative Effects
16 applies to all of these candidate routes, why is the larger pool not included in the no
17 action alternative?
18

19 To restate this issue: The agency is trying to „have it both ways“. The No Action
20 alternative should include all the roads the agency admits the public is using (it has
21 declared that its methodology for the no action alternative is “*where people are driving*
22 *now*”). This would also extend to the system trails, which the DEIS admits exist, admits
23 are legal to use, admits ARE being used....but then refused to include in Alternative B.
24 A large number of routes, which evidently qualify to be analyzed for inclusion in the
25 action alternatives under the agency’s own criteria, do not appear in the no action
26 alternative. Other similar routes were eliminated from consideration for designation
27 under some undisclosed process using an undisclosed set of criteria and no reasons
28 are disclosed for their elimination.
29

30 Each action alternative should be a „subset“ of the no action alternative unless they
31 include a completely „virgin“ route (and the DEIS proposes no virgin routes). Yet routes
32 were considered and subsequently included in action alternatives for possible
33 designation which don’t appear in the no action alternative.
34

35 The no action alternative is obviously the result of earlier decisions applied to a larger
36 set of routes which should have constituted the unadulterated no action alternative. The
37 no action alternative obviously does not include everything that actually was identified
38 as being driven on and subsequently considered for designation. There are two specific
39 violations here:
40

- 41 1. The agency applied a decision to filter the routes included in the no action
42 alternative.

²¹³ 40 CFR 1502.24

Appeal of the Record of Decision for Travel Management on the Gila National Forest

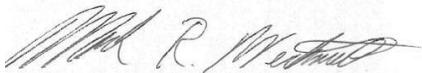
- 1 2. The agency applied a decision process and a set of criteria that are not
2 disclosed.
3

4 The DEIS is offering options that have not been properly analyzed and disclosed to the
5 public. These options are the result of undisclosed decisions or decisions made prior to
6 and outside the NEPA analysis process.
7

8 **RESOLUTION:** Unfortunately, the errors identified are so deeply embedded and so
9 fundamental to the questions considered by this project that they preclude meaningful
10 analysis of the DEIS. The first step in resolving the issues with the current DEIS is to
11 formulate an accurate no action alternative. If the agency chooses to only include those
12 closed/decommissioned/unauthorized routes and system trails that it considers for
13 designation in the action alternatives, it must also disclose the analysis method and
14 criteria used to select those routes from the larger pool of
15 closed/decommissioned/unauthorized routes and system trails. Once the DEIS has
16 been corrected, the Environmental Consequences analysis will need to be re-applied to
17 all of the alternatives and conclusions presented. Then, and only then, will the decision
18 maker and the public have a CEQ-compliant DEIS to review and consider for a
19 decision.
20

21 Thank you for the opportunity to comment.
22

23 Sincerely,

24 

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38 On behalf of:

39
40 Mogollon Apache Gila (MAG) Riders
41 Jo Anne Blount
42 POB 165
43 Glenwood, NM 88039
44

Appeal of the Record of Decision for Travel Management on the Gila National Forest

- 1 Gila Roads and Trails Alliance (GRATA)
- 2 James T. Baruch
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Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-30 (Werkmeister Comment 28 – No Specific User or Use Data
2 Disclosed)

3
4
5 March 2, 2011

6
7 Forest Supervisor
8 Attn: Travel Management
9 3005 E. Camino del Bosque
10 Silver City, NM 88061

11
12 Dear Responsible Official,

13
14 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
15 (NMOHVA) and am representing that organization and the undersigned organizations in
16 providing these comments on the Draft Environmental Impact Statement for Travel
17 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
18 organizations represent motorized recreationists in New Mexico including 4WD
19 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
20 in this DEIS provides important recreational resources to the members of the public we
21 represent.

22
23 We appreciate the opportunity to comment on the DEIS and take the responsibility of
24 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
25 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
26 Rule (TMR) with the utmost seriousness.

27
28 **ERROR:** The agency fails to disclose specific user and use data in the Environmental
29 Consequences section of the DEIS.

30
31 **DISCUSSION:** In reviewing the DEIS's Environmental Consequences section of the
32 DEIS, the only recreational use data referenced is the National Visitor Use Monitoring
33 (NVUM). It is listed as a data source in the Social and Economic section²¹⁴. It states:

34
35 *—These data sources are used to inform existing conditions, trends, and anticipated impacts from
36 the alternatives.*

37
38 Based on the context and location of the above statement, it is clear that the NVUM
39 data use was limited to the Social and Economic section of the Environmental
40 Consequences. This is corroborated by the fact that the Social and Economic specialist
41 report is the only specialist report that references NVUM data.

42

²¹⁴ DEIS, p. 247

1 The analysis of Environmental Consequences is chock full of specific instances where
2 the agency makes quantitative statements based on the amount of use, frequency of
3 use, and patterns in use to predict an outcome in the changes of that use. Here are
4 some examples:

5
6 —*This alternative affords the greatest opportunity for motorized dispersed camping and benefits
7 those who use motor vehicles to access a camping spot that provides the desired level of privacy
8 and solitude.*²¹⁵

9
10 —*People who rely on the comfort and convenience of their motor vehicle, but still seek privacy or
11 added safety gained by parking off the roadway, will be most affected by this alternative.*²¹⁶

12
13 —*This could result in a concentration of use at desired camping areas within designated
14 corridors, which could lead to user conflicts.*²¹⁷

15
16 How does the agency quantify „the desired level of privacy and solitude“? The agency
17 has not even disclosed the data on the current level of motorized dispersed camping or
18 the pattern of that camping, let alone a quantifiable measure of desire for privacy and
19 solitude. How far off of the road does a user need to camp for „added safety“? What is
20 the relationship between dispersal and safety? What metric measures the „desirability“
21 of various camping areas? Number of times it gets used in a season? Percent of time
22 the area is occupied? Again, the DEIS makes no quantifiable disclosure on dispersed
23 camping use: frequency, density, or intensity. How does the decision maker and the
24 public know that the summary comparisons made and conclusions drawn by the agency
25 are rational and supported by the facts?

26
27 Here are some example statements about the availability of „solitude“:

28
29 —*Without restrictions on how far one can travel off the roadway for these purposes, there exists
30 the potential for conflict between hunters who prefer solitude and an uninterrupted experience,
31 and those for which the assistance and convenience afforded by motor vehicles is of more
32 value.*²¹⁸

33
34 *Equally, using developed campgrounds does not provide for the privacy and solitude important to
35 many motorized dispersed campers.*²¹⁹

36
37 —*In some nonmotorized users, such contact is not an issue, but for those seeking solitude for a
38 variety of reasons (i.e., hunting, wildlife viewing, etc.) it can be. As a result, such user conflict is
39 expected to increase over time under alternative B.*²²⁰

215 EIS, p. 61

216 EIS, p. 62

217 EIS, p. 62

218 EIS, p. 63

219 EIS, p. 62

220 EIS, p. 66

1 The agency has not disclosed the metrics for „solitude“ or what pattern of use would
2 provide „solitude“. How many users per square mile provide solitude for the average
3 user? What is the „zone of disturbance“ for the species we call a „camper“? What
4 acreage does the average user consider is necessary for solitude? Remember, these
5 statements on solitude are in the „analytic“ conclusions the agency is drawing from
6 alternative comparisons. These statements form the basis of the decision maker’s
7 weighing of resource impacts versus value to the human environment. It is important
8 „solitude“ is adequately defined and backed by data if it is presented as a summary
9 statement.

10
11 The metrics for „conflict“ are also not disclosed in spite of numerous uses of the term as
12 the basis for summary statements:

13
14 *—User conflict could increase, however, among motorized users of different vehicle classes*
15 *sharing the same roads.”²²¹*

16
17 *—This could result in a concentration of use at desired camping areas within designated*
18 *corridors, which could lead to user conflicts.”²²²*

19
20 *—User conflict in general is expected to be minimal as the public will still have the ability to*
21 *disperse along the 2,331.8 miles of roads open to the public under alternative E.”²²³*

22
23 User conflict plays heavily in the agency’s conclusions as they compare alternatives.
24 But the agency fails to disclose the metrics that constitute „conflict“, provide any
25 quantifiable date, or even reveal any anecdotal data concerning conflict. We repeat: A
26 solid quantitative definition of „conflict“ is important as the agency relies so heavily on
27 „conflict“ to define differences among the choices in alternatives. The term is used no
28 less than eight times in the Summary Table 16 in Chapter 2. The decision maker and
29 the public need to clearly understand the basis of comparison for „conflict“ if the
30 agency’s conclusions are to have any rational or coherent connection to the analysis.
31 The conclusions must be drawn or inferred from a logical relationship to the data and
32 analysis presented as the conclusions have an influence on the decision maker’s
33 decision.

34
35 The agency makes comments that state a concrete understanding of the spatial and
36 temporal patterns of use:

37
38 *—Of the 375.5 miles of roads and motorized trails currently open within roadless areas, 93*
39 *percent are low volume, maintenance level 2 roads.”²²⁴*

221 DEIS, p. 59

222 DEIS, p. 62

223 DEIS, p. 65

224 DEIS, p. 56

1 „Low volume, maintenance level 2 road“? What does the agency mean by „low volume“?
2 How many users per hour or day or week is „low volume“. How does the agency know
3 the percentage of roads that are „low volume“. The agency quotes a specific
4 percentage (93 percent) of roads as being „low volume“. Does the agency have specific
5 traffic volume data on all of the roads in the roadless areas? Or even any of the roads
6 in the roadless areas? The agency has not disclosed ANY traffic volume data in the
7 DEIS or its underlying documents.

8
9 —*Under this alternative, nonmotorized and motorized places of opportunity overlap (outside of*
10 *designated wilderness and study areas) so users who prefer quieter nonmotorized activities will*
11 *continue to come into contact, with those who are using motorized vehicles.*²²⁵

12
13 —*Therefore, in most cases, ongoing existing uses may proceed with the same intensity with little*
14 *risk of disturbing birds of prey (USFWS 2007) (table 85).*²²⁶

15
16 But the agency discloses no information about the temporal patterns of use or how they
17 classify or measure „intensity“. What is the current intensity of use? What level of use
18 constitutes „ongoing existing“ use? Again, the DEIS and its underlying documents do
19 not include any disclosure of the level or intensity of ongoing, existing use.

20
21 Some of the conclusions about spatial and temporal use patterns are even more
22 important:

23
24 —*User conflicts are not anticipated in the short run, because the 50.6-mile trail section in*
25 *question is considered remote, lightly used, and deemed suitable for motorcycles and*
26 *nonmotorized uses.*²²⁷

27
28 —*User conflict could increase, however, among motorized users of different vehicle classes*
29 *sharing the same roads.*²²⁸

30
31 —*Possible effects of adding motorized trails to the system in any of the action alternatives include*
32 *increased conflicts between nonmotorized and motorized users and decreased capacity for quiet*
33 *recreation opportunities. The dispersed and remote nature of these trails, however, could*
34 *mitigate some of these possible effects.*²²⁹

35
36 Summary conclusions between alternatives about concentrations of use or conflicts with
37 non-motorized users like these are even more significant because these conclusions
38 address one of the „Issues“ that are supposed to be the fundamental foundation of the
39 alternatives:
40

²²⁵ DEIS, p. 66

²²⁶ DEIS, p. 166

²²⁷ DEIS, p. 58

²²⁸ DEIS, p. 59

²²⁹ DEIS, p. 69

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1 —*Motorized routes may lead to conflicts with nonmotorized users or, conversely, the*
2 *concentration of motorized use.*²³⁰
3

4 The agency discloses absolutely no data about frequency or location of motorized use
5 or non-motorized use. How can the agency, the decision maker, or the public critically
6 review this statement?

7
8 How can they? They admit that they have no data (emphasis added)²³¹:
9

10 —*Several unknowns further limit the discussion and analysis. These include lack of data*
11 *regarding traffic numbers and projected increases or decreases in motorized visitors or*
12 *passersby to the forest, limited data and knowledge of current effects to ecosystem resiliency*
13 *within the forest as a result of motorized travel, and limited knowledge of surrounding areas’*
14 *contributions to current and future climate impacts to assess cumulative effects.*”
15

16 More admission of no data (emphasis added)²³²:
17

18 —*Insufficient information exists to accurately estimate changes in recreation use that would*
19 *occur under implementation of the action alternatives analyzed in this report. Changes in road*
20 *miles per alternative are used as a proxy for all changes contained in the alternative. It is not*
21 *possible to incorporate camping corridor information nor is it possible to evaluate big game*
22 *retrieval differences per alternative*”
23

24 While the two previous statements are sourced from the Air Quality section of the DEIS
25 and the Social and Economic specialist report, the same truth holds for the whole DEIS
26 – the agency has not disclosed any use or user information. We will repeat: In the
27 entire DEIS and its underlying documents, the agency discloses not one shred of
28 information about who is using the Forest, where the use is happening, or when that
29 use occurs. Yet the agency freely dispenses conclusions about that use and the
30 impacts of that use between alternatives. There is no logical or rational connection
31 between the lack of data disclosed and the conclusions the agency draws and presents.
32

33 **RESOLUTION:** Disclose the user and use information the agency possess and relies
34 upon in making its conclusions. Disclose the information on which user groups are
35 using what route segments and what patterns of use are occurring. Disclose the
36 information on where dispersed camping is occurring and at what frequency. If the
37 agency does not possess information or data on use and patterns of use, disclose what
38 information was used to form the basis of the comparisons and conclusions in the
39 Environmental Consequences section.
40

41 NMOHVA contends that information on how much recreational use is occurring and
42 where that recreational use is occurring is absolutely relevant in the determination of

²³⁰ DEIS, p. 9

²³¹ DEIS, p. 74

²³² Social and Economic Specialist report, p. 20

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1 reasonably foreseeable significant adverse impacts, is fundamental to making a
2 reasoned choice among the alternatives, and that the cost of obtaining that information
3 is not exorbitant. Therefore the agency must collect, analyze, and disclose that data per
4 CEQ requirements.²³³

5
6 Until that happens, the lack of use information and user information renders this DEIS
7 so inadequate as to preclude meaningful analysis²³⁴. The agency has no choice other
8 than preparing and circulating a revised draft of the document that includes this
9 fundamental data.

10
11 Thank you for the opportunity to comment.

12
13 Sincerely,

14 

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35 Gila Roads and Trails Alliance (GRATA)
36 James T. Baruch
37 POB 17
38 Mimbres, NM 88049

39
40 Gila Trail Riders Association (GRTA)
41 Grant Gose

²³³ 40 CFR 1502.22

²³⁴ 40 CFR 1502.9

Appeal of the Record of Decision for Travel Management on the Gila National Forest

- 1 2205 Johnson Rd.
- 2 Silver City, NM 88061

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-31 (Werkmeister Comment 29 – Maps are Not the Appropriate
2 Graphic)

3
4 March 2, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

10
11 **Dear Responsible Official,**

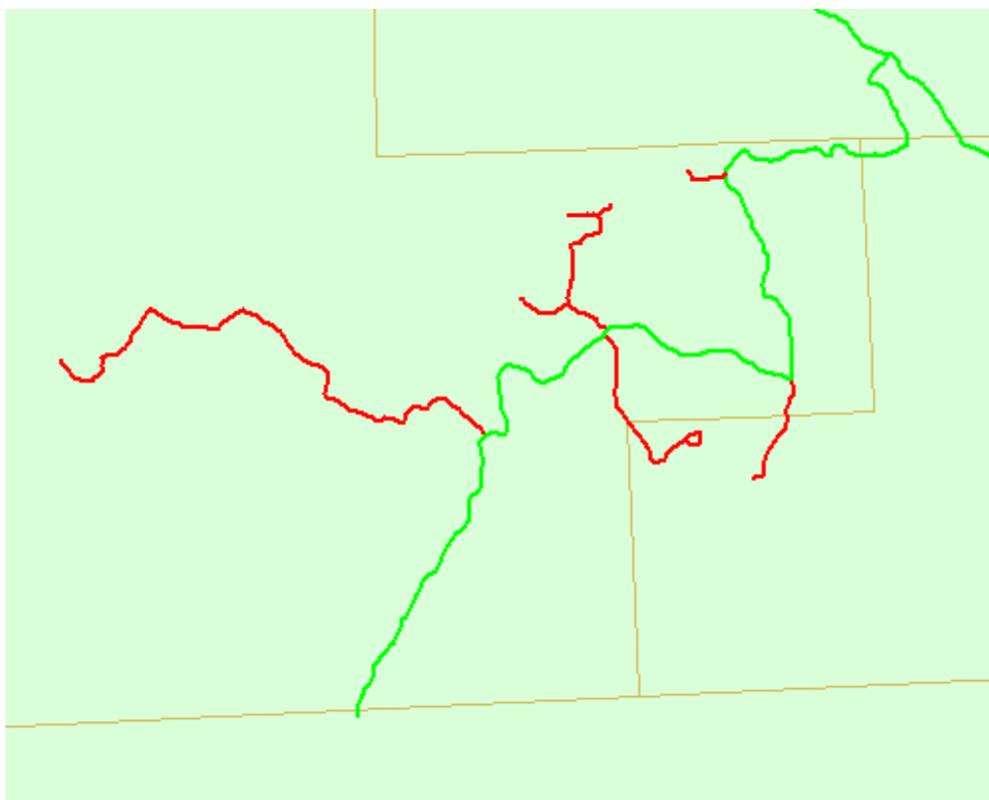
12
13 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
14 (NMOHVA) and am representing that organization and the undersigned organizations in
15 providing these comments on the Draft Environmental Impact Statement for Travel
16 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
17 organizations represent motorized recreationists in New Mexico including 4WD
18 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
19 in this DEIS provides important recreational resources to the members of the public we
20 represent.

21
22 We appreciate the opportunity to comment on the DEIS and take the responsibility of
23 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
24 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
25 Rule (TMR) with the utmost seriousness.

26
27 **ERROR:** The maps issued with the DEIS are not detailed enough or accurate enough
28 to disclose what is being designated or why. As the agency has not furnished any full
29 list or matrix showing the road segments affected by the proposed action, the public is
30 forced to rely solely on the maps to determine what routes are being closed and what
31 routes are being left open. The maps fail to provide the decision maker or the public
32 with enough relevant information to make rational, informed decisions on the proposed
33 action and its alternatives.

34
35 **DISCUSSION:** The agency has not supplied any listing or matrix of the routes
36 proposed for designation or any route segment specific discussion or analysis as to why
37 the agency is proposing any particular designation. In the absence of detailed lists of
38 the routes, the decision maker and the public must rely solely on the maps issued with
39 the DEIS.

40
41 Here is a random example from the Quemado District. The road segments in question
42 are clustered around FSR 4027S. Here is the map furnished with the DEIS for
43 Alternative G:
44



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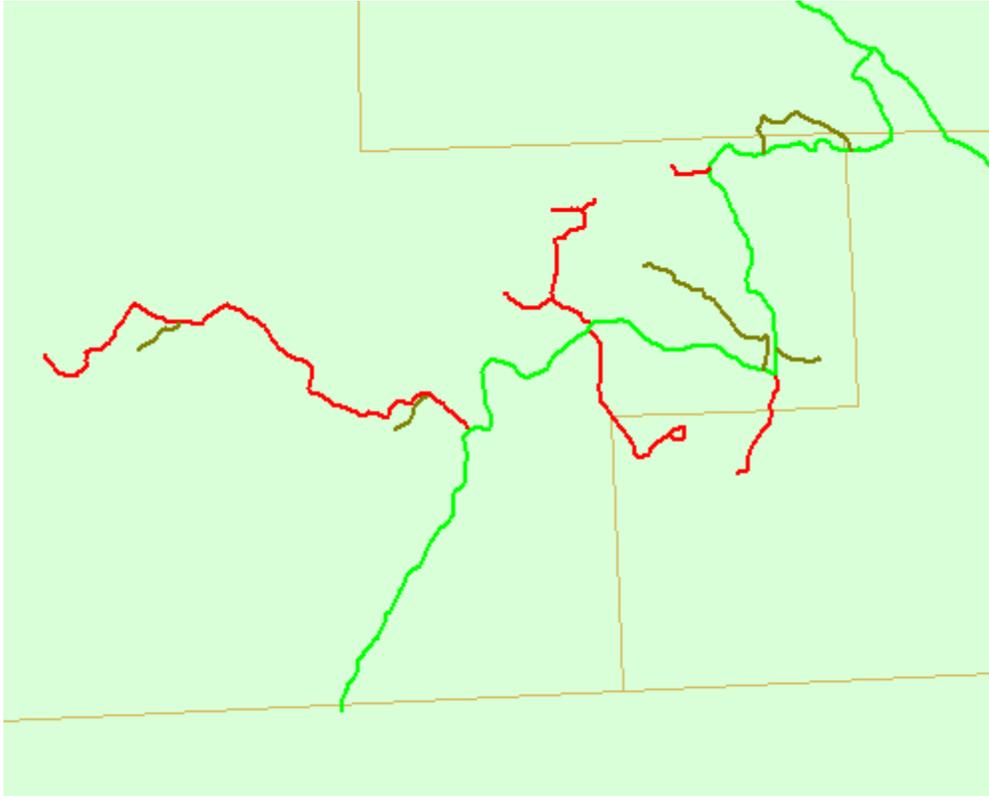
There are actually six additional route segments shown: 4130 L, 4130 O, 4130 P, 4130 Q, 4130 S, and 4130 R. Not all of these routes even show up on the map furnished to the public. The scale and clarity of the map preclude a small segment like 4130 R (only .03 miles long) from being shown. None of these six segments is labeled on the map furnished to the public. The labels are only seen IF the public files a FOIA for the GIS layers, IF the public has access to a GIS program of sufficient capability, IF the public has the technical aptitude to use the GIS program, and IF the public references the route segment to the associated attribute tables. CEQ regulations state that²³⁵:

—Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them.”

NMOHVA asserts that the maps furnished with the DEIS are not „appropriate graphics“. As the agency has not furnished any full list or matrix showing the road segments affected by the proposed action, the public is forced to rely solely on the maps to determine what routes are being closed and what routes are being left open. We further assert that relying on the public to be GIS-savvy enough to coax the appropriate detail from FOIA-obtained GIS data is NOT a reasonable expectation.

²³⁵ 40 CFR 1502.8

1 NMOHVA contends that the necessary detail for a meaningful review by the public is
2 lacking on the maps furnished to the public. In addition to the missing route segments
3 and appropriate route labeling, the public is not seeing the true baseline condition. In
4 addition to the (red) routes shown designated as closed, there are additional OML 1 and
5 decommissioned roads in the area.
6



7
8
9 This more complete view of what is actually currently exists on the ground (remember,
10 OML 1 and decommissioned roads are legally open to the public under an „open“ forest)
11 adds five more route segments (4130 K, 4130 N, 4130 M, 4130 U, and 4130 T).
12

13 To review:

14
15 The map provided to the general public: Four route segments, portions of two
16 others, only two route segments labeled, and no route segment mileages.
17

18 The map that the agency uses to make designation decisions: Twelve route
19 segments, twelve labels, and mileages for all twelve segments.
20

21 This specific example is not an isolated or unique situation. We have reviewed
22 numerous other affected areas across the forest and found the same level of detail
23 missing. The public doesn't have the „appropriate graphics“ in the form of a map with
24 enough detail to see what the agency is closing and leaving open. It also doesn't have

1 enough information on WHY the agency is choosing to leave some route segments
2 open and closing others.

3
4 These few little route segments in the example above may seem trivial but let's consider
5 the real math of this project. The route segments in the example total just under 3.5
6 miles. The area shown in the example is about 1750 acres. If you use the same
7 proportion of mileage and acres across the 2.4 million acres of this project the decision
8 maker and the public are supposed to review, that is around 4800 miles of route
9 segments. The devil IS in the details! Most of the mileage affected by this proposed
10 action is thousands of individual route segments spread across 2.4 million acres. Each
11 of the segments could be very important to some portion of the public. A route segment
12 may appear to be a short road to a dead-end but that dead-end might be the traditional
13 campsite used by a hunt party or a family for generations.

14
15 During scoping, the public was asked to identify individual routes and places that were
16 important to them. Now the public has to rely solely on this set of maps to determine if
17 their favorite route is still open or if their special place can still be accessed by vehicle.
18 The agency has provided the general public NO OTHER MEANS, other than these
19 maps, to review what will be open or closed under each of the alternatives. How is the
20 public to successfully review the maps and make substantive comments when not all of
21 the routes are even shown and many of the routes don't even have labels?

22
23 Simply put, the public cannot. The current set of maps is not the „appropriate graphic“
24 that the CEQ requires. The current set of maps precludes meaningful analysis and
25 review of the project by the public. The purpose and need for this project is to
26 „designate a system of roads, trails, and areas for vehicle use by vehicle class“. We
27 assert that for the public to make meaningful review of the project, it is absolutely
28 essential that they be able to identify each and every route segment affected by this
29 project. The agency has not presented a document that makes this possible or feasible
30 for members of the general public.

31
32 **RESOLUTION:** Provide the graphical representations of this project in a fashion that is
33 accurate enough and detailed enough that the public can make a meaningful review of
34 the project. If the agency decides that it lacks the means to do adequate graphical
35 representations or that this approach does not convey the information effectively,
36 provide the detailed segment by segment route lists that convey this information
37 effectively to the public.

38
39 This project is about the designation of routes. The segment by segment route
40 designations are absolutely the fundamental elements of this project. Without the
41 means to review and comment on these fundamental elements, the decision maker and
42 the public do not have the information they need to provide a meaningful review of the

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 proposed action and its alternatives. If, and only if, the decision maker and the public
2 have this information to review can a rational and defensible decision be made.

3
4 Thank you for the opportunity to comment.

5
6 Sincerely,

7 

8 Mark Werkmeister, PE
9 NMOHVA Board of Directors
10 1700 Willow Road NE
11 Rio Rancho, NM 87144
12 505-891-0296
13 mark.r.werkmeister@intel.com
14

15 Temporary Address through 3/23/11:
16 Apt. 1704, Shama Luxe, 128 Jinma Rd.
17 Dalian Development Zone, People's Republic of China
18 Email: mark.r.werkmeister@intel.com
19 Telephone: 138 4260 2510
20

21 On behalf of:

22
23 Mogollon Apache Gila (MAG) Riders
24 Jo Anne Blount
25 POB 165
26 Glenwood, NM 88039
27

28 Gila Roads and Trails Alliance (GRATA)
29 James T. Baruch
30 POB 17
31 Mimbres, NM 88049
32

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34 Grant Gose
35 2205 Johnson Rd.
36 Silver City, NM 88061
37

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-32 (Werkmeister Comment 30 – No Decision Rationale for
2 Route Segments)

3
4 March 2, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

10
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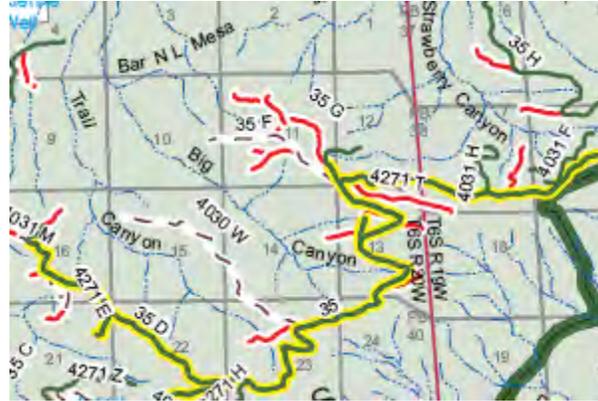
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18 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
19 in this DEIS provides important recreational resources to the members of the public we
20 represent.

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22 We appreciate the opportunity to comment on the DEIS and take the responsibility of
23 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
24 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
25 Rule (TMR) with the utmost seriousness.

26
27 **ERROR:** The agency has not disclosed any information on the fundamental element of
28 this project. The route segment specific rationale on why routes are being designated
29 open or closed in the alternatives is essential to a meaningful review by the public and a
30 rational and defensible decision by the decision maker. The agency has failed to
31 disclose the essential and fundamental information needed for a meaningful review or
32 route designation.

33
34 **DISCUSSION:** The public doesn't have enough information on WHY the agency is
35 choosing to leave some route segments open and closing others. Let's look at a
36 specific example area in Quemado Ranger District. This particular cluster of roads is off
37 of FSR 35. We did not choose it for any particular reason other than it appeared to be a
38 typical example of this issue. This is what it looks like in the Alternative G map furnished
39 to the public:

Appeal of the Record of Decision for Travel Management on the Gila National Forest



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In addition to not seeing very clearly what route segments are still open and which will be closed, the public is given no information to review on WHY each particular route segment is being proposed as open or closed in this alternative. As we have stated numerous times, the agency has not provided any list or matrix that gives any analysis or conclusions associated with each route segment. The only „list“ in the DEIS, its underlying documents, or referenced documents is Appendix L in the TAP. Some of these route segments in the chosen example area are listed in Appendix L so we compared the information given there with the information from the GIS attribute layer for Alternative G. The comparison turns up numerous discrepancies and unanswered questions. Here is the list from the TAP, Appendix L for this area:

Appeal of the Record of Decision for Travel Management on the Gila National Forest

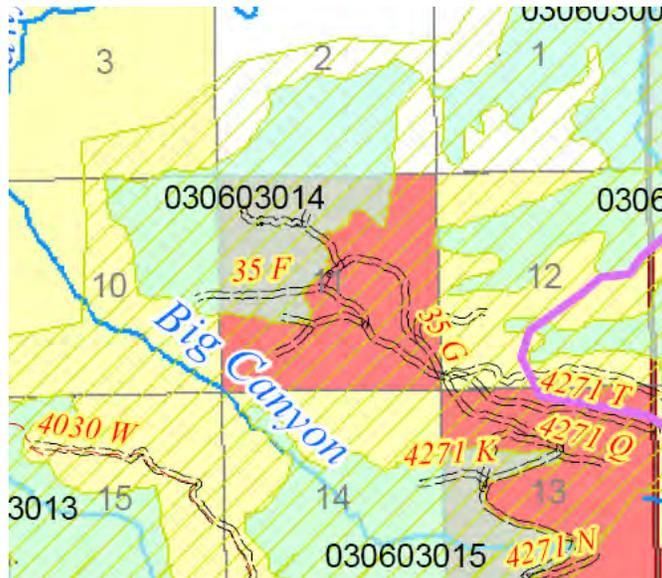
ROAD #	BEGINNING LE POST	ENDING MILE IT	SEGMENT LENG	PROPOSA	PROPOSAL NOTES	MOTORIZED DISPERSED CAMPING YES/NO	MOTORIZED DISPERSED CAMPING NOTES	COARSE FILTER - ORITY 1	COARSE FILTER - ORITY 2	DISTRICT
35 F	0.0	0.0	0.0	M	access route to rock pit	YES - DISPERSED CAMPING ALLOWED				QUE - QUEMADO
35 G	0.0	0.2	0.2	M	access route to rock pit	YES - DISPERSED CAMPING ALLOWED				QUE - QUEMADO
35 G	0.2	1.0	0.8	NM	Leads to PAC	NO - NO DISPERSED CAMPING				QUE - QUEMADO
4030 Q	0.0	0.4	0.4	CLOSED		N/A - NOT APPLICABLE				QUE - QUEMADO
4030 R	0.0	0.3	0.3	NM	Short segment; leads to and within PAC, CBD concern	NO - NO DISPERSED CAMPING				QUE - QUEMADO
4030 S	0.0	0.3	0.3	NM	Within PAC, CBD concern	NO - NO DISPERSED CAMPING				QUE - QUEMADO
4030 T	0.0	0.5	0.5	NM	Leads to, adjacent to PAC, CBD concern	NO - NO DISPERSED CAMPING				QUE - QUEMADO
4030 U	0.4	1.0	0.5	CLOSED		N/A - NOT APPLICABLE				QUE - QUEMADO
4030 U	0.0	0.4	0.4	M	Leads to rock pit	NO - NO DISPERSED CAMPING				QUE - QUEMADO
4030 V	0.0	0.5	0.5	CLOSED		N/A - NOT APPLICABLE				QUE - QUEMADO
4136 I	0.0	0.3	0.3	NM	Parallel rte, duplicate destination	NO - NO DISPERSED CAMPING				QUE - QUEMADO
4271 K	0.0	0.3	0.3	NM	No destination, within owl PAC, CBD concern	NO - NO DISPERSED CAMPING	within owl PAC			QUE - QUEMADO
4271 L	0.0	0.2	0.2	M	Follows fence line and leads to tank	YES - DISPERSED CAMPING ALLOWED				QUE - QUEMADO
4271 M	0.0	0.2	0.2	NM	Leads to /within owl PAC, CBD concern	NO - NO DISPERSED CAMPING	within owl PAC			QUE - QUEMADO
4271 Q	0.0	0.2	0.2	NM	Within roadless, CBD concern	NO - NO DISPERSED CAMPING				QUE - QUEMADO
4271 R	0.0	0.5	0.5	CLOSED		N/A - NOT APPLICABLE				QUE - QUEMADO
4271 T	0.0	1.1	1.1	NM	Parallels 35 road	NO - NO DISPERSED CAMPING				QUE - QUEMADO

1
2
3 Reviewing these route segments line by line:

- 4 • 35 F – According to the TAP Appendix L, this segment is proposed to be „Open“
5 with a segment length of 0.0 miles. Alternative G has it „Closed“ with a segment
6 length of 1.3 miles. This is a major discrepancy between the two information
7 sources.
- 8 • 35 G – according to the TAP Appendix L, this segment (two pieces) is proposed
9 to be „Closed“ (due to a PAC?) with a segment length of 1.0. Alternative G has it
10 „Open“ with a length of 0.19 miles This is a major discrepancy between the two
11 information sources.
- 12 • 4030 Q – According to the TAP, this segment is 0.4 miles long and is an OML 1
13 road. Alternative G shows an OML 1 road with a length of 0.39 miles. There is
14 agreement between the two information sources.
- 15 • 4030 R – According to the TAP Appendix L, this segment is 0.3 miles long, a
16 „CBD concern“, and leads into a MSO PAC. Alternative G shows the same
17 segment length and status but shows no information on PAC locations. For that,
18 the public has to:

Appeal of the Record of Decision for Travel Management on the Gila National Forest

- 1) Know enough to go to the Gila Travel Management website,
- 2) Click on the *Gila Travel Analysis Process Report and Appendices*,
- 3) Scroll through the many maps available,
- 4) Click on the *Appendix J - Reserve Section Density* map (the name certainly doesn't give any clues that the maps also shows MSO PAC boundaries)
- 5) Try to find route segment 4030 R. They will need a lot of diligence and luck to find it as the label for that route doesn't show up. The only way to find it is to use the FOIA-obtained GIS information to locate it and then find it on the TAP Appendix J map by comparing and identifying other nearby features. If they find it, they will see that route segment 4030 R does indeed lead into MSO PAC 030603014.



14
15
16 Since the agency has not disclosed any authoritative list of route segments and
17 rationale for closure, the decision maker and public are left to wonder if the route has
18 been closed to due to its entry into the PAC (although many other roads, including
19 paved highways, penetrate PAC's without being cause for closure), due to the „concern“
20 voiced by the Center for Biological Diversity, or some other reason. Since the DEIS is
21 silent on the decision rationale, the public is left without any definitive information to
22 review and on which to comment. NMOHVA asserts most strongly that this DOES NOT
23 MEET CEQ requirements for “*Environmental impact statements shall be written in plain
24 language and may use appropriate graphics so that decisionmakers and the public can
25 readily understand them.*”
26

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 The information on individual route segments is so scattered, so buried and so
2 tenuously linked that there is no way the agency can reasonable expect the public to
3 find, read, and understand the segment information. In fact, the public isn't even told
4 the information exists. NMOHVA finds it because we are experienced with agency
5 documents, technically capable of GIS use, tenacious at digging into the maps, dogged
6 at ferreting out the hidden information, and resolute at uncovering the truth!

7
8 Back to the line by line review:
9

- 10 • 4030 S – According to the TAP Appendix L, the route segment is 0.3 miles long
11 and closed due to PAC and CBD concerns. The Alternative G GIS information
12 agrees with the length and shows it closed but discloses no reasons.
- 13 • 4030 T – According to the TAP Appendix L, the route segment is half a mile long
14 and closed due to CBD concerns and adjacency to a PAC. The Alternative G
15 GIS agrees with the length and shows the route as closed. It does not disclose a
16 reason so the no one knows whether the claimed „adjacency“ to PAC is the driver
17 for the closure or if it is some other reason. The GIS layer also shows that
18 closing this segment effectively closes another 0.15 mile segment, 4271 M, as
19 there would be no remaining access.
- 20 • 4030 U – This last 0.5 miles of this segment is shown as „n/a“ by the TAP
21 Appendix L as it is an OML 1 road. The Alternative G GIS information agrees
22 but shows that closing 4030 U also closes 4030V, another half mile of OML 1
23 road.
- 24 • 4030 V – This half mile segment is shown as „n/a“ by the TAP Appendix L as it is
25 a OML 1 road. As noted above Alternative G GIS information shows that it is „cut
26 off“ by closing 4030 U.
- 27 • 4136 I - According to the TAP Appendix L, the route segment is 0.3 miles long
28 and closed due „duplicate destination“. Alternative G shows that 4136 I forms a
29 LOOP with 4271 L. Loops are important features for OHV recreation but the
30 agency has chosen to specifically eliminate this loop for undisclosed reasons.
31 CBD „concerns“ were captured in Appendix L but evidently motorized user
32 desires for loops were not noted by the agency.
- 33 • 4271 K – According to the TAP Appendix L, the route segment is 0.3 miles long
34 and closed due to „No destination, within owl PAC, CBD concern“. What does
35 the agency mean by „no destination“? The route segment's obvious destination
36 is wherever it went. Routes have recreational value (the routes themselves are
37 the „value“) even if the „destination“ value isn't apparent to the agency. The
38 Alternative G GIS information agrees with the length and status but discloses no
39 reason for closure.
- 40 • 4271 L – This is one of the few route segments that the TAP Appendix L leaves
41 open in the area, evidently due to needed access to a tank. The Appendix G GIS
42 information agrees on the length and status but discloses no information on why
43 this route is being left open.

Appeal of the Record of Decision for Travel Management on the Gila National Forest

- 1 • 4271 M – As noted above, the TAP Appendix L and the Alternative G GIS
2 information agree on the length and status but the TAP doesn't disclose that the
3 closure of 4030 T also effectively closes 4271 M.
4
- 5 • 4271 Q - According to the TAP Appendix L, the route segment is 0.2 miles long
6 and closed due to „Within roadless, CBD concern“. The Alternative G GIS
7 information agrees on the length and status but does not disclose the reason why
8 the segment is being closed. The public is left to wonder if it is due to „CBD
9 concern“ or if it is because it is „within roadless“. If closed specifically because of
10 „within roadless“, the agency has violated the implementation of the roadless rule
11 which specifically allows existing roads to remain (emphasis added)²³⁶:
12

13 —*Under this final rule, management actions that do not require the construction of new roads*
14 *will still be allowed, including activities such as timber harvesting for clearly defined, limited*
15 *purposes, development of valid claims of locatable minerals, grazing of livestock, and off-*
16 *highway vehicle use where specifically permitted. Existing classified roads in inventoried*
17 *roadless areas may be maintained and used for these and other activities as well.*
18

- 19 • 4271 R – According to the TAP Appendix L, the route segment is 0.5 miles long
20 and closed as a OML 1 road. The Alternative G GIS information agrees on
21 length and status but fails to disclose to the public that the road can currently be
22 used for OHV recreation under the „open forest“.
- 23 • 4271 T – According to the TAP Appendix L, the route segment is 1.0 miles long
24 and is closed due to “Parallels 35 road”. A closer examination in the field or even
25 via aerial photography clearly shows that the road parallels FSR 35 but it runs
26 along the top of a ridge where FSR 35 swings out and around the ridge. The
27 segment leads to higher ground with its attendant views or prime campsite
28 overlooking the surrounding countryside.
29



²³⁶ Federal Register / Vol. 66, No. 9 / Friday, January 12, 2001 / Rules and Regulations, p. 3250

1
2 The reason to take the agency through this detailed comparison of route segments in
3 two different documents is to demonstrate that the „devil IS in the details“ and to show
4 why it is imperative that the decision maker and the public have the details on the
5 rationale for each segment being designated open or closed. Without them, they are
6 lacking the most important information associated with this project – the information on
7 the route designations themselves.

8
9 In our review of this one tiny area with about 6.8 miles of roads, we have uncovered:

- 10
11 • Two major discrepancies: 35F and 35G
12 • Major concerns about how the „concerns“ of the Center for Biological Diversity
13 were handled compared to the OHV community“s stated desire for more
14 motorized recreation opportunities.
15 • Unanswered questions about how segment penetration into MSO PAC“s factored
16 into the decision to designate segments open or closed.
17 • Unanswered questions about how segment adjacency to MSO PAC“s factored
18 into the decision to designate segments open or closed.
19 • Major concerns about how the proximity to Inventoried Roadless Areas factored
20 into the decision to designate segments open or closed.
21 • Unanswered questions about how the creation of loops (specifically asked for by
22 the OHV community) factored into the decision to designate segments open or
23 closed.
24 • Unanswered questions about what role „destination“ value played in the decision
25 to designate segments open or closed.
26 • Unanswered questions about the role field verification played in the decision to
27 designate segments open or closed.

28
29 **RESOLUTION:** Provide a list of each route segment affected by this proposed action
30 with the following information for the decision maker and the public to review:

- 31
32 • Length of route
33 • Current status of route and whether the public is currently allowed to use
34 motorized vehicles.
35 • Natural resource concerns identified with the specific route segment
36 • Social and economic resource concerns identified with the specific route
37 segment
38 • Rationale for the agency“s proposed designation for the route segment for each
39 alternative.

40
41 This project is about the designation of routes. The segment by segment route
42 designations are absolutely the fundamental elements of this project. Without the
43 means to review and comment on these fundamental elements, the decision maker and
44 the public do not have the information they need to provide a meaningful review of the

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 proposed action and its alternatives. If, and only if, the decision maker and the public
2 have this information to review can a rational and defensible decision be made.

3

4 Thank you for the opportunity to comment.

5

6 Sincerely,



7

8 Mark Werkmeister, PE

9 NMOHVA Board of Directors

10 1700 Willow Road NE

11 Rio Rancho, NM 87144

12 505-891-0296

13 mark.r.werkmeister@intel.com

14

15 Temporary Address through 3/23/11:

16 Apt. 1704, Shama Luxe, 128 Jinma Rd.

17 Dalian Development Zone, People's Republic of China

18 Email: mark.r.werkmeister@intel.com

19 Telephone: 138 4260 2510

20

21 On behalf of:

22

23 Mogollon Apache Gila (MAG) Riders

24 Jo Anne Blount

25 POB 165

26 Glenwood, NM 88039

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35 2205 Johnson Rd.

36 Silver City, NM 88061

37

Appeal of the Record of Decision for Travel Management on the Gila National Forest

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Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-34 (Werkmeister Comment 32 – Route Designation Give
2 Owner Preference)

3
4 March 2, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

10
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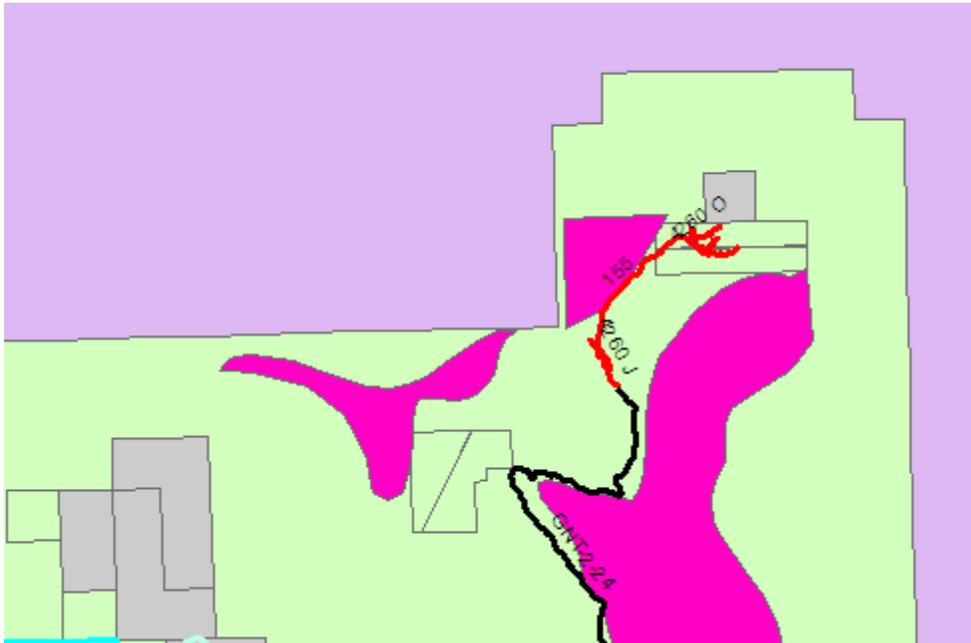
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23 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
24 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
25 Rule (TMR) with the utmost seriousness.

26
27 **ERROR:** The designation of routes leading to private in-holding parcels give
28 preferential treatment to the owner's of the in-holding parcels at the expense of the
29 public.

30
31 **DISCUSSION:** In closely examining the maps via FOIA-obtained layers for the
32 Alternatives and surface ownership, we have uncovered several examples of route
33 designation that give clear preferential treatment to the owners of private in-holdings
34 above those of the general public. In all four of the examples shown below, the no-
35 action alternative shows that routes are currently open to the general motorized public.
36 The agency's preferred alternative closes access to the public and leaves the private in-
37 holder exclusive use of the roads.

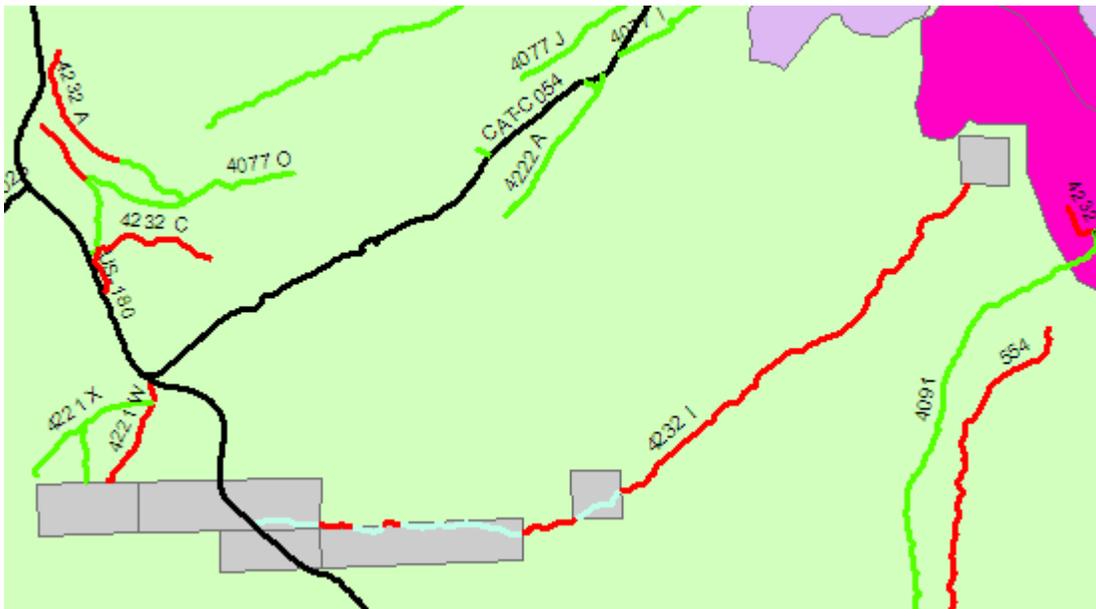
38
39 NMOHVA recognizes the agency's responsibility to provide access for the owners of
40 private in-holding parcels. But NMOHVA can find no responsibility or authority for the
41 agency that requires or allows them to make the owner's the sole users to roads that
42 provide access to in-holdings. Doing so deprives the rest of the motorized public from
43 using those same roads to access the Forest on either side of the route. Some specific
44 examples:

1



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9

Example 1 – FSR 155 is currently open to the public. In the agency’s preferred alternative, the route is proposed to be designated as „SP“ (administrative use or written authorization only). This deprives the public more than a mile of route that accesses the Forest on either side of the route that can be accessed via no other motorized access. It is worth noting that the route is a full access road protected by County status up to the point that the road will be closed to the public.



10
11
12
13
14

Example 2 – FSR 4232 I is currently open to the public. Again, in the agency’s preferred alternative, the route is proposed to be designated as „SP“ (administrative use or written authorization only). This deprives the public of nearly four miles of route that accesses the Forest on either side. This area can be accessed via no other motorized

1 means. The only credible use of the „written authorization only“ is for the owner of the
2 parcel. This gives them exclusive rights to what essentially becomes a four mile long
3 private drive into their own little piece of personal Forest paradise – created and
4 protected by the agency mandated to manage federal lands FOR THE PUBLIC!
5



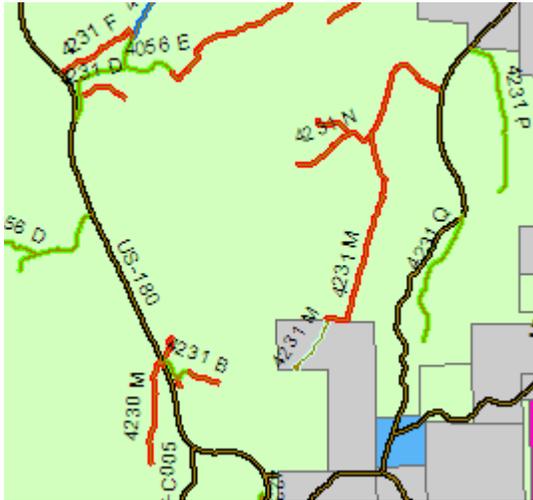
6
7 Example 3 – FSR 196 is currently open to the public all the way to the end of the road.
8 Under the agency’s preferred alternative (Alt G), the public access ends at the edge of
9 the inventoried roadless area and the rest of the road to the private in-holding is
10 proposed as SP. NMOHVA contends that this deprives the general motorized public to
11 motorized access to over a mile of forest on each side of the road.
12

13 The DEIS discloses no other reason for the change from open to closed for the
14 motorized public. We can only conclude that the desires of the parcel owner are being
15 acquiesced to by the agency.
16

17 NMOHVA also contends that it is not coincidental that all three of these situations
18 involve private parcels that are near Wilderness boundaries and in close proximity to or
19 within inventoried roadless areas. As the DEIS is silent on the process used to make
20 the determination of these designations, we are left to wonder if the agency is

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 employing illegal criteria (proximity to wilderness²³⁷, inventoried roadless areas²³⁸) in the
2 analysis.
3



4
5 Example 4 – This example appears to be an error. 4231M is coded as „NM“ rather than
6 „SP“. This would deprive the landowner from access to his property unless he is
7 expected to (or he has requested to) only access it from the south side of the property.
8 In either case, the public has been deprived of 1.7 miles of road from which to enjoy
9 motorized access to the Forest. This particular road is heavily used by local Glenwood
10 residents who enjoy riding out across the mesa to watch the sun set. The DEIS is
11 totally silent on why this route segment has been closed, especially when it appears that
12 there are no resource issues.
13

14 **RESOLUTION:** Disclose the criteria and analysis details that led to the proposal for
15 each SP designation. Restore full public motorized access to those routes that serve as
16 the only access to private parcel in-holdings. Treat all the members of the public
17 equally and fairly.
18

19 Thank you for the opportunity to comment.
20

21 Sincerely,

22 Mark Werkmeister, PE
23 NMOHVA Board of Directors
24 1700 Willow Road NE
25 Rio Rancho, NM 87144
26 505-891-0296
27

²³⁷ PUBLIC LAW 96-550-DEC. 19, 1980, An Act to designate certain National Forest System lands in the State of New Mexico for inclusion in the National Wilderness Preservation System, and for other purposes.

²³⁸ Federal Register / Vol. 70, No. 216 / Wednesday, November 9, 2005 / Rules and Regulations, p. 68282

Appeal of the Record of Decision for Travel Management on the Gila National Forest

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9 On behalf of:

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11 Mogollon Apache Gila (MAG) Riders

12 Jo Anne Blount

13 POB 165

14 Glenwood, NM 88039

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16 Gila Roads and Trails Alliance (GRATA)

17 James T. Baruch

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19 Mimbres, NM 88049

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21 Gila Trail Riders Association (GRTA)

22 Grant Gose

23 2205 Johnson Rd.

24 Silver City, NM 88061

25

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-35 (Werkmeister Comment 33 – Social and Economic Gaps,
2 Conflicts, and Contradictions)

3
4 March 2, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

10
11 **Dear Responsible Official,**

12
13 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
14 (NMOHVA) and am representing that organization and the undersigned organizations in
15 providing these comments on the Draft Environmental Impact Statement for Travel
16 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
17 organizations represent motorized recreationists in New Mexico including 4WD
18 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
19 in this DEIS provides important recreational resources to the members of the public we
20 represent.

21
22 We appreciate the opportunity to comment on the DEIS and take the responsibility of
23 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
24 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
25 Rule (TMR) with the utmost seriousness.

26
27 **ERROR:** The Social and Economic specialist report identifies fundamental gaps in
28 information that render its conclusions flawed. The agency has made no attempt to
29 obtain the necessary data to fill those gaps. The report also identifies conflicts between
30 the results disclosed and the actual situation and fails to address significant issues
31 identified in the DEIS.

32
33 **DISCUSSION:** The Social and Economic report opens its „Methodology of Analysis“
34 section with a stunning admission²³⁹:

35
36 *—Insufficient information exists to accurately estimate changes in recreation use that would occur
37 under implementation of the action alternatives analyzed in this report.”*

38
39 The subsection that contains this remarkable confession is titled „Incomplete and
40 Unavailable Information“. The agency got that part right. They are required to disclose

²³⁹ Social and Economic specialist report, p. 20

1 the lack of information per CEQ requirements²⁴⁰. But the agency fails to comply with
2 the second part of the same CEQ requirement. It is also required to provide²⁴¹:

3
4 —a *statement of the relevance of the incomplete or unavailable information to evaluating*
5 *reasonably foreseeable significant adverse impacts on the human environment;*”
6

7 Even more importantly, they are required to obtain the data if it is “*essential to a*
8 *reasoned choice among alternatives*” and the cost of obtaining it is not exorbitant²⁴².
9 This the agency has not done. The agency identified four significant issues in the
10 DEIS²⁴³ (emphasis added):

11
12 —*The proposed changes to motorized routes, specifically the type, extent, level of use and location*
13 *of motorized routes, may lead to resource, recreation, **social, and economic effects.***
14 *This issue includes the following concerns:*

- 15
16 • *The type, extent, and location of motorized routes **could have social and economic***
17 *effects by impacting tourism, traditional uses, and other recreational pursuits, both*
18 *motorized and nonmotorized.*

19
20 *The proposed change to motorized dispersed camping to limit it to proposed designated corridors*
21 *and areas may lead to resource, recreation, **social, and economic effects.***

22
23 *The proposed change to motorized big game retrieval may lead to resource, recreation, **social,***
24 ***and economic effects.***

- 25
26 • *Restricting motorized big game retrieval may have adverse effects on the **tourism and***
27 ***related employment of local communities.***

28
29 *The proposed change to designated areas specifically for OHV activities may lead to resource,*
30 *recreation, **social, and economic effects.**”*
31

32 All four of these significant issues contain important elements related to the social and
33 economic well-being of the affected local communities. Accurate economic data and
34 the subsequent conclusions are obviously essential to a reasoned choice among
35 alternatives.
36

37 The agency said that they didn’t have the information necessary to accurately estimate
38 changes in recreation use. The Social and Economic report simply states that since it
39 can’t provide the recreation use information needed to obtain accurate economic
40 information, it will use road mileage as a proxy for ALL CHANGES instead²⁴⁴.
41

²⁴⁰ 40 CFR 1502.22

²⁴¹ 40 CFR 1502.22(b)(2)

²⁴² 40 CFR 1502.22(a)

²⁴³ DEIS, p. 9

²⁴⁴ Social and Economic specialist report, p. 20

1 —*Changes in road miles per alternative are used as a proxy for all changes contained in the*
2 *alternative.*”

3
4 This astonishing gap leads directly to the admission that this renders their estimate of
5 current economic activity inaccurate (emphasis added)²⁴⁵:

6
7 —***However, these figures do not capture the entire economic value of recreation on the Forest.***
8 *Many visitors are willing to pay more than required to participate in recreational activities on*
9 *the Forest. The difference between willingness to pay and actual cost is known as consumer*
10 *surplus. Although consumer surplus is not captured in the market, it does represent a real*
11 *economic value to the users. Estimates of consumer surplus by recreation activity on the Gila*
12 *National Forest are not available; therefore, the total economic value of recreation on the*
13 *Forest cannot be measured.*”

14
15 Being able to define and compare the economic value of recreation on the Forest is
16 absolutely fundamental to a reasoned choice among the alternatives. The agency has
17 freely admitted that they do not have the information necessary to capture or calculate
18 the entire economic value of recreation on the Forest. The agency has not claimed that
19 the cost of obtaining the missing information is exorbitant. Quite simply, under this
20 circumstance, CEQ requires them to go and obtain the lacking information²⁴⁶.

21
22 The Social and Economic specialist report admits to other fundamental analysis
23 gaps²⁴⁷:

24
25 —*Its not possible to incorporate camping corridor information nor is it possible to evaluate big*
26 *game retrieval differences per alternative through IMPLAN and RECA. These differences need to*
27 *be analyzed in a qualitative manner gleaning information from other sources found in the*
28 *affected environment.*”

29
30 But the agency fails to do that in the context of social and economic impact to the local
31 communities. The gap identification continues²⁴⁸:

32
33 —*Although certain trends in visitor use may be predicted from the guidelines set forth under each*
34 *alternative, there are no methods and/or data available to estimate actual changes in motorized*
35 *and non-motorized recreation.*”

36
37 By the time the agency specialist arrives at the Economic Impact section of the report,
38 the results are predictably lacking in accuracy. The agency admits (emphasis
39 added)²⁴⁹:

245 Social and Economic specialist report, p. 26

246 40 CFR 1502.22(a)

247 Social and Economic specialist report, p. 20

248 Social and Economic specialist report, p. 22

249 Social and Economic specialist report, p. 22

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 —Furthermore, the analysis assumes that jobs and income are proportional to the designated
2 road and trail miles. **This assumption was necessary to conduct the analysis, since the exact**
3 **relationship between road miles and economic impacts is unknown; however, the economic**
4 **consequences of travel management are more complex than this assumption suggests.”**
5

6 And the conclusion ²⁵⁰ gets weaker yet (emphasis added):
7

8 —In sum, recreation on the Forest is estimated to support approximately 56 jobs and \$1,158,203
9 in labor income in the local economy, annually. **However, these figures do not capture the entire**
10 **economic value of recreation on the Forest. Many visitors are willing to pay more than required**
11 **to participate in recreational activities on the Forest. The difference between willingness to pay**
12 **and actual cost is known as consumer surplus. Although consumer surplus is not captured in the**
13 **market, it does represent a real economic value to the users. Estimates of consumer surplus by**
14 **recreation activity on the Gila National Forest are not available; therefore, the total economic**
15 **value of recreation on the Forest cannot be measured. Nevertheless, it is important to note that**
16 **the estimates of jobs and income do not completely capture the economic consequences of**
17 **Forest recreation.”**
18

19 But capturing the economic consequences of Forest recreation is exactly what is
20 needed if the agency is to accurately predict what economic impact will result from
21 changes to that recreation. The changes to the recreation aren't limited to the roads
22 and trails. The „significant issues“ identified social and economic impacts stemming
23 from changes in motorized “levels of use” of roads and trails, motorized dispersed
24 camping, and big game retrieval as items to be analyzed in the DEIS. The Social and
25 Economic specialist reports simply states²⁵¹:
26

27 —These issues are analyzed in detail in the recreation specialist report.”
28

29 They are not. The Recreation report doesn't even begin to touch on potential economic
30 impacts, let alone provide a CEQ compliant analysis. The Recreation section's
31 treatment of social impacts is cursory at best and doesn't include any conclusion at all
32 on the social impact of the changes proposed by the project. There is a reason that the
33 Environmental Consequences chapter has a Social and Economic section: The section
34 is supposed to analyze social and economic impacts of the project. It is not supposed
35 to reference other sections of Chapter 3 that give the subject inadequate coverage.
36

37 The agency's bias against motorized recreation and its role in the social and economic
38 health of the local communities is pervasive. This myopic view creates yet another
39 obvious gap in the social and economic report. The agency states²⁵²:
40

41 —Other Forest activities, such as non-motorized and wilderness recreation, may be more
42 attractive to additional users, as conflict with off-road motorized users is less likely with travel
43 management planning.”

²⁵⁰ Social and Economic specialist report, p. 26

²⁵¹ Social and Economic specialist report, p. 26

²⁵² Social and Economic specialist report, p. 22

1
2 And this consideration of impacts is purely one-sided²⁵³:

3
4 *—Above, the Non-Market Values section discussed the potential consequences of unregulated*
5 *cross-county motorized travel. The limits placed on motorized use under alternative D may*
6 *increase non-market values, particularly ecosystem service values.”*
7

8 At no point does the agency stop to consider the other side of the equation: How are
9 other non-market values, like appreciation and utilization of a motorized recreational
10 route system, likely to be impacted by a decrease in OHV opportunities? Instead, they
11 simply make the pronouncement⁹:

12
13 *—Furthermore, despite the decrease in miles of road and trails open for motorized use, the*
14 *number of visitors to the Forest is not expected to decrease.”*
15

16 This statement above is contradicted elsewhere in the DEIS²⁵⁴:

17
18 *—Several unknowns further limit the discussion and analysis. These include lack of data*
19 *regarding traffic numbers and projected increases or decreases in motorized visitors or*
20 *passersby to the forest,”*
21

22 The agency completely fails to consider the impact on housing prices by a demand for
23 people who want to live near (and ride) motorized routes. There has been absolutely no
24 consideration of the potential economic impacts that a vibrant and exciting OHV trail
25 system and its potential to increase OHV tourism could have on a local, rural economy.
26 Apparently the agency feels fully comfortable looking at only one side of the impact on
27 nonmarket values and drawing a conclusion²⁵⁵:

28
29 *—Favel management has the potential to increase nonmarket values as a result of improved*
30 *ecological health (ecosystem service values).”*
31

32 **RESOLUTION:** The Social and Economic report and summaries in the DEIS are
33 inadequate, inaccurate, full of contradictions, and fully lacking in compliance with CEQ
34 requirements. The acknowledged lack of information necessary to capture or calculate
35 the entire economic value of recreation on the Forest and not claiming the cost of
36 obtaining the missing information is exorbitant is enough alone to render the DEIS non-
37 compliant with CEQ. This lack of compliance renders the DEIS so inadequate as to
38 preclude a meaningful review. The agency has no choice but to prepare and circulate
39 a revised draft of the DEIS with Social and Economic section and report that meets
40 CEQ requirements.
41

²⁵³ Social and Economic specialist report, p. 27

²⁵⁴ DEIS, p. 74

²⁵⁵ Social and Economic specialist report, p. 29

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Thank you for the opportunity to comment.

2

3 Sincerely,

4



5

Mark Werkmeister, PE

6

NMOHVA Board of Directors

7

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Email: mark.r.werkmeister@intel.com

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Telephone: 138 4260 2510

17

18

On behalf of:

19

20

Mogollon Apache Gila (MAG) Riders

21

Jo Anne Blount

22

POB 165

23

Glenwood, NM 88039

24

25

Gila Roads and Trails Alliance (GRATA)

26

James T. Baruch

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POB 17

28

Mimbres, NM 88049

29

30

Gila Trail Riders Association (GRTA)

31

Grant Gose

32

2205 Johnson Rd.

33

Silver City, NM 88061

34

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-37 (Werkmeister Comment 35 – No Desired Economic and
2 Social Conditions Described)

3
4 March 2, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

10
11 Dear Responsible Official,

12
13 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
14 (NMOHVA) and am representing that organization and the undersigned organizations in
15 providing these comments on the Draft Environmental Impact Statement for Travel
16 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
17 organizations represent motorized recreationists in New Mexico including 4WD
18 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
19 in this DEIS provides important recreational resources to the members of the public we
20 represent.

21
22 We appreciate the opportunity to comment on the DEIS and take the responsibility of
23 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
24 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
25 Rule (TMR) with the utmost seriousness.

26
27 **ERROR:** The Social and Economic analysis does not meet the requirements of FSM
28 1900 Chapter 1970. It does not include a description of the „desired social and
29 economic conditions“.

30
31 **DISCUSSION:** In the Social and Economic specialist report, the agency states
32 (emphasis added)²⁵⁶:

33
34 —*Regulatory Framework*

35
36 *As described in FSM 1970.2 and 1970.44, the purpose of this report is to provide the*
37 *Responsible Official with information sufficient to support planning and management decisions*
38 *with major economic or social impacts reflecting to the extent appropriate: (a) Current social*
39 *and economic conditions and trends potentially affected by National Forest System management*
40 *actions; (b) **Desired social and economic conditions**; and (c) Expected and actual effects of*
41 *National Forest System management actions on social and economic sustainability.”*
42

43 The agency then goes on to claim:

²⁵⁶ USDA Forest Service. 2010j. Social and economic specialist report. Unpublished report available at the Gila National Forest, Silver City, NM. p. 3

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1
2 —*In his case, the desired conditions have been described by the Travel Management Rule,*
3 *including planning for a future increased population and providing for natural resources by*
4 *prohibiting unregulated cross-country travel and by designating a system of motorized roads,*
5 *trails and areas.”*
6

7 This is not an accurate statement. The desired *economic and social* conditions have
8 not been „described by the Travel Management Rule“. In fact, the TMR language does
9 not even contain the words „social“ or economic“. The TMR language does not include
10 the term „desired conditions“. The agency has not met its own regulatory requirements
11 for the required social and economic analysis.
12

13 FSM 1970.2 (Objectives) states (emphasis added):
14

15 *1970.2 - Objectives*

16
17 *Establish the management results and guidance for social and economic evaluation that must be*
18 *met servicewide to fulfill the mission of the Forest Service. The management results to be*
19 *achieved by social and economic evaluation are:*

20 1. *Comprehensive, integrated, and concurrent consideration of social, economic, and ecological*
21 *environments, and their interconnections.*

22 2. ***Providing responsible officials with information sufficient to support planning and***
23 ***management decisions reflecting to the extent appropriate:***

24 a. *Current social and economic conditions and trends potentially affected by National Forest*
25 *System management actions;*

26 b. ***Desired social and economic conditions;*** and

27 c. *Expected and actual effects of National Forest System management actions on social and*
28 *economic sustainability.*
29

30 FSM 1970.3 (Policy) even gives detailed instructions in how to determine the „desired
31 social and economic conditions“:
32

33 —4. *Desired social and economic conditions are evaluated using collaborative processes.”*
34

35 The agency has not employed a collaborative process to help them determine the
36 „desired social and economic conditions“.
37

38 Stating the „desired economic and social conditions“ is important. It, as the FSM 1970
39 states, is important in „providing responsible officials with information sufficient to
40 support planning and management decisions“.
41

42 **RESOLUTION:** Provide the required statements describing the „desired economic and
43 social condition“. It is important, as FSM 1970 states, in „providing responsible officials
44 with information sufficient to support planning and management decisions.“ The
45 agency’s own regulations require it. The decisionmaker (the responsible official) needs
46 the desired social and economic conditions in order to make a rational and well-

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 considered decision as they weigh the economic/social risks and benefits versus the
2 loss of motorized access on the Forest.

3
4 Thank you for the opportunity to comment.

5
6 Sincerely,

7 

8 Mark Werkmeister, PE
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21 On behalf of:

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23 Mogollon Apache Gila (MAG) Riders
24 Jo Anne Blount
25 POB 165
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28 Gila Roads and Trails Alliance (GRATA)
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31 Mimbres, NM 88049
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33 Gila Trail Riders Association (GRTA)
34 Grant Gose
35 2205 Johnson Rd.
36 Silver City, NM 88061
37

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-38 (Werkmeister Comment 36 – Obscured Conclusions)

2
3 March 2, 2011

4
5 Forest Supervisor
6 Attn: Travel Management
7 3005 E. Camino del Bosque
8 Silver City, NM 88061
9

10 Dear Responsible Official,

11
12 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
13 (NMOHVA) and am representing that organization and the undersigned organizations in
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15 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
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17 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
18 in this DEIS provides important recreational resources to the members of the public we
19 represent.
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21 We appreciate the opportunity to comment on the DEIS and take the responsibility of
22 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
23 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
24 Rule (TMR) with the utmost seriousness.
25

26 **ERROR:** The agency has buried, obscured, and obfuscated the simple truth of its
27 conclusions to the point that the public and the decisionmaker cannot find, follow, or
28 rationally connect them to the evidence presented. CEQ requires that²⁵⁷:

29
30 *—Environmental impact statements shall be written in plain language and may use appropriate*
31 *graphics so that decisionmakers and the public can readily understand them.*
32

33 **DISCUSSION:** The DEIS provides no evidence of environmental „effects“ (actual
34 existing real resource damage of any kind in any place caused by a specific use). The
35 entire discussion of impacts is comprised entirely of conjecture. The discussions of
36 resource impacts consists of „could, might and may“ statements of a general kind, based
37 on studies done in other places. These generalized statements are „backed up“ with
38 citations of scientific literature that often does not support the generalized statements
39 being made.
40

41 As an example, consider the „analysis“ presented in Chapter 3 for Watershed and Soils.
42 The DEIS identifies 41 separate 5th-code watersheds that intersect portions of the GNF.

²⁵⁷ 40 CFR 1502.8

1 The DEIS tells us that these watersheds are an appropriate level to analyze “due to the
2 landscape level scale of this project.”²⁵⁸

3
4 These watersheds play no further role in the DEIS until the Cumulative Effects topic for
5 the Watershed and Soils. The DEIS states²⁵⁹:

6
7 *—Cumulative Effects*

8
9 *Cumulative effects are often assessed by watershed, or as a portion of a specific watershed. This*
10 *type of assessment addresses the, regardless of what entity is or has undertaken the action(s). A*
11 *watershed cumulative impact can be defined as the total impact, positive or negative, on runoff,*
12 *erosion, water yield, floods, and/or water quality that results from the incremental impact of a*
13 *proposed action, when added to other past, present and reasonably foreseeable future actions*
14 *occurring within the same natural drainage basin (watershed) (1978 CEQ definition of*
15 *cumulative impacts). Cumulative watershed effects are defined as the impact of activities on*
16 *surface runoff and erosion, water yield, peak flows and flooding, channel stability, sedimentation,*
17 *and water quality. Activities that influence these effects can include timber harvest, grazing,*
18 *roads, fire, mining, recreational activities, and other land-disturbing actions that remove*
19 *vegetation and litter, which can expose or compact soil. Loss of vegetation and exposed soil can*
20 *result in reduced interception and transpiration rates, and increase surface runoff and erosion.”*

21
22 We want to make two points here. First, the DEIS states clearly that the cumulative
23 effect is the „incremental impacts of an action when added to other past, present, and
24 foreseeable future actions“. This statement certainly means that it encompasses ALL
25 known impacts that have occurred or are occurring. Secondly, since it address the
26 whole gamut of impacts listed above, it takes into account ALL of the resource impacts.
27 In other words, if you take the cumulative action and subtract out the „*reasonably*
28 *foreseeable future actions*“, one would be left with the current condition of that
29 watershed. This analysis would then represent current resource condition on this
30 specific area of the Forest net all of the various watershed and soil factors described in
31 detail on pages 78-95.

32
33 The cumulative effects analysis is vitally important as the preceding 17 pages provide
34 precious few details on the current baseline condition that CEQ requires for comparison
35 to the action alternatives. What do we find? The DEIS starts, at page 96, describing
36 the analysis methodology used. This methodology is identified as borrowed from the
37 Apache –Sitgreaves analysis completed in 2004. It involves, in the words of the DEIS,
38 looking²⁶⁰:

39
40 *—... atactivities within Gila National Forest watersheds to assess if the amount of activities has*
41 *resulted in land disturbance that has reached or exceeded a threshold of concern. This procedure*
42 *is based on equivalent disturbed area within a watershed, which includes the area associated*
43 *with land-disturbing activities, within the past 25 years. A recovery factor is used to reflect*

²⁵⁸ DEIS, p. 77.

²⁵⁹ DEIS, p. 96.

²⁶⁰ DEIS, p. 96.

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 *dissipation of effects over a 2- to 25-year period, depending on the severity of the activity.*
2 *Activities are then converted into equivalent disturbed area, using roads as an index. Equivalent*
3 *disturbed area (EDA) is a means to display disturbed areas in a watershed on an equal basis.”*
4

5 The DEIS says that the results from this analysis were then compared to a threshold
6 value:

7
8 *—The threshold level was set at 15 percent for this project, where cumulative impacts of a*
9 *watershed area are in a disturbed condition. Meeting this threshold does not necessarily indicate*
10 *that a level has been passed where cumulative effects are significantly adverse, however, it is*
11 *used as an indicator that land-disturbing activities may be approaching a level where a*
12 *watershed may begin to lose its resiliency to change. If a threshold of concern is approached,*
13 *then it may lead to development of a new alternative, modification of an existing alternative, or a*
14 *more detailed hydrologic analysis to determine if cumulative effects are adverse and significant.”*
15

16 This is important. Remember how we concluded that the cumulative effects analysis
17 with the future impacts taken out was equivalent to the current condition of the
18 watershed? The DEIS emphatically agrees²⁶¹:

19
20 *—Existing cumulative impacts were assessed for the no action alternative to determine if any of*
21 *Gila National Forest’s watersheds were already approaching, or exceeding, a level of*
22 *disturbance that would cause concern.”*
23

24 The results? The DEIS reports them:

25
26 *—In summary, none of the 5th-code watersheds approached the 15 percent disturbance threshold,*
27 *which was expected due to the dilution effect of these large watersheds. Review of alternative B*
28 *identifies three watersheds having disturbance levels above 3 percent: Corduroy Canyon at 8.6*
29 *percent, Negrito Creek at 5.7 percent, and Upper San Francisco at 3.4 percent.”*
30

31 The DEIS has expressed reservations about the „dilution“ of the impacts based on the
32 rather large size of the watersheds (in spite of the contradictory statements that they
33 were appropriate given the scale of the project). To be ultra-conservative, the agency
34 reserves the right to further assess the watersheds at the 6th-code level²⁶²:

35
36 *—One limitation of the procedure used, however, is that it was developed for watershed sizes*
37 *comparative to a 6th-code watershed level. To compensate for this, where specific 5th code*
38 *watersheds indicated higher levels of disturbance, a closer look at the 6th-code level was*
39 *examined to assess if activities were concentrated enough in one location to create concern for*
40 *adverse impacts. While the large scale at which the 5th-code watershed is delineated is so large*
41 *that it does not allow accurate determination of effects of a specific project proposal, it is still*
42 *considered relevant in a broad look at cumulative impacts across the Gila National Forest.*
43 *Another constraint of doing the analysis at this scale is that observable impacts (beneficial or*

²⁶¹ DEIS, p. 97.

²⁶² DEIS, p. 97.

1 *detrimental) at the outlet of a 5th-code watershed would likely be diluted over such a large*
2 *area.”*

3
4 When the agency went back for the more detailed look at the 6th-code database, they
5 found this:

6
7 *—Using these criteria, within the Corduroy Canyon 5th-code watershed, five 6th-code watersheds*
8 *are rated —Fair” and two are rated —Good.” Within the Negrito Creek 5th-code watershed, two*
9 *6th-code watersheds are rated “Poor,” three are rated —Fair,” and three are rated —Good.”*
10 *Within the Upper San Francisco River 5th-code watershed, two 6th-code watersheds are rated*
11 *—Poor,” seven are rated —Fair,” and one is rated —Good.” Closed roads were still considered*
12 *part of the road system for the density calculations, as decommissioning of closed roads is*
13 *currently not scheduled or planned as part of this project.*

14
15 *These results initiated a further look at the Negrito Creek and Upper San Francisco 5th-code*
16 *watersheds, as road densities were high in four of the 6th-code watersheds. Neither of these two*
17 *watersheds has any acres of wilderness, and activities appear to be well distributed across the*
18 *watershed versus confined to smaller areas, such as one or two 6th-code watersheds. Under the*
19 *existing condition, 7 percent of the disturbance acres in the Negrito Creek watershed are a result*
20 *of motorized routes, while 14 percent of the disturbance acres in the Upper San Francisco*
21 *watershed are a result of motorized routes.”*

22
23 To review the analysis completed so far:

- 24
25 1) The agency chose 5th code watersheds as applicable due to the landscape
26 level scale of this project.
27 2) They reserved the right to take a closer look at 6th code.
28 3) The measurement is a factored representation of the land disturbance in that
29 watershed.
30 4) The analysis of the 5th code watershed showed that the worst impact (Corduroy
31 Canyon) was about half of the „threshold“ (and the agency even admits that
32 exceeding the threshold value didn’t necessarily mean unacceptable impacts)
33 5) The agency found that the watershed with the highest percentage of road
34 contribution to disturbance activity (the Upper San Francisco) at 14%.

35
36 It is very important to note that road disturbance doesn’t make up 14% of the
37 watershed; it makes up 14% of the Upper San Francisco’s 3.4% disturbance. That
38 means that the road disturbance makes up only 0.4% of the watershed’s acreage.

39
40 We have just spent the last four pages walking the agency through a portion of its own
41 analysis. Why? We did it to prove a fundamental point. What is our point? The point
42 is that the agency has just disclosed that the cumulative effects to the watershed to date
43 represent the current condition of the Forest. The agency has just disclosed in that
44 same analysis that one the „worst“ watersheds on the Forest has less than one half
45 percent of its acreage „disturbed“ as the result of roads. They have disclosed that this
46 watershed is only about one fifth as „disturbed“ as the threshold at which the agency

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would normally take as an indicator that land-disturbing activities may be approaching a level where a watershed may begin to lose its resiliency to change.

That, dear readers, is a VERY conservative approach to looking for ANY indication that roads and their use by motorized users are causing an unacceptable level of impact on the natural resources of the GNF.

What conclusion does the agency draw from this analysis? In their own words²⁶³:

—Considering all natural and human impacts that have occurred and continue to occur on 5th-code watersheds across the Gila National Forest, cumulative effects on these watersheds have not surpassed a threshold that threatens to undermine their resilience to change.”

And since none of the Action Alternatives (including Alternative C which the agency claims provides only 2% less motorized mileage) would add more impacts than the No Action alternative²⁶⁴:

—Overall, no increase in adverse cumulative impacts to soil resources, riparian and wetland resources, and water quality or quantity would be expected with implementation of any of the action alternatives.”

And here is where we have identified the fatal flaw in this DEIS. NMOHVA asserts, in the strongest possible terms, that this conclusion, drawn from the DEIS, does not make its way into the Summary Table 16 in Chapter 2. Starting on page 35 and continuing all the way to page 39, the „Summary“ in Table 16 lists an exhaustive array of factors. Each one of them is full of the „more“ and „less“ statements that characterize this DEIS. Here is a typical example from page 38:

Table 16. Summary of the effects described in detail in chapter 3

Resource	Alternative B	Alternative C	Alternative D	Alternative E	Alternative F	Alternative G
Water Quality (continued)	862 miles of perennial and intermittent streams potentially impacted by motorized dispersed camping	798 fewer miles of perennial and intermittent streams potentially impacted by motorized dispersed camping	828 fewer miles of perennial and intermittent streams potentially impacted by motorized dispersed camping	862 fewer miles of perennial and intermittent streams potentially impacted by motorized dispersed camping	809 fewer miles of perennial and intermittent streams potentially impacted by motorized dispersed camping	818 fewer miles of perennial and intermittent streams potentially impacted by motorized dispersed camping

But the agency fails to disclose the most important fact revealed by their analysis:

—Overall, no increase in adverse cumulative impacts to soil resources, riparian and wetland resources, and water quality or quantity would be expected with implementation of any of the action alternatives.”

And, as the analysis we just reviewed step by step clearly shows, the current condition isn’t seeing any adverse cumulative affects either! The same is true for soil resources,

²⁶³ DEIS, p. 99.

²⁶⁴ DEIS, p.100

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1 riparian and wetland resources, and overall watershed health. Only on page 39, literally
 2 in the fine print, does the agency even begin to state the elemental and fundamentally
 3 important truth:
 4

Table 16. Summary of the effects described in detail in chapter 3

Resource	Alternative B	Alternative C	Alternative D	Alternative E	Alternative F	Alternative G
	126 miles of impaired streams potentially impacted by motorized big game retrieval	No potential impacts to impaired waters from motorized areas.	No potential impacts to impaired waters from motorized areas.	No potential impacts to impaired waters from motorized areas.	No potential impacts to impaired waters from motorized areas.	No potential impacts to impaired waters from motorized areas.
Road and Trail Condition Impacts on Watershed Health	No limits on cross-country travel which currently has minimal localized impacts on watershed condition overall; 7,682 acres of motorized routes impacting watershed health.	When compared to alternative B: All action alternatives are similar. Localized negative impacts will occur with motorized dispersed camping corridors and motorized big game retrieval. Impacts associated with these activities are minimal forestwide with current use levels. Slight improvement to watershed condition will result from limiting cross-country travel; no change in route density or acres impacted by routes as no decommissioning proposed.				

5
 6
 7 In Table 16, the statement that „current uses have minimal impacts“ is found ONLY
 8 under the action alternatives. It has NOT also been included where it belongs: in the
 9 column for the No Action Alternative.

10
 11 Statements about „current use“ must also be included under the No Action column. The
 12 summary tables in the DEIS are extremely important since they present the distillation
 13 of hundreds of pages of analysis. The summary tables must be corrected to accurately
 14 reflect the effects reflected in Chapter 3.

15
 16 The reader, whether the public or the decision maker, reading Chapter 2 is barraged by
 17 a plethora of meaningless statements that serve to imply that there is something „wrong“
 18 with the current condition that needs to be „fixed“ with this project. Chapter 3 exhibits
 19 the same traits. The true current condition of the GNF is so buried in useless and
 20 meaningless „more“ or „less“ comparisons, general claims, and vaguely related citations
 21 that only a truly diligent reader who is actually seeking the truth has any chance of
 22 finding it.

23
 24 This obscuring of the simple truth isn“t limited to the Watershed and Soils report. The
 25 same issue exists in other sections. Here is what Table 16 says about Aquatic Habitat
 26 (Fish Habitat):
 27

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Fish Habitat						
Aquatic Habitat		When compared to alternative B:	When compared to alternative B:	When compared to alternative B:	When compared to alternative B:	When compared to alternative B:
	Currently cross-country travel is allowed and likely to contribute to additional unauthorized route development.	Slight decrease in relative risk to aquatic habitat and species.	Substantial decrease in level of relative risk to aquatic habitat and species.	Greatest reduction in level of relative risk to aquatic habitat and species.	Moderate reduction in level of relative risk to aquatic habitat and species.	Moderate reduction in level of relative risk to aquatic habitat and species. Similar to alt. F with slight decrease in relative risks.
	862 miles of stream within area available for cross-country travel	126 fewer miles of stream in areas available for cross-country travel associated with MBGR and MDC	829 fewer miles of stream in areas available for cross-country travel associated with MBGR and MDC	No streams within cross-country travel area associated with MBGR and MDC.	341 fewer miles of stream in areas available for cross-country travel associated with MBGR and MDC	818 fewer miles of stream in areas available for cross-country travel associated with MBGR and MDC
	302 miles of motorized routes within 300 feet of streams and 919 stream crossings contributing to risk of impacts to aquatic habitat and species	There is no change from alt. B in the 302 miles of motorized route within 300 feet of streams. There are 69 fewer stream crossings contributing to risk of impacts to aquatic habitat and species.	93 fewer miles of motorized route within 300 feet of streams and 342 fewer stream crossings contributing to risk of impacts to aquatic habitat and species	139 fewer miles of motorized routes within 300 feet of streams and 491 fewer stream crossings contributing to risk of impacts to aquatic habitat and species	56 fewer miles of motorized route within 300 feet of streams and 158 fewer stream crossings contributing to risk of impacts to aquatic habitat and species	60 fewer miles of motorized route within 300 feet of streams and 176 fewer stream crossings contributing to risk of impacts to aquatic habitat and species

Yet, if one truly „digs“ into the details of the Chapter 3 Environmental Consequences, one finds, buried under a huge overburden of dire predictions and useless comparisons, the one pertinent fact²⁶⁵:

—Although localized degraded habitats continue to be present, the overall forest trend for aquatic habitat and species is positive.”

Why is this overall summary not stated, plainly and clearly, in the summary Table 16?

Contrast the obfuscation of the Watershed and Soils or Aquatics sections with the clear, concise summary for Air Quality in Table 16:

Table 16. Summary of the effects described in detail in chapter 3

Resource	Alternative B	Alternative C	Alternative D	Alternative E	Alternative F	Alternative G
Air Quality						
Visibility	Overall good to excellent visibility; Gila Class I Wilderness area certified for visibility impairment.	Negligible improvement.				
Air Quality	Overall good to excellent air quality; currently meeting all State and Federal standards.	When compared to alternative B: Negligible improvement.				

²⁶⁵ DEIS, p. 126.

1 The specialist who prepared the Air Quality report for the DEIS „gets it“. They clearly
2 state the current condition and then clearly and concisely describe the change from the
3 current condition under each of the action alternatives. Since they note that very little
4 change in the „causes“ considered would occur, the resulting „effect“ is small enough to
5 be considered negligible:

6
7 *—No data support predictions of the amount of particulates contributed by all of these other*
8 *sources. In addition, past impacts to air quality are not usually evident. Motorized travel*
9 *emissions would only be combined with other localized sources. Due to low traffic volume, these*
10 *emissions are fairly low across the Gila National Forest and disperse rather quickly. Actual*
11 *cumulative effects would be relatively minor and should show little change in any alternative*
12 *from the existing condition.”*

13
14 Precious few other sections in the DEIS employ the level same level of understanding of
15 „analysis“ and few exhibit the required clarity of the summarized conclusions. Instead of
16 descriptions of actual resource effects on the GNF supported by empirical data, the
17 reader is forced to wade through endless comparisons of mileages and areas. The
18 comparison of mileages and areas is not a CEQ compliant substitute for the required
19 disclosure of the no action condition and the Environmental Consequences of the
20 alternatives.

21
22 The result is a DEIS that, as written, obscures the few relevant and material facts under
23 an inexcusable overburden of assumptions, citations, and empty comparisons. The
24 DEIS as it stands does not meet the CEQ requirements for analysis²⁶⁶, data integrity²⁶⁷,
25 or disclosure of missing information²⁶⁸. It has not met the requirements for being
26 “written in plain language” and using “appropriate graphics so that decisionmakers and
27 the public can readily understand them.”

28
29 **RESOLUTION:** The CEQ requirements state that²⁶⁹:

30
31 *—Environmental impact statements shall be concise, clear, and to the point, and shall be*
32 *supported by evidence that agencies have made the necessary environmental analyses”.*

33
34 They also state²⁷⁰:

35
36 *—Agencies should employ writers of clear prose or editors to write, review, or edit statements,*
37 *which will be based upon the analysis and supporting data from the natural and social sciences*
38 *and the environmental design arts.”*

39
40 It also explains why a clear, concise DEIS is so important²⁷¹:

²⁶⁶ 40 CFR 1500.1(b)

²⁶⁷ 40 CFR 1502.24

²⁶⁸ 40 CFR 1502.22

²⁶⁹ 40 CFR 1500.2

²⁷⁰ 40 CFR 1502.8

²⁷¹ 40 CFR 1500.1(b)

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1
2 —~~NEPA~~ procedures must insure that environmental information is available to public officials
3 and citizens before decisions are made and before actions are taken. The information must be of
4 high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are
5 essential to implementing NEPA.”
6

7 Fortunately, the CEQ also provides guidance on exactly what must happen if the DEIS
8 is not of the quality required for a thorough review and a rational decisionmaking
9 process:

10
11 —If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall
12 prepare and circulate a revised draft of the appropriate portion.”
13

14 The quality of the current DEIS so badly buries, obscures, and obfuscates the simple
15 truth of its conclusions that the agency has no option but to re-issue a revised draft that
16 meets CEQ requirements for being “*concise, clear, and to the point.*”
17

18 Thank you for the opportunity to comment.

19
20 Sincerely,

21 

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34

35 On behalf of:

36
37 Mogollon Apache Gila (MAG) Riders
38 Jo Anne Blount
39 POB 165
40 Glenwood, NM 88039
41

42 Gila Roads and Trails Alliance (GRATA)
43 James T. Baruch
44 POB 17
45 Mimbres, NM 88049

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1
2 Gila Trail Riders Association (GRTA)
3 Grant Gose
4 2205 Johnson Rd.
5 Silver City, NM 88061
6

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 Comment 03022011-15-40 (Werkmeister Comment 38 – TMR and User Conflicts
2 Restrict Alternatives)

3
4 March 2, 2011

5
6 Forest Supervisor
7 Attn: Travel Management
8 3005 E. Camino del Bosque
9 Silver City, NM 88061

10
11 Dear Responsible Official,

12
13 I am on the Board of Directors of the New Mexico Off Highway Vehicle Alliance
14 (NMOHVA) and am representing that organization and the undersigned organizations in
15 providing these comments on the Draft Environmental Impact Statement for Travel
16 Management on the Gila National Forest (DEIS). NMOHVA and the undersigned
17 organizations represent motorized recreationists in New Mexico including 4WD
18 enthusiasts, dirt bike riders, and ATV users. The Gila National Forest (GNF) analyzed
19 in this DEIS provides important recreational resources to the members of the public we
20 represent.

21
22 We appreciate the opportunity to comment on the DEIS and take the responsibility of
23 reviewing the DEIS for compliance with the National Environmental Policy Act, Council
24 for Environmental Quality (CEQ) regulations, Forest Plans, and the Travel Management
25 Rule (TMR) with the utmost seriousness.

26
27 **ERROR:** The agency has decided to analyze user conflict in its travel management
28 planning process. We contend that the Travel Management Rule prevents a complete
29 range of alternatives and a rational assessment of „user conflict“ as required under
30 NEPA. Under the TMR, reduction of „user conflict“ is always achieved by formulating
31 alternatives which ban only the motorized user, because no other decision is allowed.
32 The restriction of decision options results in a severely distorted analysis that
33 misinforms the decisionmaker, restricts the allowed options, and prevents the
34 decisionmaker from selecting a rational and CEQ-compliant decision.

35
36 **DISCUSSION:** This is clearly seen in the summary statements for the Alternatives,
37 such as for Alternative D²⁷²:

38
39 — *Alternative D*

40
41 *The effects of motorized routes in terms of noise, emissions, and user conflicts that could be*
42 *experienced by people located within ½ mile from populated areas, neighboring private land,*
43 *roadless areas, wilderness boundaries, developed recreation sites, and nonmotorized trails will*

²⁷² DEIS, p. 58

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1 *be reduced by 48.2 percent when compared to the no action alternative. Alternative D offers the*
2 *second largest reduction in miles for the elements this indicator measures for among the five*
3 *action alternatives.”*
4

5 Each alternative has the identical verbiage, with a concluding statement that User
6 Conflict is reduced in relationship to the miles on which motorized use is reduced. The
7 agency is so used to seeing this sort of statement that we suspect they have not
8 examined what it really means. We shall carefully examine the underlying facts of this
9 issue for the GNF as presented in the DEIS.

10
11 First, there is the presumption of legal use. In each case presented, „user conflict“ is
12 between two legitimate and legal users. Both have equal rights to use the route
13 segment (road or trail) being considered. This bears repeating. If the use is legal, both
14 users have the EQUAL RIGHT to be on the route segment.

15
16 To prevent preconceptions from creeping in, we shall call them User A and User B.
17 User A and User B prefer different recreation modes. One can visualize A and B as
18 motorized and no-motorized, but they could also be hiker and mountain biker, horse-
19 rider and mountain biker, or even hiker and hiker with dogs. Second, user conflict
20 means one or possibly both users prefer that the other person not be allowed on that
21 particular route segment. If the agency is to use route closure or route segregation to
22 mitigate the conflict, there are only three possible actions the agency can make:

- 23
- 24 • Keep the route open to both User A and User B
- 25 • Close the route to User A and allow only User B
- 26 • Close the route to User B and allow only User A
- 27

28 In a normal NEPA process, the range of alternatives could comply with CEQ by
29 covering all reasonable possibilities, which would include all of these three actions.

30
31 Now let’s look at what happens under the Travel Management Rule (TMR). The agency
32 has written itself a rule to allow itself to remove motorized use. The agency claims it is
33 using the rule to „resolve“ user conflict.

34
35 The TMR, and specifically this DEIS, does not manage or restrict non-motorized use²⁷³:

36 *—~~N~~ alternative curtails any nonmotorized activities; the change is where people can drive to get*
37 *to places in the forest to do these activities. System roads and motorized trails would also be open*
38 *for people to walk, hike, bike, or ride horses.”*
39

40
41 Now let’s say User A is a motorized user. The TMR does not allow the alternative
42 „Close route to (non-motorized) User B and allow only (motorized) User A“. Under the
43 TMR only two out of the possible three alternatives are allowed:

273

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- Keep the route open to both User A and User B
- Close the route to User A and allow only User B

Here are the possible decision results for User A (motorized user):

- Continue to share route with User B
- Total loss of the recreation opportunity (risk of total loss)

Here are the possible decision results for User B (non-motorized user):

- Continue to share the route with User A
- Have the route all to himself (no risk of any loss)

The possible decision results are now artificially limited and skewed in favor of the non-motorized user. Consider the possible outcomes: The non-motorized user might come up the winner and get it „all to himself“. He has no risk of losing ANY recreation opportunity in TMR decisions. The best the motorized user can hope for is that he doesn’t get tossed out. Under TMR, if a user loses access, the loser is ALWAYS the motorized user. In other words, TMR pre-determines the outcome of the analysis and limits the decisionmaker’s choices. It discriminates for non-motorized use over motorized use by restricting the allowable decisions. The result is both prejudicial and pre-decisional.

In regards to user conflict, the TMR restricts the range of alternatives that are allowed into the DEIS. We contend this is illegal for two major reasons:

- 1) The agency has an obligation to give equal consideration to all legal use (emphasis added):

*—Motor vehicles will continue to be a legitimate and appropriate way for people to enjoy the Gila National Forest, and motor vehicle access opportunities are important for many reasons.*²⁷⁴”

*—Hunters and people who practice motorized recreation such as firewood gathering and motorized dispersed camping are specific user groups who benefit greatly from the Gila National Forest’s network of nearly 4,600 miles of open maintenance level 2–5 roads, since all motorized vehicle types, including non-highway legal OHVs, are allowed on them”.*²⁷⁵

It is obvious that the TMR is being applied prejudicially against motorized use; it entirely removes any possibility of loss of opportunity for non-motorized users.

²⁷⁴ DEIS, p. 2
²⁷⁵ DEIS, p. 51

1 *—The effects of motorized routes in terms of noise, emissions, and user conflicts that could be*
2 *experienced by people located within ½ mile from populated areas, neighboring private land,*
3 *roadless areas, wilderness boundaries, developed recreation sites, and nonmotorized trails will*
4 *be reduced by 19.3 percent when compared to the no action alternative. Alternative C ranks last*
5 *in this regard among the five action alternatives proposed, offering the lowest reduction in*
6 *miles for the elements for which this indicator measures.”*
7

8 The burden of „solving“ user conflict by removing one user always falls entirely on
9 motorized use no matter the circumstances. This DEIS has alternatives „resolve“ user
10 conflict over „noise“ by removing motorized use in lands designated „roaded natural“
11 (RN) under the Recreation Opportunity Spectrum in the Forest Plan. Removing
12 motorized use from a ROS area that is characterized as having „evidence of the sights
13 and sound of man“ in the existing Forest Plan is completely irrational. It also precludes
14 „equal consideration“. Without equal consideration for all uses, including legal uses that
15 are also in compliance with the Forest Plan, it is not possible to produce a full range of
16 alternatives as required under CEQ.
17

18 2) The agency is bound by CEQ to consider a „full range of alternatives“. This it cannot
19 do because the TMR artificially restricts the range of alternatives in favor of non-
20 motorized use over motorized use when addressing „user conflict“. The CEQ
21 regulations have the force of law. They trump the agency“s self-written Rule. In the
22 case of conflicting direction, the agency must comply with CEQ.
23

24 If the agency doubts that this poses a serious risk to equal consideration of all legal use
25 and providing a full range of alternatives to be considered by the decisionmaker, they
26 have only to review their own analysis conclusion²⁷⁶:
27

28 *—All of the new decisions and implementation of past land use and travel management decisions*
29 *are generally resulting in fewer opportunities for cross-country OHV uses and fewer open routes*
30 *for OHV use.”*
31

32 **RESOLUTION:** Remove „user conflict“ as an analysis element under this TMR project.
33 This would remove the artificial limitations by the TMR on equal consideration of legal
34 use and allow a full range of alternatives to be considered. User conflict can be
35 considered in subsequent agency actions not limited by the TMR.
36

37 Thank you for the opportunity to comment.

38 Sincerely,
39

40 

41 Mark R. Werkmeister, PE
42 NMOHVA Board of Directors

²⁷⁶ DEIS, p. 69

Appeal of the Record of Decision for Travel Management on the Gila National Forest

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11
12 On behalf of:

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14 Mogollon Apache Gila (MAG) Riders
15 Jo Anne Blount
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19 Gila Roads and Trails Alliance (GRATA)
20 James T. Baruch
21 POB 17
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1 APPENDIX B – Supporting Documentation

2 Final Response – FOIA Case 11-1815-R

3

4 On the following four pages.

Appeal of the Record of Decision for Travel Management on the Gila National Forest



United States
Department of
Agriculture

Forest
Service

Southwestern Region
Regional Office

333 Broadway SE
Albuquerque, NM 87102
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 6270

Date: SEP 02 2011

Mr. Mark R. Werkmeister
NM Off Highway Vehicle Alliance
1700 Willow Road NE
Rio Rancho, NM 87144

RE: Freedom of Information Act Request, Case Number 11-1815-R

Dear Mr. Werkmeister:

This is our final determination of your Freedom of Information Act (FOIA) request dated July 7, 2011, and received by the Gila National Forest (NF) on the same date. Your request was rerouted to the Southwestern Region FOIA Service Center on August 4, where it was received on August 11. Your request has been assigned Case Number 11-1815-R. Please include this case number in all your communications regarding your request.

You state: *"We are continuing in our attempts to procure a copy of the Project Record for the Draft Environmental Impact Statement for Travel Management on the Gila National Forest."*

You are requesting: *"A listing of all specific records currently residing in the Project Record for the Draft Environmental Impact Statement for Travel Management on the Gila National Forest."*

The Gila NF provided the following information regarding your multiple requests regarding information for the Gila NF Travel Management Draft EIS:

January 18, 2011: An email was received by Jennifer Ynostroza, Gila NF FOIA Liaison, advising that you were trying to "obtain some information about the Project Record for the DEIS for Travel Management." You further stated that you had sent an email to Lisa Mizuno on January 9 requesting the information but had not received a response after several attempts to contact her. You requested *"two reports that are incorporated by reference into the Wildlife Specialist's report"* identified as follows:

1. *"At Page 3: The Forest Level Migratory Bird analysis is incorporated by reference into this analysis where all high priority migratory species and their associated habitats are considered."*
2. *"At Page 13: The Forest Level Management Indicator Species analysis is incorporated by reference into this analysis where all 11 management indicator species and their associated habitats are considered."*
3. *"At Page 16: We find another reference to the Management Indicator Species and Migratory Bird reports which are incorporated by reference: For small mammal, bird, reptile, and amphibian the analysis indicators analyze the change in habitat/vegetation communities; vegetation communities as identified in the management indicator species"*



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Mr. Mark R. Werkmeister

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analysis for the Gila National Forest, or by Partners in Flight for migratory bird species.”

The Gila NF responded on January 25 advising that your request was assigned Case Number 6789 and provided 19 records, released in their entirety, responsive to your request.

February 1, 2011: Your email to the Gila NF stated that you had *“attempted to procure the information we have need to review the Gila National Forest travel Management Draft EIS through simple and timely requests to the Forest. However, they are treating all requests... as FOIA requests.”* *“We have asked for a Project Record Index so we could better target our requests...”* You went on to request the following:

1. *“All records describing or documenting site specific analysis of routes (road, trail, OMLI route, or unauthorized route) associated with this project or referenced by this project with the exception of the TAP documents posted on the Gila Travel Management web site.*
2. *All records, including meeting minutes and documentation describing, documenting, or referencing the identification of concerns, issues, significant issues, or project alternatives and any documentation related to decisions derived from those concerns, issues, significant issues, or project alternatives with the exception of those documents already posted on the Gila Travel Management web site.*
3. *All electronic maps that have been posted on the Gila Travel Management web site since 2005 (including those shown on the attached ‘snaps’) with the exception of those maps currently posted and available to the public on the website.”*

The Gila NF advises that this request was assigned Case Number 6844. On February 7 the Gila provided an ftp site link for access to responsive records pertaining to item 3 of your request. On February 24 the Gila NF provided a partial response with responsive records to items 2 and 3 and “explanatory documentation to the information requested” accessed on the ftp site. In the letter dated March 2 the Gila NF corrected their February 24 letter to state that the responsive information should have been identified for items 1 and 2 and not items 2 and 3. The Gila NF rerouted your request to the Southwestern Region (SW) FOIA Service Center on March 7. On April 6 the SW FOIA Service Center provided the final determination, advising that we were withholding four DVDs containing locations and nature of cultural resource sites pursuant to FOIA Exemption 3, 5 U.S.C. §552(b)(3). Appeal rights were also provided.

February 9, 2011: An email was received by the Gila NF requesting the following:

1. *“The scoping report or any compilation or summary resulting from the comments received from the public during the scoping period for Travel Management on the Gila National Forest. This specifically does not include the individual comments received from the public during the scoping period for Travel Management on the Gila National Forest.*
2. *Any compilation or summary of public input received prior to the commencement of the official scoping period. This specifically does not include the individual comments received prior to the commencement of the official scoping period.*

3. *GIS information (the necessary .shp files) showing occupied Chiricahua leopard frog habitat and any buffer zones associated with the Chiricahua leopard frog. Specifically included are the two layers referenced on the map entitled DRAFT Reserve Ranger District Basemap Wildlife Density: 'buf_clpfrog' and 'post1990chip_frogs'. The .pdf version of this map is still available under the GNF TAP web page.*
4. *GIS information (the necessary .shp files) showing Mexican spotted owl (MSO) protected activity areas (PAC's). This information is already available to the public in .pdf format on the Basemap Wildlife Density series of maps posted on the GNF TAP web page.*
5. *GIS information (the necessary .shp files) showing Northern Goshawk post fledgling areas (PFA's). This information is already available to the public in .pdf format on the Basemap Wildlife Density series of maps posted on the GNF TAP web page."*

The Gila NF advises that your request was assigned Case Number 6961. A response was provided on March 7 whereby the Gila NF advised you that items 1 and 2 of this request were responded to in their response to your request dated February 1 (Case Number 6844). Specifically, items 1 and 2 of Case Number 6844. The March 7 response also states that information regarding items 3-5 of this request had been updated and also included in their response to item 1 of the February 1 response (Case Number 6844). Furthermore, the Gila NF stated that your request for *the necessary .shp files* for items 3-5 was "already available to the public in .pdf format" on the "maps posted on the GNF TAP web page." The Gila NF also informed you that species information for items 3-5 had been updated since the TAP was completed. They advised that information was included in "TMR_dEIS_GISAnalysis_data" which was provided in response to your February 1 request.

April 14, 2011: An email was received from you by Raquel Cantu, Southwestern Region FOIA Liaison, advising that you had made two previous FOIA requests in February (Case Numbers 6961 and 6844) with information posted by the Gila NF to be accessed via an ftp link. You advised that due to your connectivity problems while residing in China you had been unable to access the ftp site and requested that link be re-established. Ms. Cantu rerouted your request to the Gila NF and the Forest advised that the ftp link had not been removed and was still available and accessible.

May 4, 2011: Joe Encinas, Gila NF GIS Coordinator, informed you via email that additional shapefiles for items 3-5 of your February 9 request were available on the ftp site. You advised Mr. Encinas that you were having problems accessing the information. When Mr. Encinas tried to assist to make the files more accessible you informed him that the difficulty was because you were residing in China and the Chinese government's control of the internet and various filters slowed access considerably.

July 7, 2011: The Southwestern FOIA Service Center received an email in which you stated that you were "*continuing in our attempts to procure a copy of the Project Record for the Draft Environmental Impact Statement for Travel Management on the Gila National Forest. We originally asked for this document via a letter to Ms. Lisa Mizuno on 1/19/2011. The response from the agency was delayed as they treated this simple request for information as a full-blown FOIA request. We finally received the reply on 1/27/11. The agency responded that the Project Record was still in draft form and would not be final until the release of the Final Decision. The Agency also included a short list of general topic areas that would be included in a typical*

Appeal of the Record of Decision for Travel Management on the Gila National Forest

Mr. Mark R. Werkmeister

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Project Record. We replied back the very next day with a copy of the Santa Fe National Forest's similar Travel Management DEIS Project Record as an example. The agency's reply, received on 2/2/2011 was a terse and to the point: "The Forest does not have a project record index nor one like the Santa Fe's available at this time."

You go on to state that pursuant to the FOIA you are requesting:

"A listing of all specific records currently residing in the Project Record for the Draft Environmental Impact Statement for Travel Management on the Gila National Forest."

Please be advised that any request from the public for Forest Service agency records created by or in our possession are handled via the Freedom of Information Act process as mandated by 5 U.S.C. §552, as amended by Public Law No. 110-175, 121 Statute 2524.

This is to advise you that there are no responsive records to your request of a "listing of all specific records" or "project record index." In your conversations with Ms. Lisa Mizuno, she advised you which records were available, which you then requested and the Gila NF then provided those documents to you. With the exception of a "listing" of records or "project record index", all available documents for the Gila NF Travel Management project, for which a FOIA exemption does not apply, have been provided to you. Additionally, we would like to inform you that each forest in the Southwestern Region is at a different stage in the Travel Management process. The processes followed by one forest in administering Travel Management are not necessarily followed by other forests in the Southwestern Region. This is the reason that the Gila NF did not have the information you requested when you provided a copy of what the Santa Fe NF had provided you in your Travel Management FOIA request to them. Also, the access to the ftp site provided to you was extended by two months because you were residing in China. Due to Agency-wide space availability, we were forced to close the site down sometime in June.

The FOIA provides you the right to appeal this decision of no responsive records. Any appeal must be made in writing to the Chief, USDA, Forest Service, Mail Stop 1143, 1400 Independence Avenue, SW, Washington, DC 20250-1143, and received by the Chief within 45 days from the date of this letter. The term "FOIA APPEAL" should be placed in capital letters on the front of the envelope or on the subject line of an email to wo_foia@fs.fed.us. You may also fax an appeal to 202-260-3245.

We feel this fully satisfies your request with the Southwestern Region FOIA Service Center.

Sincerely,



CORBIN L. NEWMAN, JR.
Regional Forester

Enclosure

cc: Patrick McKee, Bernice M McMahan

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2

Appeal of the Record of Decision for Travel Management on the Gila National Forest

- 1 Final Response – FOIA Case 2013-FS-R3-05354-F
- 2
- 3 On the following two pages.

Appeal of the Record of Decision for Travel Management on the Gila National Forest



United States
Department of
Agriculture

Forest
Service

Southwestern Region
Regional Office

333 Broadway SE
Albuquerque, NM 87102
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 6270

Date: FEB -7 2014

Mr. Mark R. Werkmeister, PE
NM Off Highway Vehicle Alliance
1700 Willow Rd NE
Rio Rancho, NM 87144

RE: Freedom of Information Act Request, Case Number 2013-FS-R3-05354-F

Dear Mr. Werkmeister:

This is our final determination to your Freedom of Information Act (FOIA) request dated September 11, 2013, which was received by the Gila National Forest FOIA Service Center on the same date. Your request has been assigned Case Number 2013-FS-R3-05354-F. Please include this case number in all communications regarding your request.

You requested: "A complete current *listing* of all *specific* records residing in the Project Record for the Draft Environmental Impact Statement for Travel Management on the Gila National Forest."

The Gila National Forest advises they are still in the process of developing the project record index which is still in the "draft" stage; therefore, a final listing is not available for release. Although we do not have a projected date, the requested document will be available with the release of the final Environmental Impact Statement. Therefore, pursuant to the deliberative process privilege of FOIA Exemption 5, 5 U.S.C. §552(b) (5), we are withholding the "draft" project records for the DEIS for Travel Management. The deliberative process privilege prevents injury to the quality of agency decisions. For the deliberative process privilege to apply, three requirements must be met: (1) the communication must be inter- or intra-agency, (2) the communication must be pre-decisional and developed prior to the adoption of an agency policy, and (3) the communication must be deliberative, and a direct part of the deliberative process that makes recommendations or expresses opinions on legal or policy matters. The three policy purposes that constitute the basis for the deliberative process privilege are (1) to encourage open, frank discussions on matters of policy between subordinates and superiors, (2) to protect against premature disclosure of proposed policies before they are adopted, and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action.

The FOIA provides you the right to appeal my decision to withhold the draft project record index. Any appeal must be made in writing, within 45 days from the date of this letter, to the Chief, USDA, Forest Service by (1) email to wo_foia@fs.fed.us; (2) by regular mail to 1400 Independence Avenue, SW, Mail Stop 1143, Washington, DC 20250-1143; (3) by FedEx or UPS to 201 14th Street, SW, Washington, DC 20250-1143 with telephone number (202) 205-1542; or



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Appeal of the Record of Decision for Travel Management on the Gila National Forest

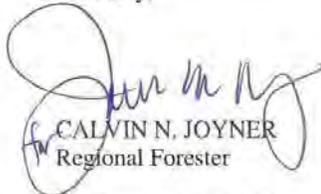
Mr. Mark R. Werkmeister, PE

2

(4) by fax at (202) 260-3245. The term "FOIA APPEAL" should be placed in capital letters on the subject line of the email or on the front of the envelope. To facilitate the processing of your appeal, please include a copy of this letter and/or the FOIA case number assigned to your request.

We apologize for the delay in the processing of your request and appreciate your patience. We feel this fully satisfies your request with the Southwestern Region FOIA Service Center.

Sincerely,



CALVIN N. JOYNER
Regional Forester

cc: Bernice M McMahan

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2

Appeal of the Record of Decision for Travel Management on the Gila National Forest

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1 withholding the draft project records. We did not ask for the draft records. We simply
2 asked for a listing of the documents currently residing in the project record.

3
4 We argue, most strenuously, that a mere listing of the specific documents contained
5 within the project record is not of a “deliberative” nature. Even if a court held that some
6 of the documents contained within the project record were deliberative, and that a list of
7 their presence constituted a deliberative element, the exemption would only hold true for
8 those particular documents and their presence on the list. It would not encompass the
9 entire list of documents comprising the project record. Many of the documents
10 contained within a project record are not deliberative (maps, scientific references, etc.).
11 At the very least, the agency must respond with a partial project record listing/index with
12 appropriately exempted documents redacted. The agency, by their refusal to provide
13 any listing of documents within the project record is claiming that every document within
14 the project record is deliberative. This is simply preposterous.

15
16 This is our fourth attempt over 3 years to establish a clear timeline of what documents
17 were being considered and analyzed by the agency in this project (the draft EIS for this
18 project was dated October 2010). The only way to determine which documents are
19 being utilized by the agency for analysis is via the official project record. The only way
20 to establish a timeline of when the agency had information to consider is to check when
21 those documents were added to the project record file. It is also important to note that
22 during our previous attempts to acquire this information the agency never claimed, in
23 any way, that the documents (or a list of the documents) were not available to the public
24 because of deliberative process privilege.

25
26 Our initial request for a project record listing began in the form of an email to the project
27 leader (Ms. Lisa Mizuno) on 1/9/11. This was just after the period for public comment
28 on the draft EIS commenced. Our follow-up inquiry with the FOIA officer for the Gila
29 (Ms. Jennifer Ynostroza) on 1/18/11 was treated as a formal FOIA (Case Number
30 6789). We received the official agency response on 1/25/11. Our FOIA asked for a list
31 of project record documents. This response included no mention of the project record
32 index in spite of our clear request.

33 We made another follow-up request for the project record index on 1/27/11. Ms. Mizuno
34 responded on 2/1/11 to clarify the agency’s position:

35
36 *—The Forest does not have a project record index nor one like the Santa Fe's available at this*
37 *time.”*

38
39 Please note that the agency response at that time did not claim an exemption due to
40 deliberative process privilege. It simply stated that the project record index did not exist
41 at all. The agency was also responsive to two other FOIA’s (Case Numbers 6844 and
42 6981) made by NMOHVA during this time period. It is important to note that both FOIA
43 responses were complete. All the requested documents were provided and those
44 included many documents that *could potentially have been claimed* as being exempt
45 under the deliberative process privilege as the documents requested (and promptly
46 supplied) were clearly pre-decisional and deliberative in nature. For example, the

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 agency provided a series of meeting notes taken as the individual Ranger Districts
2 proposed the status of specific roads under each alternative.

3
4 Our 2nd attempt to procure a project record index was made on 7/7/11. The FOIA
5 requested:

6
7 *—A listing of all specific records currently residing in the Project Record for the Draft*
8 *Environmental Impact Statement for Travel Management on the Gila National Forest”*

9
10 The agency’s response, after regurgitating the entire FOIA sequence up to that point,
11 was:

12
13 *This is to advise you that there are no responsive records to your request of a "listing of all*
14 *specific records" or "project record index."*

15
16 Again, it is important to note that no deliberative process privilege exemption was
17 claimed by agency. Since it was obvious that there had to be an ongoing project record
18 even if there was no claimed index, we appeared in person at the Gila National Forest
19 office in Silver City, New Mexico, on 10/17/11. We were freely allowed to examine the
20 physical project record files with Ms. Mizuno. We immediately noted that the project
21 record we examined was extremely sparse. It contained only documentation of public
22 notices, the scoping comments, the draft EIS, and some maps. Keep in mind that this
23 was in October of 2011...a full year after the agency released the draft EIS and after
24 they had received public comment on that draft EIS.

25
26 The scarcity of documents in the project record was very troubling. It did not contain the
27 volume or range of best available scientific data, meeting notes, management decisions
28 or field condition reports consistent with a careful, thoughtful analysis of the travel
29 system and the subsequent production of a 300-page EIS. Our organization has been
30 (and remains) thoroughly involved in every step of the travel management planning
31 process on the Gila and other forests in New Mexico. We were very familiar with the
32 volume and type of documents and information accumulated and compiled in project
33 records for travel management planning done by other Region 3 forests. In every case,
34 that information was shared freely with the public and our FOIA requests were filled with
35 no claim of deliberative process exemption.

36
37 We conclude that:

38
39 1) The agency produced the EIS without proper analysis, and knowing the
40 decision they desired, worked backwards to “produce” the draft EIS to support it,
41 or,

42
43 2) The agency produced the Draft EIS using environmental documents and
44 analysis that were not available to the public during the public comment period
45 per the requirements of NEPA and the CEQ:
46

Appeal of the Record of Decision for Travel Management on the Gila National Forest

1 *–NEPA procedures must insure that environmental information is available to public*
2 *officials and citizens before decisions are made and before actions are taken.” 40*
3 CFR1502.21
4

5 In either case, the agency would be guilty of violations that would be fatal to an EIS. It
6 is quite clear that the vast majority of the documents used to produce the Draft EIS were
7 not available to the public during the comment period.
8

9 On 9/11/13 (almost three years after the release of the Draft EIS), we once more filed a
10 simple FOIA asking the agency to produce a listing or index of the documents within the
11 project record. This is the subject FOIA for this appeal. The agency no longer claims
12 that a listing/index does not exist. Now they are hiding behind a misapplication of FOIA
13 Exemption 5.
14

15 There is a purpose to our determination in acquiring a list of the contents of the project
16 record and the timeline in which it was assembled. That information is vital to our ability
17 to fully perform the public participation role that NEPA gives us. It is the public's
18 obligation to verify that the agency produced a NEPA/CEQ-compliant document as the
19 result of a NEPA/CEQ-compliant process. The project record and its production timeline
20 will be a key element in any necessary administrative appeal of the ROD and any
21 subsequent litigation associated with this project's process.
22

23 The difficulty we have encountered in obtaining information that should be readily
24 available to the public lends credence to our concern that this project's process is fatally
25 flawed.
26

27 Thank you for your consideration.
28

29 Sincerely,
30

31 

32 Mark R. Werkmeister, P.E.
33 Board of Directors
34 New Mexico Off Highway Vehicle Alliance
35 1700 Willow Road NE
36 Rio Rancho, NM 87144
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39
40
41