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Subject: Record of Decision for Travel Management on the Gila National Forest
APPEAL TO CALVIN JOYNER, THE REGIONAL FORESTER USDA
FORESTSERVICE REGION III, FROM A DECISION OF THE FOREST
SUPERVISOR, KELLY M. RUSSELL, GILA NATIONAL FOREST

NOTICE OF APPEAL

Pursuant to 36 CFR 215, the Appellants, listed herein, appeal Gila National Forest Supervisor Kelly M. Russell's Record of Decision (ROD) for Travel Management on the Gila National Forest, signed September 26, 2013 and published in the Silver City Daily Press on June 11, 2014. We, as part of the reviewing public, dutifully participated in every public-input opportunity offered, both before and during the processes the Gila National Forest is required to follow under the National Environmental Policy Act (NEPA). We have identified and provided substantive comments on mistakes and process errors made in the Draft Environmental Impact Statement (DEIS). In our review of the Final Environmental Impact Statement (FEIS) we find that the agency ignored public input, failed to remedy identified errors, and failed to adequately address the public's comments in the agency's response to comments. Therefore, the appellants submit that the ROD violates the National Environmental Policy Act and the regulations promulgated by the Council on Environmental Quality (CEQ) and should be reversed.

Moreover, the catastrophic wildfires -Whitewater Baldy and Silver Fire- which have occurred since the DEIS was released for public input, have significantly altered the baseline existing conditions on over 429,000 acres. Because this significant new circumstance has bearing on the proposed action, and no analysis could have been presented for public comment in the DEIS, and because no analysis was presented in the FEIS, the Appellants request that the ROD be withdrawn, a Supplemental Environmental Impact Statement be completed, relating the proposed alternatives to the dramatically changed condition of the forest, and the deficiencies in the Travel Management FEIS on the Gila National Forest, which we have identified in the following pages, be corrected .



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DATED this 27th day of July, 2014

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1 OVERVIEW

This appeal is submitted on behalf of organizations, businesses, and individuals who have participated in the Travel Management process since it began. We champion multiple uses of public lands for the benefit of all. We are made up of off-highway vehicle (OHV) riders, hunting groups, horseback riders, and concerned citizens. We are retirees, parents and grandparents who have made substantial investments in our communities and lifestyle. We are opposed to discrimination that prevents the young, the senior citizens, or the handicapped citizens, access to their public lands.

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, both before the start of the NEPA process, and now, throughout it. We have attended group meetings with our District Ranger, provided GPS maps of routes, provided lists of routes we would like to continue to use, verified roads existence, taken field trips with forest service staff to look at roads and areas, travelled hundreds of miles to meet at the Supervisor's office, participated in scoping, submitted comments on the DEIS and now have standing to appeal the FEIS and ROD.

We believe that the process and analysis used to create what will be the final product, the Motor Vehicle Use Map, were flawed. Our comments, intended to correct potential problems on the Travel Management Environmental Impact Statement (EIS) for the Gila National Forest, were not adequately addressed. In addition, the agency failed to analyze the impacts of the Whitewater Baldy Fire and Silver Fire prior to the release of the FEIS and ROD. We are genuinely concerned that the Forest Service has not taken a hard look at the consequences to the natural or to the human environment, of any of the action alternatives, especially after the fires. The combined effects of the restricted use from the proposed alternative and the catastrophic wild fires are approaching the magnitude of non-use of forest resources which were never intended by Congress and for which the Supreme Court stated that "it has never been the case that the national forests were... to be set aside for nonuse." United States v. New Mexico, 438 U.S. 696, 716 n.23

Our primary concern is that land-use management decisions be made lawfully in full accordance with the NEPA, respecting the customs and culture of the indigenous people, the families, those who grew up here and will raise children here, and nourish grandchildren here, and those who cherish the land.

The NEPA provides for this in Section 101(b) (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.

The TMP reiterates this stance:

“Americans cherish the National Forests and National Grasslands for the values they provide: opportunities for healthy recreation and exercise, natural scenic beauty, important natural resources, protection of rare species, wilderness, a connection with their history, and opportunities for unparalleled outdoor adventure.”

And

“Most National Forest visitors use motor vehicles to access the National Forests, whether for recreational sightseeing; camping and hiking; hunting and fishing; commercial purposes such as logging, mining, and grazing; administration of utilities and other land uses; outfitting and guiding; or the many other multiple uses of NFS lands. For many visitors, motor vehicles also represent an integral part of their recreational experience. People come to National Forests to ride on roads and trails in pickup trucks, ATVs, motorcycles, and a variety of other conveyances. Motor vehicles are a legitimate and appropriate way for people to enjoy their National Forests – in the right places, and with proper management.”

1.1 Statement of Reasons for Appeal

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 our comments in the agency’s response to comments. Furthermore, the FEIS and ROD failed to recognize that there are new circumstances, arising from the catastrophic wildfires that have occurred in the last three years, since the DEIS was released, which are relevant to environmental concerns that have bearing on the proposed action and its impacts .

1.2 Relief Requested

As shown in the Statement of Reasons, the ROD for Travel Management on the Gila National Forest presents a decision based on an EIS that contains certain deficiencies and arrives at inaccurate conclusions based on a document and project record containing those deficiencies. The resulting ROD violates the NEPA, the regulations promulgated by the CEQ, and Forest Service Planning regulations. We hereby request that the agency withdraw the ROD, correct the deficiencies in the EIS, reconsider the corrected EIS, and that a new decision be issued to correct the deficiencies identified herein. In addition, the Appellants request that a Supplemental Environmental Impact Statement be completed relating the proposed alternatives to the dramatically changed condition of the forest.

On behalf of the organizations, businesses, and individuals listed below, we therefore, respectfully appeal to Calvin Joyner, the Regional Forester, USDA Forest Service Region 3, on the record of decision of the Forest Supervisor, Gila National Forest, Kelly M. Russell, signed September 26, 2013.



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3 APPEAL POINTS RE: INADEQUATE AGENCY RESPONSE TO COMMENTS

Reference: Letter/Comment 03022011-15 03072011-121 and 03072011-78

Note: Throughout the document please find the comments (red highlight) and Agency response to comments integrated into the respective topics.

The responses contained in FEIS Appendix B, Response to Comments, ignore comment issues, incorrectly summarize the comment, or provide incorrect or no response at all. The FEIS and reports are not corrected and therefore still contain substantial errors identified in comment, thereby misinforming the decision-maker and the public.

We provide the following statement because it applies generally to our comments. The FEIS analysis is explicitly contrary to CEQ's guidance. This statement comes from Executive Summary p. vi, Considering Cumulative Effects Under the National Environmental Policy Act, Council on Environmental Quality, January 1997.

Determining the cumulative environmental consequences of an action requires delineating the cause-and-effect relationships between the multiple actions and the resources, ecosystems, and human communities of concern. Analysts must tease from the complex networks of possible interactions those that **substantially affect the resources. Then, they must describe the response of the resource to this environmental change** using modeling, trends analysis, and scenario building when uncertainties are great. **The significance of cumulative effects depend on how they compare with the environmental baseline** and relevant resource thresholds (such as regulatory standards). Most often, the historical context surrounding the resource is critical to developing these baselines and thresholds and to supporting both imminent and future decisionmaking (bold added for emphasis)

3.1 CEQ Requirements for Cumulative Effects Analysis

3.1.1. Causes and effects relationships omitted

CEQ does not say the agency “may, might, can or should” look at cause and effect to analyze cumulative effects. CEQ says determining cumulative effects requires delineating cause and effect relationships. Identifying cause and effect relationships is not optional. The FEIS fails this requirement, not least because it doesn't even analyze the very thing that is the sole subject of the analysis: motorized use, and it provides no evidence that motorized use is harming resources in the Gila National Forest.

3.1.2 No Analysis, No Excuse

Motorized use has always been essentially unrestricted in the forest outside of wilderness areas. There have been decades of motorized use. The GNF has had decades to study it. All the evidence the GNF could ever need of damage caused by motorized use is right at their fingertips. But the GNF has made no attempt to examine that in eight years. The FEIS has built an enormous document to analyze an issue for which it repeatedly insists it has no data: motorized use.

We note that the travel management planning started in 2006. The FEIS was released in 2014. The Gila National Forest has had EIGHT years to gather data. They have done nothing in eight years to look at the empirical evidence that is right on the ground they are charged to manage.

3.1.3 Fails to Comply with 1505.22

In 40 CFR 1500, §1502.22 addresses incomplete or unavailable information. The GNF has complied with only one of the three requirements of 1502.22; it has admitted information is lacking. From the Final Watershed and Soils report p. 51:

The Forest has no data for motorized use levels

The GNF has not complied with the other two requirements of 1502.22: (bold added)

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

The GNF had eight years to do the simple and inexpensive work of laying out traffic counters to sample traffic on roads and trails. They already have the traffic counters, evidenced by a few main road traffic counts shown are in the Roads report. Obtaining the information was possible and not of exorbitant cost. The GNF had an obligation to obtain the incomplete information. They made no effort to obtain any of the incomplete information.

(2) **a statement of the relevance of the incomplete or unavailable information** to evaluating reasonably foreseeable significant adverse impacts on the human environment;

The FEIS has no statements about the importance, significance, or relevance of the “unavailable information”

3.1.4 Failure to Evaluate Existing Forest Conditions for Existing Causes and Existing Effects

The project is not proposing to add some new activity to the forest that has not existed before; that would create new impacts that didn't exist before. All the possible impacts from the

unrestricted, maximum possible allowed use already exist on the forest. The evidence is there, the GNF has done nothing in eight years to collect or evaluate even the smallest bit of it.

3.1.5 Failure to Use Agency's Own Existing Data and Science

The GNF failed to provide any analysis or even a qualitative description of the existing effects of existing motorized use. The forest itself provides an ideal experiment for evaluating impacts of motorized use on natural resources. The GNF could have (but did not) compare soils, water, wildlife, and watershed conditions in wilderness to conditions outside wilderness. They have years of monitoring and studies inside and outside of wilderness, these were not compared. There are USFS studies on trail and water conditions in wilderness, none are cited. Comment 03032011-17-9 specifically addresses this opportunity for an analytical comparison, and the agency's responsibility to use its own tools and data, and is a detailed criticism of the FEIS methodology. This comment is listed in the GNF's comment inventory called Comments by Subject. The comment code does not appear in Appendix B and there is no response at all to it.

Instead of studying the forest that they are tasked to manage, that is right outside their doors, the GNF produced an analysis that relies entirely on cited studies to support their claims of motorized damage. If they are so sure the damage is there, why didn't they just go out and look at it?

The agency claims the courts owe them deference for their scientific expertise. The case law shows there is a limit to that privilege. The requirement for the "hard look" is not satisfied when the agency refuses to examine relevant data. Instead, the agency has engaged in "...distorting the decision making process by overemphasized highly speculative harms" (Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 109 S.Ct. 1835 U.S.Or.,1989. May 01, 1989 SUPREME COURT). Also from that case:

...Council on Environmental Quality regulation requiring environmental statement to **focus on reasonably foreseeable environmental impact rather than include "worst case analysis" when agency is faced with unavailable information** concerning reasonably foreseeable significant environmental consequence...

The existing conditions on the forest are the reasonably foreseeable consequences of allowing motorized use. Instead of focusing on that, the FEIS focused on "worst case analysis" by citing only negative studies and presenting only negative conclusions. The FEIS is in the unsupportable position that its cited studies are contradictory to its conclusions about the existing conditions of resources. The cited studies are used to support agency predictions of extreme environmental damage, but the existing condition shows "no harm to resources" from existing unregulated motorized use, even with cross country travel allowed.

3.2 CEQ tells the agency to identify the interactions that substantially affect the resources.

There is no study of the existing evidence of interactions between motorized use and resources, Instead the FEIS presents the current condition as the sum total of all natural events and human activity.

3.3 CEQ tells the agency to consider what is substantial and significant.

The FEIS has nothing in the analysis which differentiates between trivial effects and substantial effects. Any and all impacts are treated as equally meaningful; just that some are “more” or “less” than others. The comparison of alternatives deals entirely in “more” and “less” and does not disclose if effects or changes in effects are substantial or significant.

3.4 CEQ tells the agency to assess the significance of cumulative effects compared with the environmental baseline.

The FEIS persistently refuses to present the proper baseline. It refuses to include all the routes. It refuses to include all the economic benefits. It refuses to use data and studies it has. It refuses to account for how all the natural regime factors have contributed to the current condition. For instance, the FEIS has nothing to say about the substantial and significant impacts from 28 years of fire burning 36% of the forest, naturally occurring sedimentation, soil movement, effects of flashfloods, or the contribution of natural geothermal activity to water temperatures.

3.5 The USFS expects to get deference for the science in the FEIS.

But the FEIS can’t even present consistent numbers for the miles of road in the Gila National Forest. The final Recreation Report (p. 11) states this:

There are also 784.1 miles of County, State and US roads and highways within the administrative boundary; this mileage remains constant throughout all alternatives.

The final Roads Report says there are 1,842.2 miles of County, State and US roads and highways. Table 1, p. 4:

Table 1: Roads under other jurisdiction within or accessing the Gila National Forest

Road Jurisdiction ^a	Miles
Bureau of Land Management	1.8
County	818.4
Other Forest Service	23.7
Private	349.7
State Highway	686.3
U.S. Highway	337.5
Total Miles	2,217.4

^a Source: INFRA, GIS

Likewise, it can't present a coherent figure for road maintenance costs. The FEIS describes the budgetary benefits of reducing the maintenance needs on the forest. FEIS p. 34 Table 16 states the no action Alternative B has \$5.169 million in deferred (e.g. overdue) maintenance.

FEIS p. 50 identifies \$272.6 million of deferred maintenance on GNF's NFS roads: (bold added)

The result of the forest's inability to perform full maintenance is a maintenance backlog known as deferred maintenance. Examples of deferred maintenance include replacing culverts, cattle guards, surfacing and signs based on their life cycle or when needed and removing all roadside vegetation encroaching into the roadway or that which is limiting site distances. **An estimate of the current deferred maintenance for NFS roads on the Gila National Forests is \$272,265,429.**

The Gila National Forest can't measure its own roads or count its own money. But it demands that we accept its conclusions on difficult and complex issues of science.

The FEIS does not show cause and effect between motorized use of routes and existing conditions in the environment as shown in data. The analysis doesn't even analyze the activity that it claims to analyze; motorized use of routes. It analyzes roads; roads are not an "activity". Even considering the roads analysis, the information provided in the FEIS indicates lack of correlation between existence of routes and watershed conditions. The FEIS and responses to comment refuse to examine that serious and pervasive problem in the analysis. Instead of looking at the facts on the ground, the FEIS clings to its insistence of 'damage caused by roads', cited from studies done in other place that have different conditions. CEQ requires that the FEIS properly draw conclusions from the information presented. This FEIS fails to comply with that direction.

4 ISSUE: FIRE EFFECTS NOT ANALYZED

As noted above the recent catastrophic fires have burned a significant portion of the baseline used to analyze the alternatives. The Whitewater-Baldy Complex Fire (WWB), May-July 2012, was the largest fire in the history of New Mexico. As of July 23, the fire had burned more than 297,845 acres (465.383 sq. mi; 120,534 ha) in Gila National Forest at 95% containment. To a lesser extent, but still involving significant acreage and effects to motorized travel, the Silver Fire, May-June 2013, burned 138,698 acres. The Silver Fire Burned Area Emergency Response (BAER) Team Executive Summary reported “A significant amount of high and moderate burn severity has occurred in the headwaters of the Mimbres River and Animas Creek, 303(d) listed streams, located in the Aldo Leopold Wilderness affecting numerous Outstanding National Resource Waters (ONRW) totaling 35 miles.”

http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5430883.pdf

The fire also impacted the Rio Grande Basin north of Las Cruces, NM and El Paso, Texas.

The Whitewater Baldy BAER Executive Summary itemizes damage to natural resources http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5375619.pdf :

The fire severely burned a large tract of land across the Gila National Forest and the Gila Wilderness, including the headwaters of Whitewater Creek, Mineral Creek, and Gilita Creek that drain directly into the communities of Glenwood, Alma, and Willow Creek respectively.

Additionally, pre-fire erosion rates commonly less than one ton per acre have been modeled post-fire to range from between 20 to over 100 tons per acre. Changes in runoff response compounded by sediment bulking are issues of serious concern for downstream values of human life and property.

Severe damage to critical natural resources, including soil productivity, water quality, watershed health, threatened and endangered species, and critical habitat has resulted from this fire and irreversible damage is expected if management action is not taken in the three watersheds mentioned above, as well as in the Headwaters of the West Fork Gila River, Canyon Creek-Middle Fork Gila River, and Upper Mogollon Creek, Mineral Creek, and South Fork Negrito sixth code watersheds. The range of post-fire erosion rates greatly exceeds the dominant tolerable soil loss of 1 to 3 tons per acre. In the wilderness areas proposed for treatment the West Fork and Middle Fork of the Gila, as well as Whitewater Creek and Mogollon Creek, are in nonattainment of state water quality standards (303(d) listed) and are also designated Outstanding National Resource Waters (ONRW) which are subject to higher water quality standards. There are an additional sixteen ONRW streams in these watersheds and approximately ten ONRW

wetlands. The burn severity was high throughout most of the mixed conifer vegetation communities at the tops of several drainages.

Large contiguous tracts of burned forest system lands have dramatically changed the existing condition, in the Glenwood Ranger District, Reserve Ranger District, parts of the Wilderness Ranger District in Catron County, and the Silver City Ranger District and parts of the Wilderness Ranger District in Grant County, between the issuance of the DEIS and FEIS. The pre-fire existing condition is altered for both the natural environment and human environment. There have been, and will continue to be, significant impacts from these large, intense forest fires, which just occurred in the three years since the DEIS was released.

Nevertheless, fire effects are only dealt with in a cursory manner in the DEIS and FEIS. There is no meaningful analysis of fire effects on roads and trails or natural and human impacts after the WWB and Silver fires.

We can appeal only on the issues we commented on in the DEIS. No one commented on the 298,000 acre WWB fire, or the 38,000 acres Silver Fire - they hadn't happened yet. The aspect of the fires could not have been, as stated in CEQ-Appendix B- 40 Questions, "reasonably raised during the scoping process" or the DEIS comment process. These fires constitute a significant new circumstance.

The existing condition used for analysis changed dramatically. We request that a Supplemental Environmental Impact Statement be completed as a result of the dramatically changed conditions over the baseline which was used for developing the alternatives.

The NEPA necessitates the preparation of a supplemental EIS in cases of significant new circumstances. :

40CFR1502.9(c)(1)(ii) Draft, final and supplemental statements:

(c)Agencies

(1) shall prepare supplements to either draft or final environmental impact statements if:

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

The FEIS states:

The 2011 Wallow Fire on the Apache-Sitgreaves National Forests also has a closure order in place restricting road and trail access within the burned area. Some roads and trails on **both** forests may be closed for several years.

While road closures are standard operating procedure after a fire, the scale of the fires within areas traditionally used by hunters, and other recreationalists, constitutes a significant new

circumstance which must be considered. The access to prime hunting country has been severely impacted. Only 6 major arteries, 60 miles apart, are even passable. Some of them are barely passable. It would not be possible to pull a trailer over these roads. Two years after the fire, the main access from the west, NM 159- Bursum Road, is still not passable hauling a trailer. It will flood with the monsoons. FS road 141 is barely usable. Hunters have to go all the way around to get into the heartland to hunt elk and to camp at Snow Lake. Emergency access is impeded by the road conditions. Larry Blount, a co-appellants in this appeal, is retired from the New Mexico State Police. Countless times he has accessed the high country in Law Enforcement capacity. He is still a volunteer with the Catron County Sheriff's Department. His extensive experience in the high country attests to his assertion that "the more ways there are to enter an area, where campsites are for example, the more likely an effective rescue, or evacuation, can be carried out." The knowledge from the public, and law enforcement agencies, is not put to good use. The resiliency which is offered through leaving roads open disappears. A case in point is that during the WWB fire the redundancy of roads over areas where there were firefighting endeavors, were used to stage equipment, monitor the fire and provide access for fire fighters and other personnel. The roads also deterred the spread of the fire. If these roads are not used, they will succumb to all of the natural forces inherent in a burned area. The mobility they provide for firefighting, emergency access and recreation will be less and should be included in an SEIS.

Put the burned conditions and the Decision together, and the access is dramatically altered.

Moreover, without a SEIS, the actual mileage, and concomitant usage for various activities, under Alternative G, after the fires, is unknown. Yet the Agency can still claim that the mileage tables in the FEIS are true and accurate. This misrepresents the actual conditions of the forest. Some closed roads under Alternative G may be excellent and useful; some roads open under Alternative G may be impaired and require closure. Without an SEIS we will just have to take the Agency's word that resource damage is severe enough to warrant closures but someday they will reopen. There will be no analysis disclosed to the public.

Under the APA standards of review, this Forest Service action could be considered arbitrary, capricious, an abuse of discretion.

Under the Administrative procedures Act (APA) standards of review, Chapter 7, Section 706, that would set aside a Forest Service action that is:

(A) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

4.1 Remedy

The remedy for this issue is to analyze the effects of the fires on motorized access in the alternatives, as presented in the Decision.

The Forest Service must make a plan which will outline when the roads will become operational again (provide a timeline), and how the Forest Service plans to make them operational, so they don't deteriorate and become unusable, leading to more unroaded areas in the parts of the forest designated for general motorized access.

The Forest Service also must analyze how the alternatives, in the Proposed Action, could be fully implemented since the fires occurred. The access to prime hunting country is has been severely impacted.

In dealing with fire effects it is necessary to analyze the economic impact from the catastrophic fires that occurred between the dates of the DEIS and the FEIS. The comment period for the DEIS ended March 7, 2011. After that time, in May and June, 2011, the Bear Wallow Fire, named for the Bear Wallow Wilderness in Arizona, where the fire originated, burned over 841 square miles (2,180 km²) in Apache, Greenlee, Graham, and Navajo counties in Arizona and Catron County in New Mexico. It was the largest fire recorded in Arizona. The only access to Glenwood- US Highway 180- was closed to thru- traffic intermittently during the time that firefighting efforts and evacuations were occurring. The businesses in Glenwood and Alma rely on summer-time tourism. The closures severely impacted revenues for the five motels, four restaurants and three stores located in Glenwood and Alma.

Then came the WWB fire in 2012. The upland scorched terrain had changed absorptive characteristics from those of a shag carpet to those of an asphalt parking lot. During the fire and in the aftermath ,still continuing today, the possibility of upland flooding became the dominant issue in the lives of those at the bottom of the burned watersheds. The BAER Team recommended that the historic and popular Catwalk at the Catwalk National Recreation Trail, be dismantled and the Trail closed to the public because of the dangers from floods. The bridges, walkways, railings, picnic ground structures and associated infrastructure, which were thought likely to catch floatable debris, were removed to protect Glenwood and the Highway 180 Bridge.

The economic impact from losing the 50,000 visitors per year is highly significant. One well known family restaurant went out of business in 2013; two other restaurants are now open a few times per week, in the summer. One motel closed and another is barely functioning. The other three are managing with limited staff. The general merchandise stores are open with limited staff. The remaining store is a specialty store and trades via the internet.

The FEIS did not include economic research on the impacts of the fires, It did not analyze the economic impact of the Alternatives in conjunction with the fire effects. Such research is available at <http://www.srs.fs.usda.gov/econ/pubs/misc/fl-fire-report2000-lores.pdf>. This is publication SRS4851, the Final Report for Economic Effects of Catastrophic Wildfires, written by the USFS Southern Research Station. The following is an excerpt from the NMOHVA appeal by Joanne Spivack:

This analysis of 1998 Florida wildfire examined tourist spending, lodging receipts. The Florida analysis points to what could have been, but was not, included in the GNF economic analysis. From p. 16 of the Florida study:

Tourism and overall sales fared the worst during August, weeks after the last wildfire, prompting the question whether the steep drop was due to the wildfires or some other event(s). Therefore, a regression model was estimated to examine statistical links between wildfire in a county and tourism spending. See Table 2.7. Changes in hotel revenue were modeled as a function of wildfire size, year, and economic productivity (US GDP). Initial results failed to establish a statistical relationship between wildfire size and percent change in hotel revenue (used as a proxy for tourism). The regressions exhibited a statistically significant negative relationship between tourist spending and the year 1998, meaning that 1998 was unique compared to the ten previous years. From the standpoint of tourism, 1998 was different for several reasons. First, the hot, dry conditions found that summer may have served to reduce the attraction of Florida. Second, nationwide media coverage that detailed the extent and side effects of the 1998 wildfires—mandatory evacuations, smoke, and road closures—may have served to discourage travel to the state.

Best Methodology Note that when the initial results did not show relationship, the USFS analysts at the Southern Research Station didn't just declare "no relationship". They looked deeper and employed another analytic tool. Regression analysis is a standard tool for analyzing relationships. They also don't declare relationships without presenting statistical support.

The USFS Southern Research Station study shows us two things. First, the GNF report fails to use accepted analytical methods. It simply declares there are relationships without proving them statistically (e.g. GNF's entire analysis is based on its unproven assumption of a direct and linear relationship between miles and dollars).

Second, the GNF report fails to consider the economic impact of catastrophic fire. The GNF had the opportunity to update the economic analysis in the 3 years between the DEIS and the FEIS. But the economic report fails to even mention this enormous event. The Baldy-Whitewater fire destroyed large areas of forest around Glenwood, NM. The forest will not recover for decades. This change is permanent in terms of the timeframe of the planning, and will have long term effects on visitation and recreation spending. The GNF study fails to consider that the fire made part of the forest unusable for recreation. This reduction makes the opportunity to use the remaining forest even more important and valuable.

The GNF could have at least made some estimate of impact. Instead the economic report doesn't even mention the fires or that there would possibly be an economic impact. It also totally fails to mention the USFS's removal of the historic Catwalk in Glenwood, which was the most popular attraction in Catron County, and the 2nd most popular in the region (after the Gila Cliff Dwelling National Monument). The analysis fails to even mention that the USFS removed the Catwalk and now years later has made no significant progress

in re-installing it. Reopening the catwalk foot trail is NOT the same as re-installing the actual steel Catwalk itself.

The response ignores our original comment, which showed that by excluding visitor spending, the GNF's report has severely underestimated economic impacts, and understates the effect of reducing recreational opportunity by closing roads. The GNF has understated both the social quality and the economic quantity of impact. It understates who is affected and what the dollar impact is on the local economy. It fails to consider factors and methodology that we find commonly included in other economic analyses done by and for the USFS.

To summarize, fire impacts constitute significant new circumstances relevant to environmental concerns and bearing on the Decision and its impacts. By the standard set in 40CFR1502.9, SEIS is clearly necessary.

5 ISSUE: LIFE'S AMENITIES

We have repeatedly requested that the Forest Service respect the customs and culture of the indigenous people of this area. We have requested the Forest Service to give consideration to our values and history with the forest, and our relation to the forest. In Section 102(B) these values and history are called the unquantified amenities and values, and the Forest Service has demonstrated that it will disregard NEPA rather than show the respect and consideration for these amenities and values that NEPA requires.

5.1 Camping on Lower Frisco

In the ROD, concerning one of the few places uniquely treasured by local, indigenous people, the Lower San Francisco River, Supervisor Russell states:

This portion of the San Francisco River lies within both an inventoried roadless area and wilderness study area. The 1986 Forest Plan recommended that the Lower San Francisco River not be designated wilderness. There was a great deal of public comment and concern regarding the motorized route system in the San Francisco River, specifically the area from Big Dry Creek to Mule Creek. All alternatives in the DEIS analyzed changes to the route system in this area. Due to the level of public comment, I decided to have the San Francisco River area specifically addressed in the FEIS.

Comments included adding no motorized routes and removing motorized access from the San Francisco River to reduce impacts to riparian and aquatic species and their habitat. Comments also focused on maintaining access for fishing, camping, bird watching, and

other traditional family outings. I recognize that this is only one of very few public access points to the river.

The action alternatives provided differing mixes and amounts of motorized roads and motorized dispersed camping and motorized big game retrieval corridors. I feel that alternative G is the best choice to provide public access to the San Francisco River, continue the parking and camping opportunities currently used near the river, and greatly reduce the impacts to resources adjacent to or along the San Francisco River. Direct impacts to water quality, streambank stability, riparian vegetation, and aquatic species including critical habitat for loach minnow and spikedace from motorized uses would be eliminated at 39 of 40 stream crossings under alternative G. There is also a reduction of 88 percent of the motorized routes within 300 feet of the New Mexico Environmental Department's listed impaired (303d) reach of the San Francisco River.

We absolutely must correct the impression that the parking and public access is near the river or that it provides camping opportunities. Ms. Russell, in her statement, seems never to have been in this area. She equates camping in a parking area, 6 miles away from the water, as a camping opportunity. In Alternative G, camping is, for all practical uses, particularly for traditional family outings, constricted to a few acres. The illustration of Alternative G shows the magnitude of the change that the FS is implementing in a local traditional recreational area. The bold, red line shows what the public is losing. To access the water and decent camp site, one must travel a cobbled road, which changes each time it rains. It is a slow process along the old road. Travelling the 6 miles to get to the San Francisco takes at least an hour. Once there, the road widens in several places providing good camping spots up high, away from the flood plain. This explains the local interest in this area where there are few public access points to the river due to prior decisions to close the public off. However, relegating the amount of camping to less than a few acres, 2 hours away via motorized conveyance, virtually renders the area valueless. Congress never intended the lands to be valueless.



The Decision is out of compliance with the NEPA Section 101 (a)

it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable

means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. (emphasis added)

and Section 101 (b) (2)

assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings; (emphasis added)

and Section 101(b) (5)

achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; (emphasis added)

and Section 102 (A)

insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment

The Decision also disregards the CEQ regulations set forth for compliance with NEPA at 40CFR § 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

Furthermore, extensive NEPA case law has clearly established that the NEPA process does not mandate a certain outcome, and that in fact, natural values are not to be placed above all others.

The Forest Service developed no methods or procedures to identify and consider these unquantified amenities. The Forest Service shows no interest in the relation of the local people (or any people) to the forest nor does it have any regard for the importance of the forest to the indigenous citizens and their custom and cultures.

In the recreation section of the FEIS the Forest Service writes its own description of these amenities:

From wilderness to western heritage, visitors to the Gila NF have the opportunity

to “find themselves” in the wildness of the forest. The essence of the Gila is the freedom to explore vast expanses of backcountry. Heritage and cultural connections allow local communities, Native Americans, and recreationists to establish long-term bonds with the forest. Traditional gathering of forest products and hunting bring visitors from near and far. Rivers and lakes, uncommon in the Southwest, provide relief from heat across the forest. (emphasis added) (FEIS p. 60)

In light of the decision to close the public off from the only traditional area near water it is hard to tolerate such a gilded statement. There is no attempt to preserve such unique accessibility, even though the Forest Service is aware of its presence.

We find this statement in response to comments (The comment is highlighted in red, the response in black):

Under Laws, Regulation, and Policy page 604 :

Comment: 03062011-01-3; 03072011-78-15/20

The reduction of 94.8 percent in access is a violation of the public trust doctrine.

The reduction of access to streamside areas as proposed in the Gila’s Travel Management planning only pertains to the use of motorized vehicles in those areas. Public use and access by foot or other nonmotorized means to streamside areas is not restricted. Therefore, public use and access to these areas are maintained.

The statement “therefore, public use and access to these areas are maintained” is a calculated misrepresentation. The San Francisco river is miles north on Old 12 and entails walking through boulders and dense, weed infested land. Therefore the usage is limited to those who horseback ride or have time and fitness to backpack in. The Lower Frisco is miles away from parking and requires hours of stepping over rocks and logs. In either case, access will still be provided by the roads which were created when settlers beat a path with horses and wagons, and have been kept usable by motorized recreationists.

Amenities are tied irrevocably to forest access. They include personal relationships, family, livelihoods, and traditions that arise from our generations of proximity to the forest, including working and recreating in our vast and uniquely accessible forest. The forest is the source of much of our history as well as our livelihoods and culture. Being in and around the forest has affected us too deeply to change, or to engage in "substitute behaviors" as the Forest Service likes to say. There is an unquantifiable value that is available in the forest that can be found nowhere else. That's why access is so very, very critical to us. No dollar value can be placed upon these amenities, hence they are indeed unquantified. The Forest Service reports that 61% of its visitors are from Grant County (FEIS p. 59). Most of the appellants are from Grant County and neighboring Catron County. This area is our favorite area to take our families.

Therefore, we contend that the Forest Service is out of compliance with the NEPA at Section 102(B). Appropriate consideration was not given to these amenities and values. In fact, no consideration was given. Moreover, I have attended numerous meetings, including Scoping meetings and Commission meetings where the San Francisco River access was the topic. Furthermore, in February 24, 2006, our groups met in Silver City, with then Regional Forester, Harv Forsgren. He stressed that the decisions would be “defensible”.

I believe the decision to close access to this dearly loved area to motorized camping is based on contentions, from outside pressure groups. I believe the decision selects for one type of user over another and promotes user conflict.

If this is the case, the agency is exceeding its statutory authority. There is absolutely nothing in the Travel Management Rule that tells the agency to consider user conflicts. The phrase “conflicts between motorized and nonmotorized users” does not appear in the language of the Organic Act, the Multiple-Use Sustained Yield Act, the National Forest Roads and Trails Act, or the National Forest Management Act nor is there language authorizing favoritism of one group such as those who access the forest motorized over a group that rides horses or hikes.

The relief we seek is for this Decision to be withdrawn and a new document developed which observes both the letter and the spirit of the NEPA.

5.2 Old Highway 12 on the San Francisco River

There is no commented coded to 03032011-17 for our submitted comment on the San Francisco River. There is a response to comment coded as 03072011-121.

03072011-121-3 failure to analyze unique aspects

03072011-121 2-7 failure to analyze traditional and recreational values.

The Response to that comment is this statement (p. 716):

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

The current traditions, cultural and social values for the area are not mentioned in the Cultural Resources report (that is only about prehistoric resources). Social values for the San Francisco River are not mentioned anywhere in the FEIS or underlying reports. They are not in the original Recreation report, the revised Recreation WSA/IRA report, and are not in the Social-Economic report. The GNF has utterly failed to do the social analysis required in the USFS planning

regulations, and under NEPA law. The only concerns addressed in the FEIS are from one side; the side that hates motorized use and wants it banned.

The agency did not respond at all to the specific error clearly identified in our comment about the lack of the required social analysis:

ERROR: The DEIS and supporting Specialist Reports fail to acknowledge the special status and value of the San Francisco River motorized access. They fail to disclose the existing condition or the cumulative impacts on the social environment from a closure. The methodology of merely counting and comparing miles is completely inadequate. This methodology results in conclusions which fail to inform the public and the decision maker about the values of this unique location and access which is so important to the public. The analysis consists solely of mileage comparisons and provides no qualitative discussion, and fails to provide any presentation of the social and recreational values of this (or indeed of any) location or route.

The lack of proper social analysis has not been corrected in the FEIS. The analysis has only gotten worse, and even more one-sided. The phrase “San Francisco River” appears 77 times in the FEIS. There is not one single statement speaking to value of the local traditional uses, and the unique value of this place to local residents.

The initial statement at p. 137 states the area is controversial: (bold added)

Motorized use in the San Francisco River corridor has been and is very controversial. Opinions expressed by the public range from a total closure of the entire River corridor, to keeping the entire corridor open to motorized vehicle use. This wide range of opinion and the concerns raised were considered in developing the Travel Management Rule proposed action and in the development of alternatives. During the comment period for the Draft EIS, specific concerns were raised about the effects of maintaining existing user created roads within the Lower San Francisco IRA and Wilderness Study Area.

The San Francisco River corridor is more than just the Lower San Francisco River. It runs from the Lower San Francisco Plaza, south of Reserve, to the Arizona border. This is accessed via a road which runs along the river. The valley floor is a treasured location for the local community, and motorized access is long established. The analysis does not show any consideration of the social values associated with the controversial San Francisco River corridor, even though those values are clearly identified in our comment and comments from others. The FEIS then makes this outrageous statement at p.153:

Other Locally Unique Characteristics

There are no other known unique characteristics in the area.

The San Francisco River road between Glenwood and Reserve is itself is the subject of controversy that is not discussed in the FEIS.

Despite the fact that Catron County considers this road to be Old Highway 12, not FR32, and that it considers this a county road under RS2477, the Forest Service is using the Record of Decision to administer it and manage it and thereby adjudicate it.

02112011-04-2 02242011-01-1

Road 32 - Route 32 should be closed from private land

Old Highway 12 from the Reserve end of the road is proposed for administrative use for private land access in all action alternatives to private land in sections 9 and 21 T8S R19W. The segment between the parcel in section 21 running to the parcel in section 29 is decommissioned.

There has been no documentation ever submitted as to how this segment became decommissioned. Furthermore, the private parcels on either end of this segment were purchased in 2011 after the comment period for the DEIS was over. Public involvement in the purchase of this private land was limited to that associated with the Gila National Forest land management planning process **in 1986**. An Environmental Assessment was done on both Tract 40 and Tract 42. The Forest Service found that neither tract of land revealed any evidence of recognized environmental conditions and required no further environmental investigations. Apparently, despite continued motorized access, there is no damage occurring to the land. (See photographs in previous comment on the Frisco).

Nevertheless, in the rationale for spending \$ 776,000 dollars of tax payer money and violating Catron County's "no net loss policy" the Forest Service claims the higher moral ground in this statement:

The Forest Service acquired these two parcels to "eliminate potential impacts to the Wilderness that would be associated with the private development of access and utilities and the potential environmental impacts from the on-site disturbances associated with private development of land to its economic highest and best use."

Additionally, the Forest Service states it acquired these two parcels (emphasis added):

“ to benefit wildlife habitat, *increase recreation opportunities*, assure that watershed conditions remain stable from human interference, maintain the region's natural beauty and enhance fire protection of the area. The Forest Service determined that acquiring these two parcels would ensure the area remains un-roded and will benefit the public by providing assurance of continued access across these lands.

The sardonic statement, in light of the proposed action- Alternative G- is that recreation opportunities will increase. The pictures posted above show the terrain. In some places there is good walking, but there are cobbles and sandy beaches and mucky areas impassable for most people on foot.

The segment of road between section 29 (T8S R19W) and section 14 (T9S R20W) is proposed for administrative use only to access private lands, which minimizes use.

The devaluation of private property through Forest Service actions such as limiting access to that property or impeding emergency access to private property was pointed out in our DEIS Comments 5 -The No Action Alt Does Not Comply With CEQ Requirements "But: The agency must methodically and patiently destroy the value of the private property to which the road provides access. Erasing one of the only two roads is a big first step. It matters not to the agency that there is no emergency access, and with only one way in and out, there is no **escape in the event of a catastrophic wildfire. It's more important to the agency to erase that road.**

In reference to the roadless area, this route was established prior to the roadless area designation.

This route is considered by Catron County as RS-2477, however the route has not been adjudicated by a competent court. Therefore the FS should hold it out in its management and administration protocols as a RS2477 road.

5.2.1 Preservation of NHPA artifacts in the San Francisco River Valley

In 2011, NMOHVA made a photographic record of homestead artifacts along the river between Glenwood and Reserve. The USFS has been buying up private land in the valley. We are concerned that the agency will “cleanse” the area of evidence of inhabitation and human use, in order to make it suitable for wilderness designation proposals.

The historic artifacts that exist along the San Francisco River between Glenwood and Reserve include buildings, household goods, tools, implements and the remains of wagons and old cars. These have been respectfully left in place for decades, by the motorized users in the valley. We ask that the U.S. Forest Service have a similar respect for these beloved traces of local history. We should not have to remind the USFS that these artifacts are protected under the National Historic Preservation Act. We know what is there, and we know it should remain there.

5.2.2 Analysis Content and Method

The analysis is entirely obsessed with demonizing motorized use and the uses and access that are so important to the community. The analysis portrays the area solely in terms of IRA's, WSA's, wilderness characteristics, and the usual recitation of “potential” resource issues. There is no social analysis, there is no mention of any historic roads protected under the National Historic Preservation Act.

FEIS Chapter 3 Affected Environment presents the analysis method, starting at p. 138. The method is entirely focused on impacts to forest resources, impacts to WSA's, wilderness and roadless characteristics, and entirely omits social, traditional and historic values.

Analysis Methods. In this analysis, potential impacts to wilderness study areas and their values are discussed for the purpose of compliance with the National Environmental Policy Act, which requires disclosure of expected impacts to forest resources. This analysis is not meant to have any bearing on proposing these areas for wilderness designation other than to understand the potential effects to wilderness character and roadless characteristic values from the proposed action alternatives. The analysis also includes the consideration of irreversible and irretrievable commitments of resources on Wilderness Character and Roadless Area Characteristics effects for potential designation as wilderness under the 1964 Act. The document “Applying the concept of wilderness character to national forest planning, monitoring, and management” (Landres et al. 2008) was used to direct the analysis on wilderness character.

5.2.3 Failure to Provide Physical Analysis of River Flow and Flooding Characteristics

The FEIS fails to disclose the enormous and powerful flood water flows that periodically scour the valley. The magnitude and force of seasonal flows create massive changes in soils and configurations in the riverbed. Effects from motorized use are absurdly trivial compared to the natural events. The species in the river have evolved to survive the sediment, turbidity and force of flash flood waters.

5.2.4 Damage from Natural Events compared to Motorized Use

Photos below show the sidewall cuts along the San Francisco River created by violent flooding events compared to motorized use. Tall embankments cut by flood waters. This is a real “impact” that affects natural resources.



Real Impact: river bank sidewalls, exposed roots, erosion and soil movement from flash floods.



This is NOT a real impact:



This is not a real impact either.



But the GNF thinks these people are harming “scenic beauty”. From the Recreation IRA/WSA Report p. 60.

5.2.5 Natural appearing landscapes with high scenic quality

The Lower San Francisco River is well known for its’ scenic beauty. Visual Quality could be improved in all Action Alternatives due to the proposed prohibition on cross-country travel and limiting motorized use to designated routes within the WSA.

The FEIS has performed the dutiful recitation of the legitimacy of motorized use. But statements like the one above show the agency’s pervasive institutional hatred of motorized use, that corrupts the analysis . The GNF is here stating that the mere sight of a vehicle harms scenic beauty.

This IS a real impact. Flood damage to trees, powerful waters move large rocks.



Dry floodplain area, cobbled with river rock, receives flow during floods.



Many parts of the San Francisco River road between Glenwood and Reserve run over dry areas that get flood waters when the river overflows.

Impacts from motorized use are insignificant and are obliterated by flood water, rolling boulders and debris moved by powerful flows. Debris from flooding is seen lodged in trees, six feet off the ground.

The analysis fails to present impacts from motorized use in the proper context of comparison. Human use impacts are trivial compared to impacts from the predictably recurring natural flash floods. The floods continually remodel the riverbed.



5.3 RS 2477 Roads

We are appealing this Decision because the Forest Service is attempting to adjudicate RS2477 issues with this Decision. It was brought up in comment that The Forest Service is changing the use of, or closing, certain roads which the counties have claimed under their RS2477 rights. Although not adjudicated, the Forest Service is taking it upon itself to change the use of or close some of those roads. In the FEIS response to comment, the Forest Service simply avoided the issue by describing current Forest Service policy.¹ It does not address the fact that the Forest Service is changing the uses of and partially or completely closing numerous roads so claimed.

¹ FEIS page 663, " Current Forest Service policy is to defer processing of any RS 2477 assertions, except in cases

The most prominent one of these roads is the San Francisco River Rd (FR 4223L and old Highway 12) of which key sections are being closed. It is not listed as open in the Decision. It will make an enormous area "unroaded."

This is more than the Forest Service trying to settle an RS2477 issue by this Decision. It is an example of road closures that create large unroaded areas. The roads are removed from the maps but they are still there, making the unroaded land a fraud. This newly "unroaded" section is being artificially created by an administrative action on the part of the Forest Service. Many people call this "manufacturing wilderness."

Also on the Lower San Francisco River Road, 29 river crossings have been blocked off, essentially closing the road.

Closure of this road segment eliminates cuts off access. The road will fade into nature, allowing the area to be a better wilderness prospect. This is unlawful and it cannot be done in good conscience by the Forest Service; it is serving an agenda that conflicts with the multiple use mandate set forth by Congress in the MUSY and the NFMA.

In scoping, the Forest Service states that there were conflicting opinions on what to do in the San Francisco River area.² Yet scoping does not trump the law; multiple use is the Forest Service's mandate, period. Closing the segment in question destroys the road's continuity and access value, precluding multiple use.

People who oppose multiple use must address this with Congress, not during the Forest Service's land use and travel Plans.

Stone Canyon Road (FR 642, T7S, R9W section 30 to T7S, R9W section 24). Closure.

where there is a demonstrated and compelling need. The Forest Service will administer and manage the use and operation of such roads accordingly, until or unless a court of competent jurisdiction rules in a manner that is contradictory to our findings. Congress has not delegated to the Forest Service the adjudicative authority to conclusively determine whether or not there is a valid RS 2477 right. Only a court of competent jurisdiction can conclusively make such a determination. The burden of proving the existence of an RS 2477 right-of-way in court lies with the claimant. All of the following five elements are required for an appropriate public body to establish a public road under RS 2477 over NFS land: Document that a road must have been constructed or established using public funds.

² From the Record of Decision: "*Lower San Francisco River* – This portion of the San Francisco River lies within both an inventoried roadless area and wilderness study area. The 1986 Forest Plan recommended that the Lower San Francisco River not be designated wilderness. There was a great deal of public comment and concern regarding the motorized route system in the San Francisco River, specifically the area from Big Dry Creek to Mule Creek. All alternatives in the DEIS analyzed changes to the route system in this area. Due to the level of public comment, I decided to have the San Francisco River area specifically addressed in the FEIS."

Wahoo Canyon Road (FR 760, with spurs, T8S R10W section 12, ending at T8S, R9W section 1). Closure.

The closure of Stone Canyon and Wahoo Canyon Roads closes off 22 sections of NFS lands from public use. These are Catron County claimed roads. They lie in the north range of the Black Range, which already has a wilderness.

Another road in question is one claimed by Catron County; this is 4223L.

Also Road 32 in T8S, R19W section 9 and 21, there is a usage change from open to public to administrative (written permission only). Another segment between the private parcel in section 21 and the private parcel in section 29 is classified as "Decommissioned." The segment of road between section 29 (T8S, R19W) and section 14 (T9S, R20W) will be for administrative use only to access private lands, which cuts off public use. This is a through county road, upon which the County has asserted its RS2477 claim. This means the County intends for it to remain open to the public.

A segment of the road to Lost Lake (Forest Road 4056X) is left off all the maps. The road begins in 10S, R19W section 3 and ends T9S, R18W section 21 (at Road 403) The missing segment is in T10S, R19W section 2 and 1. This road used to go from Catron County Road #10 to adjoining FR 626A, FR 4163 and FR 141. Now it will be an out-and-back from one end or another. Catron County has asserted its RS2477 claim on this road.

The roads the Forest Service is unilaterally adjudicating include but is not limited to the roads specified in this narrative. The short time frame for appeals has constrained an exhaustive listing.

However, the Forest Service is violating RS2477, which states that:

"The right of way for the construction of highways across public lands not otherwise reserved for public purposes is hereby granted."

It was repealed in 1976. All the roads in question pre-date 1976 and/or the establishment of any WSA they may cross.

In New Mexico, the Territorial Legislature enacted section 67-2-1 NMSA, 1978 Compilation. In 1905 the Legislature knew the federal government was going to reserve the public lands in 1906, thereby closing them to homesteading and assuming control of the roads. As a consequence of the 1905 territorial act the USGFS cannot close New Mexico roads that predate the 1906 reservation of public lands to the federal government.

The resolution of this appeal would be for the Forest Service to re-classify all the roads as open to all public uses. This will save a considerable amount of research and change, and possibly save the filing of many RS2477 assertions in court. The four Counties have claimed well over 100 roads, encompassing hundreds of miles.

6 ISSUE: “NO ACTION” ALTERNATIVE DOES NOT COMPLY WITH CEQ

This appeal is written and submitted on behalf of the hundreds of concerned citizens who dutifully participated in the Travel Management process. In reviewing the process there were distinct phases of public input, each progressively more complex, necessitating increasing levels of technical and analytical expertise.

6.1. Phase 1 - Failure to Use the Public Input Data, Failure to Admit it has Public Input Data

The Decision disregards the CEQ regulations set forth for compliance with NEPA at 40CFR § 1507.2 (a) Fulfill the requirements of section 102(2) (A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

The first phase was one of public participation. It involved accumulating data from members of the public, counties and Forest Service; providing input to each other and the Forest Service; and expressing our concerns on the outcome of the Travel Management in the Gila National Forest.

The GNF asked the public to provide the Forest with information on user-created routes in 2005, at the commencement of planning for implementing the Travel Management Rule (TMR).

At the inception of the TMR, the National OHV Team for the USFS produced the MOTOR VEHICLE ROUTE AND AREA DESIGNATION GUIDE. Early in the guide it addresses the issue of inventorying the 'user-created' routes. The Guide identifies three levels; no inventory, partial inventory, and full inventory. In the section titled: Identifying Roads, Trails, and Areas for Consideration, page 9, it makes this essential observation, which is also a warning: (emphasis added)

"A complete inventory of user-created routes is not required. However, users deserve some assurance that their favorite routes are given appropriate consideration, and we must have enough information about these routes to evaluate social and environmental impacts of adding them to the forest transportation system."

The public was told repeatedly in public meetings that the Forest would evaluate the user-created routes for designation. The public complied, and acted on good faith. The OHV public did the work with their own equipment and at great personal expense of time and travel. It would be unconscionable for the GNF to ignore and discard this valuable information. Yet this is precisely what happened. Harv Forsgren, R3 Regional officer, met with us in Silver City, February 24, 2006. He stated that the starting point would be what is "defensible".

Mr. Howard Hutchinson, Executive Director Coalition of Arizona/New Mexico Counties for Stable Economic Growth, a co-appellant on this appeal, testified before the House Natural Resources Committee, March 12, 2012, on "EXPLOSION OF FEDERAL REGULATIONS THREATENING JOBS ANDECONOMIC SURVIVAL IN THE WEST:

"Early in the process (2006-2007) the National Forests, including the Gila, encouraged OHV users to submit data and maps of the routes they use.

The OHV users submitted hundreds of miles of GPS tracks to the Gila National Forest. These tracks were entered into the Gila National Forest database by the Gila's GIS specialist. He created maps that overlaid the user trails with the Gila's system roads.

These maps were posted on the Gila's website until shortly before the Proposed Action was released. Then, the maps and all reference to them disappeared from the website. But we had already archived the maps and images of the web pages, anticipating this would happen.

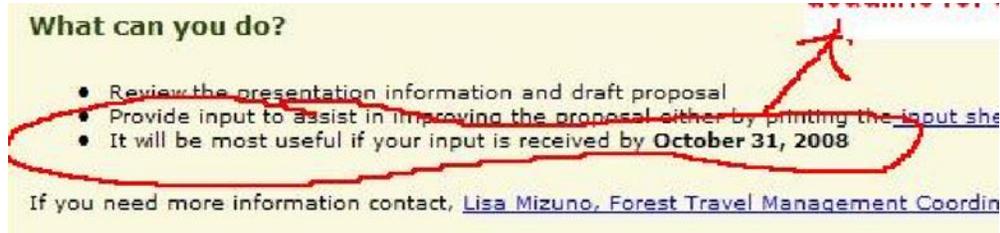
The Draft EIS never says that hundreds of miles were submitted by the public, and entered in the forest database and displayed (temporarily) on the website. None of the alternatives incorporate any of these routes.

The Gila never identified which if any of the Public Input routes overlaid forest system trails and roads. This testimony shows that the Gila DEIS claimed only 16 miles of existing motorized "system" trail, even though the national website showed 828 miles in 2007."

Explanation: From 2005-2007, the agency sought the help of the motorized community in identifying the unauthorized routes in use. The motorized community submitted detailed information in the form of GPS data. This data was added to the GIS system, and the resulting maps called Public Input were posted on the agency's website. These maps, for each ranger district, showed the Public Input routes overlaid on a standard GNF background.

Below are ‘screenshots’ taken from the GNF’s webpage, showing the Public Input maps posted for public use. These were removed from the website prior to the start of Scoping.

These were taken on 9-11-08. As noted on this webpage, the GNF was asking the public for input, saying it would be most useful if received before Oct. 31, 2008.



6.1.1 Evidence on the Gila National Forest website of the Public Input Maps

The first image shows the listing for the public input maps, the bottom line in the table.

• Solicit additional input to the draft proposal
 • Reconnect with those who provided input
 • Identify if some important points or coordination was missed
 • Improve our proposal
 • Resolve as many conflicts as possible in order to have the best proposed action to move into NEPA

If you are unable to attend one of the workshops or would like more time review the presentation materials and draft proposal and provide input: the presentations and maps that will be presented at the Workshops are available for review:

Slide presentations:

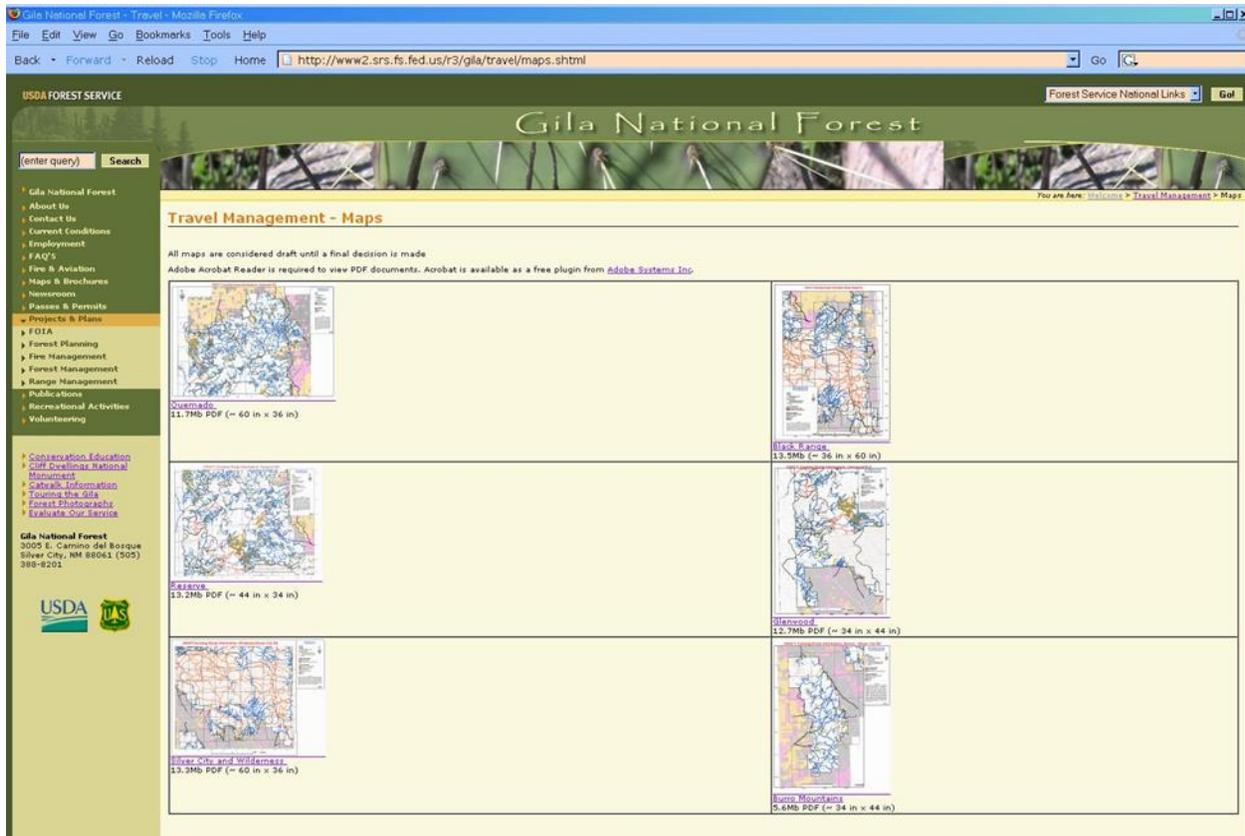
1. [Overview of the Travel Management Rule](#) (Powerpoint 126Kb)
2. [Gila NIF's process to implement the Rule](#) (Powerpoint 86Kb)
3. [Draft Proposal](#) (Powerpoint 3.29Mb)

Maps:

Maps	Black Range RD	Glenwood RD	Quemado RD	Reserve RD	Silver City RD	Wilderness RD	Burro Mtn. Area
Existing Direction Map	View Map (PDF 9.9Mb)	View Map (PDF 8.0Mb)	View Map (PDF 7.1Mb)	View Map (PDF 8.4Mb)	View Map (PDF 5.4Mb)	View Map (PDF 7.9Mb)	View Map (PDF 3.1Mb)
Draft Proposal Map (all roads)	View Map (PDF 12Mb)	View Map (PDF 4.1Mb)	View Map (PDF 9.3Mb)	View Map (PDF 11.5Mb)	View Map (PDF 7.1Mb)	View Map (PDF 12.1Mb)	View Map (PDF 4.0Mb)
Motorized Transportation Map and Dispersed Camping	View Map (PDF 9.7Mb)	View Map (PDF 7.6Mb)	View Map (PDF 6.3Mb)	View Map (PDF 7.9Mb)	View Map (PDF 5.7Mb)	View Map (PDF 7.6Mb)	View Map (PDF 3.1Mb)
Public Input Map	View Map (PDF 3.8Mb)	View Map (PDF 9.8Mb)	View Map (PDF 4.3Mb)	View Map (PDF 4.6Mb)	View Map (PDF 3.3Mb)	View Map (PDF 4.2Mb)	View Map (PDF 1.1Mb)

Adobe Acrobat Reader is required to view PDF documents. Acrobat is available as a free plugin from [Adobe Systems Inc.](#)

The second image shows the clickable PDF maps for Public Input for each ranger district.



The GNF has had over three years to work with this Public Input GPS information; to ground truth, verify field conditions etc. If it has done any of that, it has not disclosed it. It has not even disclosed a mileage number for routes submitted by the public.

The mileage could be calculated with a few clicks on the computer, since the data is already in the system. The agency could easily have determined where the submitted trails overlaid system routes, but it didn't do that either. The DEIS never even mentions that this data was solicited and received from the public. The agency does not disclose the data is already in their computer system, the tedious work of data entry was done years ago. It does not disclose the data had been posted on the agency's website. There is no excuse for the agency's failure to acknowledge that it has the data and no excuse or its failure to work with it. To our knowledge the agency has not followed any of the Region 3 guidelines for trails.

The FEIS has not disclosed they have these maps. The FEIS has not accounting for the roads and trails submitted by the public. The FEIS does not mention these maps.

The maps are not listed in the Project Record Index. As part of the scoping process, the information on the maps are part of the environmental information used for preparing the NEPA document. Document No. 0123 in the current project record index is a FOIA request from CBD regarding the user-created maps. Document No. 0426 is a letter from Blue Ribbon Coalition

regarding the user routes. Document No. 1765 is a conversation with Donna Stevens of UGWA, about user created routes. But the maps themselves are not listed.

We know the GNF has these maps. We have the maps, downloaded from the GNF website six years ago. But that is not enough; all the maps must be in the project record as part of the official NEPA records.

The user input maps are the only record of requested routes, and the only evidence of positive value and benefits for keeping routes open to the public.

There is no other site specific assessment in the FEIS that shows positive attributes or benefits of motorized routes. Without the user input maps, the decision-maker has remained uninformed as to the specific desires, needs and requests submitted by the public. This is especially true since the current supervisor, and decision-maker, arrived at the GNF long after these maps were taken off the website in 2008.

We request that the user input maps of 2008, of each ranger district, be added to the project record.

The Decision disregards the CEQ regulations set forth for compliance with NEPA at 40CFR § 1507.2 (a) Fulfill the requirements of section 102(2) (A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment.

6.2 The second phase began with the NEPA process - Scoping.

Our groups had submitted route requests and duly commented on the Proposed Action. In scoping we asked the Forest Service to go through the process of analyzing user trails which had been recently removed from the GNF website.

The need for a thorough analysis should have been identified if the Forest Service had observed its obligations under 40CFR1501.2, which directs the Forest Service to "Determine the scope and the significant issues to be analyzed in depth in the environmental impact statement." During scoping, and confirmed by comments on the DEIS, it became obvious that the Forest Service's plans to close thousands of miles of existing, open roads was unacceptable to the surrounding communities by the number of collective and individual concerns expressed about individual routes and groups of routes, and about the importance of forest access in general. These voiced concerns should have made it obvious to the Forest Service that it needed to do a route by route analysis.

6.3 The Travel Analysis Process TAP Process.

The next phase was confusing. The GNF drafted its Proposed Action before completing and releasing the TAP. The Center for Biological Diversity said it best—“Travel Analysis should form the basis for the proposed actions and purpose and need statements in the subsequent NEPA process and therefore, this document should have been readily available prior to the publication of the proposed action and certainly should have been made available after our repeated requests. The public has had no opportunity to review this important and lengthy document which would help to inform the public’s understanding of the motorized needs of the GNF and help the public better understand the analysis that lead to the proposed action. The failure to make the TAP publicly available after repeated requests is more than an oversight; it is an obstruction of the public’s right and obligation to submit informed comments in response to proposed actions from the Forest Service.”

The FEIS, Appendix B Response to Comments page 195 explains:

The TAP is intended to provide analysis of roads and trails *that feed into the EIS during the Scoping process.*

The GNF went backwards. They built a NEPA document with no framework. After the document was built they tried to incorporate the framework.

The FEIS, Appendix B Response to Comments page 195 states:

The TAP provides the framework and the explanation of the forest process from which recommendations for designation are outlined that may be examined in the National Environmental Policy Act (NEPA) process. The NEPA process provides the basis, including formal public involvement, for making decisions.

The National OHV Team for the USFS produced the MOTOR VEHICLE ROUTE AND AREA DESIGNATION GUIDE. On Page 12, the Guide discusses another step the Gila National Forest did not do; the GNF did not involve the public in the preparation of the TAP document which is also recommended by Region 3.

Public involvement at this stage is essential to ensure that the public has a chance to identify and respond to broad-scale issues. Collaborative efforts in travel analysis can result in proposed changes to the forest transportation system that enjoy broad support, avoid serious environmental issues, and are relatively straightforward to address under NEPA. ***Failure to involve the public in travel analysis can result in lack of understanding and support for the travel management program and repeated challenges to project decisions.***

USFS Region 3 provided a document on October 13, 2006, to guide the Forests in producing the TAP. Page 1 has this:

TAP is **not** a NEPA process; however, federal regulation and agency policy **require** an analysis to provide input when considering changes to the motorized transportation system.

Page 2 says this, and the emphasis is in the original:

Travel analysis and travel management decisions depend on information about existing use patterns, violation and accident patterns, natural resource conditions, user demand, and social and economic interactions. **Public participation & collaboration are required; therefore, TAP is a public process.**

This statement of public process is also made at page 14 of the National OHV Team guide:

Travel analysis provides initial pre-NEPA screening of user-created routes to identify those suitable for inclusion in proposals for additions or changes to the forest transportation system.

It is not trivial that the Gila National Forest put the cart before the horse and released the TAP after the release of the Proposed Action. The GNF failed to disclose a significant document for public examination. Public collaborative efforts at this stage are essential to ensure that the public has a chance to identify and respond to broad-scale issues in travel analysis. The public can justifiably doubt that an authentic TAP analysis was done, and that analysis and recommendations flowed OUT of the TAP, and were not pushed into the TAP to support a desired result.

6.4 The Draft Environmental Impact Statement.

This phase of the process became unnecessarily complex because the No Action Alternative failed to provide a complete analysis of the existing condition, failed to state the authority it used to close, or decommission roads prior to the starting point, did not address user-created routes and disparagingly called them unauthorized routes, reported that despite all analysis showing that motorized travel caused no damage, severe restrictions on motorized travel would be necessary to comply with the travel management rule. It appears that the agency did no real analysis on alternatives, because the No-Action Alternative was the basis from which decisions flowed and it did not reflect the existing condition- rather an estimate. Participation in the public input process, the TAP, would have allowed reasonable discussion about the roads and trails OHV's are uniquely built for. We requested that user-created routes, the ones removed from the website prior to scoping, be shown in the draft EIS, and incorporated into the No Action Alternative. Lack of analysis and exclusion from the No Action Alternative of user created routes, OML1

roads, and closed roads brings us to conclude that the No Action Alternative does not comply with CEQ requirements.

Much could have been changed if the GNF forest would have complied with R3 Guidelines and undergone the Travel Analysis Process prior to the beginning of the NEPA process. Instead it took a shortcut. These shortcuts include but are not limited to violations of the NEPA Section 102 (i), (ii), (iv), and (v) as well as a failure to meet the standards of review set forth in the Administrative Procedures Act (APA). The APA standards of review state that a Decision may be set aside if it was arrived at without observance of procedure required by law. We contend that the violation of four different CEQ regulations and of the NEPA Title I, in the process of arriving at this Decision, make the decision unlawful.

These are not trivial violations; they go to the heart of taking a hard look at the effects of the Decision.

We are appealing this Decision because it is based on faulty information presented in the no action alternative, which grossly skews the decision-maker's perception of the effects of the Decision.

The EIS violates the intent of CEQ's no action alternative (1502.14(b) and (d)) as clarified in the CEQ's "40 Most Asked Questions." Reviewers, including the decision-maker, cannot understand the effects of the alternatives using the baseline provided in this no action alternative.

The ROD and FEIS also violate the objective of the affected environment, 40CFR1502.15.

We also contend that the newly applied name, "unauthorized," violates the LRMP, and so naming an entire category of routes is unlawful.

In our comments we directed the Forest Service to prepare a new EIS because after reviewing the EIS it is obvious that the presented route inventory is incorrect. Because the inventory of existing roads and trails is incomplete, the County could not make fully informed comments and/or requests regarding the proposed Travel Plan.

In the Forest Service's response, it states that: "Alternative B does not include unauthorized (user-created) routes, maintenance level 1 closed, or decommissioned routes. Alternative B displays the existing motorized system for the Gila National Forest which includes those roads that are classified as Maintenance Level 2 through 5 and designated motorized trails as recorded in the respective INFRA databases."

There are no designated trails on this forest. It is an open forest. The Forest Service claims on FEIS p. 60 that "Currently, except where prohibited, foot/horse travel on the forest is not restricted to the designated trail system, that is, foot or horse travel can travel cross-country within the forest boundary." However, as discussed, no process for designation is disclosed in

the EIS. The Forest Service never needed a system for designating anything because the LRMP authorized travel anywhere except areas where a closure was in place (Wilderness).

In this response, the Forest Service also changes its presentation of the existing condition to their "interpretation" of the existing condition. The existing condition is supposed to be the current level of management intensity, not the Forest Service's interpretation of the existing condition.

Furthermore, the response does not address the point of the comment. That is, regardless whether this was an honest idea about how to present the existing situation, the "honest idea" has resulted in a huge misrepresentation of the existing situation. The ML1 roads, and the unauthorized routes, and the decommissioned roads were all open for public use, with no attempt on the part of the Forest Service to be closed. That is the "current level of management intensity" in existence ever since the LRMP was set forth. The Forest Service made no attempt to close user-created routes, and that was the "current level of management intensity." There could be no such thing as an "unauthorized route" because this is an "open" forest as set forth in the LRMP. All routes were legal. The phrase "Current level of management intensity" is directly from the 40 Questions # 3 clarifying the no action alternative. Since the CEQ regulations are not very specific about the no action alternative, the CEQ itself produced a document called the Forty Most Asked Questions. In this document, at Question 3, we receive considerable clarification about the no action alternative and why it must be included:

"In this case, no action is no change from current management direction or current level of management intensity." (Emphasis added)

In Question 3, CEQ describes the type of no-action we are discussing for this EIS:

"There are two distinct interpretations of "no action" that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases "no action" is "no change" from current management direction or level of management intensity."

That correctly fits our situation with this EIS. CEQ clarifies the *objective* of the no action alternative. This is critical:

"This analysis [of no action] provides a benchmark, enabling decision-makers to compare the magnitude of environmental effects of the action alternatives." (emphasis added)

Thus, leaving all of that mileage out is not just a small error that can be overlooked in any further independent action even if it is an honest mistake, because it's absence so grossly skews the comparisons.

In 2004, the agency issued a “All Travelways” map to the public. This map shows far more routes than any of the Existing Direction or even All Roads maps the agency issued after starting the TMR implementation process. Even if the Forest Service can produce a NEPA-compliant closure order for all of the “extra” routes shown on the All Travelways map, all of these routes are already clearly acknowledged to be in use by the public since 1989 (the data on the 2004-issued map).

Below is an excerpt from a previous analysis of the baseline, No action alternative, and the real existing condition.

The baseline, Alternative B, No Action Alternative, which is the basis for comparison with the other Alternatives, excludes thousands of miles that the DEIS admits are legally open for use and are being used. The DEIS says that the No Action Alternative includes the routes the public uses now. These two maps are an example of the amount of legal existing Forest Service road mileage being deliberately excluded from the DEIS and closed to motorized use.



MAP B6 No Action Alternative 2011
Claims to show the existing system of roads in the Deep Creek area, primarily the Glenwood Ranger District



The same area, with existing roads, from the 2004 All Travelways Map released to the public on CD.

There is a much higher percentage of roads and trails being closed than what the DEIS says. DEIS Presents a False No Action Alternative which is a Violation of NEPA, NFMA and USFS Planning Regulations.

The No Action Alternative must include the routes the public uses now. However it leaves out routes for High-clearance vehicles, and decommissioned routes which are still open for public use because the GNF is an Open to cross country

travel forest. We have USFS maps showing these roads as open, and the DEIS admits the public used these roads. The DEIS fails to include legally hundreds, if not thousands, of roads not listed in the forest service inventory. The DEIS fails to include virtually all of the official Forest Service trails that ATVs and motorcycles legally use now. It claims there are only 16 miles of motorized trail in the forest. This is a word game, since all the trails are legally open to motorized use right now.

In its response to comment, page 664 under "Starting Point," the Forest Service responds to a commenter who is concerned that Alternative B does not show all the miles of roads and trails that are currently in use. In its response, the Forest Service says,

"Alternative B does not include unauthorized (user-created) routes, maintenance level 1 closed, or decommissioned routes."

And according to the GIS data supplied to NMOHVA under a FOIA request and shared with us, the Forest Service has 1,169 miles in OML1 status. In fact, at FEIS page 14, in the discussion of one of the options for the alternatives, the Forest Service tells us it is considering:

"Reopening of roads includes both maintenance level 1 closed roads 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..."

In other words, the Forest Service never made any attempt to actually close any of these. Only now does the Forest Service claim that any of these routes were closed to public use.

In the FEIS the Forest Service changes this number to just 531. What happened to the remaining 638 miles? And how can the mileage outcome remain so similar? Were they converted to Decommissioned? Although if they were the outcomes would not change as long as the Forest Service is claiming the decommissioned roads are also "automatically" closed. However, at FEIS page 54, it states that

"these roads are currently receiving traffic and are thus not truly decommissioned."

Insofar as the GIS-reported OML1 roads, that's 20%³ of the total roads proclaimed by this EIS as existing, yet they are not counted in the comparison between the present situation and the situation that will result if any action alternative is implemented. Why should they be counted as open to motorized? Because of the continuous use they have been receiving over the years. That is the "current level of management intensity." The Gila Forest did not make it a priority to close these roads. The Gila forest management let the public continue to use them. The total number of miles of open to motorized as set forth in Chapter 2 is wrong because the in-use OML1 roads

³ 4,604 from DEIS Table 1 p. v, added to the 1,169 miles of OML1 roads.

were subtracted before we even started. This is an important omission, because the Forest Service states that they were in continuous use, and we know from reading our CEQ instructions, that is the "current level of management intensity." These miles must be shown in the no action alternative as miles open to motorized use, because they always were open to motorized use.

We contend that the no-action alternative is unlawful because it does not provide an accurate baseline for comparison to the effects of the action alternatives. It does not accurately portray the current level of management intensity.

Even if the Forest Service can produce the environmental documentation for each one of the OML1 closures, the level of management intensity allowed them to remain in use, thus they must be counted in the baseline of all open roads.

At 40CFR1502.14 the Forest Service is directed to analyze the no action alternative. At 1502.14(b) the Forest Service is directed to:

"Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits."

and 1502.14 (d)

"Include the alternative of no action."

As explained in the "40 Questions," the objective here is so that reviewers of the document can see the difference between the way the situation is at present, and the way the situation will be under the Decision.

The type of no action we are discussing and the objective are clarified in the "40 questions." The objective is so that reviewers (including the Decision-maker) can compare the current situation with what things would be like under any of the action alternatives, or in this case, under the Decision. And, in this case, because the no action alternative left out so many miles, the Decision-maker did not have an accurate benchmark to craft this Decision. The Decision-maker was studying tables in Chapter 2 that did not reflect the true magnitude of change; and thus, did not know that the Decision would actually close 58% of the existing access, and not 28% as claimed.

Forgive us if the following analysis and discussion is long. We do so because the Forest Service did not understand what we were trying to point out in comment, and the time is now critical for the Forest Service to understand the mistake it has made.

So, the no action alternative must describe the current level of management intensity--not just what is in the INFRA database minus the OML1 roads and "unauthorized" routes. Our analysis (provided in detail in the following pages) of the no-action alternative in the EIS revealed that

routes were erased from maps, routes were changed to closed when they had been open and in use for at least twenty years, and entire systems of trails and routes simply "not counted" because they weren't in INFRA or had not been inventoried, or were simply labeled "unauthorized." However, those routes are open and in use because continued use keeps them open. The Forest Service calls these routes "unauthorized," except that in an open forest, where people have been allowed to drive anywhere, there can be no such thing as an unauthorized routes. All of those routes are authorized by the LRMP which set forth that this forest would be open to cross-country travel.

The FEIS must honor the seminal regulatory document for the forest, but in this case, it does not. All of the mileage that is mapped and open in previous maps published and distributed by the Forest Service must be counted. That is the current level of management intensity.

Our analysis of the no action alternative indicates that the Forest Service has reduced the amount of open, in-use mileage shown in the no action alternative, and that doing so dramatically minimized the change from the present situation as compared to the situation as it will be under the Decision.

Our examination of the FEIS indicates that the Forest Service made no substantive changes to their no-action alternative. It invented a new category of road, but it made the numbers add up in nearly the exact same way as the DEIS. The total loss to the public is not revealed in the FEIS or the ROD. The newly closed miles were lawful and open and in-use, unless closed by a specific closure order. The FEIS contains no catalogue of closure orders.

In calculating the real number of miles we also used the Region 3 GIS trails maps plus the OML1 miles plus what they "say" is "out there" in their INFRA database. In our calculation, we include all the miles open to the public under the current level of management intensity.

6.4.1 Disclosure of true mileage closed by Alternative G:

	DEIS Table 1, page v	FEIS Table 1, page viii	Faulty NOAA
NO Action Alt-miles designated open to the public for motor vehicle use	4,604	4,613	OML1 plus Decommissioned roads plus Open OML Roads 2-5 7,895 actually available to the public
Alt G	3,323	3,334	7,895 - 3,334 = 4561 actual closed miles

Total	1,281/4604=28% (1,281 proposed to be closed)	1,279/4613=28% (1,279 proposed to be closed)	4561/7895=58%
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In approximating the real number of miles we used the Region 3 Trails data and OML1 mileage (3,334) plus what the Forest Service says is out there, 4,604. $3,344 + 4,604 = 7,895$ total miles on the ground left open for public use by the Forest Service. Table 19, page 46, of the DEIS says there are 4,613 OML 2-5 roads. This agrees with FEIS Table but the FEIS added a new category of 531 miles, and then subtracted them, as well as another 638 miles which were closed with no known lawful closure orders. Thus, the mileage outcomes for both the DEIS and the FEIS are almost exactly the same. But because the OML1 and Decommissioned roads are left off the comparative tables (in the open routes column) it looks like nothing has been lost.

The GNF has missed CEQ's *intent* for the no action alternative, which, according to CEQ, is to provide the baseline values for comparison with the action alternatives. We must be able to determine the magnitude of change to the affected environment.

6.4.2 The shocking circumvention of the rule of law.

We still don't know where the term "unauthorized" originated. Of course it is used in the text of the TMR, yet the authority for "de-authorizing" existing, open, and in-use routes (only in the years since the TMR was set in place) is never disclosed, either in the TMR or in the EIS. The EIS does not disclose when or how these "unauthorized" routes became "unauthorized." The Forest Service does not disclose how open, legal routes become "unauthorized." This looks like a case of the government changing the name of something for the sole purpose of changing its legal status. This is a stunning circumvention of the rule of law. The Forest Service simply changes the phrase "existing route" into "unauthorized route," and suddenly, it is apparently illegal. This is astonishing.

6.4.3 Level of management intensity not accurately disclosed in the mileage numbers

Having pointed out that the Forest Service is circumventing the rule of law with its new name, we would still look for whether the route had a lawful closure order or not. Since there is no listing in the EIS and few appear in response to FOIA's, we go to what the Forest Service did to close them. And we find that, the Forest Service made no attempt to inform the public or to physically close any of the routes that it left out of its baseline alternative. This goes to the heart of the "current level of management intensity." The Forest Service simply left them open, and the public continued to use them.

In other words, it doesn't matter if there is a closure order or not: Out on the ground, the Forest Service just left the routes open. That is the current level of management intensity and that is why the Forest Service must include all that mileage in its no action alternative.

In the no-action alternative, in order to gain a meaningful understanding of the current level of management intensity, we must know what administrative action was taken to communicate the closure to the public and to enforce the closure (signs, berms, fences, and active enforcement by LEO's) such that the routes were no longer used. We have no evidence there was any effort to close these routes.

Furthermore, the Forest Service doesn't even guess at what they call the "unauthorized" route mileage. The Forest Service claims in response to comment that it does not have to inventory these miles.⁴ We contend that they do, because the route mileage is the crux of the issue and the subject of the analysis. We contend that the regulation exempting the Forest Service from doing an inventory does not apply because the miles of routes are the central issue in this analysis.

Furthermore, case law has established that because the TMR implementation is a task that the Forest Service set for itself, without Congressional authorization, they are not exempt from gathering the information necessary to do an appropriate and accurate analysis.

And, the reason these miles should be in the comparisons is, the Forest Service has never communicated to the public that the roads are not open. The Forest Service made no attempt to physically close them, using signs, berms, boulders or barriers. The Forest Service made no attempt at public education about user-made routes. As far as the public was aware, (and according to the LRMP) they are open and legal. That makes them part of the existing, in-use transportation system. **They represent a significant part of the existing level of management intensity.**

Next we again examine the map "All Travel Ways on the Gila National Forest" published by the Forest Service. The date on the compact disc is 3/19/2004. The dates on the map itself say that it was constructed in 1989 and field reviewed in 1991.

This map shows **all** of the presently claimed OML1 routes as open. There is no legend item separating OML1 routes, OML2 routes, or trails. All the roads are represented by the title of the map, "All Travel Ways" and they are shown as open routes. This clearly indicates that even if some of the roads were at some time lawfully designated as OML1 roads, they were not closed and the Forest Service had not attempted to close them. The public is using them, and has been for over twenty years. This ongoing use is confirmed at DEIS p.51, indicating that the Forest Service perceives that these routes are currently in use by the public, and further indicates no effort to stop that use.

"The Gila National Forest's road system inventory includes an additional **1,194 miles** of roads that are classified as either closed or decommissioned. Hunters are user groups that

⁴ The Travel Management Rule (USDA Forest Service 2005) states that "reviewing and inventorying all roads, trails, and areas without regard to prior travel management decisions and travel plans would be unproductive, inefficient, and counter to the purposes of this final rule." In this case, the Forest Service is exempting itself from identifying the quantity of the subject of all of these analyses. It is impossible to analyze the effects of anything if one does not even know the quantity of the analyzed subject. This exemption is irrational; it is meant to circumvent an expense that the Service has unilaterally set up for itself.

specifically benefit from closed and decommissioned roads since they allow for easier cross-country access to more remote areas of the forest from the open road system for hunting and big game retrieval."

In the above citation we see another example of the Forest Service's linguistic gymnastics: it calls the use of these roads "cross-country travel," when in fact, the people are driving on an Forest Service-constructed road that has never been closed! This goes straight to the heart of the "current level of management intensity."

In the FEIS that passage does not appear. The Forest Service admits in many places and Chapters 1, 2, and 3 that OML1 roads are receiving use. Nonetheless, the Forest Service simply says that, for the purpose of showing the baseline alternative,

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

So the Forest Supervisor arbitrarily declared that these routes are all now closed, solely for the purpose of travel management, even though the routes are all actually open. In the context of the travel management no action alternative, it is incorrect to claim that these roads don't count when you know people are using them on a regular basis. It is incorrect to leave these roads off the maps if they are all candidates for inclusion in the designated system. The roads cannot be analyzed if they are not on the maps. They can't even be considered, if no one knows they exist.

At p. FEIS 108 we learn that

"Some unauthorized routes have become established on remnant logging roads or other formerly managed roads that are no longer part of the National Forest System, but were never obliterated and remain on the landscape."

Based on eyewitness accounts, we challenge the Forest Service to produce the administrative record that shows all the closed roads marked or barricaded before very recently (the last two years). In all the years preceding travel management, the Forest Service did nothing to stop traffic on any of these roads. This goes to the heart of the "current level of management intensity."

6.4.4 Existing trails in roadless areas have been deleted

We have the map the Glenwood RD titled "Draft Travel Management 020806" which shows many miles of trails in roadless areas, but which have all been erased from the EIS maps.

Here are just two specific examples of existing routes removed from the Alternative B EIS maps on the Glenwood Ranger District:

1) T8S, R21W, north of the Wilderness boundary, we have existing trails mapped and numbered by the Forest Service as Trail # 506, 44, 515, 515.2, 36 and 21. These trails make loops that use the County Road CO13 as the clear boundary of the Wilderness.

2) T10S, R19 and 18W, and T9S, R18 and 19W, show trails mapped and numbered by the Forest Service as Trail # 202, 201, 798, 109, 808, 198, 505, 197, 194, 196, and 195. These trails make loops and NM highway 159 is a clear landmark warning of the Wilderness boundary.

All these trails are shown on Region 3's GIS maps, and on yet another iteration of Glenwood R.D.'s draft "Existing Route Information" maps, with no restrictions on the type of use. They appear in the "background" of the 2003 and the 2004 maps noted earlier in this comment. These trails do not appear on the maps distributed with the EIS.

The Forest Service discloses no rationale for erasing these trails from the EIS maps. The Forest Service already had these routes mapped and numbered in 1989. The EIS provides no detail on their legal status.

6.4.5 Too much missing data to make a meaningful comparison

According to CEQ, the no-action alternative is one which must be examined in detail, yet the status of mapped and numbered roads that are now closed--but were not closed during the LRMP, and were not closed when the early maps were distributed, is not accounted for. Reviewers have no way to check the accuracy of their present status. In other words, the no-action alternative does not disclose the present situation. The no action alternative simply removes them from the Chapter 2 comparisons. This renders the comparisons meaningless. Why? Because the Forest Service has arbitrarily removed too much data from the current transportation system in use by the public.

Claiming these roads are already closed, so they "don't count" gives the false impression that there will be significantly less change to the affected environment than will actually change if this Decision is implemented.

6.4.6 There is no formal designation process

This also raises the question of how any routes outside of Wilderness became "nonmotorized." Again, in an open forest, this takes a discrete action on the part of the Forest Service, to remove a lawful use, or to build a specific type of trail. To claim that "xx number of miles of trails were designated for hiking" means that the Forest Service had to go through the process required by law to exclude other lawful activities from that trail.

The Forest Service provides no explanation of what the designation process is, or under what authority any lawful activities were excluded. In fact, in the DEIS recreation chapter the Forest Service admits that motorcycles use the trails, and there are few prohibition on doing so.⁵ It is an "open" forest.

⁵ DEIS p. 50

There is no formal designation method in place because the forest never needed one.

6.4.7 *The real existing mileage so far*

If we add up the miles of roads that are presently open, but **will be closed by this Plan**, we arrive at:

2,122 trails reported by R3⁶ but erased from the EIS maps⁷

1,169 OML1 roads claimed in this EIS

1281 called out in Alt. G to be closed (Table 1 DEIS pg. v-- 4,604 minus 3,323)

The total loss of mileage is 4,572 miles, outside the Wilderness.

If we subtract the 909 miles included in the DEIS Table 5 alternative G total, we have in this analysis 3,291 miles of routes that are ***not disclosed as existing in the Forest Service's baseline alternative***.

If we add that undisclosed mileage to the 4,604 disclosed in Table 1 we have a total mileage of **7,895 miles of presently open travel ways forest wide** (outside of Wilderness). Confusing? Absolutely. Yet this a much more plausible number for a forest that's 3.3 million acres and has been open to free public access since its inception. This number of miles represents the existing level of management intensity. We could repeat the calculations for the FEIS, however, the outcome is almost exactly the same as previously noted in our table.

6.4.8 *What is the magnitude of change?*

The change from the current situation is not the modest 28 percent reported. It is a whopping 58 percent --in other words, the Forest Service is really proposing to **shut down over half of the present access**.

The EIS has many conflicting and confusing tables. If we do the same calculation with the number provided in Ch. 2 p. 24 Table 5, Miles Of Open NFS Roads To Be Closed In Alternative G (909) we find that we still lose 54 percent of our access.

We note that in the FEIS no "total" closure miles are given. We find closures shown piecemeal, for example,

"Close 144 miles of open NFS roads to all motorized vehicle uses (table 5, p. 25)."

"Close 1 mile of open NFS motorized trails to all motorized uses (table 8, p. 26)."

⁶ In our present day GIS comparison it appears that R3 has brought its inventory in line with the Gila's so we no longer have that evidence.

⁷ FEIS page 60 claims only 735 miles outside wilderness

And starting with Table 5 in Chapter 2, we find no total, "open," total "closed by ...". All the tables show miles open or changed from one use to another with the few "piecemeal exceptions which do not add up to totals for anything and thereby make it impossible to add up the total of open or closed miles.

6.4.9 Still more presently existing mileage not disclosed

However, we come across an unexpected dataset in Chapter 2: miles of "unauthorized" routes. The term "unauthorized routes" is mentioned 31 times in FEIS Chapter 2, all in reference to routes that will be *added*. We also find in the roads specialist report, unauthorized routes are again mentioned in reference to adding routes to the "system." That is to say, the Forest Service plans to add miles of existing routes not in INFRA, not OML1, and not in any other classification.

In Chapter 3 "unauthorized routes" are directly referenced 87 times. The recreation discussion brings these routes up ten times in direct references.

In its response to comment in the FEIS the Forest Service states that:

"With the Forest being open to cross-country travel, there are an unknown amount of miles of unauthorized (user-created) routes that exist across the Forest and within roadless areas."

These discussions reveal that there is an entire category of routes that's not in the INFRA and not called a "system trail," or "OML1, 2, 3, or 4." This is a different kind of route and evidently, there are a lot of them. We don't know how many because the Forest Service has no current inventory. The Forest Service has never determined what recreation activity these routes support. The Forest Service knows they are there and that people are using them; this makes them part of the current level of management intensity.

With the exception of the tiny amount of that mileage proposed to be added, the Forest Service has omitted an unknown amount of this mileage from the Chapter 2 comparisons. This is in violation of 40CFR1502.14, which directs agencies to use the information in Chapter 3 to develop the comparative data in Chapter 2.⁸ In Chapter 3 the Forest Service admits that these routes exist. It just won't say how many miles there are.

The claims that it is okay to have so much incomplete information for "unauthorized" routes fails to satisfy CEQ requirements for disclosure. There is a big difference between an inventory that is 95% complete, and one that is 95% incomplete. Information being incomplete does not excuse lack of disclosure. Virtually all of the information in the FEIS is incomplete to some degree, if only by being out of date. The agency must have some inventory of unauthorized

⁸ CEQ directs agencies to use the data from the Affected Environment and the Environmental Consequences to develop the comparative tables in Chapter 2. In this EIS, both the Affected Environment and Environmental Consequences are in Chapter 3.

routes, because they are designating varying unauthorized routes in five alternatives. (Responses to comment, p. 751: unauthorized routes would be added to alternatives C, D, E, F, and G.) The agency obviously has some information, but won't disclose what or how much.

The response at p. 666 cites the Travel Analysis Process (TAP) report and states the agency had an inventory of unauthorized routes, and with Region 3's approval, converted them all to OML-2 roads in the late 1990's. The response is copied verbatim from the TAP report, (p. 9-10):

The Gila National Forest conducted a GPS inventory of the road system from 1992 through 1999. The inventory identified user-created routes that were recorded in the corporate database, Travel Information System (TIS). When the Forest Service adopted the current corporate database, INFRA Travel Routes (INFRA), in the late 1990s all road data was converted from the TIS to the INFRA format. Unfortunately, the "user-created" field was not converted to INFRA and the Gila National Forest lost their "user-created" identifier. The Gila National Forest then made a decision, with the concurrence of the Regional Office to continue inventorying "user-created" roads in their database and to code them as National Forest System Roads (NFSRs) operating at a Maintenance Level 2. At that time, the features to track "user-created" roads were not available. As a result, the existing inventory of NFSRs coded as Operational Maintenance Level 2, on the Gila NF now consists of a combination of:

- 1) "User-created" routes that were inventoried in TIS,
- 2) "User-created" routes that were inventoried in INFRA before the Roads Policy,
- 3) FS authorized routes not managed as NFSRs, and
- 4) All NFSRs operated at Maintenance Level 2.

The Gila National Forest completed an inventory of "unauthorized" roads before the tools to track them separately were available in 2001, and at this time, the Gila National Forest cannot determine exactly which of their existing NFSRs are "user-created." The Forest acknowledges there may be errors in the INFRA database entries and associated mapped routes.

The FEIS provides no data or maps on any current unauthorized routes. It says it has no complete inventory (FEIS, p. 63). But the TAP informs us that tools to track unauthorized routes currently exist, and have existed for the past 13 years. If unauthorized routes have increased over the past 2 decades, as claimed, the agency has had 13 years to get them into the inventory. But at p. 612 Appendix B, the response cites the boilerplate that they couldn't inventory unauthorized routes, because it would be of exorbitant cost and be time-consuming.

According to Chapter 3, these routes exist through recurring use. This means that many people use them, because they do not become overgrown and impassible; and, this makes them part of the current level of management intensity. They are an integral part of the affected environment.

How many miles? The EIS proposes to add a minute amount of this mileage--so we know it is out there. There may be 100 miles, or there may be 1,000 miles, or there may be 3,000 miles.

The mileage could be quite high because this is a 3.3 *million* acre forest that has been open to cross country travel by everyone, since its inception.

The changes to the affected environment that is caused by closing all of it by omission, cannot be erased. Closure by omission increases the magnitude of change and it could increase the change by several orders of magnitude. Why? Because these routes clearly represent a valued recreation resource. Why? Because the visitors themselves maintain them, in order to continue to avail themselves of the amenities these routes afford.

In the matter of the no-action alternative, omitting the total number of these miles from the comparative tables creates two problems: 1) it creates the false impression that the Forest Service is not changing very much when in fact, the change will be so significant that recreation and travel on the GNF will be radically altered. 2). As it is presented in the EIS, there is not enough information in the no action alternative to analyze it.

6.4.10 Summary

The Forest Service has created a No Action Alternative which minimizes the difference between the present situation and what the situation will be like under the Decision if it is implemented. It has done so by eliminating all OML1 roads, arbitrarily removing many miles of trails and roads from maps, and mostly disregarded the existence of an entire system of routes that the Forest Service calls "unauthorized." In fact the Forest Service does not know how many miles of routes there are in the Forest, yet miles of routes is the metric by which all impacts are measured. It is the crux of the problem; it is the main subject of the analysis. A reasonable, feasible and most important, a lawful Decision cannot be derived from such incomplete data about the main subject of the analysis.

This is not what CEQ expected from federal agencies. The CEQ expects a fundamental impartiality in the preparation of these analyses. The basic accuracy of the entire document is in question because of these (perhaps) unintentional and (admitted as) intentional omissions, and the Decision is open to further independent action because of them. Because the effects have been unlawfully skewed, the Decision is illegal.

Even if these omissions are honestly committed, the Decision does not live up to the Administrative procedures Act (APA) standards of review, Chapter 7, Section 706, that would set aside a Forest Service action that is:

(A) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; "(including but not limited to these examples: the erasure of existing and previously mapped roads from the maps published with the EIS; and, creating a class of routes called "unauthorized" when they were authorized since the forest's inception).

(C)"in excess of statutory jurisdiction" (Including but not limited to these examples: Congress never gave the Forest Service the authority to simply erase existing and previously mapped roads from the maps published with the EIS, or for that matter, any

maps. Congress never directed the Forest Service to dismantle the infrastructure needed to manage and allow access in the forest)

(D) "without observance of procedure required by law." (including but not limited to this example: the absence of a CEQ compliant no action alternative. The Forest Service does not show the "current level of management intensity" per CEQ instruction. It shows the existing situation as something entirely different).

We contend that the violations do include but are not limited to the list at the beginning of this appeal.

The relief we seek is the withdrawal of this FEIS and Decision, and the preparation of new EIS, aimed at producing a lawful Decision that abides by the direction set forth by the NEPA regulations and the laws set forth by Congress for the Forest Service. In this new document, an accurate portrayal of the current management intensity is absolutely mandatory.

We request that the user input maps of 2008, of each ranger district, be added to the project record.

7 ISSUE: NEW DATA ADDED

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

“(c) Agencies:

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

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

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”⁹

In this project, the agency has added significant new information to the environmental documents between the Draft EIS and the Final EIS. This new information is significant in both its content and the volume. The sheer volume of new information is evidenced by the growth of Chapter 3 – Environmental Consequences from 217 pages in the Draft EIS to a whopping 409 pages in the Final EIS. The addition of 192 additional pages, growing the analytic section of the

⁹ 40 CFR 1502.9(c)(1)

EIS by 88%(!), is stark evidence that a broad range of additional data, information, analyses, and conclusions are being presented in the Final EIS without an opportunity for the public to review and comment on the new information.

A specific example of these significant content changes in the information, analysis, and subsequent conclusions is found in the Watershed and Soils section. In the Draft EIS, the agency relied on the concept/methodology of “riparian risk zones”¹⁰. In the Final EIS, these risk zones have been dropped completely and the agency is now using entirely new data/methodology: the 2011 Gila National Forest Riparian Map (RMAP).¹¹

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

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

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
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This is no mere update of newer information. The methodology has changed (all routes, both FS and non-FS, in the FEIS versus only Forest routes in the DEIS), the calculations presented have changed (the ranges of road density included in each category), and the results (the percentages) have all changed. In fact, the changes in the results are so startling as to require further review to ensure new and additional errors have not been introduced. But the public has been denied its right and obligation to review and comment on the methodology and its accuracy because this significant new information is only presented in the FEIS.

¹⁰ DEIS, page 81
¹¹ FEIS, page 194

Another stark example of significant content changes is the addition of a whole new section of the Recreation Analysis in Chapter 3: Recreation – Special Management Areas. This was so much new information that it required an entirely new and additional underlying specialist’s report: The inventoried roadless areas and wilderness study areas report (USDA Forest Service 2013b2).¹²

This overwhelming and significant change, in both volume and content, is in direct violation of CEQ regulations for the presentation of new information. CEQ requires that a supplement go through the same NEPA-required process as the original EIS:

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

Because of these major changes, we demand that an SEIS be prepared and circulated so that these dramatic change in methodology can be tracked throughout the document, and so that we can identify what changes in the outcomes will result because of the new material.

8 ISSUE: AGING AND HANDICAPPED ACCESS

Motorized travel restrictions will have impacts on aging or people with disabilities. These impacts include access, big game retrieval and dispersed camping. Special provisions aimed at providing people with disabilities motorized opportunities that are otherwise not available to all forest users were not included in the DEIS.

In the comments and responses on the 2005 Motorized Travel Rule published on November 9, 2005, in the Federal Register, the agency states:

“Under section 504 of the Rehabilitation Act of 1973, no person with a disability can be denied participation in a Federal program that is available to all other people solely because of his or her disability. In conformance with section 504, wheelchairs are welcome on all NFS lands that are open to foot travel and are specifically exempted from the definition of motor vehicle in § 212.1 of the final rule, even if they are battery powered. However, there is no legal requirement to allow people with disabilities to use OHVs or other motor vehicles on

¹² FEIS, p. 112

¹³ 40 CFR 1502.9 (c)(4)

roads, trails, and areas closed to motor vehicle use because such an exemption could fundamentally alter the nature of the Forest Service's travel management program (7 CFR 15e.103). Reasonable restrictions on motor vehicle use, applied consistently to everyone, are not discriminatory" (Federal Register, Vol. 70, No. 216, page 68285).

This concept also applies to providing special provisions for aging populations that may have limited mobility.

There is a range of road and trail miles available for motorized uses in all action alternatives and areas and corridors in alternatives C, D, F, and G that is proposed open to all users for motorized vehicle travel. Senior citizens and persons with disabilities will have the same access rights as the general public.

8.1 Failure to adequately respond to comments

We appeal the Travel Management Decision because of the USFS did not meet its legal requirement to respond to our comments about the denial of access to the handicapped and elderly disabled.

The Forest Service did not comply with the requirements of 40CFR §1503.4, Response to Comments, which provides the agency with specific instructions on how it must respond to the comments it receives on a draft EIS:

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

- (1) Modify alternatives including the proposed action.
- (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
- (3) Supplement, improve, or modify its analyses.
- (4) Make factual corrections.
- (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

According to CEQ 40 Most Asked Questions, 29(a), The USFS is required to state what its response was. If USFS determines that no substantive response to a comment was necessary, it must explain briefly why. CEQ intends that USFS use the comments to propose its Decision, not chose various ways to avoid public comment concerns. CEQ requirements have been poorly followed, as described below.

8.2 Failure to Correct Unlawful Response

Reference: USFS response Page 104: *While we showed concern for access for elderly and handicapped people, we never endorsed Alternative C.*

The Forest Service has unresponsively combined our handicap concerns comment with other, unrelated comments, thereby failing to comment to our comment at all. The USFS is out of compliance with the list of lawful responses.

8.3 Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990

Background: DEIS failed to provide reasonable access for disabled, handicapped, and elderly people in violation of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. During the public comment period, numerous comments were submitted to the FS regarding the need for access to the forest for disabled, handicapped, and elderly people and cautioned that a failure to do so would be discriminatory.

The Forest Service's adoption of the DEIS would have a discriminatory effect on the disabled, handicapped and elderly. No consideration was given to the accessibility issues of disabled, handicapped and elderly people during the entire Travel Management process for the GNF, which violates the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. The Forest Service cannot create or maintain discriminatory practices in the promulgation of its rules and policies. The disproportionate effects on disabled, handicapped, and elderly people are significant, and the Forest Service's failure to analyze those effects violates the procedural requirements of NEPA. This issue was not addressed adequately in the GNF TMP Final EIS.

This problem was also brought up in the Grant County Commission comments (submitted to USFS on 2/24/11):

4. Relief Sought: In conclusion, USFS did not comply with CEQ requirements for responding to public comments. USFS misdirected the subject on handicap access comments. We seek relief by requesting that GNF TMP Decision be withdrawn, that USFS prepare a new EIS which accurately analyzes and documents the existing conditions, public comments and impacts related to the human environment.

9 ISSUE: GRANT COUNTY, BEAR CREEK WATERSHED

9.1 Failure to Correct Unlawful Response

We appeal the Travel Management Decision because of the USFS failure to correct a response error, specifically our comments about the USFS unlawful statements about the Bear Creek watershed and water quality: Bear Creek Watershed/Water Quality Issues 03072011-78-86. The Forest Service did not appropriately respond to the comments on this matter pursuant to 40CFR §1503.4 (see 11.1 above for specific guidance for agency response to comments).

9.2 Addition of Significant New Information

GNF USFS has added significant, new information to the environmental documents between the Draft EIS and the Final EIS. This new information is significant in both its content and the volume. The sheer volume of new information is evidenced by the growth of Chapter 3 – Environmental Consequences from 217 pages in the Draft EIS to 409 pages in the Final EIS. The addition of 192 additional pages, demonstrates that a broad range of additional data, information, analyses, and conclusions are being presented in the Final EIS without an opportunity for the public to review and comment on the new information, per 40CFR1502.9 (c).

A specific example of these significant content changes in the information, analysis, and subsequent conclusions is found in the Watershed and Soils section. In the Draft EIS, the agency relied on the concept/methodology of “riparian risk zones”. In the Final EIS, these risk zones have been dropped completely and the agency is now using entirely new data/methodology: the 2011 Gila National Forest Riparian Map (RMAP). In addition, the FEIS for the Gila NF Travel Management included a specialist report that did not exist with the DEIS. This is the 6th Code Watershed, Soils and Aquatics Cumulative Effects

The new information is not simply updating new information. The methodology has changed (all routes, both FS and non-FS, in the FEIS versus only Forest routes in the DEIS). The calculations presented have changed (the ranges of road density included in each category), and the results (the percentages) have all changed. Importantly, the changes in the results are as significant as to require further review to ensure new and additional errors have not been introduced. But the public has been denied its right and obligation to review and comment on the methodology and its accuracy because this significant new information is only presented in the FEIS.

Another stark example of significant content changes is the addition of a whole new section of the Recreation Analysis in Chapter 3: Recreation – Special Management Areas. This is significantly new information that it required an entirely new and additional underlying specialist’s report: The inventoried Roadless areas and wilderness study areas report (USDA Forest Service 2013b2).

This overwhelming and significant change, in both volume and content, is in direct violation of CEQ regulations for the presentation of new information. CEQ requires that a supplement go through the same NEPA-required process as the original EIS, per 40 CFR 1509.2 (c):

Agencies shall:

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of Scoping) as a draft and final statement unless alternative procedures are approved by the Council.

In addition, we are appealing due to the lack of a comment period for substantial new data in the FEIS and none compliance with 40 CFR 1509.2(c).

9.3 USFS None Compliance with the Data Quality Act and CEQ Regulations:

Our preliminary analysis reveals that USFS misinterprets and fails to make appropriate correlations. Too much misinterpretation and misrepresentation is present in this report for the Forest Service to make any claims to its scientific integrity. New Specialist Report, 6th Code Watershed, Soils and Aquatics Cumulative Effects.

Due to these continuing problems, errors and unlawful statements, we are appealing this on the grounds of none compliance with the Data Quality Act, as well as none compliance with 40 CFR 1502.24, Methodology and scientific integrity. Because of these major changes, we demand that a new EIS be prepared and circulated so that these dramatic changes in methodology can be tracked throughout the document, and so that we can identify what changes in the outcomes will result because of the new material.

9.4 Relief Sought:

In conclusion, USFS did not comply with CEQ requirements for responding to public comments; USFS added significant new information from the DEIS to the FEIS; and, failures to comply with the Data Quality Act related CEQ regulations. [name your organization that is appealing] seeks relief by requesting that GNF TMP Decision be withdrawn, that USFS prepare a new EIS which accurately analyzes and documents the existing conditions, public comments and impacts related to the human environment.

10 APPEAL POINT: INADEQUATE AGENCY RESPONSE TO COMMENTS

Reference: Letter/Comment 03032011-17-4-13

The response to this comment ignores the comment's specific criticism of the economic analysis methodology. Here is issue as presented in the original comment:

The critical factor missing from the economic analysis of hunting on the Gila National Forest is trip expenditures. The economic analysis shows only direct job and income and the multiplier on that. It omits the usual tourism economic analysis which

shows trip expenditures (lodging, restaurant, gas, supplies etc.), and the multiplier effect of that money in the local economy. Inclusion of trip expenditures is standard for evaluating tourism economies.

The response (and p. 20 of the report itself) does not limit itself to the hunting issue. It addresses the general topic of economic analysis. The response argues that trip expenditures (visitor spending) should not be included. (bold added)

Visitor expenditures are available through the NVUM report for the Gila NF. These visitor expenditures are used in the economic impact tool to estimate economic impact. However, it is inappropriate to conflate visitor expenditures with economic impact: not all (or even most) of the expenditures will remain in the local economy. For instance, when gasoline or groceries are purchased locally, only the retail mark-up remains in the local economy. Therefore, \$50 spent on gasoline does not translate to \$50 of economic impact (page 22 of the social and economic specialist report).

As we will show later, visitor expenditures were not used in the analysis of economic impact, despite the report's claims to the contrary.

10.1 CEQ Violations

CEQ violations include the inadequate, incomplete analysis, refusal to use standard indicators, flawed methodology, refusal to disclose and use its own data. The FEIS does not even mention the existence of important data collected by the agency. The agency's own readily available data was excluded from the analysis, and it indicates conclusions contrary to those presented.

10.2 Failure to Analyze the Social Economic Environment

Although the social economic report represents a very small percentage of the FEIS's actual pages, it is tasked with representing fully half of what must be considered in the decision; the human environment. NEPA directs the decision-maker to make a decision that balances the need for resource protection with the need for human use. No matter how much detail the FEIS provides on the natural environment, if the human environment is not properly analyzed, if it has been under-valued and under-estimated, the FEIS is inadequate and does not properly inform the public and the decision-maker.

The response fails to resolve the comment's issue, and the FEIS conclusions are not modified. The comment presented evidence that the methodology used in the social economic report is contrary to standard practice, and contrary to methods used by the USFS itself for economic impact assessments.

10.3 Failure to Disclose Methodology, Reasons for Changes from Draft Report

The revised social economic report (“the report”), released as part of the FEIS, introduces new issues of inadequate, faulty and incomplete analysis. It has made unexplained changes in its results, changes of orders of magnitude, with no explanation. Despite the new estimates being some 20 times larger, there is no change in the conclusions that motorized use is an insignificant piece of the economy, and that the loss of it caused by road and trail closures would be insignificant. The report fails to recognize that motorized access is needed for all forest activities.

10.4 Failure to Use Accepted Methods and Data

The agency refuses to use standard methods of analysis by excluding visitor spending, and the indirect and induced effects of that spending. This insured an artificially low result which underweights the cost of closure, and overweights the benefits of closure.

The response rests entirely on its argument that it is “inappropriate” to “conflate” visitor expenditures with economic impact. With unconscious irony, the GNF says that right after saying that the USFS NVUM uses visitor expenditures to estimate economic impact.

10.5 Failure to Disclose Existence of Agency’s Own Collected Data

The economic contribution from the outfitting/guide business for hunting alone is extremely significant. The GNF knows this, but it is not disclosed in the FEIS. CEQ requires discussion of factors that are substantial and significant to the analysis.

The agency has collected precise and detailed data guide business for years. This information is essential and germane to the analysis. The agency knows this and deliberately withheld their data from the analysis. Instead, the Gila National Forest allowed the FEIS economic analysis to be entirely generated in the Washington office by an analyst there. The report was produced by running gross scale data from national databases through a computer program.

10.6 Data that the Gila National Forest Deliberately Kept Out of the Analysis

The GNF knows exactly how many guide businesses operate in the forest, because they must be licensed. FEIS, p. 57, 58.

In order to ensure quality recreation experiences for the guided public, the Forest Service requires that any commercial outfitter and guides operating on the national forest have a special use permit

There are 98 outfitter and guide operations that provide services on the Gila National Forest, but 13 are not involved in hunting.

The FEIS provides no other data, although the GNF has collected data for years. It knows everything about the guide business activity in the forest. Every ranger district is required to keep a record of every trip done by every guide company. The ranger districts logs record details of every outfitter trip, including how many guests, how many guides, pack animals, number of days and exactly where they are going.

The GNF knows how many people are employed, since the trip logs record all guide personnel.

The GNF knows how much money the guide business generates. Outfitters are required to remit 3% of gross revenues to the USDA.

The GNF knows the split between wilderness and non-wilderness guided trips. Of the 85 hunting outfitters, around 19 do some work in the wilderness. The other outfitter companies use the roaded areas, and these will be severely impacted by the road closures, and reduction in motorized camping and game retrieval.

The GNF does not even mention the existence of its extensive guide business data, anywhere in the FEIS or reports. We request that the last ten years of guide business logs from every ranger district be added to the project record.

10.7 Faulty Methodology in the Social Economic Report

The Final Social Economic Report added Appendix A that details the methodology. But like the analysis done for the DEIS; it includes only jobs and income, not visitor spending and the effects of it. Appendix A still excludes visitor spending, and the induced and indirect effects of that spending.

Visitor spending/visitor expenditures are not identified in any inputs to the analysis, and are not presented as any outputs in the conclusions or summary tables. There are repeated statements that the economic impacts were figured from jobs and income. The Social Economic report falsely claims that it included visitor expenditures in its analysis.

The description of IMPLAN methodology at page 18 of the report provides definitions for indirect and induced impacts. However, nothing in the report shows any analysis of those factors, or inclusion of visitor spending. The following statements in the report indicate the analysis is still limited to employment and income, and hence did not measure overall economic impact. There are no similar statements that visitor spending is included. (bold added)

P. 3: (the alternatives were evaluated for the effect on jobs)

Employment related to recreation tourism as an indicator of the proposal's effects to the tourism industry and general economy of the area. ...**The IMPLAN model will be used to evaluate effects of the alternatives on recreation-based jobs.**

P. 3: (the analysis will focus on income)

The analysis will focus on the quantitative income discussion. Income effects related to recreation on the Forest is addressed parallel to the employment effects for the four-county region

P.4: (IMPLAN used to estimate changes to employment and income)

IMPLAN Professional Version 3.0 was used to **estimate changes to employment and income** under the various alternatives.

Report Claims About Expenditures in Appendix A:

The report (p. 19) claims Appendix A shows that NVUM expenditure profiles were used in the analysis.

Appendix A: Detailed Economic Impact Procedure provides a systematic overview of the economic analysis steps. The economic analysis incorporates the following information:

(1) **NVUM expenditure profiles** specific the Gila NF were used for the analysis

We examined Appendix A, looking for NVUM expenditure profiles. The term "NVUM" appears once in Appendix A, at page 30, used only to identify segment shares; (dividing usage between motorized and non-motorized). There are no NVUM expenditure profiles in Appendix A.

The word "expenditures" appears in Appendix A, (p. 20) to say that economic impacts do not include visitor expenditures. (bold added)

The changes in employment and income are relatively minor, particularly within the context of the regional economy. Under all alternatives, the potential changes in employment and income due to travel management are equivalent to less than one-third of one percent in the local economy. **The economic impact estimates are not estimates of visitor expenditures,** but rather a reflection of money being introduced and recycled through the local economy.

This conclusion has two flaws. First, it asserts that changes are “relatively minor”, but the analysis excludes the factor that would produce the great change; visitor expenditures. The analysis then places the economic effects in the wrong context, comparing them to a regional economy that includes cities with income opportunities not available in the rural areas. The rural areas in the four counties are extremely dependent on the forest (UNM report on the Gila National Forest), and their economies must be evaluated in the proper context of their location and limited options for alternate sources of income.

“Expenditures” appears for the second and last on p. 30 in Appendix A, in connection with IMPLAN. In the space of four lines, the report makes two consecutive, contradictory statements. The first sentence says “expenditure profiles” are somehow built into IMPLAN, using a “low expenditure” profile (with no explanation of what that means, what it is, or how it is used). (bold added)

The economic impact of recreation on the Gila NF is **modeled in IMPLAN using the “low spending” expenditure profiles.**

The next sentence says the total economic impact of recreation is employment and income.

The **total economic impact of recreation (employment and income)** is then multiplied by the share of motorized activities on the Gila NF.

The Summary of Economic Impacts are displayed in Table 11, p. 20. The summary information is presented solely as employment and labor income. There are no numbers for visitor expenditures or their effects on total economic impact. Table 11 is titled “Recreation-related Employment and Income by Alternative” and displays employment and income by alternative.

Elderly and disabled population:

At pages 5 -6, the report presents that the local population in the four counties is more elderly and more disabled than the average population, and more dependent on motorized access. (bold added)

However, population decreased between 2000 and 2010 in all counties except Catron County. **Declining populations may be due to aging populations** (deaths exceed births) and out-migration.

However, positive population growth rates are expected to return as a result of the anticipated influx of amenity **retirees** (SWCOG, 2010).

The median age of a population is relevant for social and economic analysis of travel management planning. Older populations are likely to have different needs and preferences related to Forest use than younger populations.

Catron and Sierra counties are substantially older than the other planning area counties, the state, and the nation. Catron County experienced the most striking change between 1990 and 2010 - the median age in the county increased by 48% during the period. Grant and Hidalgo counties also have older populations than the state and the nation. Issues concerning elderly and aging populations, particularly related to access to Forest resources, are a concern in all study area counties; particularly in Catron and Sierra counties.

Table 2 reports age and disability data. **All counties in the planning area have higher percentages of disabled and elderly residents than the state or the nation. Catron and Sierra counties have the highest concentrations of elderly residents – approximately 30 percent of Sierra County residents are over age 65.** Grant County has the most disabled residents; however, in percentage terms Grant County has the lowest frequency of disability due to its relatively large population. **Hidalgo and Sierra counties have the highest percentages of disabled residents. Mirroring the concentration of elderly residents, approximately 30 percent of Sierra County residents are disabled.**

Elderly and disabled residents may be more reliant on motorized access to participate in activities on the Forest. Some comments received during the scoping period identified limitations in motorized access as potentially detrimental to **mobility-impaired (due to age, disability, or both) people.**

The report mentions these factors in Table 12, but apparently made no adjustments in of how a large percentage of local people will be impacted. Table 12 presents this statement under Access for Elderly and Disabled (p.21):

May limit access of elderly and disabled populations to some non-motorized areas. However, in accordance with ADA, mobility devices that are suitable for indoor pedestrian use are permitted on all NFS lands open to foot travel. Furthermore, under all alternatives, diverse motorized options remain.

This is the standard agency boilerplate with the insultingly statement that electric wheelchairs or scooters designed for indoor use are allowed on primitive trails, and that this somehow compensates for the closures.

P. 22 says: (bold added)

The number of miles of motorized routes varies by alternative and **could affect** the ability of mobility impaired people to reach their favorite places, where those places are not accessible in any other way.

This evades the reality the closures absolutely have an unavoidable impact of locking out the elderly/disabled; there is no “could affect”. The mobility-impaired require motorized vehicles for any and all access, and they have no other choices. The elderly/disabled will not proceed on foot, bicycle or horse where motorized use is prohibited. They aren’t going to travel cross country by non-motorized means. Their forest use is completely limited to where vehicles are allowed. The report refuses to admit that closures affect them more severely than the able-bodied population. The impacts of the closures on the mobility-impaired are most egregious where the agency has selectively closed motorized access in large areas, notably in the IRA’s and the agency’s de facto “buffer zones” adjoining wilderness areas.

The impacts on the mobility-impaired are brushed off; go use your wheelchair on the trails. P. 22 states:

There is no legal requirement to allow people with disabilities to use motor vehicles in areas that are closed to motor vehicle use.

This evades the reality of the ‘other side of the coin’. There is no legal requirement to allow disabled use. But neither is there anything that prohibits the forest from allowing disabled people to use vehicles in closed areas. We see nothing cited that prevents the forest from making that decision. The forest is giving special permission to grazing permittees. They could give special permission to the disabled, if they wanted to. Nothing is stopping that, except that the forest just doesn’t want to. Because they don’t want to, they don’t analyze this reasonable alternative.

NVUM and Activity Participation:

The GNF report uses the NVUM table of activity participation (Table 4, p. 8). But it omits the critical statements (included in the Santa Fe National Forest Travel Management FEIS) that describe the limitations of the NVUM.

The following two quotes are from the Santa Fe NF TM FEIS Recreation Report clarify the NVUM methodology, and its limitations. The limitations include both its methodology and how data collection is done.

p. 23: (explaining that NVUM respondents can select more than one activity and 15 of the 29 activities are not specific to motorized or non-motorized. The national survey figure for specifically motorized recreation is 39.9%)

The NVUM measures visitors pursuing a recreation activity physically located on Forest Service lands. Visitors are surveyed for which of 29 different recreational activities they participate in on National Forest land (Table 3). **Survey respondents could select**

multiple activities, so participating percentages may total more than 100%. Respondents were asked to select one activity as their primary activity. Some selected more than one, so the percentage that considers that activity as their primary may total more than 100%. **Of these activities, 6 are specifically motorized recreation, 8 are specifically non-motorized recreation, and 15 are not specific to motorized or non-motorized recreation.**

The 2009 NVUM National Summary Report shows that the highest percentage of visitors (> 20%) enjoyed five activities: viewing natural features (43.9%), relaxing (36.4%), driving for pleasure (24%), hiking/walking (42%), and viewing wildlife (37%). This report also shows that nationwide, **specifically motorized recreation accounted for 39.9% of visitors** and specifically non-motorized recreation and account for 78.2% of visitors (as noted below, survey respondents could select more than one activity, so percentages may add to more than 100.)

p. 25: (The NVUM surveys are done primarily at developed sites, and tend to not capture dispersed recreation activity like OHV use.)

The NVUM does have several limitations. Visitor use is measured at specific recreation sites classified as high, medium, or low use by the forest and therefore small sites used by few people are not recorded. These unrecorded recreational visits may represent a significant contribution to one recreation type and therefore numbers reported in the NVUM may be low.

The FEIS for the Santa Fe National Forest, Chapter 1, Purpose and Need, p.1: (bold added) statement on the importance of motorized access for non-motorized activities. Shows that motorized access is important to virtually all 29 activities surveyed in the NVUM.

Driving a vehicle is an important part of virtually every activity on the forest. Most visitors drive to the forest to sightsee, camp, hike, hunt, fish, ride horses, collect firewood, picnic, sit by the water, or for a number of other activities. People come to the forest to ride on roads and trails in pickup trucks, ATVs, motorcycles, and other vehicles.

The GNF does not consider the impact of road closures on non-motorized activity or the economic impacts of that. This is described more fully in another section below on Affected Users.

10.8 Economic Impact of Wildfire:

Another error is the report's failure to consider the economic impact from the catastrophic fires that hit the GNF between the dates of the DEIS and the FEIS. The report makes this tragically inept statement at p. 5:

The Catwalk near Glenwood and the Cliff Dwellings each receive about 50,000 visitors a year.

The Catwalk was the pride of Glenwood and its main attraction. The Catwalk was a marvelous construction of steel walkways and bridges that provided a scenic path over the stream in Whitewater Canyon. The USFS hacked the Catwalk into pieces and airlifted it out of the canyon after the wildfires. We will not digress into whether or not this was justified. But the reality is that this National Scenic Trail treasure is gone. The GNF claims it is working on it, but talks only about the foot path, not about restoring the scenic engineering marvel that was the unique attraction.

USFS research is available on the economic impacts of catastrophic wildfire, e.g. <http://www.srs.fs.usda.gov/econ/pubs/misc/fl-fire-report2000-lores.pdf>. This is publication SRS4851, the Final Report for Economic Effects of Catastrophic Wildfires, written by the USFS Southern Research Station.

This analysis of 1998 Florida wildfire examined tourist spending, lodging receipts. The Florida analysis points to what could have been, but was not, included in the GNF economic analysis. From p. 16 of the Florida study:

Tourism and overall sales fared the worst during August, weeks after the last wildfire, prompting the question whether the steep drop was due to the wildfires or some other event(s). Therefore, **a regression model was estimated to examine statistical links between wildfire in a county and tourism spending**. See Table 2.7. Changes in hotel revenue were modeled as a function of wildfire size, year, and economic productivity (US GDP). Initial results failed to establish a statistical relationship between wildfire size and percent change in hotel revenue (used as a proxy for tourism). **The regressions exhibited a statistically significant negative relationship between tourist spending and the year 1998, meaning that 1998 was unique compared to the ten previous years**. From the standpoint of tourism, 1998 was different for several reasons. First, the hot, dry conditions found that summer may have served to reduce the attraction of Florida. **Second, nationwide media coverage that detailed the extent and side effects of the 1998 wildfires—mandatory evacuations, smoke, and road closures—may have served to discourage travel to the state.**

10.9 Best Methodology

Note that when the initial results did not show relationship, the USFS analysts at the Southern Research Station didn't just declare "no relationship". They looked deeper and employed another analytic tool. Regression analysis is a standard tool for analyzing relationships. They also don't declare relationships without presenting statistical support.

The USFS Southern Research Station study shows us two things. First, the GNF report fails to use accepted analytical methods. It simply declares there are relationships without proving them statistically (e.g. GNF's entire analysis is based on its unproven assumption of a direct and linear relationship between miles and dollars).

Second, the GNF report fails to consider the economic impact of catastrophic fire. The GNF had the opportunity to update the economic analysis in the 3 years between the DEIS and the FEIS. But the economic report fails to even mention this enormous event. The Baldy-Whitewater fire destroyed large areas of forest around Glenwood, NM. The forest will not recover for decades. This change is permanent in terms of the timeframe of the planning, and will have long term effects on visitation and recreation spending. The GNF study fails to consider that the fire made part of the forest unusable for recreation. This reduction makes the opportunity to use the remaining forest even more important and valuable.

The GNF could have at least made some estimate of impact. Instead the economic report doesn't even mention the fires or that there would possibly be an economic impact. It also totally fails to mention the USFS's removal of the historic Catwalk in Glenwood, which was the most popular attraction in Catron County, and the 2nd most popular in the region (after the Gila Cliff Dwelling National Monument). The analysis fails to even mention that the USFS removed the Catwalk and now years later has made no significant progress in re-installing it. Reopening the catwalk foot trail is NOT the same as re-installing the actual steel Catwalk itself.

The response ignores our original comment, which showed that by excluding visitor spending, the GNF's report has severely underestimated economic impacts, and understates the effect of reducing recreational opportunity by closing roads. The GNF has understated both the social quality and the economic quantity of impact. It understates who is affected and what the dollar impact is on the local economy. It fails to consider factors and methodology that we find commonly included in other economic analyses done by and for the USFS.

10.10 Omitted Affected Users

The report grossly understates the impact of road closure by assuming the effects are only on motorized recreation. This fails to acknowledge that closing roads to motorized use affects every forest user. The following statement is from the FEIS for the Santa Fe National Forest, Chapter 1, Purpose and Need, p.1: (bold added)

Driving a vehicle is an important part of virtually every activity on the forest. Most visitors drive to the forest to sightsee, camp, hike, hunt, fish, ride horses, collect firewood, picnic, sit by the water, or for a number of other activities. People come to the forest to ride on roads and trails in pickup trucks, ATVs, motorcycles, and other vehicles.

The report also fails to consider the economic impact effects of closures on non-motorized use. Effects of closure on non-motorized use is described the Santa Fe National Forest FEIS for

Travel Management. The SNFN Final Recreation Report report (p. 68) concludes that reducing motorized access will reduce camping for some forest users, a favorite place may not be accessible as a day trip without motorized access. (bold added)

All action alternatives are likely to limit some people's camping experience. Some people's favorite spots may be eliminated from motorized access and some of the more remote corridors may not be available via motorized access. **This may mean that a favorite place may not be available in a day anymore because it is too far to walk to it.**

The Santa Fe National Forest FEIS also speaks to the impacts closure to motorized use will have on non-motorized use.

Santa Fe National Forest FEIS P. 91: (bold added)

People who drive cross country to get to places where they rock climb, ride horses, or bicycle will also have to park next to a road and proceed without their cars. **A trip that used to take a day may take longer because of the time required to get to the desired destination without a vehicle. We expect that some people will forego the trip altogether.**

10.11 Visitor Spending, Indirect and Induced Impacts

The first report simply ignored visitor spending. But the second report argues explicitly against it, actively defending its faulty methodology. That defense is at p. 20 of the Final Social Economic Report: (bold added)

The economic impact estimates are not estimates of visitor expenditures, but rather a reflection of money being introduced and recycled through the local economy. **If a visitor purchases gasoline at a local station for their OHVs, only a fraction of the purchase price remains in the local economy.** Much of the money leaks out of the regional economy (e.g., to oil producers in other states or nations).

We reviewed USFS sources, and find that the standard methodology for evaluating economic impacts includes visitor spending. There is a review of the literature, at http://www.nrs.fs.fed.us/pubs/gtr/gtr_ne276/gtr_ne276_074.pdf. The study and all the other studies cited include visitor spending.

Wendell G. Beardsley, economist, Intermountain Forest and Range Station, USFS describes the economic impacts of tourism in the proceedings of The Forest Recreation Symposium, 1971, USDS, Northeastern Forest Experiment Station

http://www.nrs.fs.fed.us/pubs/other/recsym/recreation_symposium_proceedings_028.pdf

The larger document for the symposium is at <http://www.treesearch.fs.fed.us/pubs/14541>

Mr. Beardsley clarifies that impact means business activity, and that personal income is only a portion of impact. (P. 28, bold added)

DEFINING IMPACT

To provide a base for further discussion, a few underlying concepts deserve mention.

First, economic impact can be defined in at least two different ways, and it should be made clear which we are referring to. Often "impact" is used to mean "total spending," or "total business activity" created by the spending of new (outside) dollars in a particular area. Alternatively, it can refer to personal income that accrues to the area's residents in the form of wages, profits, rents, etc., because of the new spending. **Obviously personal income is only a portion of total business activity generated when new money is attracted to a particular local area.**

Second, we look at the response's claim about leakage of visitor dollars out of the local area. The fact that there is leakage does not justify excluding 100% of visitor spending, which is precisely what the GNF report does. Mr. Beardsley addresses the "leakage" effect; part of a dollar spent does leave the area. However, part of it does stay. The GNF report decided to count none of the tourist dollar, under the excuse that some part of it leaves the local economy.

Mr. Beardsley presents data that strongly indicate the GNF report has made a serious error by excluding visitor spending. This is succinctly captured in the abstract:

ABSTRACT. Economic impacts per dollar of tourist expenditure have generally been found to be low compared to other economic sectors in local less-developed areas where recreation development is often proposed as a stimulus for economic growth. Tourism, however, can be economically important where potential or existing recreation attractions can encourage tourist spending in amounts large enough to offset these lower per-dollar impacts.

Mr. Beardsley (using the example of Teton County, WY), raises another pertinent issue, that the GNF report ignores. That issue is the importance of the recreation economy, due to lack of other sources of income (p. 30): (bold added)

Because of the uniqueness of the county's recreational resources and the **relative lack of opportunities for economic growth in other sectors**, improvement of the economy may depend in large measure on further recreation development.

This echoes the findings of the UNM's report on the economic impact of the Gila National Forest; e.g. the importance of recreation spending, because of the decline of other industries, and the lack of alternative sources, and the dependence of an isolated country (Catron) on spending by national forest visitors.

We provide another example of economic impact analysis done for the USFS in Florida. This 2013 analysis examines the economic impact created by USFS project spending in the Osceola National Forest. It is similar to the GNF planning area; it includes a three county area adjacent to a national forest. The Economic Impact Analysis Of The Collaborative Forest Landscape Restoration Program can be found online at <http://ftp.fs.fed.us/restoration/documents/cflrp/results/AcceleratingLongleaf/EconomicAnalysisCFLRPreport.pdf>

The methodology applied in the Osceola National Forest study is explained at p. 1, below. Like all other USFS economic analysis, and the FEIS cited references, this study indicates that the GNF was wrong to exclude direct, indirect and induced effects of visitor spending from economic analysis. (Bold added)

Outside sources include tourists bringing dollars into a local economy or the sale of services and products to people outside of the region. Sales and other transactions between people and businesses within an economy typically do not result in economic growth but is mainly a redistribution of resources. However, this form of economic activity is still important and sustains jobs and more. This broader form of economic activity is often referred to as “economic contributions.” **This study measures the economic impact for the local forest area and the State of Florida as the dollars are brought into these economies from the outside.** The national effects are considered economic contributions. Economic impacts and contributions can be expressed in terms of jobs, income, output (expenditures) and tax revenues. **Economic contributions and impacts, for the purpose of economic modeling, can be divided into three standard components: direct, indirect and induced effects. The indirect and induced effects are the two components of the “multiplier” or “ripple” effect. Each of these is considered when estimating the overall effects of any activity on the economy. A direct effect is defined as the result of the initial purchase made by the consumer.**

Only the amount of the purchase that remains in the region under study is retained as the direct effect. For example, when a person buys a restaurant meal for \$20, there is a direct effect to the restaurant and the local economy of \$20 assuming all of the supplies needed for the meal were provided locally. However, recognizing much of the consumed food and supplies were likely bought from sources outside of the region of study, a lower amount, for example, \$10, actually remains in the local economy as a direct effect. **Indirect effects measure how sales in one industry affect the various other industries providing supplies and support. For example, the restaurateur must purchase additional food and supplies, plus pay costs such as power, rent, etc.; local food suppliers must buy more product, and so on. Therefore, the original direct effect of**

\$10 benefits many other industries within the regions. An induced effect results from the wages and salaries paid by the directly and indirectly impacted industries. The employees of these industries then spend their incomes. These expenditures are induced effects that, in turn, create a continual cycle of indirect and induced effects.

The sum of the direct, indirect and induced effects is the total economic impact or contribution. As the original retail purchase (direct effect) goes through round after round of indirect and induced effects, the economic contribution of the original purchase is multiplied, benefiting many industries and individuals. **Likewise, the reverse is true. If a particular item or industry is removed, the economic loss is greater than the original retail sale.**

We will be referring to that last sentence later. When an item is removed, the economic loss is greater than the original sale, because the indirect and induced effects are also lost. This means it is a nonlinear effect.

Appendix A details the procedure used for dividing the activities into percentages for motorized and non-motorized. This at p.30: (bold added).

The result of this split is motorized activities accounting for 26.3 percent to 49.5 percent and non-motorized activities accounting for 52.7 percent to 75.9 percent of Gila NF recreation.¹

An analysis of visitor spending data by Forest Service and academic economists has revealed that differences in spending between most activities are not statistically different from each other. As a result, we do not gain precision from modeling activities separately

The report leaves out visitor spending under the excuse that it wouldn't help the analysis differentiate between motorized and non-motorized recreation, because the spending patterns are similar. However, what we are after here is dollars, not just percentages of how the pie is split. Including visitor spending would have produced a much more accurate picture of what the local economy stands to lose, if closures discourage visitors because of reduced opportunity for motorized recreation. The object of this analysis is not just to differentiate between motorized and non-motorized effects, but to assess the economic impacts of motorized use. It needs to find all the dollars; it doesn't.

Statements that there is little spending difference among different activities are strongly contradicted by data on actual expenditures by elk hunters, collected by the USGS for the Bridger-Teton National Forest analysis. We presented these figures in our comment. The agency's statement that spending doesn't vary by activity is also contradicted by its own cited reference, the 2008 National Forest Visitor Spending research. Activities like snowmobiling generated far more spending than hiking.

In our comment we provided a useful and very pertinent USFS economic analysis, the Economic Importance of Elk Hunting in Jackson Hole, Wyoming, 2005, by USGS for the Bridger-Teton National Forest. It is clear that the GNF did not use anything in that study, the GNF didn't even include it as a reference in the FEIS.

In the next paragraph we see that the 'total economic impact of recreation' is defined as employment and income. This confirms again that visitor spending/trip expenditures are not included. All the tables and data then presented are only for jobs and labor (direct income).

The total economic impact of recreation (employment and income) is then multiplied by the share of motorized activities on the Gila NF. Table 14 shows the estimated employment associated with motorized recreation on the Gila NF. Alternative B reflects current conditions. **The changes between alternatives are linear to the change in motorized route miles** (shown in Table 17). Table 15 follows the same steps for income.

The report declares that the economic changes are linear with changes in miles. It assumes a totally linear correlation between miles and dollars; two totally dissimilar measures with no identified relationship. There is no demonstrated relationship at all between miles and dollars at all, let alone a linear one. Here again, the agency is making declarative statements with no support.

Linear means that a particular percentage of road closure will produce the identical percentage of reduction in jobs and labor income. Economics don't work that way. Now we revisit the last sentence in the quote from the Florida national forest study:

Likewise, the reverse is true. If a particular item or industry is removed, the economic loss is greater than the original retail sale.

When an item is removed, the economic loss is greater than the original sale, because the indirect and induced effects are also lost. This is a nonlinear effect. The GNF is wrong to assume a linear relationship between miles and dollars.

The agency's motivation to grossly understate economic impact is visible in the following cite from p. 20 of the Final Social Economic Report (bold added)

Two additional reasons for the small economic impact are:

(1) Access will continue for administrative purposes (e.g., grazing, emergency services).

(2) Approximately 1 percent of employment and income in the local economy comes from recreation activities on the Gila NF. Therefore, changes will not substantially affect regional employment conditions or county revenue.

The GNF produced a report that supports their travel management decision by concluding the closures won't have a substantial impact on regional employment or county revenue. They've manufactured that conclusion by constructing an economic analysis that deliberately omits the largest contributing economic factor in a recreation-based economy; the trip expenditures.

The first so-called "reason" is pure nonsense, access for administrative and emergency purposes is not motorized recreation.

The second "reason" shows the agency's desire to trivialize negative impacts from closures. It makes the unjustified statement that "mitigating factors in the qualitative analysis would lessen the economic consequences". This has no supporting data or citation. Saying something in a report doesn't make it science.

From p. 18 of the Social Economic report: (bold added). The agency admits it lacks the information to do a proper analysis, so they'll go ahead with the 'simplest' one. Simplest does not necessarily equate to scientifically sound or accurate. But it is easier.

A change in supply (motorized opportunities) will affect quantity demanded (visitation). However, the precise relationship between opportunities and visitation is uncertain. **Given data limitations, an assumption of a linear relationship between motorized opportunities and motorized visitation is least likely to bias the analysis toward either motorized or non-motorized interests.** If we assume a nonlinear relationship, we would need to know how the rate of change in visitation varies across the function (i.e., between current miles and zero). **This information is unknown and cannot be ascertained given available resources. The economic modeling, therefore, makes the simplest and most defensible assumption (linearity).** The numerical nature of the economic outputs can give a false sense of precision.

Assuming a linear relationship does not reduce bias. The linear assumption biases the analysis against motorized use by underestimating the negative impacts of closure. As discussed herein, when an industry or item is lost, the economic loss is greater than the initial value of the item itself. (e.g. a visitor dollar not spent causes a loss in the economy of more than one dollar.)

Justifying the simplest assumption (of linear relationships) because it is the "most defensible" is bad science. "Defensible" means defensible in court, not defensible as proper science. The agency is apparently more concerned with covering its butt, than doing a good analysis. Ironically, its butt would be better covered if it did better science. If it doesn't have the data and

methods to produce a valid conclusion, then the statement should say exactly that. If the agency can't do a proper analysis, presenting a bad analysis is not an acceptable substitute.

We point out t(again) that the relationships between land closures and economic impacts are inherently nonlinear. From the Florida study cited above:

Likewise, the reverse is true. If a particular item or industry is removed, the economic loss is greater than the original retail sale.

Not having data does not justify using the wrong methods for analysis just because it's easier.

Also at p. 18:

Therefore, it is appropriate to heavily weigh the qualitative social and economic analysis in the evaluation of tradeoffs. **The qualitative analysis emphasizes the mitigating factors that would lessen the economic consequences**, such as the prevalence of substitution behavior and the potential increased demand for the services of outfitter guides.

There is nothing in the report that presents an 'appropriate' analysis. The report proposes that some imagined factors would (not "might" or "may", but "WOULD") reduce negative impacts. Maybe they mean the tooth fairy. Substitution behavior does not mean that the tooth fairy turns all the OHV users into hikers. Substitution behavior means the OHV users substitute one place for another. They vote with their dollars, and go to places where there is opportunity for their recreation (i.e. Colorado, Utah, Arizona). The report has no balanced qualitative analysis. It never even mentions factors that could increase the (negative) economic consequences. The report does not use the information that is in studies cited by the FEIS.

The economic consequence of losing a motorized visitor cannot be assumed as equivalent to losing a non-motorized visitor. That difference is supported by references cited in the FEIS. Motorized users are richer and better educated than average (USFS RecStat, updated 2008) and they spend more than non-motorized users (National Forest Visitor Spending, White and Stynes, Journal of Forestry, Jan/Feb 2008). Also, OHV users are more active than the average user in every type of outdoor recreation. Lose an OHV user, and the economy is also losing a hiker, a nature-viewer, mountain biker, and/or hunter, etc. (USFS RecStat)

The GNF Social Economic Report presents has no balanced view at all. It doesn't look at both the positive and negative possibilities. Every assumption is slanted against motorized use. It refuses to consider any possible negative economic outcome from reducing access for motorized recreation. The report never considers the outcomes if its assumptions turn out to be wrong.

The report is not a neutral assessment. It is entirely one-sided. It trivializes and obscures negative impacts, refuses to include relevant data, employs a faulty methodology, ignores impacts to non-motorized users, ignores the responsible opposing opinion in its own cited references, claims that vague “mitigating” factors will offset negative effects. This is all done to produce the desired conclusion that massive reduction in forest motorized access will have little to no negative economic consequences. This is not science or analysis, it is propaganda.

The final report completely ignores every suggestion and fact we submitted in comment. The report could have been adjusted to include at least some measure of trip expenditures, some factor for induced and indirect effects of that spending. But it refuses to include any of these.

The GNF is directed (by case law) to present responsible opposing opinion, especially from its references in the body of the FEIS. FEIS references confirm that visitor spending is an important component of analyzing economic impact. The report argues against it, but provides no credible justification.

The following reference cited by the FEIS (and ignored by the FEIS analysis) was produced for Region 3. We presume that Region 3 finds the analysis from the University of New Mexico Bureau of Economic Research used the correct methodology. We provide quotes from it about the importance of visitor spending to the communities around the GNF.

The quote at p. 92 describes the indirect and induced multipliers omitted in the GNF’s report. Table 7.7 at p. 93 uses the indirect and induced impact in its calculations. There are many mentions of the importance of visitor spending to the rural counties.

SOCIOECONOMIC ASSESSMENT OF THE GILA NATIONAL FOREST, 2007 done for Region 3 by UNM Bureau of Business and Economic Research. (bold added)

At p. 4:

The direct impacts indicate that **visitor spending is by far the largest contributor to the economic activity in the assessment area**, providing \$111 million in output and 2,122 jobs.

(and)

The direct activities associated with the Gila NF create **indirect and induced impacts**, as businesses and workers make expenditures and purchases and these funds cycle through the local economy. In total, the Gila NF contributes directly or indirectly an estimated 3,376 jobs and \$63.9 million in income to the economies of the four counties included in this study. This is equivalent to about 17.5 percent of the 19,245 jobs in these areas in 2002. **Visitor spending is by far the largest source of activity, contributing a total of 75 percent of the jobs and 80 percent of the labor income impacts**

At p. 60:

Visitor spending is the single most important contributor to the economic impact of the Gila NF. Spending profiles of various recreational visitors is discussed in Chapter 7, “Economic Impacts.”

At page 83:

The increased relative size of retail and services within the assessment area reflects a **growing dependence on tourism and visitor spending, much of which is directly related to the Gila NF.**

At p. 84:

A significant portion of economic activity in Catron County is **derived from tourist spending, much of which is likely to be related to forest uses.**

At p. 91:

The direct impacts indicate that **visitor spending is by far the largest contributor to the economic activity of the assessment area, providing \$111 million in output and 2,122 jobs.**

At p. 92

Economic Impacts and Multipliers

The direct activities associated with the Gila NF create **indirect and induced impacts, as businesses and workers make expenditures and purchases and these funds cycle through the local economy.** The sum of the direct, indirect, and induced expenditures constitutes the total impact that the Gila NF has on the economies of the neighboring communities. These impacts, in terms of employment, income, and total output, are summarized in **Table 7.7.**

At p. 93

In total, the Gila NF contributes **directly or indirectly an estimated 3,376 jobs and \$63.9 million in income to the economies of the four counties** included in this study. This is equivalent to about 17.5 percent of the 19,245 jobs in these areas in 2002.

At p. 93 Table 7.7 shows how inclusion of indirect and induced impacts affects the totals.

Table 7.7: Direct, Indirect, and Induced Impacts of the Gila NF, 2004

TOTAL OUTPUT IMPACTS (000s of 2002 \$)				
	Direct	Indirect	Induced	Total
Ranching	11,617	7,230	989	19,836
Timber Harvesting	1,244	317	123	1,685
Visitors & Recreation	111,170	15,196	14,993	141,359
Forest Service Operations	--	8,940	5,546	14,485
Total	124,031	31,683	21,652	177,366

TOTAL EMPLOYMENT IMPACTS (#)				
	Direct	Indirect	Induced	Total
Ranching	161	109	15	285
Timber Harvesting	4	5	2	10
Visitors & Recreation	2122	196	222	2540
Forest Service Operations	374	88	79	540
Total	2661	398	317	3376

TOTAL LABOR INCOME IMPACTS (000s of 2002 \$)				
	Direct	Indirect	Induced	Total
Ranching	1,254	1,740	301	3,295
Timber Harvesting	270	93	38	400
Visitors & Recreation	42,009	4,750	4,561	51,319
Forest Service Operations	4,172	3,118	1,604	8,894
Total	47,705	9,699	6,504	63,908

At p.95, it discusses Catron County's dependence on the Gila NF, which is not considered in the GNF report. In the GNF report, no county is weighted differently in the report, for its dependence on the GNF resources. This is the same issue raised in Beardsley; Catron County residents lack other sources of income, therefore the few they have are critical.

Catron County is possibly, for a variety of reasons, the most dependent of the four counties on the use of the Gila NF. First of all, a large portion of its land is forest land. Additionally, the county is extremely rural, with a very small population and economic base. In **Table 7.3**, it can be seen that just over 25 percent of Catron County's economic output is from ranching and farming, and it is likely that a substantial portion of these activities make use of the Gila NF. Additionally, **in economies as small as that of Catron County, visitor spending is a vital source of money, and the Gila NF is the primary tourist attraction of Catron County. The dependence of the Catron County economy on the Gila NF is very probably limitless.**

The Social Economic Report could have (but obviously did not) use the numbers or make estimates based on the numbers in the 2007 UNM report. The GNF cites decades-old research from other countries, about animals that don't live here, to support their claims about roads damaging wildlife. But the GNF refused to use research done for the USFS itself, specifically for this planning area, in order to form a more complete and accurate assessment of economic impacts. The GNF's selective vision is damning, revealing a deep prejudice that taints the entire FEIS and ROD.

Another FEIS cited study is the National Forest Visitor Spending Averages and the Influence of Trip-Type and Recreation Activity, White and Stynes, Jan-Feb 2008, Journal of Forestry. This study also supports the use of trip expenditures for estimating economic contributions. We cite from this study, P. 17: (bold added)

Over the past 20 years, rural public lands have been recognized increasingly as important tourist destinations that bring visitors to the region (e.g., Douglas and Harpman 1995, Donnelly et al. 1998, and English et al. 2000). **The expenditures of these visitors support local businesses and bring income and jobs to the region.** Because some regions have experienced declines in timber harvests, tourism development has been advanced as one means of supporting the economies of local communities. Additionally, forest recreation management and planning now gives more attention to marketing (e.g., national forest niche analysis) and identifying the recreation-related economic linkages (e.g., economic impact and economic contribution analysis) between the forest resource and local communities. **Estimates of the spending of national forest recreation visitors provide the basis for estimating the economic contributions of forest recreation to local economies.**

Here is another report cited in the USFS research archive, in which visitor spending is identified as an essential part of the economic impact analysis, and which calculates indirect and induced effects:

The Economic Impact of Snowmobiling in Maine

http://www.nrs.fs.fed.us/pubs/gtr/gtr_ne241/gtr_ne241_073.pdf

P. 74: (bold added)

Three additional questions provide the remaining information needed to estimate the economic impact of snowmobiling in Maine for these groups. **The first question asked for trip-related expenses associated with the use of the specified snowmobile.** These expenses include gas and oil for the snowmobile, a share of gas expenses for the tow vehicle, a share of restaurant /lounge purchases, groceries, accommodations and other expenditures related to snowmobile trips.

P. 77 shows how total economic impact was calculated: (bold added)

Finally, the following formula is used to estimate the total economic impact for each sector:

$$\text{Total Sector Impact} = \text{Direct expenses} + \text{Margined expenses} \times (\text{sector multiplier} - 1)$$

This formula provides an estimate of the total economic impact for each sector. The total expenses for a given sector represent the direct impact, and **multiplying the margined expenses by the sector multiplier less one yields the indirect and induced impacts. This equation is applied to every economic sector from which snowmobilers purchased goods and services, and the results are summed over all sectors to estimate the total impact of snowmobiling in Maine.** The process results in an estimate of \$225,973,240 for the total economic impact of snowmobiling. **The total impact is composed of \$152,487,621 in direct impacts and \$73,485,569 in indirect and induced impacts.** The overall multiplier for the snowmobiling expenditures can be determined by dividing the total impact by the direct impact, or \$225,973,240 / \$152,487,621.

10.12 Unexplained Major Change in Final Numbers in Social Economic Report:

The analysis in the Final Social Economic Report has (for undisclosed reasons), greatly increased the number of jobs and the income for motorized recreation. The new numbers are 24 times larger. That is not a minor correction. The analysis doesn't say how or why this happened. The Soc-Econ report released with the DEIS claimed these figures, for Alternative B, the No Action: (p. 24) (bold added)

The economic contribution of recreation on the Forest is provided in Table 12, 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.

The revised final analysis shows Alternative B with 73-138 jobs and \$1.5-2.9 million in labor income. Below is a section from Table 11, p. 20, showing employment and labor income from motorized recreation activities

Table 11. Recreation-related Employment and Income by Alternative

Employment	Alt B	Alt C (93%)	Alt D (66%)	Alt E (50%)	Alt F (76%)	Alt G (76%)
Employment from 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

Even though the numbers are much larger, they still include nothing for visitor expenditures. The per job income is the same in the old report and the new report. The only thing the new report does is increase the number of jobs.

For the No Action, the first report (estimated jobs and income created by motorized recreation), showed 3 jobs and \$62,243 of income. That figures to \$20,747 per job. The second report showed 73-138 jobs. At the low end, the 73 jobs produce \$1,532,501 of income; that is \$20,993 per job. At the high end of the estimate, 138 jobs and \$2,884,365, each job is paying \$20,901.

10.13 Bigger Numbers, But No Change in Methodology

Although the new numbers look a lot bigger, it's just 'more of the same'. The money is all still just income. The report claimed that the methodology in Appendix A included some factor for expenditures. Simple arithmetic proves that claim is not true.

The new report doesn't even mention that the numbers are greatly changed from the first report (let alone explain why). At the low end of the estimates for Alternative B, the jobs increased from 3 to 73, and the income increased from \$64,243 to \$1.53 million. This is a 2400% increase. That's not just a "correction".

An analysis that can't explain a 100% variability within its own figures, and a 2400% difference from its prior version, has absolutely no credibility.

11 ISSUE: GRAZING AND MINING ECONOMICS

The FEIS fails to discuss possible impacts of the alternatives on ranching and mining operations

The FEIS p 2 shows that grazing permittees and mining claimants will now need to obtain permission to continue using roads that they have used for decades in the past, without interference or fear of general access being prohibited. The permittees and miners had the same rights as the public to use roads.

Motor vehicle use that is specifically authorized under a written authorization may include activities such as livestock operations, mining, logging, firewood collection, forest products, private land access, and maintenance of pipeline and utility corridors (36 CFR 212.51(a)(8) and 261.13(h).

The FEIS fails to disclose or discuss that reduction of access can affect the efficiency and viability of the ranching and mining operations. The grazing permittees and mining claimants are losing the previously assured use of all existing roads. This is a use they have had for all of the decades prior to this decision. They developed their operations based on access via the

existing legal roads, and the knowledge they could continue to use those roads. This right of use for these traditional resource uses has never before been broadly revoked.

The FEIS puts no value on what it means to take away the assured access the permittee and miner has always had in the past. That includes, but is not limited to, the psychological cost. They have enough uncertainty from nature. It is unconscionable to injure them with the unnecessary uncertainty created when access is made unpredictable.

The FEIS presents no rationale at all for why it is necessary or reasonable to force each individual permittee and claimant to negotiate for access. There is a rationale for assessing forage to determine AUM. There is a rationale for a miner to access his claim. There is no rationale for forcing them to negotiate for road use. This serves no purpose.

The FEIS presents no discussion at all about impact on roads from grazing permittees or mining claimants. There is no analysis. The FEIS does not even disclose how many individual ranchers have permits or mining claimants there are on the forest. There is no discussion of impacts from motorized use of existing routes by permittees and mining claimants. Therefore, there is no evidence at all that it was necessary to reduce motorized use by permittees and mining claimants.

Under the Rule and this decision, the permittees and mining claimants have even less rights than the public. At least the public knows what roads it can use year to year, and the burden falls on all of the public equally. These folks don't know from year to year how their allowed access might change. There is nothing inherent in the system to produce fairness. At least the public knows that any changes in designation must be made in public. Agency changes in the road system must be documented. The public has the right to obtain information about changes in road designations. Unjustified changes can be challenged.

The permittee and mining claimant has no such rights. They are isolated from the public and peers, in a solitary struggle to preserve the access essential to their operation. There is no process to protect them. There is no requirement for transparency or reason. They are at the mercy of staff personalities, prejudices and personal agendas. The process of road permitting renders them invisible and impotent.

The Travel Management Caste System The following statement in the Rule as published, presents a happy picture of multiple use management where forest uses are balanced and one use does not have preference over another.

(p. 68266)

National Forests are managed by law for multiple use. They are managed not only for the purposes stated in these comments, but for timber, grazing, mining, and outdoor recreation. These uses must be balanced, rather than one given preference over another.

The reality of the Rule's effect is revealed in the decision. The Rule does not result in balanced multiple use, where one is not given preference over another. The result is exactly the opposite; a caste system of elites and disadvantaged.

Before the Rule, all users were equal and had equal rights. The Rule destroyed that. The Rule deliberately creates a caste system of forest users. Non-motorized users are the kings, at the top of the heap. There are no restrictions on them at all. They can go anywhere, including cross-country. The blanket excuse for that is that the Rule was written only for managing motorized use. What this really means is the Forest Service made an active decision to manage and restrict only certain users. Likewise they made an active decision to give other users preference by not managing them. The Rule states its preference of nonmotorized use over motorized use at p. 68274:

At this time, the Department does not see the need for regulations requiring establishment of a system of routes and areas designated for nonmotorized uses.

In that same paragraph, the USFS states its acceptance for "inconsistent" management and policies for nonmotorized use among different forests. There is no mandate to make policy uniform across all forests.

On some National Forests, and portions of others, bicycles and/or equestrians are restricted to designated routes, or even prohibited altogether. On other National Forests, cross-country use of bicycles and horses is permitted.

At p. 68265, the USFS declared some unidentified "need" for "consistency" in regards to motorized use. The USFS caste system is visible here too; motorized use policy must be consistent (and nonmotorized use does not need to be consistent). There is no discussion of this alleged "need", it is presented as self-evident. It is not.

Revised regulations are needed to provide national consistency and clarity on motor vehicle use within the NFS. At the same time, the Department believes that designations of roads, trails, and areas for motor vehicle use should be made locally.

Next in the caste system come the motorized users; restrained to designated routes and prohibited from cross country travel, but at least all public members are allowed use on the designated system. At the bottom of the heap are the permittees and mining claimants, who aren't even assured of access on roads other permittees or mining claimants can use. The only assured use is what is allowed to the motorized public. They may wind up with more total miles allowed. But they are at the bottom of the caste system because access for them is the most arbitrary, unreliable and unpredictable of all the user types. They have more at stake and more to lose. Roads aren't just recreation, for them it's their livelihood at stake.

Nonmotorized users enjoy total freedom. They can take all access for granted as an agency-given right. Permittees and miners have no rights at all that each individual can rely on from year to year, beyond the public motorize system. Motorized users fall in between; with limited use allowed to the entire group.

The FEIS does not recognize the social impact of this system, which makes the permittee and miner second class citizens.

The FEIS ignores what is at stake for the permittee and miner; his livelihood and survival, the quality of life for his family and neighbors, and his community.

The FEIS is silent on the traditional cultural impact of a road permitting system that will discourage the next generation from continuing to ranch or mine.

The FEIS is silent on what happens in the local economies if ranching and mining decline. The Social-Economic report looked only at recreation for effects from proposed alternatives. The Social-Economic Report confirms that it analyzed the effects of the alternatives only on recreation based jobs and not on any other sectors of the economy: P. 3 (**bold added**)

Recreation-based tourism is likely to be more sensitive to the proposed action and alternatives than other employment because of **the Travel Management Rule's provision for written authorization applicable to livestock grazing permits,** mining plans of operations, etc. **The IMPLAN model will be used to evaluate effects of the alternatives on recreation-based jobs.**

Alternatives Fail to Capture Impacts to Permittees and Miners. Potential impacts to grazing and mining from different alternatives are entirely ignored. This big empty spot was created because permittee use and mining are entirely excluded from the analysis, under the excuse that this use will be covered under a permitting system. The Social-Economic Report repeats this at p. 21:

Two additional reasons for the small economic impact are:

(1) **Access will continue for administrative purposes (e.g., grazing, mining emergency services).**

What "access" is it that might be allowed to continue? The FEIS is silent. The full range of possibilities varies from "use all existing roads" to "use only the roads open to the public, and maybe a tiny bit more". If the second case turns out to be the reality, the permittees and miners will be confined to the same motorized roads as the public. But the socio-economic impacts to permittees and miners will be far, far more severe than impact to the public, under the same miles of road. This exposes another serious flaw in the Soci-Economic analysis, which bases its assumptions and conclusions solely on mileage. An analysis curtailed to the one indicator of mileage fails to produce a real analysis.

The FEIS is silent on all these impacts to permittees. The official response will no doubt be reassurances that the permittee and miner road use process will turn out just fine. We are not reassured. There is a well-documented history of bullying from the federal agencies. The Rule and subsequent decision only adds more potential for abuse to a system that puts the permittee and miner totally at the mercy of the agency. Threats, real or implied, of agency reduction of

access will make it even harder for the permittee or miner to negotiate other aspects of his operating plan.

The FEIS method of analysis is not appropriate or meaningful for assessing impacts to permittees and miners. The entire FEIS is written in terms of mileage. All the comparisons are in mileage. There is precisely zero qualitative analysis on roads. Permittee and miner impact cannot be measured in mileage. Having the right to use the same designated roads as the public doesn't mean those are the roads a permittee and miner needs. The FEIS has not looked at this issue at all, never mentions it. As we said above, permittee use and miner use cannot be evaluated by counting how many miles of allowed use the public has or how many miles a permittee or miner is allowed to use (for now, until his next operating plan review). The permittee or miner has to have access to the roads he needs; not ten times as many roads he doesn't need. The appropriate measure for permittee and miner road needs is inevitably and necessarily qualitative.

The FEIS fails to consider if permittee or miner road use could be handled as authorization to use an identified roads system, or if it is a "valid existing right" under the Rule. Rule as published, p. 68274 (bold added)

Motor vehicle use that is specifically authorized pursuant to a written authorization issued under Federal law (§ 261.13(h) of the final rule) is exempted from this prohibition. In addition, in making these designations, **the responsible official must recognize valid existing rights** (§ 212.55(d) of the final rule).

Prior Existing Right to use roads: Under all prior approved operating plans, the permittee and miner had a valid existing right to use the existing roads. The operating plan, locations of improvements etc. were based on the implicit assumption of the existing right to use the roads. The denial of this prior existing right has not been analyzed in the FEIS.

Rule Creates an Administrative Void: Under the Rule, the Record of Decision has created an administrative void. The FEIS contains no discussion of the administrative decision-making process that would replace the access system that is removed by the decision. The Record of Decision doesn't even mention that such a process is needed, or how it would be designed and by whom. There are no protocols or guidelines for how road negotiations would be done. There is nothing about a permittee's rights or a miner's rights, or recourse, if he cannot reach agreement on the roads with the local forest management.

Failure to Consider Other Options; It Didn't Have to Be This Way The Gila National Forest could have taken a different approach, by designating a system of roads for ranching operations that would be open to all permittees. The forests are compelled by the Washington office to implement the Travel Management Rule. We see nothing in the Rule prevents a forest from analyzing and designating a system of roads for permittee use or miner use. The decision includes a designated Minimum Road System for the agency's own administration of the forest. We see nothing in the Rule that prevented the agency from considering an alternative that would have allowed permittees to use this same road system, or part of it. The agency could have considered a hybrid system; with assured access on a basic network of roads, and permitted

access on additional needed roads. The agency did not consider any such reasonable alternatives.

The USFS has replaced the permittees' and miners' rights to use roads with a process that is unknown, secretive, with no identified rules, no disclosure, no transparency, no required consistency, no public record of the process and no identified recourse for complaint or appeal. This resembles the procedures of a medieval inquisition rather than a modern government. Permittees and miners now have no assurance that decisions will come out of any particular process at all, rather than personal staff prejudices. They are subjected to the unfettered whim of the agency.

Federal Manager as Overlords Decades of use and access were erased, and existing rights taken away, through the decision of one woman transplanted a few years ago from California. She has no knowledge or concern for the local communities or culture. She will be gone as quickly as she came, just like her predecessors. The forest supervisors (and district rangers) come and go. The damage from their decisions remain as a burden, far into the future. The local counties, which have so much land under federal management, suffer under what functions as a foreign occupation under a feudal system. The counties' futures are decided by appointed federal managers who are not elected and cannot be removed by a democratic process.

12 CONCLUSION

This Appeal is submitted by organizations, businesses, and individuals who have participated in the Gila NF Travel Management Plan process since the beginning. The issues brought forth in this Appeal provide the evidence and rationale to support the Appellants' desire that the Record of Decision be reversed.

The Appellants represented herein have serious concerns about the flaws found in the Final EIS and about the Record of Decision based on the flawed Final EIS. The facts of error and omission were pointed out in the Appellants' comments. The Final EIS does not correct these identified flaws, and the Agency either incorrectly responded or did not respond at all to our comments.

Additionally, the FEIS and ROD failed to recognize that there are new circumstances that must be incorporated into the FEIS and ROD. The catastrophic wildfires that have occurred in the last three years were not addressed in the DEIS and have such major impact on the natural and human environment that this point alone should be considered a fatal flaw that results in the withdrawal of the ROD.

The flaws we have identified in this Appeal are more than adequate to demonstrate that the ROD violates NEPA, the regulations promulgated by the CEQ, and Forest Service Planning regulations.

The sole relief that we seek is that the agency withdraw the ROD, correct the deficiencies in the EIS, reconsider a corrected Final EIS that provides the basis for a reconsidered ROD .

Additionally, the Appellants request that a Supplemental Environmental Impact Statement be completed relating the proposed alternatives to the dramatically changed condition of the forest.

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