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Subject: Record of Decision for Travel Management on the Gila National Forest Catron, Grant, Hidalgo, and Sierra Counties, New Mexico, Publication No. MB-R3-06-08 dated May 2014. Responsible Official: Kelly M. Russell, Forest Supervisor

Section 1: Decision Appeal Introduction

The Grant County Board of Commissioners ("County") hereby submits this appeal of the Record of Decision (ROD) for Travel Management on the Gila National Forest pursuant to the regulations at 36 CFR 215 (*Notice, Comments and Appeals Procedures for National Forest System Projects and Activities*). The County has submitted numerous comments, written and/or oral, to the US Forest Service Gila National Forest ("GNF") throughout the Travel Management Plan ("TMP") revision process, as evidenced by the GNF Travel Management Plan Project Record as well as by our own records.

Should the GNF Project Records differ from our records, this document additionally serves as notice that the County intends that our records be considered as valid and of consequence to the appeal process, and any subsequent legal or other actions as may ensue, as are the records of the GNF.

Pursuant to 36 CFR 215.14, the issues brought forth in this appeal aim to provide the evidence and rationale to support the County's desire that the Record of Decision be reversed. This document identifies portions of the ROD with which the County disagrees and explanations for that disagreement; provides discussion of the County's contention that the Responsible Official's decision failed to consider our substantive comments previously submitted either in writing or orally; and cites law, regulation or policy which the County believes the ROD specifically violates.

The GNF is located entirely within the four neighboring counties of Catron, Grant, Hidalgo, and Sierra, and is a nearby neighbor with Luna County. Economic, cultural and historic linkages exist between the counties that cannot be separated or isolated to one county; impacts to one county may affect all the counties. Therefore, this appeal incorporates by direct reference and by inference all comments and support documents submitted in writing and orally to the GNF, whether in the Project Record or in the records of the individual counties, including but not limited to County Comprehensive Plans, Community Wildfire Protection Plans, Transportation Plan and other such planning documents that address transportation with respect to natural-resource-based industries, economies, cultures, and traditional uses of natural resources.

We are appealing this ROD because the U.S. Forest Service ("USFS") Gila National Forest ("GNF") is out of compliance with regulation 36 CFR 219.7 Requirements for coordination with other public planning efforts and the following CEQ regulations:

40 CFR 1501.6 Cooperating agencies
40 CFR 1502.16 Environmental consequences
40 CFR 1506.2(b) and (c) Elimination of duplication with State and local procedures
40 CFR 1506.2 (d) Consistency requirements (also, 36 CFR 219.4 (b)
36 CFR 219.7 (c) (provides more specific instructions to the USFS decision maker)]

We are additionally appealing this ROD because the County disagrees with portions of the ROD that contains factual errors and omissions, and because the Responsible Official failed to consider many of our substantive comments previously submitted either in writing or orally.

Thank you for your attention to our comments and concerns.

Sincerely,

The Grant County Board of Commissioners:

Brett Kasten, Chairman

Gabriel Ramos, Commissioner

Ron Hall, Commissioner

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Section 2: Intergovernmental Issues of Noncompliance

2.1 Introduction

The powers of the federal government are vested by the U.S. Constitution, however state governments tend to have a greater influence over most Americans' daily lives than does the federal government. In fact, the Tenth Amendment to the United States Constitution prohibits the federal government from exercising any power not delegated to it by the States in the U.S. Constitution. States, through local governments (county, municipal governments and the elected officials of soil and water conservation districts), handle the majority of issues most relevant to individuals within their respective jurisdictions.

Agencies, such as the USFS, are established by governments to provide specific services. The personnel of agencies are not elected officials, but rather civil servants. Agencies do not make laws, but implement the actions required by laws. Agency actions are also regulated by their own internal rules and regulations, as well as by the rules and regulations of other government agencies. Agencies, such as the USFS, are therefore required to take into account not just federal, but state statutes and local ordinances, resolutions and plans.

Local governments do not have the authority to promulgate laws that supersede federal government laws and regulation. However, rural counties' socioeconomic wellbeing, health, safety, and culture can be strongly impacted by the management of the surrounding federal or public lands. Local government elected officials are required by state law and sworn by oath to protect the economic, social, and general wellbeing of the people and resources within local government jurisdictions. Additionally, soil and water conservation districts ("SWCD"), which are quasi-governmental entities with elected officials, are required to provide for the ongoing stability and health of soil, water resources and other resources, with a special mission to coordinate between private property owners and federal and state governments.

Because locally elected governments and elected officials have far ranging and important responsibilities to their constituents, their areas of responsibility may coincide or overlap with those of federal agencies, and lead to specifically interacting with federal agencies on all federal issues impacting the local community, county or conservation district. Where there are mixed jurisdictions across the landscape, local governments can adopt land use (or resource) plans to

set local policy regarding their subject matter jurisdiction that may be applicable on federal lands, such as law enforcement and other legal responsibilities prescribed by state and local laws. Local government land use and resource plans may include surrounding federal or public lands within the local governments' borders (e.g. wildland-urban interface areas, or WUIs, that are identified in local government wildfire planning documents). These inclusions ensure that federal agency actions are not implemented at the expense of local socioeconomic wellbeing, culture and customs. Additionally, the desired conditions of local governments and the citizens for the mixed jurisdictional landscape can be reflected in such plans. This is a valuable resource for federal land and resource management agencies.

Federal agencies and departments are mandated by various federal statutes to encourage local government participation in federal decision-making process related to federal plans, policies and programs that may impact the local land use, management of natural resources, the citizens and the local tax base.

In fact, federal agency consideration of local land use and resource plans, or "officially adopted policy" is key to a local government's engaging as a cooperating agency or with consistency review under the National Environmental Policy Act and coordination under the National Forest Management Act, and in assisting in the Governor's consistency review process (43 CFR 1610.3) for BLM.

In short, it is the business of local government to ensure that the human dimension, i.e. the health, safety and wellbeing of humans, is given at least equal weight by federal agencies in local resource management decision-making.

2.2 Coordination, Consistency Review, Cooperating Agency and Joint Planning

2.2.1 36 CFR 219 Forest Planning Rule requirements:

Note that the GNF TMP NEPA DEIS planning process operated under the 1982 Forest Planning Rule.

36 CFR 219.3 (a) states: *Planning, conducted according to the planning framework outlined in §§ 219.3–219.11, involves engaging the public.*

36 CFR 219 Forest Planning Rule, Section 219.7 Coordination with other public planning efforts:

36 CFR 219.7 (c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include--

> *(1) Consideration of the objectives of other Federal, State and local governments, and Indians tribes, as expressed in their plans and policies;*
>
> *(2) An assessment of the interrelated impacts of these plans and policies;*

(3) A determination of how each Forest Service plan should deal with the impacts identified; and,

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

36 CFR 219.7 (d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination.

36 CFR 212.53 states: *The responsible official shall coordinate with appropriate Federal, State, county, and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to this subpart.*

36 CFR 55(a) states: *...the responsible official shall consider effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs...*

There is no evidence of any genuine full compliance engagement on the part of GNF throughout the planning process. Mailing copies of the Draft and Final EIS to County Commissioners and publishing news releases that solicits input is not the same as accepting active and real local government participation, especially given the USFS coordination and joint planning requirements, and particularly when that County request was rejected. In the GNF response to DEIS comments on this matter, the GNF claims 134 line items[1] between 2005 and 2013. However, this alone does not indicate or even imply any measure of actual engagement, coordination, joint planning or cooperation with local government, nor does it indicate any attempt on the part of GNF to work with the County to resolve conflicts.

In fact, the County's dissatisfaction is founded directly in the lack of true effort on the part of GNF to involve the County in the planning process and strive for consistency between GNF proposed actions and County and SWCD relevant laws, policies and plans..

It appears that, after review of the Final EIS, the GNF disregarded all of the County's substantive and significant issues expressly identified in the DEIS and in the Project Record. The County has expressed concern throughout the TMP plan process and in its DEIS comments that the DEIS did not adequately address the historical, cultural or recreational needs of the citizens, however no substantive changes were made to the Final EIS in response to these concerns.

2.2.2 Elimination of duplication 40 CFR 1506.2(b) and (c)

Consistency and coordination between federal agency and local government planning processes go hand in hand, but neither may be substituted for the other. The point of consistency and coordination is to eliminate needless duplication of effort. If local governments have already adopted plans that address areas that a federal agency needs to include in their own planning,

[1] Five counties were involved with the TMP process, although GNF only recognized DEIS comments from Sierra and Grant counties. The 134 line items does not include Soil & Water Conservation District comments

then using local plans not only eliminates duplication, but reduces the likelihood of conflict between local and federal planning efforts. This appeal is an example of the result when federal agencies do not attempt to incorporate local planning into agency planning.

2.2.3 Consistency: National Environmental Policy Act (NEPA); 40 CFR 1506.2 (d)

NEPA applies to "every major Federal action significantly affecting the quality of the human environment" 42 USC § 4332(2)(C). The courts have interpreted this to mean that every time the federal government spends any amount of money for almost any decision, NEPA compliance is required.

Local land use or resource plans must be a part of a federal agency's consistency review process. If the federal agency is aware of local land use or resource plans during the analysis and writing of an EIS, as the GNF certainly was, NEPA requires that the agency "Discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the [EIS] should describe the extent to which the [federal] agency would reconcile its proposed action with the [local government] plan or law." 40 CFR §§ 1506.2, 1506.2(d).

NEPA further requires that copies of comments by State or local governments accompany the EIS throughout the review process. 42 CFR § 4332(c).

NEPA statutes also provide that local governments can have joint planning authority if the state or local government has adopted a comparable NEPA requirement. 40 CFR § 1506.2(b), (c).

The GNF is out of compliance with requirements to coordinate with local governments. The DEIS failed to address consistency analysis with the County's plans, programs and activities that include travel management components (e.g. County mini-NEPA plans, wildfire plans, comprehensive land use and resource plans, economic plans, and emergency services rapid response plans), even in instances when the GNF was an active participant in developing those plans. Most of the relevant local government plans were not entered into the TMP Project Record. Furthermore, although the County requested meetings with GNF to coordinate the consistency review, and directed that any review and analyses be displayed in a revision of the DEIS and Final EIS, the GNF chose to not do so.

2.2.4 Coordination: National Forest Management Act (NFMA)

NFMA requires that USFS develop, maintain and revise land and resource management plans that are coordinated with the land and resource management planning processes of State and local governments, as well as other federal agencies. 16 USC § 1604(a). It may be logically concluded that coordination means a process that attempts to achieve compatibility between USFS and local land use and resource plans.

"Coordination," has a legal definition (California Native Plant Society v. City of Rancho Cordova et al, filed March 4, 2009) that in the context of the 36 CFR 219 regulation implies a *measure of cooperation*, i.e. true engagement. In applying the court's position to the County's issue,

> "The Forest Service could not coordinate with local governments by simple consultation. Coordination by definition implies some measure of cooperation that is not achieved merely by asking for input or *trying* to work together. " (emphasis is the court's).

To further cite the court's opinion on the meaning of coordination:

> "We (the court) do not read this coordination as requiring the city to subordinate itself to federal agencies by implementing their comments and taking their direction. We cannot reasonably deem that this "coordination" is satisfied by the mere solicitation and rejection of input from the agencies with which the city is required to coordinate."

Furthermore, 36 CFR 219.4(b) (2) the regulation requires that coordination be displayed in the Final EIS: *The results of this review shall be displayed in the environmental impact statement (EIS) for the plan (40 CFR 1502.16(c), 1506.2).*

There has been no display, review, summary or evidence of GNF coordination with the County in the DEIS, the Final EIS or the ROD. Although the GNF provided a summary of consultation with affected Tribes, there is no summary of consultation with the County. There is no disclosure or discussion of inconsistencies or conflicts between the County's plans and policies or how the GNF can reconcile its proposed action with the local plan or law (40 CFR 1506.2(d)).

2.2.5 Cooperating Agencies 40 CFR 1501.6

The County is appealing this ROD because the GNF is out of compliance with regulation 40 CFR 1501.6 Cooperating agencies, CEQ Directive (1/30/2002), CEQ Factors for Cooperating Agencies, and, the GNF TMP MOUs with Counties to be Cooperating and participate on the TMP EIS ID Team.

To provide examples of these USFS failures to comply with the spirit and the letter of the laws related to Cooperating Agencies, Catron Count Commission finally withdrew from being a Cooperating Agency in their October 11, 2010 letter to the GNF SO Re: Catron County Termination of Memorandum of Understanding for the Travel Management Plan EIS, stating:

We feel we must do this in accordance to prior judicial decisions made on other cases that have been heard and as given the ineffectiveness of the MOU, as well as it's implementation and the GNF lack of compliance with federal requirements.

After numerous attempts to coordinate, per 219.7 to assist in consistency review; joint planning and duplication of efforts, per 1506.2, Catron County, along with other counties, requested on numerous occasions to review all the GNF TMP ID Team Specialist Reports, the basis for the DEIS. The GNF rejected the request, stating that the MOU with the Counties only committed to providing the Counties socioeconomic specialist report, not the other specialist reports related to the alternatives and impacts to the natural resources. Yet, it is impossible for the participating counties to provide adequate feedback on the socioeconomics, and to assess the risks to the health, safety and welfare of its citizens without knowing what the specialist reports say about their natural resources alternatives and impacts. NEPA law, itself is very clear about the inter-relationships between natural resources and the human dimension in these rural settings that are so dependent upon natural resources for their economy, and sociocultural customs and cultures. NEPA Section 102 C (iv) states

The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

FS socioeconomic handbook and manual specifically direct the FS to address socioeconomic impacts when their natural resource proposals are or could be interrelated to the human dimension,; that is, to analyze the socioeconomic impacts.

As a related example, Grant County Representative on the TMP ID Team stated in their DEIS

> In virtually every instance concern of a persons' right to utilize public property is the question. Although the Gila National Forest has a directive from the federal government it seems that they should not only include public input but have some application of the comments they receive. The NEPA process is designed to gain knowledge from the public not to satisfy a requirement. Having examined all of the proposed alternatives giving special consideration to Alternative G numerous conditions and concerns from the public have been left to minimum comment and little or no scientific evaluation. Economics plays a big role in the usage of the GNF to all of the communities that surround as well as support the forest, yet there is no mention of economic impact that the TMP may have on neighboring communities. Forest areas have historically been open to the public for various uses while wilderness areas are designated for restriction on usage.

Comments:

Again, this is another plea to FS to consider more fully the economic and social effects of the TMP impact analyses. Implied in their comments is their willingness to assist the FS in providing full disclosure of the human dimension effects. Yet, the FS ignored these requests, and failed to fulfill their legal requirements to resolve conflicts, as agreed to in the MOUs with the participating counties; more importantly, to comply with 36 CFR 219.7 and 40 CFR 1506.2.

Grant Soil and Water Conservation District tried repeatedly to obtain Cooperating Agency status because of their intergovernmental agreements with the GNF regarding Gila National Forest watershed improvement projects,; range, livestock and wildlife enhancement projects; many requiring motorized access that could be significantly and adversely impacted by the TMP alternatives. Yet, the GNF SO arbitrarily rejected the Grant SWCD request for Cooperating agency status, stating the Grant SWCD was not a government entity. This cavalier response by the GNF SO was made in spite of the Grant SWCD presenting in detail, that it is a government according to New Mexico State law; and, it explained how they surpass the CEQ's Factors for Cooperating Agency and by reiterated by the CEQ Cooperating Agency Directive to federal agencies (1/30/02).

The persistent lack of FS willingness to address these inconsistencies and coordinate with counties and soil and water districts to resolve the intergovernmental conflicts are inconsistent with and in violation of federal laws and regulations, including the coordination requirements in NFMA, the Multiple Use Act and Sustained Yield Act, the TMP Rule, and CEQ requirements related to Cooperating Agencies.

2.2.6 Lack of full disclosure 40 CFR 1506.2 (d) and 36 CFR 219.7 (c)

The GNF consistency requirements and results are not disclosed in the Final EIS. Without proper consistency review, GNF exposes the County to safety, health, and economic risks that could result from implementation of the GNF Travel Management Plan Amendment. The GNF failed in the DEIS to disclose the possible consistencies and inconsistencies between the proposed GNF TMP alternatives in the DEIS and State, Tribal and/or local government policies, and this was not rectified in the Final EIS.

The consistency section must address related local policies, programs and activities, including but not limited to the following: County roads and transportation plans; County travel management policies; related County comprehensive land and resource plans; County environmental planning and review process ordinances; County declared RS2477 roads; County community wildfire prevention plans; related law enforcement; rural fire department needs and county wildfire responsibilities; and County subdivision regulations, especially where residential subdivisions are within or adjacent to the forest (not only the identified WUIs).

The Council on Environmental Quality ("CEQ"), has recommended consistency analysis in the Affects Analysis. The CEQ requirement for consistency with state and local plans is found in NEPA at 40 CFR 1502.25(a): *...directs to the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with other environmental review laws and executive orders.*

Furthermore, at 40 CFR 1506.2 CEQ states: *(d) To better integrate environmental impact statements into State or local planning processes, Statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.*

It should be noted for the record that the Catron County Commission tried to work out an agreement with the GNF to comply with 40 CFR 1506.2 but the GNF Supervisor rejected the County's request. Catron County went so far as to acquire the assistance of a CEQ specialist in Washington DC to assist in developing and implementing joint planning and other aspects of 40 CFR 1506.2. This information is documented and verifiable. Neither this TMP related effort and eventual conflict, nor any other Catron County conflicts, were addressed in the DEIS or the FEIS; none of this was adequately or fully disclosed, discussed or considered in the Final EIS.

The CEQ regulations and the USFS 36 CFR 219.7 are interconnected and similar in purpose and need: *(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2), as discussed in the County's previous section on coordination in A-1 (a) through (f), above.*

GNF must meet these consistency requirements prescribed in the CEQ and in the 219.7 (c) forest plan rule before any Decision can be accepted. Consistency review cannot be properly achieved without coordination with the County to identify and affectively address the consistency of intergovernmental policies necessary to improve the environmental conditions. The County

instructs the GNF to coordinate with the County, per 36 CFR 219.7 (1982), in order to complete the consistency requirements.

In addition, neither the DEIS or the FEIS/ROD comply with 36 CFR 219.7 (e) or (f).

(e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.

2.2.7 Missing information

The DEIS and Final EIS are missing key information regarding compliance with coordination requirements by federal, state and local governments. The DEIS discussed public participation on p.6 and tribal consultation on p. 7. But coordination with local governments or state governments is missing in the DEIS and this problem was not rectified in the Final EIS. Key information is also missing from the Chapter 4: List of Preparers; Consultation and Coordination, lacking any discussion of coordination or joint planning by the GNF even though Catron, Hidalgo, Luna and Sierra County all have adopted mini-NEPA plans. 40 CFR 1506.2 calls for joint planning "to the maximum extent possible". As has been discussed previously, coordination is not public involvement, nor, is it "consultation". Apparently even an agreement to achieve cooperation and coordination does not work; the County has found the MOU between GNF and the County to have been ineffective in establishing effective cooperation and coordination with the Gila National Forest over the years since the MOU was signed in 2009.

The GNF is required to meet with the County Commission *early* in the development process to "develop procedures for coordination", as prescribed by the Travel Management Rule (36 CFR §212.53) and in the Forest Service Planning Rule 36 CFR §219.7 (d). While perhaps obeying the bare bones letter of the law, this process has also been ineffective. The GNF has failed to follow up with sincere commitment for timely coordination and close and routine communication as was promised on several occasions.

True coordination to address consistencies, conflicts, opportunities for coordination, and coordinated monitoring, as specified in USFS planning rule must begin early on in the process, and must continue throughout the process, concluding with an agreed upon monitoring plan, per 219.7. Because this did not happen, the Final EIS and Record of Decision are essentially invalidated by the lack of GNF true engagement throughout the whole planning process.

2.3 Remedies

2.3.1 Disclose coordination activities

The TMP is must disclose all coordination activities for the whole developmental process and describe how the agency complied with the laws and regulations related to coordination requirements. The County instructs the GNF to comply with 36 CFR 219.7 and disclose the results of the GNF consistency review, per 36 CFR 219.7(c) and (40 CFR 1502.16(c), 1506.2).

This omitted information should be disclosed by GNF to demonstrate compliance with the 1982 USFS 36 CFR 219.7 planning rule.7 as set out in (a) through (d), below. The TMP must describe the results of coordination and describe how the line officer fulfilled the requirement of the following:

(a) *The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.*

(c) *The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include--*

> *(1) Consideration of the objectives of other Federal, State and local governments, and Indians tribes, as expressed in their plans and policies;*
>
> *(2) An assessment of the interrelated impacts of these plans and policies;*
>
> *(3) A determination of how each Forest Service plan should deal with the impacts identified; and,*
>
> *(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.*

(c) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative.

(d) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

Monitoring and evaluation should be described in the DEIS, including how the line officer fulfilled all requirements. The County instructs the GNF to coordinate with the County in the implementation monitoring section of 36 CFR 219.7 and this should be displayed in the monitoring section of the DEIS.

(e) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.

2.3.2 Disclose appropriate laws and regulations in DEIS

The County also instructs the GNF to include coordination laws, regulations and agency directives into the DEIS and the appendix.

2.3.3 Initiate true coordination with the County

36 CFR 212.53 requires the GNF to coordinate with the County on designation of roads, trails and areas for motor vehicle use. True intergovernmental coordination pursuant to this requirement and 36 CFR 219.7 (1982). never occurred. True coordination must be initiated and the results disclosed in the DEIS and Final EIS, including how the line officer fulfilled this requirement.

2.3.4 Disclose entities that were coordinated with, and how that occurred

In addition, the GNF should disclose and insert in Chapter 4: List of Preparer; Consultation and Coordination exactly which State agencies, tribal and/or local governments the GNF actually coordinated with and how GNF performed this coordination, as per 219.7, above. Note that consultation and cooperating agency status do not rise to the standard of coordination. Also, insert a new subsection to Chapter 4 to include: Coordination with State, Tribal and Local Governments to be consistent with 36 CFR 219.7.

2.3.5 Conduct joint environmental planning with Counties per 40 CFR 1506.2

Because all the Counties of and neighboring the Gila National Forest has adopted extensive environmental planning, and because the GNF did not comply with 40 CFR 1506.2 (b) and (c), joint planning should be immediately initiated by the GNF to meet requirements to reduce duplication of effort.

The need for joint planning efforts is clear. For example, Catron County passed a resolution to conduct its own environmental analysis of the GNF TMP to determine the impacts on the human environment. The resolution and the County's request to conduct joint planning were submitted to the GNF supervisor's office on August 13, 2009. On April 14, 2010, the GNF Planner and ID Team leader met with the County ID Team and agreed to conduct joint environmental analyses and joint public meetings, as well as jointly conduct consistency analysis and assist in the environmental justice outreach requirements with assistance from CEQ in Washington DC. However, the GNF SO reversed the GNF agreement to conduct joint environmental planning, as

specified in 40 CFR 1506.2 (b) without explanation or justification. Therefore with its decision not to comply with 40 CFR 1506.2 in which federal agencies are to "cooperate to the maximum extent possible to reduce duplication between NEPA and State and local requirements" the GNF is out of compliance. This situation should be immediately rectified.

Furthermore, due to what amounts to a protracted stalling process to thwart efforts by Catron County Commission to cooperate to the maximum extent possible as the Commission complied with its own planning requirements , Catron County was unable to complete its own environmental analysis (Catron County Environmental Planning and Review Process Ordinance).

The GNF actions, described above, appear arbitrary and capricious in their rejection of the County's Joint Planning request. Thus a remedy for Catron County, which remedy benefits all the Counties affected by GNF planning, is for the GNF to explain in the DEIS and the Final EIS why the GNF has not complied with §1506.2 that requires cooperating with the County Commission to conduct joint planning and public involvement actions in the EIS process "…to the maximum extent possible". This failure to comply with this regulation can be corrected by complying with 40 CFR 1506.2.

Without this correction, and with the apparent lack of compliance, and lack of meaningful input from the County via coordination, GNF cannot produce an accurate Effects Analysis in the DEIS. Furthermore, the Deciding Officer cannot find appropriate balance between the effects of the proposed action and/or activities vs. the benefits to society and the health, safety and welfare of the County and its citizens.

2.4 Summary Intergovernmental comments

In sum, this Decision must be remanded because of the GNF failure to engage in a meaningful way with local government, as evidenced by the major violations and omissions, above. The absence of a summary of the County's and the Forest Service's coordination effort is telling: there was none. There was no effort by the Forest Service to sincerely and in good faith work together with the County in resolving differences over the proposed plan. The regulations are clear and the case law is clear. The USFS and Gila National Forest have disregarded both the spirit and the letter of the law and its own regulations set forth to implement the NEPA.

Section 3: Issues of Errors and Omissions

3.1 Introduction

The County is appealing the TMP ROD because of serious factual errors and omissions, including failure of the Responsible Official to consider many of our substantive comments previously submitted either in writing or orally.

3.2 "No Action" Alternative

3.2.1 Fires

We request that a Supplemental Environmental Impact Statement be completed as a result of the dramatically changed conditions in the study area.

We cite 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.

There have been significant changes from the existing access condition that was extant at the beginning the TMR process, due to major fires on the Glenwood and Reserve and parts of the Wilderness Ranger Districts in Catron County, and the Silver City Ranger District and parts of the Wilderness Ranger District in Grant County. 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.

This is not addressed in the FEIS.

In May & June of 2012 290,000 acres burned in the Whitewater-Baldy Complex fire. The Whitewater-Baldy Complex Fire was the most destructive fire in the recorded history of the Gila, in size as well as intensity.

The Silver Fires burned 138.698 acres.
The 2012 Whitewater Baldy (WWB) Complex Fire, in southern Catron County, burned tributaries of the San Francisco River, the source of which was already impacted from the 2011

Wallow fire. The WWB also burned the headwaters of the Gila watershed, which supplies all the downstream uses for Catron and Grant counties, southern Arizona, including the San Carlos Indian Reservation, extending all the way to the Colorado River at the California-AZ border.

To a lesser extent the Silver Fire impacted the Rio Grande Basin above Las Cruces NM and El Paso Texas. However this watershed has tributaries that drain into Elephant Butte Lake, and Caballo Lake, which is a major recreational area for residents all along the Rio Grande, from Albuquerque to El Paso. It's *the* place in this part of NM for fishing, boating, and all the water activities in this arid land.

In the SEIS, among other things, the Forest Service should analyze how the fires affect 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.

There is no analysis in the FEIS of how the Decision, on top of the changed condition from the fires, would affect the counties bordering the Gila forest (or which have a large proportion of their land mass being in the Forest). Of the counties with Gila NF in them, Catron and Grant rely on the Gila NF for goods and services the most. One example of a big change in the delivery of recreational services is fishing: The fires were so hot and large that the fish died all the way into Arizona. This type of dramatic impact is present throughout the burned areas.

This will affect the uses in the unburned areas as well.

We want the Forest Service to analyze the effects of the fires on the access as it is presented in the Decision. The access to prime hunting country is 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. Put the burned conditions and the Decision together, and the access is dramatically altered.

Emergency access is impeded by the same circumstances. The more ways to enter and area where campsites are, for example, the more likely an effective rescue, or evacuation, can be carried out. At this time, access is severely impeded by the burned conditions and the Decision together.

To summarize, there <u>are</u> significant new circumstances relevant to environmental concerns and bearing on the Decision and its impacts. By the standard set in 40CFR1502.9, an SEIS is clearly necessary.

3.2.2 Alternative does not comply with CEQ requirements

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." [2]

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." The 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

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[2] 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).

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 of the data on the 2004-issued map).

Trails have been removed from the FEIS maps

We have a network of routes on the Forest Service map dated 2004, named Open Road System, that is not on the corresponding FEIS map #B9. Where R17 and T7 join R16, T7, it can be seen that an entire network of routes has been left off the FEIS map. The missing routes are all inventoried and numbered routes that were in the Forest database prior to 2004, but have been omitted from the FEIS database and analysis.[3] The person who found the discrepancy between

[3] Route numbers 4311U, 4311T, 4046A, 4311X, 4174G, 4174H, 4311X, 4311P, 4311O, 4311T, 4311N, 4311K, 3189, 4311, 4311E, 4178W, 4174M, 4311H, 4174N, 4174O, and 4216R are all missing from the FEIS map and obviously, from the FEIS mileage calculations. These are all inventoried and numbered routes that were in the Forest database in 2004, but have been omitted from the FEIS database and analysis.

the maps is not familiar with the forest, but is only looking at random to find these discrepancies. She found these after comparing the maps for only about 20 minutes. The existence of these routes demonstrate the level of management intensity in 2004.

These routes' absence (and we can only guess at how many more) makes it look as though the Forest Service isn't changing very much when in fact the changes will be unreasonably and significantly large.

Roads show in the GIS database but not on the FEIS maps.

Now, turning to the GIS database supplied to NMOHVA under a FOIA request and shared with us, we can point to an example of a large number of roads appearing in the GIS database but not on the EIS maps. Looking at the paper maps published with the EIS for Alternative B (no action), in the SW 1/4 of T9S, R18W there aren't very many roads. There are no special designations such as Wilderness, RNA, etc. We only see the Ranger District boundary along Deep Creek Divide (Reserve & Glenwood).

Looking at the GIS database, we find an entirely different picture: there are literally ***miles*** of roads that are not shown on the paper maps. They all have Forest Service numbers identifying them. They make loops and they make connections.

No description of where actual cross country travel is occurring

At EIS p.4 the Forest Service states that,

> "Approximately 2.4 million acres are available for motorized cross-country travel. Even though these acres permit motorized cross-country travel, it may not be possible to drive on all of them due to slope, terrain, or thick vegetation."

The word "may" is inaccurate. It is impossible to drive anywhere a person wants to, precisely because of terrain and vegetation. Trees, rocky canyons, cliffs, vegetation, blow-down and steep, rugged terrain--all of these inhibit cross-country travel. The fact is, it is not possible to drive on almost all of the acreage. People use linear paths, made either by the Forest Service itself or by repeated use, to find their way through the rugged terrain. In other words, they are driving on the existing roads and trails. The Forest Service repeatedly calls this "cross-country travel." The accurate description (people using existing routes) is not included in the description of the affected environment.

This omission conflicts with the CEQ instruction at 40CFR1502.15, to describe the affected environment such that reviewers can understand the effects of the alternatives. Because the Forest Service says using an existing route is the same as cross country travel, the EIS makes it impossible for reviewers to understand the effects of the Decision. The Forest Service has failed to accurately describe the affected environment.

The Forest Service does not show OML1 Roads in the Comparative Tables in Chapter 2.

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% [4] 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 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, <u>that *is* the "current level of management intensity."</u> These miles must be shown in the no action alternative as miles open to motorized use, because they always were open to motorized use.

<u>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.</u> It does not accurately portray the current level of management intensity.

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

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.

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%

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, 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.

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.

The level of management intensity is 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.[5] 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.

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[5] 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.

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**.

Here's another example of Forest Service confusion at work: In the SW 1/4 of T8S R19W is FSR#32, marked as OML1 in the GIS database. It accesses private property from the north. On the paper maps the northern segment is not shown at all. What exactly is not shown? The portion of FSR32 that lies in the roadless area--but the paper maps published with the EIS ***do not show this***. The Forest Service simply erased the road.

On the Alternative G maps the exact same segment is also erased, and none of the paper maps published with the EIS show that there is a roadless area there. Because it's not on the no-action map (alt. B) it looks like nothing has been lost.

Trails have been erased from the EIS maps

Another problem reviewers have is that the R3 maps show different amounts of trail in the IRAs than this EIS. For example, this EIS shows no trails at all in the Devils Creek IRA, but the R3 website shows 53 miles. Eagle Peak IRA has 26 miles according to R3, but nothing according to this EIS. Frisco Box IRA has 57 miles of trail but this EIS shows nothing.[6]

The Forest Service may claim that these are nonmotorized routes, yet it requires a separate action to remove any lawful uses. Motorized trails and roads are legal and do exist in IRAs. IRAs have no special Congressional designation or protection, and are required by the Wilderness Act to be available for multiple use ("...[any lands not designated by Congress]...."). Neither the no action alternative or the recreation chapter disclose any prior decisions closing those trails. The Forest Service simply erased them from the maps. Now it looks like nothing will be lost.

The EIS GIS data shows only 243 miles of trail outside Wilderness (for the no action alternative). The comparative tables in Ch. 2 show zero miles. Of course, there would be "zero" miles of designated trail because this is an open forest. Nothing is designated. At FEIS page 60, the Forest Service states that. However, to determine the magnitude of change under this Decision, we need to know how many miles of trail are really on the ground. Calling the repeated use of linear paths the same thing as "unrestricted cross country travel" is inaccurate, because the Forest Service already told us unrestricted cross country travel in not possible in the rugged terrain and dense vegetation. It is especially inaccurate when the Forest Service has

[6] FEIS page 34 Table 16 shows only 4.5 motorized trails open in IRA's, but the Forest Service provides no authorization for excluding motorized vehicles from roads and trails in IRAS's and in fact motorized use is lawful.

already mapped and numbered and included in its database many of the roads and trails being used for this "cross-country travel."

Early maps show everything as open

Next we find an earlier map published by the Forest. The date on the compact disc is 3/19/2004. The map Title is "All Travel Ways on the Gila National Forest." 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 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."

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.

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.

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.[7] It is an "open" forest.

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

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 R3[8] but erased from the EIS maps[9]

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.

What is the magnitude of change?

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[7] DEIS p. 50

[8] 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.

[9] FEIS page 60 claims only 735 miles outside wilderness

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)."

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.

And apparently, there is 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.[10] 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 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

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[10] 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.

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.

To summarize, as we have repeatedly stated earlier in this appeal, 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.

3.2.3 Narrow range of Alternatives

The issue of the range of alternatives was raised in comment. The Forest Service response simply reiterates what the Forest Service chose to do, and explains the narrow range of alternatives away by saying they are all developed from issues raised in scoping, which were all about motorized activities. It is obvious that the Forest Service did not understand the comment, so we will write our appeal with a slightly different approach.

We are appealing this Decision because the range of alternatives is too narrow, and does not encompass all reasonable alternatives within a rational, normal range as they would bear on the actions the Forest Service will take (i.e. complying with the TMR).

40CFR1501.2(c)

> Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

NEPA Section102(E)

> study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

We contend that the range of alternatives is constrained by the perception that the TMR is a mandate to close roads and trails, primarily because of the instruction in the TMR that directs the Forest Service to consider noise, emissions, and essentially, the mere presence of motorized vehicles. This instruction is unlawful because it forces the alternatives to crowd only one end of the spectrum of reasonable alternatives. In a rational evaluation of identifying and designating a

transportation system designed to meet the statutory requirements of the Forest Service and to provide for multiple use and the goods and services that are mandated by the MUSY and other laws, the Forest Service must realize that the existing condition should lie in the middle of the range of alternatives, not at the extreme end of the range. This is partly because we are identifying a designated transportation system that will serve varied multiple use needs. It is partly because that is the only rational and realistic way to view it.

The Forest Service has created the unresolved conflicts concerning the use of available resources by naming (in the TMR) the presence of motor vehicles as something that must be "considered" in crafting the alternatives. This forces a situation in which only the elimination of motor vehicles is an option, and the expansion of the transportation system is precluded. But if we read the instructions from Congress, the Forest Service is expected to keep a functional motorized transportation system on the forest to serve the needs of multiple use, including recreation. Everyone needs and uses motor vehicles in the areas of the forest designated for general access (everything outside wilderness). Every recreation activity requires a motor vehicle to access the desired activity. By this artificial constraining of the alternatives, this Decision denies everyone's access to varying degrees. Requiring the EIS writers to consider the presence of motor vehicles as a potentially negative effect, [11] the Forest Service is incorporating an arbitrary philosophical value (not defined by any legal standard) into its planning process.[12] This is unlawful; there is no legal standard or legal requirement that demands that philosophical values be addressed by the plan under consideration. There is no statutory requirement that requires the Forest Service to reconsider the use of motor vehicles outside of wilderness. The entire demand to "consider" the sound, emissions, etc of motor vehicles arises out of a philosophical position taken by some individuals, but it is far too arbitrary to be lawful. It can also be construed as an

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[11] Note at 36CFR212.55(a), the phrases "conflicts among uses of National Forest System lands," and (b)(3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands" and (b)(5) "Compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound,
emissions, and other factors." These instructions have been misinterpreted by the EIS writers to mean "conflicts between users." This is very different than conflicts between uses. Conflict between uses would be a "mechanical" issue; it would be an obvious physical incompatibility. Conflicts between users (in the context of motor vehicles) is a philosophical issue about whether or not motorized vehicles should be allowed on national forest lands. This has arisen from the philosophical values of certain individuals, some acting under the color of their status as Executive Branch employees. Nonetheless, the above regulatory language implies only negative effects from motor vehicles and no advantages or positive effects. This is the language that needs to be clarified such that arbitrary philosophical values cannot so easily be introduced into the process, and motor vehicles can be appropriately managed without the artificial onus of that particular philosophy.

[12] The Forest Service say in response to comment that it removed the quiet recreation indicator to develop alternatives. But that is false. Since quiet recreation was an indicator in the DEIS, it influenced the development of alternatives. The alternatives in the FEIS are essentially the same as in the DEIS. Removing printed evidence of the phrase "quiet recreation" did not change the analysis in the FEIS. To truly remove an indicator, the agency must also remove the consequences of the indicator and its effects on the alternatives. This obviously has not been done. The Forest Service claims that they removed indicators for noise, user conflict, quiet recreation etc. These claims are belied by simply comparing Table 1 in the DEIS to Table 1 in the FEIS. Twiddling a few small numbers produced no change at all in the percentages of closure. The agency has merely cleansed the document of certain words, but it has not corrected the analysis and the conclusions. This shows the agency falsely claiming it has made corrective changes.

attempt by the Forest Service to manage the whole forest (outside of wilderness) for wilderness values.

In a complete range of appropriate alternatives, at one end of the range we would have an expansion of the existing system, and at the other end we would have a contraction of the existing situation. At this point in the discussion the Forest Service will of course claim that it is expanding the system, but that is a false claim, because in the Plan the Forest Service is designating roads and trails where there was virtually no designation before. Of course it will "look like" the system is being expanded, even though it is not. In other words, because the Gila is an "open" forest (open to cross country travel) there were never any designated trails. The TMR requires that the Forest Service designate some. The Forest Service chooses from the existing situation some trails it will designate. The appearance is that we are going from zero designated to 175 miles, or whichever number is offered in the alternatives. But these are not new miles; they are already existing and in use by the public. The reality is there are thousands of miles of existing trails, and the designation process will close all remaining existing trails. That cannot be considered "expansion."

And, the exact same argument would be made for the roads.

The upshot of this reasoning is that the Forest Service needs an accurate inventory of the existing road and trail situation before it can formulate alternatives. The Forest Service claims the regulations don't require this, however, we remind the Forest Service that the miles of road and trail are the crux of the issue, the very subject of the analysis. An accurate, scientific, and rational analysis cannot be completed if the analyzers don't even know how much there is to analyze. In other words. in this case, the exemption from having a complete inventory is inappropriate because the inventory is the subject of the analysis. The direct, indirect and cumulative effects cannot be estimated because we don't know what we are analyzing. In other words, we are contending that the subject of the analysis cannot be an unknown.

Thus we have two faults constraining the construction of a true range of alternatives: the Forest Service is incorporating philosophical values into its alternative construction, and, the subject of the analysis is unknown.

Thus, there is not a true range of appropriate alternatives in this analysis. There is no conflict over the use of the resources other than the one that the Forest Service created by incorporating philosophical values into its planning process. The real issue to be resolved is how to comply with the TMR, not how much less road and trail we will have.

Therefore, we contend that the range of alternatives has been unlawfully constrained by these two faults. The resolution to this appeal is threefold:

1. Remove the language from the TMR which creates the conflict because it too easily introduces philosophical values into the process, and, Congress never directed the Forest Service to reconsider the use of motor vehicles on national forest lands.

2. Obtain a complete inventory of the subject of this analysis, the roads and trails. This has been done by other forests. It is expensive, but because the inventory is so critical to producing a rational, accurate and NEPA-compliant Decision, it is necessary in this case.

3. Withdraw this Decision and develop a new analysis with the accurate information, and reformulate the alternatives using this clean slate - no arbitrary philosophical values, and a complete inventory. Only then can a rational, appropriate and defensible decision can be rendered.

3.2.4 Full impact unknown

We are appealing this Decision because it is in violation of 40CFR1500.1(b), 40CFR1500.2(b). and 40CFR1501.7(2), 40CFR 1502.16, and the NEPA at Title I, Section 102 (C) (i), (ii),(iv) and (v).

In our comments on the DEIS, we stated that the Forest does not know the "full impact of the closure of roads due to the fact that not all the roads were studied in the DEIS."

In its response to comment, the Forest Service claims its own regulations and Title 40 exempt them from doing a thorough analysis. It does not address the cumulative impacts inadequacies as we pointed out in our comment.

However, in spite of the fact that the Forest Service in all its regulations and in the TMR has exempted itself from doing a complete inventory and analysis, the CEQ (regulations for implementing the NEPA Section 101 and 102) clearly indicate otherwise. The Forest Service uses 40CFR 1502.22 as an exemption; it is not. It is simply the instruction about what to do if the agency doesn't have some information in an area of the study, and the instruction to disclose the relevance and importance of the missing information. It doesn't exempt the Forest Service from have complete information about the actual subject of the analysis. By the same token, contrary to Forest Service claims, we find nothing in the NEPA that exempts the Forest Service from acquiring all of the key data. In fact, the NEPA itself appears to be pretty demanding in it expectations about the quality of these EIS's.

The violation of 1502.22 extends beyond considering it an exemption from gathering all the data. The Forest Service has failed to accurately disclose the real relevance of the missing data. It is incredibly relevant and important. Not knowing how many roads and trails are in the Forest is to not know the quantity, quality, key characteristics and even the location of the main subject of the analysis. An analysis cannot be completed without knowledge of the subject being analyzed.

The Forest Service doesn't seem to think it's very important to have all the information about the main and sole subject of the analysis. We believe it is important, because without complete information about the subject of the analysis, there cannot be an adequate cumulative effects assessment. The Forest Service cannot comply with 40CFR 1502.16 (in its entirety) without a thorough knowledge of the sole subject of the analysis. Even an estimate of the full effects cannot be accomplished.

40CFR 1500.2(b) explicitly states that the EIS "must be supported by evidence that agencies have made the necessary environmental analyses." A necessary analysis to produce the required "high quality" environmental information (40CFR1500.1(b)) would in this case obviously include a route-by-route analysis, and a thorough knowledge of the subject of the analysis. This EIS has no such evidence, in fact, the EIS stands behind the Forest Service regulations (which are subordinate to CEQ) that they do not need to do a route by route analysis because it would cost too much. We would like to remind the Forest Service that case law has established that in a

task such as implementing the TMR, which is not mandated by Congress nor the general public but it is rather a task that the Forest Service has unilaterally set forth for itself, the cost of gathering the necessary data for a proper analysis is not a valid exemption. If the Forest Service, and only the Forest Service, believes the matter of vehicle use is so important that it requires special management and an EIS for every forest in the nation, and intends to take action that will affect millions of people, the forest Service is obliged to conduct a thorough, CEQ-compliant analysis and have and use all the data about the sole subject of the analysis.

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.

Just one of several dozens of examples which illustrate the blunders that the Forest Service would make by skipping the route-by-route analysis is from a resort located in Grant County, the Burro Mountain Homestead RV Resort. The Forest Service is showing on its maps that the Resort's fire evacuation routes will be closed by the Travel Plan. This is a shocking threat to the health and safety of forest visitors and inholders.

More accurately put, this reveals a profound ignorance of the on-the-ground circumstances. This is the type of situation we meant when we told the Forest Service in our DEIS comments that the full impact of the closures is not known due to the fact that not all the roads were studied. The full impact is not known, by any stretch, without knowing the specific circumstances of each road, its importance in access and connectivity, its value for forest management, and its value to the forest-visiting and using publics.

In sum, the Forest Service has used its own regulatory scheme to circumvent both the letter and the spirit of the CEQ regulations. The Forest Service is promulgating regulations that are in conflict with CEQ. The Forest Service's regulations provide the Forest Service with simple shortcuts that diminish and detract from the adequacy of the analysis. These regulations provide a way for the Forest Service to disregard its statutory authorizations, and to disregard all lawful and mandated access needs on the forest.

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.

The resolution to this appeal point is to withdraw this Decision and start over with a true baseline inventory of the study area. In other words, start with knowing, at the very least, the location, mileage and key characteristics of all the routes in the forest. Then a proper cumulative effects assessment can be made.

3.2.5 Mandate to designate

The Decision violates the Travel Management Rule (TMR). 36CFR 212.5. For that reason we are appealing the Decision.

At 212.50(b) the Forest Service instructs itself, that the responsible official shall designate the road and trail system:

> "This subpart provides for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for motor vehicle use."

As noted in our comment submitted during the comment period on the DEIS, we contend that the agency has misunderstood and misinterpreted the TMR. The TMR does not mandate closures on any scale, and especially not on the scale that the agency has chosen for the GNF. The TMR is a mandate to designate roads and trails, and include new routes as they are inventoried and classified. The word "closure" appears nowhere in the text of the TMR. The TMR is a mandate to make a functional and worthy system of roads and trails that keeps the forest accessible for recreation and forest management. The mandate to designate is the primary statement made in the TMR text. The only language that indicates any limitations is the instruction to limit access for dispersed camping and big game retrieval, yet the TMR does not tell what distances from the roads a forest may choose to allow. The distance that the Gila has selected, 300 feet, is unsupported by any factual information which would indicate that is the proper or ideal distance that anyone can travel off the roads.

Furthermore, the agency's misunderstanding of the TMR by closing, and not designating roads and trails, will drastically limit the actual number of roads overall, and especially roads that can be counted in the "corridors" of dispersed camping opportunities. This will cause a profoundly negative effect on the public access systems, emergency response systems, the rights of private property owners, the protection of the management and economic and social well being *and* the customs and culture of the residents of Grant County and all other visitors to the Gila Forest. The use of the Forest has been part of the Grant residents' lives for many generations, and this Decision will end all that as we know it today.
In sum, the fact of the matter is the TMR is subordinate to the statutory requirements as set forth by Congress, in numerous laws directed at the Forest Service to have a comprehensive transportation system. The transportation system must be of sufficient scale to adequately meet all of those statutory requirements. Congress never directed the Forest service to close massive mileage to public access.

In short, the Gila Forest has the concept exactly backward. The text of the TMR discusses creating a system of designated roads and trails. The Gila Forest has failed to follow the instruction and mandate from the TMR as set forth at 36CFR212.50 (b).

This Decision must be remanded and a new Travel Plan developed in which this mandate to designate is followed properly.

3.3 County Issues

3.3.1 Emergency vehicle use of roads and trails

We are appealing this Decision because the agency has failed to give appropriate consideration to our concerns, and because of this disregard, has failed to lawfully respond to our DEIS comments on the need for roads for emergency response vehicles. The regulation governing lawful responses is found at 40CFR 1503.4.

The agency's response to our comment labeled Issue #5 about loss of access due to road closures repeatedly states that the TMR exempts certain users, specifically emergency vehicles for example, either in response to an emergency or by written permission to accomplish their mission.[13] This is willful ignorance on the part of the agency. This agency knows full well that once the road has been closed, it becomes abandoned, but roads need maintenance. Trees fall on the roads making them impassible. Rain, freeze, and thaw processes create chasms and gullies that are impassible. This maintenance may be performed by the agency, the recreational visitors, contractors, or permittees, as long as the road is open. Once closed and essentially abandoned, a vehicle may have the right to pass, but that vehicle will not have the physical ability to pass.

At 40CFR 1503.4 the proper responses to comment is provided for the agency. Declaring that the Decision will have no effect on emergency responses in a willfully ignorant manner is not a lawful or responsible response. The writers of the CEQ regulations had no idea that an agency would evade dealing with a county's concerns through such willful ignorance, by claiming something the agency knows is not true. This alone is not only bad faith, it is grounds for remand simply because of the fraudulent assumption that the roads will remain passable even after they have been abandoned. Any fraudulent assumptions used by the agency to support its position is grounds for remand, to correct the statements using the truthful assumptions, and in turn, to correct the Decision.

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[13] FEIS page 595, "Vehicles responding to or that are needed for activities such as search and rescue; fire, law enforcement, etc., are exempt under 36 CFR §212.51 from the designations. This section of the rule states that motor vehicle use on roads, trails and areas shall be designated by the responsible official, *"provided that the following vehicles and uses are exempted from these designations:*

(5) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(7) Law enforcement response to violations of law, including pursuit

A responsible response would necessitate a revision of the FEIS and in turn, a change in the Decision. This particular unlawful response is especially egregious because life and property may depend on good emergency access, yet the Forest Service seems to be disregarding the public safety issues we have raised.

Please respond responsibly and lawfully, and make the required revisions. It will likely result in changes in the Decision.

3.3.2 Economics

In our comments, we expressed concern that the proposed cutbacks in forest access would adversely affect the economic well being of Grant County. Given that the median income of Grant County residents is below the state median, and the rural nature of the County makes it more reliant upon the forest than the state average, we believe that the reduction in economic activity that will result from this 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

and Section 102(C)

[include in any major Federal actions significantly affecting the quality of the human environment,]...a detailed statement by the responsible official on—

> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented

The Forest Service is also violating 40CFR1502.24

> "Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix."

because it is not using the best available information on the economic effects that the forest has on the surrounding communities. The Forest Service is making up its own study when in fact three other far more accurate and professional studies are available: The University of New Mexico "Economic Impacts of the Gila National Forest" which would be the most appropriate because it studies the Gila and surrounding communities themselves, so it is very site specific. Also the Western Governors Association has a recent study, the Economic Impacts of Outdoor Recreation, including state by state breakdowns of effects. We can also refer to the 2008 National Forest Visitor Spending research in the Journal of Forestry. It is questionable that the Gila forest uses its own study that shows so little impact from these dramatic closures, and discards the professionally done studies. We are looking for some integrity in the use of the literature here, and it appears that the Forest Service is picking and choosing to suit their own ends (avoid showing negative impacts from the closures).

The Forest Service is also violating 40CFR1500.1(b) "... The information must be of high quality." The study that the Forest Service uses does not even use all of the elements in the standard economic equation! Obviously the Forest Service study is not of the quality expected by CEQ at 1500.1.

According to the CEQ's 40 Most asked questions, question 29a states that:

> "... agencies must respond to comments, however brief, which are specific in their criticism of agency methodology." (emphasis added).

This response may include a change in the text or corrections to the document. A correction would be to use the UNM study, since it is so very site-specific. Such corrections in this case would force the Forest Service to reveal the catastrophic economic outcomes that this Decision will cause. The Forest Service doesn't seem to want to do this.

The Forest Service is also violating 40CFR 1500.1(b)

> NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail. (emphasis added)

This is iterated at FS regulation 36CFR 219.14, Involvement with state and local governments, and at 36CFR219.16, Relationship with interested individuals and organizations. The Forest Service went through the motions of following this instructions, but the outcome clearly

indicates that the Forest Service never seriously considered the input received from Grant County and from numerous other organizations and individuals about the flaws in the economic work that were so obvious that there were numerous comments on the matter.

And, at 36CFR219.4(b)(2)(iii) the Forest Service instructs itself to identify

> Opportunities for the national forests or grasslands to contribute to social and economic sustainability

However, in the Issues section of the FEIS, pages 9 and 10, there is nothing presented that answers this regulation. Clearly there is opportunity to contribute to the economic sustainability of the surrounding communities, because modern, professionally done research reveals that forest based recreation is an "economic giant" (Western Governors Association's Economic Impacts Of Outdoor Recreation study, 2012). It especially reveals that motorized recreation contributes more to the local economies than non-motorized recreation and in some cases vastly more. Yet the Forest Service made no effort to explore this.

At 36CFR219.21 The Forest Service gives itself explicit instructions about the need to assess the economic and social well being of the surrounding communities.

> " Economic analyses address economic trends, the effect of national forest and grassland management on the wellbeing of communities and regions, and the net benefit of uses, values, products, or services provided by national forests and grasslands."

219.21 also instructs the Forest Service to recognize the capacity (or lack thereof) of the local communities to survive changes in land use.

However, the Forest Service addressed none of this in the FEIS. It was not even considered an Issue.

When subjected to public scrutiny, the public and the local governments pointed out the gross shortcomings of the economic report but the Forest Service disregarded them. Sure, the Forest Service revised their numbers, but it did not correct the faulty methodology used to develop those numbers. Thus, the Forest Service could still say the impact would be negligible.

<u>The Importance of this Appeal Point</u> Although the social economic report represents a very small percentage of the FEIS's actual pages, it is tasked with representing nearly 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 (Section 101(b)(5)). 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 or the decision-maker.

In the following pages we will demonstrate that the Forest Service methodology in its economic report is severely faulty.

The adverse effect on the human environment comes as an economic blow to Grant County. This grows from disregard of 101(b)(2). The Forest Service has also failed to fulfill Section 101(a) because it did not consider the economic effects of the Decision. To "consider" means, take into account, or to use in the process of crafting the Decision. The Forest Service did not do this, even given the paltry numbers it produced with its own economic analysis. The Forest Service is saying, here are the numbers; too bad if it's a negative effect on your community. The Forest Service is well aware of the New Mexico study because it is cited in the FEIS. They know what the real economic numbers should be, yet they choose to disregard that study. We regret to say this but that shows a lack of professional integrity.

If we just use the Forest Service's numbers (from FEIS Table 213 on page 446) and stick with the faulty study, and do not bring up the matter of the incomplete no action alternative that gives a false baseline for comparison, we see:

- a 27.5 % reduction in jobs related to motorized recreation.
- a 27.7% reduction in labor income from motorized recreation.
- an 11% decline in al recreation related jobs.
- and 11% drop in that sector of employment related to recreation on the forest.

These are disappointing numbers, especially for such small communities. And, it does not include the higher costs of grazing operations because under this Decision in many areas the ranchers cannot use motor vehicles to move the cattle.

Grant County is the largest county in the study area so we know that Grant County will feel the largest effects. In all these communities, there are few if any alternative jobs available. Our economies are centered around the forest. The families involved will have to leave the area to find replacement employment, contributing to the further incremental decline in population and diversity. It is easy for the Forest Service to place this into an "insignificant" realm by claiming the jobs are only a tiny proportion of all area jobs. The Forest Service fails to take into account visitor spending and induced and indirect effects. The Forest Service fails to take into consideration the lack of alternative employment. The Forest Service fails to take into account the other forest industries scarified to natural values. This is just another nail in the rural communities coffin.

One single example (out of dozens) is heard from the Burro Mountain Homestead Resort. The proprietor predicts that the estimated 58% loss in access, and the conversion of roads to 50 inch limited vehicles, will cost him 20% of his yearly lessees and 50% of his daily use fees (i.e. RV space rental, guest rooms, and RV rentals). The guests of this ranch spend considerable amounts of money in Silver City as well. While this is anecdotal, how can the Forest Service claim such a small economic impact when every citizen is sure that the Forest Service is wrong? The answer lies in the Forest Service economic report.

The Forest Service produced an economic report that concludes 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; visitor spending and the induced and indirect effects of that. The Forest Service report only includes jobs and income. The conclusion drawn from doing it this way has two flaws. First, it has made sure the changes are "relatively minor" by excluding 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 are extremely dependent on the forest (please refer to the University of New Mexico report on the Gila National Forest), and their economies must be evaluated in the proper context of their location.

Furthermore, and dramatically eroding the Forest Service's credibility, there is a major unexplained change in final numbers in this faulty 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 Socio-Econ report released with the DEIS claimed these figures, for Alternative B, the No Action: (p. 24)

> 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.

Obviously something major changed in the new report. Was it the method, was it the data, or both? Even taking the lowest end of the estimates for Alternative B, the jobs estimate increased from 3 to 73, and the income was increased from $64,243 to $1.53 million. This is a 2400% increase. This is quite startling; the new figures are 24 times larger than the old ones. The upper end of the estimate has twice as many jobs and dollars as the original report. The new report number is 20 times higher than the first report. We question the credibility of an analysis that has a 100% variability within its own figures, and is 2400% different from its prior version. There is no explanation; and, the numbers are still trivial, according to the Forest Service.

There seemed to be no purpose to the change.

There is an important difference between the first and second reports. The first report simply ignored visitor expenditures. A reviewer could think that the omission of visitor expenditures was an honest mistake. But the second report argues explicitly against including visitor expenditures. Now we see the agency actively defending its faulty methodology. That defense is at p. 20 of the 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).

That statement shows a startling ignorance of standard methodology for evaluating economic impacts. We provide an 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 is explained at Collaborative Forest Landscape report p. 1. This shows what an economic impact analysis should include, and why. Like all FEIS cited references, this study indicates that the GNF is wrong to exclude direct, indirect and induced effects of visitor spending from economic analysis, and should know better (because it is cited by the FEIS). (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 repeat this because it is so appropriate to our situation: 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 Forest Service treats the economic effects as linear: more miles, equals more economic activity; fewer miles equals less economic activity. The Florida study show us that the effects are not linear at all.

FEIS 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 FEIS 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 access. The object of this analysis is to assess the economic impacts of motorized access. 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. The Forest Service'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 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."

Here is where the report declares that the economic changes are linear with changes in miles. Now stop and really think about that. The report assumes a totally linear correlation between miles and dollars. These are two totally dissimilar measurements with no identified relationship. There is no demonstrated correlation between miles and dollars at all, let alone a linear one. Here again, the agency is making declarative statements with no supporting evidence.

A linear correlation 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. A business is not half profitable at half the volume. At half the volume it's all costs and no profits and it can't survive at all. Now we cite from the last sentence in the quote from the analysis of the Florida national forest:

> 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.

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.
>
> "Based on their usefulness for other management purposes, on the surface it seems appropriate to develop estimates of recreation visitor spending for visitors engaged in particular recreation activities."

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.

However, the Forest Service developed this conclusion by ignoring the standard professional economic equations and instead using their own faulty methodology.

There is also a study cited in the FEIS but which is ignored by the Gila National Forest in the FEIS and the Decision. It is titled "Socioeconomic Assessment of the Gila National Forest, 2007" done by the University of New Mexico Bureau of Business and Economic Research.

It notes, to pick a few important points relevant to our discussion, that:

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. 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: And, regarding 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. "

Table 7.7:

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

This paints a far different picture than the Gila National Forest would have us believe.

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.

Yet the Forest Service ignores this very credible study done for the Gila region itself, even though the GNF knows this study exists. The only answer is that the Forest Service seems to be very intent on trivializing the economic impacts of this Decision.

Why did the Forest Service ignore this study? We regret to say this, but this does not reflect well on the Forest Service professional or scientific integrity. They had these studies but disregarded them. Maybe it's just a coincidence that the outcomes are so different from the Gils's study.

The Forest Service's desire to trivialize negative impacts from closures is also seen in its unjustified assumption that "mitigating factors in the qualitative analysis would lessen the economic consequences." This assumption too has no supporting data or citation. It is just the Forest Service declaring something it wants. Saying it is so doesn't make it so, and saying it in a report doesn't make it science. Declaring that the simplest assumption (of linear relationships) is also the "most defensible" is also an inappropriate and unjustified statement. What is the Forest Service defending itself from?

There is another economic study that if used by the Forest Service would give a more accurate picture of the economic losses incurred if this Decision is implemented. The Western Governors Association contracted to do the Economic Impacts of Outdoor recreation study. They found that outdoor (forest based) recreation is actually an economic giant. Instead, the Gila makes up its own report and leaves out the most important factor in the economic equation. The fact that almost 30 percent of the visitors are from 100 to 500 miles away (FEIS p. 58) makes this omission doubly critical.

Nonetheless, it would not have been difficult for the Forest Service to craft a Decision with the exact reverse results, and such a modest increase in productivity would have no adverse effects on the forest because it would involve only a tiny proportion of the forest.

And, we know the stated effects are underestimated because of the EIS's faulty no action alternative.

The violation of 101(b)(2) is simple: the Forest Service is not assuring a productive environment, rather, it is dramatically reducing the productivity in a sacrifice to natural values. In fact, the Forest Service has documented no real-time, on-the-ground adverse impacts to the natural environment from the human activities as they are now conducted under Alternative B.[14] The Forest Service uses theories, assumptions, proxies and decades-old literature from different locales and climates; yet there is not one evidenced example of an adverse effect coming out of the Gila National Forest itself. But there are clearly a number of significant negative effects to the surrounding communities.

We contend that the Forest Service has not struck a balance between resource use and productivity. The Forest Service is placing natural values above all others and is not and has never considered our place in the forest nor has the Forest Service considered our concerns. The Forest Service has disregarded 101(b)(5) in its entirety.

The Forest Service has disregarded 102(A) because it has not integrated the social sciences with the natural. The economics of a community have a profound effect on its well-being and social

[14] Specified in two other of our appeal points.

success as a community. The Forest Service is saying, this Decision will have a negative result for Grant County and the others, but too bad, we are not considering the social sciences in this Decision. This Decision will place natural values above all others. The customs and culture of Grant County have meant nothing in making this Decision, as indicated by the negative economic impacts this Decision will have on the community. To the Forest Service, these negative effects are nothing because they appear to be small. They are not small, regardless of how much the Forest Service tries to trivialize it.

The Forest Service has not placed this negative impact on the human environment in its report on adverse impacts as it is instructed at 102(C)(ii). The Forest Service misunderstands what that report is about--it is unavoidable adverse impacts to the human environment which must be specifically called out. In its unavoidable impacts report, the Forest Service speaks only to the natural environment. This is indicative of the Forest Service's misunderstanding of the NEPA--the NEPA requires a hard look at the impacts to the human environment. The Forest Service only reports a few possible negative impacts to the natural environment.

In sum, we contend that the Forest Service has violated five important sections of the NEPA and two sections of Title 40. They are important because they cover Congress's direct instructions to the Forest Service. This combination of violations cannot be considered a minor matter just because the Forest Service's selected numbers are small. It is a serious matter because the result is an illegal Decision. It one more Decision added onto a long list of Decisions that are destroying the customs and culture of Grant County and those surrounding. The next Decision will have a similar incremental negative effect, just like the last one and the one before it, until there is nothing left for the people who have lived and worked in Grant County for generations.

The relief we seek is to have the Forest Service withdraw this Decision and prepare a lawful EIS to support a lawful Decision, which does follow the instructions in NEPA to take into account the social and economic environs of the forest and the surrounding communities. In other words, this is not a plea to save our economies, so much as it is a plea for a lawfully crafted decision.

3.3.3 RS 2477

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.[15] It does not address the fact that the Forest Service is changing the uses of and partially or completely closing numerous roads so claimed.

The most prominent one of these roads is the San Francisco River Rd (FR 4223L and old Highway 12) of which a key section is 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.[16] Yet scoping does not trump the law; multiple use is the Forest Service's

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

[16] 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."

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.

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 section3 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 FR141. 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.

3.4 Laws

3.4.1 NMFA violation

In our comments on the draft EIS, we reminded the Forest Service that there are a number of laws that the Forest Service must adhere to over and above the instructions in NEPA in Section 101 and 102 regarding environmental quality. One of those laws is the National Forest Management Act of 1976 (NFMA). This law is aimed directly at Forest Service management of the national forests, and it includes direct instructions from Congress to the Forest Service.

We contend and appeal this Decision because it is direct violation of the NFMA. Congress never directed the Forest Service to dismantle the forest transportation system and especially not to the radical degree as this Decision mandates.

The NFMA devotes its entire Section 8 of the law to the road system. Section 8 establishes beyond doubt that (a) roads are not an irretrievable commitment of resources, and (b) that the Forest Service is expected to maintain a transportation system. The transportation system must be of sufficient size and diversity, to access all parts of the forest to accomplish forest management programs and tasks, as well as support the other activities that occur on the forest such as recreation, hunting, livestock operations, and fuel wood gathering, to name a few common examples.

Furthermore, Section 16 of the NFMA sets forth a dedicated funding source for roads. Congress didn't just tell the Forest Service it had to have a transportation system, Congress set up dedicated funding for the transportation system. The clearly indicates that Congress intended for the forests to have complete road systems that support all the activities on the forest. Congress never intended for the Forest Service to set about dismantling the transportation systems solely for its own belief system that less roads are better for the environment. NEPA is subordinate to the Forest Service Congressional mandate. Congress never intended the forests to become semi-wildernesses and mostly inaccessible, with anyone using motor vehicles forced to be concentrated into small, designated and limited areas and corridors. That does not support all the activities that occur on the forest.

Furthermore, NFMA repeatedly includes outdoor recreation as one of the resources to be protected in the course of evaluating the effects of timber sales:

> Sec. 6. "(1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use, Sustained-Yield Act of 1960, and in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and timber, watershed, wildlife and fish, and wilderness;
>
> Sec 6 (1) (A) insure consideration of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resources, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish;
>
> "(v) such cuts are carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and esthetic resources, and the regeneration of the timber resource.
>
> "(2) exceptions to these standards for the harvest of particular species of trees in management units after consideration has been given to the multiple uses of the forest including, but not limited to, recreation, wildlife habitat, and range..."

The NFMA did not set forth any restrictions on what kind of outdoor recreation.

Outdoor recreation is impossible without access.

In sum, while we are not lawyers, we perceive that this Decision violates the NFMA directly in several different areas. The Decision could fail on any one of (but not limited to) the following standards:

One of the basic standards of judicial review would remand this Decision because the Forest Service is choosing a course of action that was never intended by Congress.

The Administrative Procedures Act also covers the violation, at 706 Scope of Review: (A):

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

Or 706 (C)

> "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;"

Or it could fail because it is an abuse of discretion by the Forest Service, specifically,

> "the decision was based on an erroneous conclusion of law;"

in which the Forest Service assumption about its legal authority has strayed far from Congressional intention, as set forth in every law ever passed by Congress directing Forest Service activities.

The relief we seek is a Travel Plan which complies with the NFMA's mandate to have a road system that is adequate for accomplishing the statutory authorizations that Congress set forth for the Forest Service. One way to do this is to withdraw the decision and rewrite the EIS such that it does use site-specific information from the Gila for the effects of roads and trails, and balances the effects of the roads and trails with the benefits to human productivity that the NFMA directs.

3.4.2 MUSY violation

We are appealing this Decision because it violates the Multiple Use- Sustained Yield Act (MUSY). The Decision mandates a course of action never intended by Congress. In our comments we urged the Forest Service to strike an appropriate balance in managing all types of recreation and noted that to this end a designated system of roads, trails and areas for motor vehicle use established with public involvement will enhance public enjoyment of the National Forests while maintaining other values and uses. The Decision however, does not reflect these principles or values. The decision makes draconian closures the objective, and human uses and values as mandated in the MUSY are belittled and ignored.

According to our research, the Forest Service will be closing 58% of the existing roads. This is not enough to meet the statutory requirement of the MUSY. For almost 100 years the Forest Service recognized that roads and access are necessary to perform all the tasks associated with multiple use, including recreation. Suddenly, with the advent of the travel management rule, roads have mysteriously become unnecessary, yet nothing has changed except the rule.

In our comments we pointed out that the Gila NF has more to consider than its own concerns for purely natural values, and that those other values are set forth in several laws intended to guide Forest Service activities including the MUSY (Public Law 85-517).

In the MUSY Section 4, Definitions, it is stated that

> "Multiple use" means: The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output. (emphasis added)

The fact of the matter is that the Decision does not utilize the combination that will best meet the need of the American people. Without access, the forest can meet few or no needs. The Decision denies access to the point of destroying the harmonious utilization of the resources and fails to give any consideration to changing needs and conditions. No consideration is given to the harmonious and coordinated management of the various resources and no consideration is

given to the productivity of the land. Without roads, all productivity is crippled. Prior statutory definitions in related laws has established that "productivity" does not mean making more animals, birds and habitat exclusively. It does not mean making more "forest" untouched by the hands of mankind. It means the production of goods and services for human benefit on a sustainable basis.[17]

Without a sufficient transportation system, coordinated management cannot be accomplished. While the Act states that some of the land will be use for less than all of the resources, the Act does not intend that *most* of the land be so restricted. With the transportation system imposed by this Decision, that will be the long term outcome.

> 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.

The above statement is directly from our comments. It reflects the values that the surrounding Counties, and the writers of the MUSY, expect the Forest Service to consider when designing a transportation system for the forest. However, that is not what the Forest Service has considered in this Decision. This Decision truncates the transportation system to such an extent that the activities named above are severely and unlawfully curtailed. We expect management, not the drastic across-the-board closures of the magnitude this Decision mandates. "Road closure" is not the same as "management."

In Public Law 85-517 (MUSY) Section 2, the Secretary of Agriculture is directed by Congress to <u>develop</u> and administer the renewable resources of the forests for multiple use. This Decision conflicts with that direction; closing 58% of the roads is the opposite of "developing." It is dismantling the national forest's ability to produce goods and services for human benefit. Indeed, in the subtitle of P.L. 85-517 states the clear instruction from Congress to the Forest Service: it directs that the national forests be managed under the principle of multiple use and to <u>produce a sustained yield of products and services.</u> (emphasis added) With 58% fewer roads, this production will be crippled, because the roads are necessary for the management, protection, and improvement of such products and services, but they will be abandoned and become impassible.

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[17] Section 4(b) of the MUSY provide a clear implication of that definition, " ''Sustained yield of the several products and services'' means the achievement and maintenance in perpetuity of <u>a high level annual or regular periodic output of the various renewable resources</u> of the national forests without impairment of the productivity of the land. (emphasis added)

Furthermore, Section 3 of the MUSY authorizes the Forest Service to cooperate with interested state and local government agencies in the development and management of the national forests. The Decision reflects the fact that the Counties were not cooperated with. The drastic reduction in access clearly shows that the Forest Service has ignored our concerns as set forth in our comments on the draft EIS.

In sum, the letter and the spirit of the MUSY has been violated by this Decision. Congress never intended for the national forests to become nearly inaccessible for developing and improving the products and services that Congress expected when it passed the MUSY. Congress never directed the Forest Service to dismantle the infrastructure needed to perform its Congressionally mandated duties.

While we are not attorneys, we perceive that under the standards of the Administrative Procedures Act (APA) This could be construed as an abuse of discretion, which may be indicated by the following:

1. It is clearly unreasonable, arbitrary, or fanciful--a 58% reduction is access is clearly unreasonable, and the belief that it will improve forest productivity is simply fanciful;

2. It is based on an erroneous conclusion of law - the Forest Service's perception of its Congressionally authorized duties has slipped far away from anything Congress intended in all of the laws it passed giving direction to the Forest Service;

3. the record contains no evidence upon which the tribunal rationally could have based its decision. The evidence presented in the EIS does not support such draconian closures.

Under the APA standards of review, the Decision could also be considered in excess of statutory jurisdiction, authority and limitations. In other words, with this Decision, the Forest Service has exceeded its statutory authorization as set forth in numerous laws directing Forest Service activities.

The only relief for this appeal is to withdraw the Decision and develop a new EIS which does support the values set forth in the MUSY Act (P.L. 86-517).

3.4.3 Organic Act violation Organic Act violation

We are appealing this Decision because it violates the Organic Act of 1897.

In our comments on the DEIS we raise the issue of the pertinent laws governing the agency's behavior and authority, which the agency must observe above and beyond NEPA. One of those laws is the Organic Act of 1897, which is the founding authorization for the agency. The Organic Act provides that all persons have virtually unlimited ingress and egress to the national forests. In its response, the agency pointed out that the Act also states, " provided they abide by the regulations" created by the agency as authorized by Congress. The agency's response evades the point of the comment: that is, the Decision violates the Organic Act because of the draconian reduction in public access. True, the TMR is one of the rules, however, it was never intended by Congress that the newly created forest service promulgate such stunningly restrictive rules, to the point of unenforceability and total lack of public support, and to the point of making the forests nearly inaccessible for normal activities expected to occur in the forest. In other words, this

regulation (the TMR) is being executed in such a way as to violate the Organic Act by unduly restricting public access.

While we are not attorneys, under the Administrative Procedures Act, we perceive that this Decision is in excess of Forest Service "statutory jurisdiction, authority and limitations, or short of statutory right." In other words, the Decision grossly conflicts with the intent stated in the Organic Act, and that conflict is too great to consider it to be within the legal authority vested in the Forest Service by Congress.

In sum, we do not find the agency response convincing. We still contend that the Decision violates the spirit and the letter of the Organic Act.

The Decision must be remanded and the Travel Plan revised to allow for less restrictive public access, such as the public has availed itself of since the inception of the Gila N.F. and as mandated in the Organic Act.

3.4.4 National Forest Roads and Trails Act Violation

We are appealing this Decision because it is in direct violation of the National Forest Roads and Trails Act. In comment, it was noted that the Forest Service is obligated by other laws that the Forest Service must follow (its "statutory authorization" from Congress). One of these is the often overlooked but important Roads and Trails Act. The Forest Service's response is to make the excuse that it is not out of compliance because the Roads and Trails Act does not require the current designation in anticipation of indeterminate future growth. However, shrinking the existing system as this Decision does, does not comply with the Act because shrinkage will constrain present activities and will definitely constrain future needs. Congress did not tell the Forest Service to shrink or dismantle its transportation system. Congress told the Forest Service that the construction and maintenance of a system of roads and trails is what Congress wants.

The text of the law is important because it spells out the intent of Congress, and how important roads and trails are to Congress:

> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled* ...the Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services."

This should be an unmistakable message to the Forest Service that Congress expects it to keep the Forest accessible and be prepared for increased demand. In its response to comment, the Forest Service claims this Decision is preparing for increased demand. This is simply false. Reducing the present supply is not preparing for future demand. It is the opposite: the Forest Service is dismantling the basic infrastructure needed to accommodate increasing demand.

Congress knew demand for forest products and services would increase, and directed the Forest Service that roads and trails are necessary to satisfy those demands.

Furthermore, we agree with Congress that the roads and trails increase the value of the forest. A forest without access is an un-usable forest. It is unavailable for human uses because humans (97% outside wilderness) use motor vehicles for every activity on the forest.

However, regardless of the impacts of the roads, the value of the roads must be appropriately weighed against their effects (in light of the Roads and Trails Act), and we remind the Forest Service that Congress expects the Forest Service to solve the problems that do exist, with modern knowledge and technologies. But above all, Congress has directed the Forest Service to keep the forests accessible, and this Decision violates that instruction.

By the standards set forth in the National Trails System Act, this Decision is totally out of compliance. Based on our research, this Decision will close 58% of the present access. This is in direct conflict with the Act.

The resolution to this appeal is to withdraw the Decision and the FEIS and prepare a new EIS which honors the mandate from Congress. This will entail a completely new EIS, and a re-ordering of priorities such that the negative effects are mitigated. Fortunately, the present FEIS documents no on-the-ground effects that are caused by the roads, rather it uses proxies, theories, literature, and declarative statements to claim all the roads are bad. We don't really know how bad the roads are (or even if they are bad) because the Forest Service, in the FEIS, condemns them to a nearly hysterical degree. A new EIS which actually documents the real effects, on-site on the Gila Forest, would be the best first step toward a Decision which balances the intent of Congress to have the roads and trails with the effects of those road and trails.

3.4.5 Table 1 Indicators

We are appealing this Decision because it is based on speculation and declarative statements and not on any facts from the Gila National Forest.

It came up in comment that the Gila was not using the best analysis methods or science.

The faults include but are not limited to failing the Administrative Procedures Act standard set forth at Section 706: an agency decision would be set aside if it is:

> (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

Our contention is simple and virtually self-explanatory. In each of the specialists sections in the FEIS the specialist lists all the things that motorized travel <u>may</u> cause. To determine this, the specialist refers to and interprets literature written about the subject. However, there are no quotes from the literature so reviewers of the FEIS don't know whether the writers of the

literature are speculating themselves. [18] Or, the writers are writing about a situation, animal or bird that does not exist on the Gila Forest. [19] Or the FEIS specialist provides their own interpretation of what may happen during motorized activities.[20] Never does a specialist provide any data from the real world of the Gila National Forest. No one has any positive statements on the damage roads actually do cause on a landscape scale on the Gila forest. The text of the FEIS is filled with doomsday material that does not come from any monitoring or original research done on the Gila forest.[21]

However, we find one important piece of information in the "project record" which belies all of these dire predictions. We find another important statement from the FEIS that is drowned out by these overwhelming but mainly speculative doomsday predictions. Under the existing regime with the forest open to cross country travel, the following table reveals that no Management Indicator Species (MIS) is at risk forest wide:

Table 1: Gila National Forest Management Indicator Species Summary[22]

From GILA NATIONAL FOREST MANAGEMENT INDICATOR SPECIES, HIDALGO, GRANT, CATRON, AND SIERRA COUNTIES, NEW MEXICO, 2002, from project record for TMR DEIS

Ranking	Global	State	Gila	Gila Habitat
Species				
Aberts squirrel	secure	secure	secure	no net loss of habitat
Arizona gray squirrel	secure	imperiled	stable	only found in one area of NM due to habitat preferences
Beaver	secure	vulnerable	stable	net improvement of

[18] Example from FEIS p. 234: "The reduction of riparian vegetation and widening of the channel at stream crossings can impact water temperature (Heede 1980; Beschta 1997; Poole and Berman 2001)." (the word "can" is speculative).

[19] Example from FEIS p. 34: "Surface erosion from forest roads affects the fine sediment budget and may impose a chronic condition of sediment inputs to streams, directly affecting the stream substrate and the health of aquatic life (Luce et al. 2001) (Not from the Gila forest).

[20] Example from FEIS p. 273: Taylor and Knight (2003) examined pronghorn responses to mountain bikers and hikers. Biking activities caused pronghorn to be altered at an average distance of 328 meters and to flee at an average distance of 234 meters. To analyze disturbance effects of motorized activities to pronghorn this analysis will use disturbance zone of 200 meters. (Specialist proposing their own interpretation for the distance).

[21] While studies show that small mammal density is greatest along large, mostly paved, roadways (Adams and Geis 1983, Adams 1984, McGregor et al. 2008, and Bissonette and Rosa 2009), few researchers have done comparative studies along rural dirt roads. (Nothing from the Gila forest).

				habitat
Black-tailed jackrabbit	secure	secure	stable	habitat generalist
Blue Grouse	secure	secure	stable	habitat changes not recorded
Common black-hawk	uncommon	imperiled	expected to be rare	on periphery of range
Desert Sucker	vulnerable	Imperiled but stable	no indication of positive or negative long term trends	No report of habitat change
Rocky Mountain Elk	secure	secure	stable	habitat improved
Goshawk	secure	Nonbreeding-vulnerable breeding-imperiled	stable	Very specific habitat needs
Hairy Woodpecker	secure	secure	stable	habitat increasing
Hooded oriole	secure	secure	present in all surveys	very limited habitat
Horned lark	secure	Negative trend	present in all surveys	no data indicating declines
Killdeer	secure	secure	present in all surveys -stable	limited habitat
Long-tailed vole	secure	secure		habitat improved
Mallard	secure	secure	stable	habitat very limited
Mearns' (Montezuma) Quail	secure	fluctuating unable to assess but it is hunted	stable	Weather, drought & grazing most critical
Mexican Spotted Owl	rare	imperiled	stable	habitat improved
Mogollon [Mexican] vole	secure	secure	confirmed	mixed improvement in habitat
Mule Deer	decline	fluctuating but it is hunted	stable	habitat stable except prolonged drought causing habitat decline
Northern Flicker	secure	secure	stable	habitat stable
Plain (Juniper) Titmouse	secure	secure	stable	stable to increasing
Red squirrel	secure	secure	stable	abundant
Sonora sucker	vulnerable	imperiled	No indication of positive or negative trend	5 monitoring sites, numerous successful observations
Merriam's Wild Turkey	secure	secure	stable	Net improvement
Yellow warbler	secure	secure	secure	limited habitat

We see, for the Gila forest, a summary showing all species habitat is "abundant, stable, mixed improvement, habitat increasing, secure, no data indicating declines, present in all surveys," and so forth.

However, the only statement that all of these results in Table 1 is actually being borne out, that we can find in the FEIS itself, is one statement on page 214, Chapter 3 Affected Environment:

> "At current use levels in general, observations across the forest indicate that motorized dispersed recreation and motorized big game retrieval is infrequent enough that impacts are minimal forestwide."

<u>So all the tables and calculations about zones of disturbance and destructive outcomes are apparently not actually occurring on the Gila National Forest.</u> If one reads them closely, one will notice that the many tables and charts in the FEIS are all based on proxies and extrapolations,

and *that* may explain why there seems to be no correlation between what is actually happening and what the specialists are afraid might happen.

Remember, everything in the FEIS talks about what might happen, not what has actually happened.

So the fact of the matter is, by all real-life indications, all the management indicator species on the Gila Forest are not threatened in any significant way by the roads and trails. The effects of motorized travel is minimal.

It is interesting that this table never made it into the FEIS. Only the worst outcomes are speculated and predicted in the text of the EIS. Yet so far, none have proven out.

Thus, it could be said that the scenes of destruction set forth in the FEIS are simply "fanciful," and not supported by evidence from the Gila forest. The withholding of Table 1 from the FEIS is a serious mistake; it gives the impression that the writers of the FEIS do not want this information in the Deciding Officer's hands.

These omissions are probably honestly committed, but even so, the Decision does not live up to the Administrative procedures Act (APA) standards of review, Chapter 7, Section 706, part E (cited above). There are other laws and regulations it doesn't live up to also, including but not limited to 40CFR 1502.24 "Methodology and Scientific Accuracy," which instructs the Forest Service to assure the integrity of the science in the FEIS. The results in Table 1 and the statement on page 214 are a striking anomaly to the doomsday predictions found throughout the FEIS. Perhaps none of the specialists ever checked the actual condition of the MIS. None of the FEIS writers (except one lonely voice, the only one who is consistent with Table 1) seem to dare to say that maybe the roads and trails have not had these bad effects, since all the MIS are doing fine. None of the writers seem to dare to speculate that there may be very few effects from the roads and trails.

In fact, the FEIS condemns the roads and trails to such an hysterical extent that we suspect the effects could be negligible.

It might be prudent to note here (in reference to the Summary) that although NEPA does not require USFS to make a particular decision, it does require USFS to address all the available scientific information. In addition, one of NEPA's implementing regulations, 40 C.F.R. section 1502.9(b), requires USFS to "disclose and discuss responsible opposing viewpoints." The Ninth Circuit held that, since USFS did not discuss in its final EIS the scientific viewpoint that the northern goshawk was a habitat specialist, it violated 40 C.F.R. section 1502.9(b): "[T]he Final EIS fail[ed] to disclose and discuss responsible opposing scientific viewpoints in the final statement itself in violation of NEPA and the implementing regulations." The **Ninth Circuit rejected USFS's argument that its summary comment stating that opposing views existed sufficiently addressed the debate over whether the northern goshawk was a habitat generalist. The Ninth Circuit also rejected USFS's argument that the habitat generalist controversy was sufficiently addressed by documents in the record, and noted that NEPA and its accompanying regulations required "the agency [to] disclose responsible opposing scientific opinion and indicate its response in the text of the final statement itself."**

The resolution to this appeal is to withdraw this EIS and Decision and rewrite them so that the real situation on the Gila National Forest is disclosed, not the fanciful world of doom-saying, extrapolation and speculation. There is obviously a vast gap between what is written and what is real. Why does one speaker dare to say there are minimal effects, and why was Table 1 left out of the FEIS? Why wasn't Table 1 used as the baseline (which it is) and the actual effects of the roads and trails compared to that reality? Answer those questions, and then we may find a Decision that does balance population growth with productive harmony, as the NEPA instructs.

3.4.6 Unlawful responses to comments

We are appealing this Decision because in 13 instances, the Forest Service did not respond to our comments according to CEQ regulations at 40CFR1503.4, Response to Comments.

At 40CFR 1503.4, CEQ gives specific instructions as to how an agency must respond to the comments it receives on a draft EIS. They are as follows:

> (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.

Also, in the CEQ's 40 Most Asked Questions, at question 29a clarifies further:

> Normally the responses should result in changes in the text of the EIS, not simply a separate answer at the back of the document. But, in addition, the agency must state what its response was, and if the agency decides that no substantive response to a comment is necessary, it must explain briefly why.

The idea is for the public comments to inform the Decision. It is not just one of the required steps the Forest Service has to get through to finish this document, nor is it an exercise in "going through the motions." CEQ intends that the Forest Service use the comments in a constructive way to craft the Decision, not chose various ways to evade the commenter's concerns. The CEQ instructions have been poorly followed in our case.

Our code number was 03022011-32. The .pdf page on which our comment is paraphrased is given at the beginning of each of our discussions.

Page 12. In what appears to be a response to our comment to urging the Forest Service to select Alternative B we explain in our comment why: not all the roads and trails were studied or even depicted on the maps, so no one knows the real effects of the Decision. The Forest Service did not answer the point of our comment and that is that without a complete inventory to examine,

we don't know what the Forest service is actually planning to do, because we have no accurate baseline to compare the action alternatives to. Instead the Forest Service lists the regulations under which it is making these closures. It appears to be an appropriate response, but it is not. This goes to the heart of a CEQ-compliant no action alternative, which is absent in this analysis. CEQ did not place the instruction "address the point of the comment" in its list of appropriate and lawful responses because it is assumed that the responding agency will address the point of the comment. The Forest Service did not.

Page 13. The response to our comment on the effects to range resources is nonsensical. It is the Forest Service saying something is so just because the Forest Service wants it to be so. Previous impacts do not preclude that more and worse impacts will occur. In fact, it is ridiculous to claim additional impact will be negligible, because all the additional impact will be, well, *additional* impacts --which will inevitably grow in increments of the years. In wet years it will grow by large amounts. The sites could actually become unusable, or so unpleasant that they are no longer useful. The Forest Service cites no evidence to support its position. The Forest Service response is simply the Forest Service evading the reality of the situation.

Page 42. In response to our comment about lack of coordination, the Forest Service claims 134 line items which took place between 2005 and 2013. This does not mean there was any cooperation or coordination. We find nothing in the project record index that indicates there was any dedicated effort to coordinate with the Grant County. Coordination does not mean that Grant County subordinates itself to the Forest Service; coordination has been legally defined as the parties working together toward a common goal. In this decision, the Forest Service has completely disregarded all of our input, as demonstrated by the outcome (the Decision). Nothing in our comments was taken into consideration in the crafting of this Decision, therefore it is impossible to claim that any coordination took place.

Page 63. In response to our comment about emergency access, the Forest Service demonstrates (at best) willful ignorance. The emergency vehicles may be exempt, but once the roads are closed the maintenance stops and the roads become impassable. The Forest Service knows this. There is no item in the list of appropriate responses which instructs the responding agency to willfully ignore reality, and explain to the commenter a solution to the problem that cannot possibly occur or would even be feasible.

Page 69. In our comment on the multiple use mandate from Congress, the Forest Service makes a foolish and improbable claim that with this travel management plan which will close 58% of the access, it is preparing for increasing multiple use demand. This is patently impossible. Reducing supply does not prepare anyone for increasing demand. Saying things that simply aren't true is not on the list of lawful, appropriate responses to comments.

Page 70. The Forest Service response to our comment about the Organic Act is answered by us in a separate appeal point. Briefly, Congress never intended to have the Forest Service take such draconian action against public access; in other words, the Forest Service missed the point of our comment.

Page 99. The Forest Service response to our comment about camping restrictions insults the intelligence of the commenter. The Forest Service points out that only motor vehicles are restricted, and that people can walk anywhere they want. However, what we are talking about is

motorized dispersed camping, so the discussion of where you can hike to camp is irrelevant and useless. It is not the point of the comment; the Forest Service evades the point of the comment with this discussion. Evading the point is not on the CEQ list of lawful responses.

Page 104. While we showed concern for access for elderly and handicapped people, we never endorsed Alternative C. The Forest Service has carelessly mixed up our comments with the comments of others. This is not on the list of lawful responses.

Page 105. Our concerns about big game retrieval received no consideration whatsoever.

Page 132. Our concerns that the baseline alternative (B) was flawed were given no consideration. The Forest Service explains what it did, and it did in fact leave out many miles of road, and the Forest Service expresses no interest in correcting that basic flaw. This attitude is not on CEQ's list of lawful responses. The Forest Service was obligated to make corrections based on the comments about the flawed baseline alternative.

Page 190. Our concern for the loss of access for ranchers is again disregarded by Forest Service willful ignorance. Administrative use only relies on the roads not being blocked by natural causes. The absence of any other users of the road will preclude the freelance maintenance that occurs on all forest roads from time to time. Costs of operations will rise when these roads become blocked and the rancher is the only one clearing it.

Page 191. Our comment about the costs of closing the roads is met again with willful ignorance (roads will remain open even after they are abandoned) and the response is "not responsive" to the comment. The comment covered more than recreation income. The comment encompassed the full range of economic benefits to counties that forest access enables. The paraphrasing of the comment omitted the heart of the comment. And, the comment obviously did not "inform" the Decision; the Forest Service went ahead and closed a huge proportion of the existing roads.

Page 192. Our concerns about the custom and culture of our community were evaded by using a discussion of the economic effects. The Forest Service evaded the point of the comment, and thus the comment did not "inform" the Decision at all.

In sum, almost none of our comments "informed" the decision. The Forest Service did not follow the CEQ instructions for responding to comments. The Forest Service evaded, misdirected, or changed the subject on almost all of our comments. The only comment which received any consideration was the comments about fuelwood gathering, and all others were disregarded. This is demonstrated by the Decision the Forest Service made: close 58% of the existing access regardless that we expressed serious concerns about such action. None of our comments about the accuracy of the baseline or the effects were considered. The Forest Service still refused to change the document even for fuelwood gathering, instead variously explaining how the Forest Service would work around the problem or saying historically there hasn't been excessive demand for permits, or giving more explanations of the regulations, instead of really trying to cooperate. We know our comments did not inform the Decision because of the Decision itself-close off massive amounts of forest access. The outcome is the proof.

The relief we seek is to have this Decision withdrawn and a new EIS prepared in which there is coordination and in which the comments are not treated like just another exercise to get through --to be answered any way possible without changing the document--to finish this EIS. CEQ

intended for the public and the local governments to be full participants in the process. The Forest Service has disregarded both the spirit and the letter of the law.

3.4.7 Natural values above all else

We are appealing this Decision because it violates the National Environmental Policy Act, Title I, Section 105 :

> "The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies." (emphasis added)
> [42 U.S.C. 4335]

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. However, with the Decision to close the massive amount of road and trail mileage to public use, it appears that the agency is doing exactly that.

In our comment submitted during comment on the DEIS, we expressed deep concern that the agency's position that fewer roads....tends to be more protective of natural and cultural resources, would result in a Decision that de-values human needs and interests and places natural values above all others. This was labeled Issue # 9. This has happened. The FEIS makes the same mistake as the DEIS in that does not consider all values, cultural, economic, recreation, and multiple use along with natural values. In fact the agency provides no credible evidence that roads are a significant negative factor in the forest landscape. Instead, the agency lists in detail every species of plant and animal and bird that resides on the forest, and makes declarative statements about the negative effects of human intrusion and roads especially. The agency has not documented the effects of roads and trails using any on-site research. In fact there is absolutely no on-site research in the entire analysis.

The agency is in fact arbitrarily placing natural values above all others.

The Travel Management Rule states that multiple use will continue to be the prime mandate, yet multiple use is impossible without roads. Roads provide access to forest projects and recreation activities not available if the people wishing to avail themselves of the amenities offered by the

forest must always walk to their desired sites. In its response to comment, the agency cites the portion of MUSY which allows that some land may be used for less than all the resources. The intent of Congress was NOT to create vast areas in the national forests where less than all the resources are used. With this Decision, we believe that far too much land will be used for less than all its resources, and that amount of land placed out of use was not the intent of Congress.

That is not what the MUSY mandates. The original intent of the MUSY was to ensure that activities besides timber harvest were given proper consideration, expanding the range of activities Congress felt to be important for the national forest. Thus Congress mandated multiple use, and in the case of NEPA, the law itself clearly states that the NEPA is supplementary and subordinate to the agency's Congressional mandate. A forest with an insufficient number of passable roads is not available for multiple use, thus the Decision violates the NEPA mandate that NEPA is subordinate to the Multiple Use mandate.

While we are not attorneys, we also perceive the Decision to be vulnerable to remand under the standards of review set forth in the Administrative Procedures Act. The most obvious point of failure is that the Forest Service has made a Decision that exceeds or lies outside its statutory authorizations as set forth by numerous laws passed by Congress to direct Forest Service activities. The Congress never directed the Forest Service to place natural values above all others; in fact, the Congress has clearly and repeatedly directed the Forest Service to develop and enhance the products and services available on the national forests.

The Decision must be remanded and a new Travel Plan must be developed which does not place natural values above all others. "Harmonious management" which preserves the production of goods and services and protects the health of the forest in perpetuity is a proven concept. Full public access and a healthy forest are not mutually exclusive.

3.4.8 Written permission stipulation

The Forest Service failed to provide a lawful response to our comment about roads that will be open by written authorization only.[23] The Forest Service simply reiterated what it plans to do and did not address the heart of the issue: that is, it is an arbitrary method of allowing uses.

In the matter of private land access, the Forest Service is in violation of ANICLA (Alaska National Interest Lands Conservation Act). That is the only law that guides a federal agency's

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[23] FEIS page 23: "The following changes apply to motorized routes that will open for periodic administrative use or specific permitted uses only (table 7, p. 26):
◦ Change the use on 289 miles of existing NFS roads currently open to all motorized uses.
◦ Add 26 miles of unauthorized routes as roads.
◦ Reopen 9 miles of maintenance level 1 closed roads or decommissioned roads and change to maintenance level 2. ◦ Change 2 miles of NFS roads to NFS trails.
◦ Add 3 miles of unauthorized ATV routes to NFS trails."
FEIS Table 7 page 26: " Table 7. Road and trail miles for use as "periodic administrative use" or "by written authorization only"

relations to private landowners within or adjacent to public lands, and it only requires the federal agency to provide reasonable access, and nothing more. It does not direct the federal agencies to protect landowners from trespass.

The purpose for which this rule is being established is not disclosed. This is a significant omission. There needs to be a rationale for this new rule but the Forest Service provides none.

The "written permission " stipulation must be abandoned. It provides too much opportunity for arbitrary or otherwise unlawful activity on the part of the Forest Service.

Regardless of what the road in question accesses, the FEIS sets forth no standards for how anyone can get this special permission. This is the essence of arbitrary and capricious, since these roads are presently open and in use by the general public. If this special permission clause is left in place, any "responsible official" could choose to deny access based on any reason. This will allow arbitrary decisions to made by individuals based on personal value systems or other issues, and the "responsible official" has the power to make such decisions based solely on his/her authority under color of his/her authority as an executive branch employee. This is the antithesis of free access to public lands, and the antithesis of equal treatment under the law. The agency has not identified any site where "unnecessary resource damage" has occurred, such that this sort of bureaucratic tyranny should even be put in place. It is also dangerous that the agency has put no limits on what roads may be placed in this status in the future.

The agency does not have a private right to act in these matters. The agency is assigning itself far too much arbitrary decision making power with this stipulation.

The roads needed for these activities should be open as necessary. If specific sites have problems, site-specific remedies should be undertaken.

The Forest Service may believe it is preventing trespass (in the matter of private land access), but the Forest service has no duty to act in these matters. No private landowner gets a private "backyard" from which the public is banned via this rule. There is no end to what private landowners will demand the Forest Service do for them if this stands.

Another interpretation of this unexplained new rule is, it is one more step toward road closure and land acquisition. In the case of private land access, the Forest Service is making it difficult for the land owner to access his/her own land, by requiring written permission to use the only access roads (as set forth under this Decision). This is an arbitrary and capricious rule, because there are no standards. The Forest Service can deny access (or make obtaining permission difficult) whenever it pleases, thus destroying the value of the land. The Forest Service may then acquire the land at a devalued price.

In the matter of grazing allotments, the same holds true. The Forest Service can make it easy or difficult, based on no set standard, for the permitee to access his/her improvements. This in turn threatens the value of the allotment, and threatens the permitee with the loss of the economic viability of the allotment.

We are appealing the closure of all roads in this manner because it is arbitrary and capricious. All those roads must be left open for the necessary utility and access they provide.

3.4.9 Use of word "unauthorized" is illegal

We are appealing this Decision because the Forest Service has circumvented the rule of law by making up a new name for the existing roads and trails in the forest. That word is "Unauthorized." [24]

The reason it is illegal is that the LRMP for the Gila National Forest authorized the operation of motor vehicles anywhere in the forest. It is what is called an "open" forest. Cross-country travel is legal. But because of slope, terrain and vegetation, actual cross-country travel is not the norm. What people do is drive on existing linear paths or ways that have been made by repeated use, or by the Forest Service, or by contractors. In any event, the type of routes that are most often labeled "unauthorized' are the ones made by repeated use of a linear path. These are also often called "user made" routes. However, none of these are unauthorized in the Gila Forest because the seminal regulatory document for the Forest, the LRMP, authorized these routes. Therefore, the entire construction of the EIS itself, and of the baseline route mileage in the no action alternative, is incorrect. There are no unauthorized routes. The Forest Service must honor the LRMP and treat all the routes equally.

The Forest Service wants to make cross-country travel illegal; however, by choosing to rename all user-made routes "unauthorized," the Forest Service is attempting to retroactively make all past cross country travel illegal also. The LRMP is the only set of regulations that protects these traditional, existing and in-use routes. The Forest Service claims it can just ignore the LRMP. This is illegal.

In summary, what has happened is that the Forest Service has, via the TMR, changed the name of a thing for the sole purpose of changing its legal status. However, most specifically in the Gila, the word that the Forest Service selected, "unauthorized," does not apply. In fact, that word is an astonishing attempt by the Forest Service to avoid the process required to make an activity illegal. The Forest Service must evaluate all the routes equally, and count all the routes equally. The Forest Service cannot skip the legal steps required to make an activity illegal by simply unilaterally changing its name.

RESOLUTION TO THIS APPEAL POINT: The Forest Service must erase this illegal term from the entire document. It must admit that there is no evidence that user made routes have a measurably different effect on the forest than the Forest Service constructed routes. The entire implication of illegality that the word "unauthorized" lends to these old roads and trails must be

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[24] FEIS page 5: The nonsystem roads (i.e., decommissioned, unauthorized, etc.) will not be shown on the motor vehicle use map and may not be used for motorized travel. Page 19: "Add 7 miles of unauthorized routes and designate these routes as National Forest System (NFS) roads open to all vehicle types" page 22: "Add 25 miles of unauthorized routes as roads." The word unauthorized is used throughout the FEIS.

eliminated from the EIS. The Forest Service must reconstruct it's no action alternative and count all the routes that exist on the ground as open, legal routes, and begin their analysis with a clean slate. The Forest Service cannot criminalize or omit any miles simply because the Forest Service wants to change the name of the type of route that exists on the ground.

This will likely require a proper on-the-ground inventory, because the Forest Service admits that many miles of the routes are not recorded in its road and trail database. After this major correction has been made, begin the travel management plan from that point.

3.4.10 Unquantified amenities

We are appealing this Decision because it is a violation of the NEPA Title I, Section 201(B)

> identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations;

We have repeatedly requested that the Forest Service respect the customs and culture of the people of Grant county, and that the Forest Service give consideration to our values and history with the forest, and our relation to the forest. However, with this Decision, which we have determined will close approximately 58% of the access, we can see that the Forest Service has no consideration for our values. 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.

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 citizens of Grant County. 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)

"finding themselves in the wilderness of the forest--that's what the road and trail access enables. "OHV" per se is usually not the primary objective, but "OHV's" are necessary for appropriate access on the OML2 roads. Yet with this Decision, the Forest Service disregards its own value statement. There is no attempt to preserve such unique accessibility, even though the Forest

Service is aware of its presence (at least intellectually; there may be no heartfelt connection as there is with the local residents and visitors).

In the socio-economic section of the FEIS are simple cold factual information about demographics. There is nothing in the socio-economic sections of the FEIS that even remotely reflects these unquantified values, nor does the Forest Service even attempt to explore these values. Yet there is a direct instruction from Congress that the Forest Service innovate if necessary--"identify" and "develop" are the words used in the law, methods to ensure these values and amenities are considered in the Decision.

What are these amenities? They are tied irrevocably to forest access, and have to do with 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 and our guests from out of the area (almost 30% of total visitorship, FEIS p. 58). 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) so Grant County has the greatest potential for these losses. It behooves the Grant County Commissioners to look after our citizens' forest access.

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.

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.

3.4.11 User conflict

A matter was raised in comment that concerns the way in which the Forest Service appears to be exceeding its statutory authorizations, and that is in the matter of "user conflict." In the FEIS page 10, we note that the Forest Service has a concern: Under "Issues, Motorized Routes," we read:

> "Motorized routes may lead to conflicts with nonmotorized users or, conversely, the concentration of motorized use."

And at FEIS page 445, we find that the Forest Service states:

> "By limiting motorized access to designated roads and trails, all action alternatives reduce the probability of user conflict due to incompatible uses"
>
> "All action alternatives are expected to promote... numerous opportunities for solitude and quiet recreation."

We are appealing the Decision because obviously the Forest Service is utilizing the philosophical ideals of a few individuals in crafting the Decision, not the laws and regulations set forth by Congress. This can also be construed as attempting to manage for wilderness qualities ("quiet recreation") in areas of general forest access. It is doing this by identifying "user conflict" (as manifested by the philosophical differences between motorized and some nonmotorized users) as an issue that must be addressed in this Travel Management Plan. This exceeds Forest Service statutory authority.

In other words, 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.

CEQ instructs the writers of EIS's to "count what counts." Under the Forest Service's existing statutory authority, user conflicts "don't count."

By insisting on addressing these as "Issues," the Forest Service is giving itself the duty to act in resolving philosophical differences between lawful forest visitors. The uses are not "incompatible;" all forest visitors arrive and depart and travel to a greater of lesser extent using motor vehicles. It appears as though the TMR has overstepped the authority assigned to the Forest Service by bringing up "incompatible uses." This has opened the door for the Forest Service to concern itself with philosophical differences between different forest visitors. However, the only differences the Forest Service wishes to address are those between motorized users and nonmotorized users. This is in total disregard of all the other "incompatible" uses that are ongoing in the forest. [25] In the national forest statutory context, "incompatible" can only be a mechanical or physical interference, not a philosophical difference.

If a person camping who arrived in a motor vehicle dislikes another camper who is also using a motor vehicle but perhaps in a slightly different way, this is now "incompatible." It only became incompatible with the advent of the travel management rule.

Regardless that the TMR brings this up; this particular concern definitely exceeds the statutory authority of the Forest Service. In this statutory context, incompatible uses are qualitatively different from philosophical differences, and the dislike or "frustration with" motor vehicles on

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[25] Here are two quotes from Forest Service research, which will illustrate the foolishness of government-mandated segregation of forest visitors according to individual desires, values, and tolerance:
Goal Interference and Social Value Differences: Understanding Wilderness Conflicts and Implications for Managing Social Density Alan E. Watson, USDA RMRS Proceedings, 2001, article begins on page 20:
"*...horse users felt invaded by llamas, a nontraditional method of access to Wilderness in the U.S.*"
And, please refer to Forest Service Research Paper INT-468, "Hikers and Recreational Stock Users: Predicting and Managing Recreation Conflicts in Three Wildernesses." To summarize: *"...the majority of the behavior creating conflict for hikers were horses defecating ...noisy horse groups, rude horse groups, and trail damage caused by horses. ....separating uses is generally supported by hikers but not by horse users."*
In both these surveys, the "conflict" identified by the Forest Service in Wilderness is exactly as it is between motorized and non motorized visitors.

the part of some individuals does not trigger any Forest Service duty to act. If it did, what other philosophies would we find Forest Service interfering with?

Furthermore, the 2003 the Gila N. F. Transportation Analysis Process (TAP Page 57) at UR(3) asks the question:

> "What are the adverse effects of noise and other disturbances caused by developing, using, and maintaining roads, on the quantity, quality, and type of unroaded recreation opportunities?"

And the TAP provides the answer, which should be (but apparently is not) self-evident:

> "Very little effect by virtue of having thousands of acres of wilderness to experience an area without roads and associated disturbances."

Furthermore, judging from the estimated total annual visits in 2011 -- only 699,000[26] -- in a 3.3 million acre land base (3,300,000 acres) including a wilderness, the frequency of encounters between any visitors is low. Everyone is enjoying a considerable level of solitude. Again--CEQ instructs the agency to only "count what counts."

Therefore the use of "user conflict" in the crafting of any Decision is unlawful. It is unlawful because no law set forth by Congress directing the Forest Service operations and mission instructs the Service to address this type of visitor conflict. If those conflicts are of a criminal nature, then state and county law enforcement steps in, and there is a mark, or damage, or evidence that a conflict occurred, This travel management kind of "visitor conflict" is **ephemeral**; there is **no evidence** it happened; and, its **occurrence is hearsay**.

In fact, we cannot find any law except the Wilderness Act that states or implies that the government is tasked with attending to the philosophical comfort of any visitors. The Forest Service has been directed to manage the Forests such that uses which conflict with its sustained yield, multiple-use mission are regulated. No laws have anything to do with relieving, improving, or eliminating the emotional distress of individuals recreating on NFS lands.

The resolution to this appeal is to remove "visitor conflict," "quiet recreation," and all other iterations of "user conflict" from the EIS and from any role in crafting the Decision. In the TMR "incompatible uses" must be defined such that the Forest Service manages for lawful purposes, and not such that it must arbitrate philosophical differences via it's travel plan.[27]

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[26] FEIS p. 46

[27] Under the terms set forth in Section 706 of the Administrative Procedures act, the Decision could be set aside because at 706(C) the Decision is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."

3.5 Natural values

3.5.1 Change in methodology

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."*[28]

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 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"[29]. 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).[30]

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:

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[28] 40 CFR 1502.9(c)(1)

[29] DEIS, page 81

[30] FEIS, page 194

Existing Forest Road Density in 6th-code Watersheds	· 76 percent of the 6th-code watersheds have a road density of less than 1 mile of road per square mile of land (mi/mi^2). · 20 percent of the 6th-code watersheds have a road density of 1 to 2 mi/mi^2. · 4 percent of the 6th-code watersheds have a road density of greater than 2 mi/mi^2)

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

Existing motorized route density in 6th-code watersheds (Forest Service and non-Forest Service routes)	43% of the 6th-code watersheds have a road density of less than 1.0 mile of road per square mile of land (mi/mi^2). 51% of the 6th-code watersheds have a road density of 1 to 2.4 mi/mi^2 6% of the 6th-code watersheds have a road density of greater than 2.4 mi/mi^2

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.

Another stark example of <u>significant content changes</u> 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).[31]

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*

[31] FEIS, p. 112

> *scoping) as a draft and final statement unless alternative procedures are approved by the Council."*[32]

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.

3.5.2 Expanded Chapter 3

We appeal this Decision and demand that a Supplementary EIS be prepared. The reason we demand this is because in the FEIS, Chapter 3 has been expanded from 217 pages to 409 pages. This is a substantial change. The public has had no opportunity to review or comment on the new material. The public has no way of evaluating whether this new material further supports the Forest Service Decision or not.

The 200 pages is scattered about, in many different topics. It's not all in one place.

Astonishingly, it also includes a completely new specialist's report.

This goes beyond "corrections" and enters the realm of new and unknown material, and cannot be simply corrections made in response to comment. If this is the Forest Service's position, they do not disclose why they chose to correct only Chapter 3 and none of the others needing correction, as so amply demonstrated by comments on the DEIS.

The added material indicates that the DEIS Chapter 3 was so erroneous that it had to doubled in size to make it adequate for supporting the Decision.

The only solution to this appeal point is to issue a supplementary EIS. The DEIS was clearly inadequate, because so much new material seems to be needed to support the Decision. A quick "patch-up" job is inadequate under the terms of the regulations guiding enforcement of the NEPA.

If we were to hold this new FEIS up to the Administrative Procedures Act standards of review, it would fail because it has been done without observance of procedure required by law. It would fail because the supporting evidence for the Decision must have been clearly erroneous or severely inadequate. The possible violations to this creative change to the NEPA process include but are not limited to this list.

Please withdraw the FEIS and issue a supplementary EIS, that can be fully reviewed and commented upon in a timely manner.

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[32] 40 CFR 1502.9 (c)(4)

3.5.3 Frog studies

We are appealing this Decision because it violates 40CFR1502.24, Methodology and scientific accuracy. We have examined a series of comments about the Chiricahua Leopard Frog, and it confirms beyond a doubt that the Forest Service has not ensured the scientific integrity of this analysis.

Please review:
03032011-17-10, and 10a-d Chiricahua Leopard Frog

Responses ignore comment issues, incorrectly summarize the comment, and/or provide incorrect response. The CLF comment was answered under five separate responses in Appendix B. These are 17-10, and 17-10 a through d. We will address each response separately.

03032011-17-10
Summary Statement: Chiricahua leopard frog analysis: The analysis is on the roads themselves and never addresses use.

Response: An overview of the analysis process used for all terrestrial species is documented on pages 134 to 137 of the DEIS. This section discusses how motorized travel affects wildlife species. On pages 157 to 165, the DEIS completes an analysis of direct and indirect effects to amphibians and the Chiricahua leopard frog by alternative and a determination by alternative is documented in this same section of the DEIS. This analysis discusses how the miles of routes (motorized roads and trails) would be used as one indicator to where this use occurs and would have the potential to affect the Chiricahua leopard frog.
On pages 134 and 136, the DEIS discusses how traffic affects wildlife and how miles of road were used as an indicator of potential effects. Additionally, page 164 (table 84) of the DEIS discusses how reduced traffic would benefit this species.
The wildlife report acknowledges that the higher the level of use on a road, the greater potential to affect a species. Current traffic count data does not exist.

Appeal Point 1: The response ignores the DEIS references cited by the comment. Threat of collision to the animal is not related to road mileage, it is related only to traffic intensity and speed. The response ignores data in the DEIS and DEIS references, that were presented in the comment. Those facts include these, each taken from a DEIS source (comment p.8):

> Now we can assemble the facts about "high potential for harvest" under the No Action Alternative B with 71 miles of road.
>
> > Roads take .14 of one percent of the dispersal area
> > Roads are exactly where the frog is least likely to be (roads are dry and lack cover)
> > Roads are used by vehicles during the day primarily in dry conditions
> > Frogs move only at night in rain, they are not on roads when vehicles are present

> Motorized vehicle use occurring during the day when the frogs are inactive and hidden in moist regions off the roads. The likelihood of vehicles on an ML-2 road on rainy nights is negligible
> Traffic counts on ML-2 roads suggest less than five vehicles per day

CONCLUSION: the likelihood of a frog being killed by a vehicle on a road is extremely low. There is no high potential for harvest on roads.

The DEIS makes highly inaccurate statements of the impact of roads on the CLF:
At Page 141 the DEIS makes this statement

> The higher road density and number of stream crossings the greater the exposure rates between vehicles and the Chiricahua leopard frog, which facilitates the potential for harvest of this species. Alternatives C, D, F, and G maintain higher road density levels and a high number of stream crossings which continue to facilitate the potential for harvest.

The DEIS claims that higher road density increases the risk of harvest (collision). This statement is simply not true. It is not supported by the facts. But this statement forms the foundation of all the comparisons of the alternatives.

Appeal Point 2: The response claims there is no traffic count data. This is false. Our comment on the DEIS cites traffic count data from the GNF document Final Engineering Judgments, dated Sept 21, 2007, File 7700-1. These are ML-3 roads, with more traffic and higher speeds than the ML-2 roads of concern in the CLF analysis. The comment states:

> The survey periods mentioned are 3 and 4 hours. Daily traffic on ML-3 roads were 0, 11 and 18 vehicles with the counts of 11 and 18 including vehicles that would not be on an ML-2 road (sedans, sports cars, RVs). Here are those counts:
>
> Road 150, ML-3, monitored for 3 hours on a Friday, July 29, 2007: 11 full sized vehicles plus 4 ATVs
>
> Road 119, ML-2, (no observed traffic reported) 'Traffic count information from 1986 shows an average daily traffic of 20 vehicles at the junction of C-010 and US 180. It is estimated that 75% of the traffic never reaches the road segment in question. The following 3 miles of road is a popular OHV destination.
>
> Road 111 ML-3, 'During the motorized mixed use (MMU) study period on Tuesday July 31,2007, eighteen vehicles were observed. Vehicle types included ATVs, RVs, motorcycles, jeeps, sedans, sports cars, pickups with trailers, vans, and SUVs."
>
> Road 209, ML-3 The average daily traffic at the junction of US-180 is 12 ADT based on a 1986 traffic count. The MMU team setup a radar gun for approximately 4 hours on

> Monday 7/30/2007 and hid behind trees to try and get a representative speed for the road, however there were no other vehicles on the road while we were running radar.

Appeal Point 3: The response ignores the comment's challenge to the science cited in the analysis. Our comment shows that the analysis grossly misused the cited reference to support its claim of the risks of traffic density. The reference cited by the DEIS is Fahrig et al. (1999).

We found the Fahrig study and read it. Our comment (p. 6) showed the DEIS used a study on high speed paved roads of 500-13,000 vehicles per day to support its statements about risk of collision on low speed unpaved forest roads with traffic of less than ten vehicles per day.

> At page 157-158 the DEIS cites a study indicating that traffic intensity is a factor.
>
> > *The literature documents that a large number of amphibians and reptiles are killed on roadways (Maxwell and Hokit 1999). Fahrig et al. (1995) documented that the higher the traffic intensity, the greater the number of dead frogs and toads.*
>
> First, we note the Fahrig study was done on two lane paved roads with traffic counts of 500 to 13,000 vehicles per day. The DEIS here tells us traffic intensity is a significant factor, but provides no traffic intensity information, either anecdotal or quantitative. There is some traffic count data in the mixed used monitoring done by the road engineers, in the document titled Final Engineering Judgments, dated Sept 21, 2007, File 7700-1.

The misapplication of Fahrig et al. to forest roads indicates that the agency either didn't read the study (didn't know what is in it), or deliberately used a high study on high speed, high traffic paved roads, and attempted to claim it was relevant to low speed, low traffic dirt roads. The FEIS has not changed anything. The quote from Fahrig still appears in the Final Wildlife Report and Biological Evaluation p. 68, with no disclosure of the limited applicability of the Fahrig study, or that the studies were done at night:

> The literature documents that a large number of amphibians and reptiles are killed on roadways (Maxwell and Hokit 1999). Fahrig et al. (1995) documented that the higher the traffic intensity, the greater the number of dead frogs and toads.

Appeal Point 4: Failure to present responsible opposing opinion in the project record, which was presented in the comment on the DEIS.
(Center for Biological Diversity v. United States Forest Service 349 F.3d 1157 (9th Cir. 2003) the Ninth Circuit ruled "[T]he Final EIS fail[ed] to disclose and discuss responsible opposing scientific viewpoints in the final statement itself in violation of NEPA and the implementing regulations. NEPA and its accompanying regulations required "the agency [to]

disclose responsible opposing scientific opinion and indicate its response in the text of the final statement itself."

Our comments gave the FEIS the opportunity to revise its analysis. Absent any revision, the FEIS still has the obligation to present the responsible opposing opinions from cited references in the text of the final statement itself. The DEIS cited references support our comment that the DEIS failed to disclose that the frogs move only at night and are not out during the day.

The field work for the Fahrig mortality study was done AT NIGHT. From Fahrig et al (1995), p. 178 of Amphibians and Road Traffic (bold added)

> On six evenings, between 2030 and 2230 h, during the spring breeding season between 25 April and 24 May 1993, we traversed the road segments and counted all dead and live frogs and toads along contiguous 1 km sections of the roads (Fig. 1). Shaffer and Juterbock (1994) provide a discussion of this sampling method.

Fahrig et al, p. 179:

> Differences in frog and toad activity between nights, probably due mainly to differences in weather conditions, were corrected for by including date as a class variable in the models. Effects of time of evening on frog and toad activity were corrected for by including a variable giving the time of sampling.

The FEIS also failed to present other pertinent facts in our comment on the DEIS:

-The Fish and Wildlife Service Recovery Plan for the CLF uses the Northern Leopard Frog as a surrogate species for the CLF, because there is little CLF specific data.

-The Recovery Plan also supports our comment on the point about frogs moving only at night and only in the rain. The Dole study cited in the Recovery Plan states the frog moves less than 5 to 10 meters (3 to 4 feet) during the day.

Dole confirms that frog dispersal happens only on rainy nights. Our comment said "The frog dispersal in the area happens only on rainy nights", and quoted the Dole abstract: (bold in comment)

> *In nocturnal rains leopard frogs occasionally made extended excursions off their ranges. Such movement differed from home range movement in being direct, more or less continuous through the night, and often covering distances of 100 m or more; one trailed frog moved 159 m in a single night. These migratory movements stopped at daybreak, the frogs commonly remaining in the region they had reached for several days, unless forced*

> *by unfavorable moisture conditions to move to more moist regions. Occasionally the migration was continued on the night following the initial movement; one trailed frog traveled 240 m in two consecutive nights.*

The next section of the comment provides the Recovery Plan statements that frogs' "adult survival" depends on staying moist. The comment is very clear about the omissions and what should have been included in the discussion (comment p. 6)

> The DEIS has inexplicably excluded the essential fact of nighttime movement from the methodology.
>
> CONCLUSION: The dispersal area is only relevant on rainy nights. The frog could be present on roads only on rainy nights. Motorized vehicles on roads during the day do not present a risk of collision. Failure to use the best available science results in a faulty analysis that misinforms the decision maker.

The Final Wildlife and Biological Evaluation Report continues to make statements about the CLF that ignore the facts about time and conditions for frog movement (night, rain). The final report still uses road miles and road crossings as indicators for "potential harvest" of CLF, p.17:

> For these focal species, route miles will be the only indicator used to analyze the potential for harvest and disturbance. Number of road crossings will also be used as a potential harvest indicator for occupied Chiricahua leopard frog sites, occupied southwestern willow flycatcher sites, and designated southwestern willow flycatcher critical habitat.

And again, at p. 69:

> Harvest effects were analyzed by miles of roadway within each habitat type and disturbance effects were analyzed by distance from road within the identified associated habitat out to 250 m (acres).

The analysis and conclusions ignore proven facts about the CLF life patterns and biology: it will die if the skin is dry, and it only moves about on rainy nights, therefore the daytime vehicle use on roads is not a threat.

03032011-17-10a p.765

Summary Statement: Chiricahua leopard frog analysis misapplies the dispersal area. It uses dispersal, but for the wrong purpose. The Recovery Plan did not design the dispersal area as a

"road exclusion zone." The Recovery Plan never advises closing roads, or using the dispersion area to identify roads for closure.

Response: The Forest used a U.S. Fish and Wildlife Service (USFWS) document cited as "Southwest Endangered Species Act Team (2008)" and named "Chiricahua Leopard Frog Considerations For Making Effects Determinations And Recommendations For Reducing And Avoiding Adverse Effects" (CMED) as a reference to the methodology applied; as discussed on page 159 of the DEIS. The introduction section of this document states: "The CMED provides considerations in determining if the species may be in the action area of the proposed activity and, if so, possible ways in which Federal activities may affect various aspects of the species and habitat." The wildlife specialist report completed an effects analysis on each alternative (pages 157 to 165, DEIS), but did not design road exclusion zones or provide advice.

Appeal Point 1: The Final Wildlife Biological Evaluation says this at p. 70 (bold added)

> Analyzing the change in miles of roads within a reasonable dispersal distance from occupied sites between the different alternatives, along with the analysis of other focal amphibian species that are dependent on perennial riparian areas will provide the bases needed to determine the potential affects to this species from the different alternatives.

This statement makes it clear that the analysis is still using a zone in order to evaluate the roads. It's not called a zone, but the results are the same. The alternatives were assessed based on how many miles of road are within a certain distance of CLF habitat. There is absolutely NOTHING in the CMED that supports using road mileage as an indicator to predict negative impacts to CLF.

The analysis also continues to misunderstand and misuse the dispersal concept. Frogs disperse from an occupied area to OTHER suitable areas. They don't disperse in all directions from the occupied site.

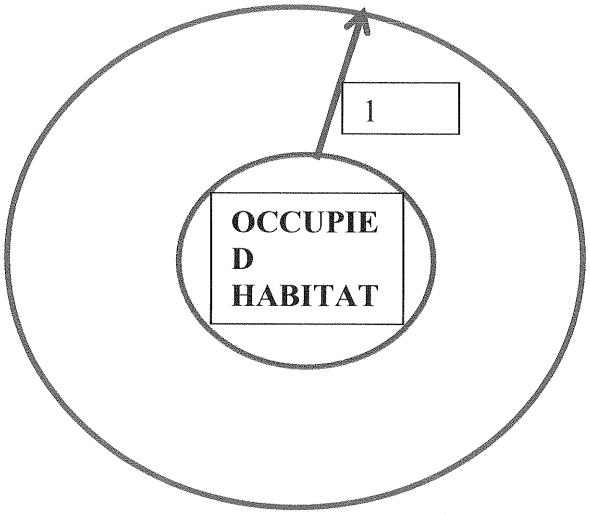
If the frogs are in a water body and there is another suitable habitat a mile away, overland to the north, the frogs could disperse (on a wet night) moving north to that other water body. The frogs would disperse one mile NORTH. They would not go 1 mile south, east or west, because there is no suitable habitat in those other directions. The agency seems to have a hard time understanding that a one mile dispersal does not mean drawing a circle around the occupied habitat that extends a mile in every direction. Dispersing means a one mile line from occupied habitat to a suitable habitat.

Agency's Misconception of Dispersal: One mile dispersal in ALL directions from occupied site

Wildlife Report and Biological Evaluation

p. 70 "Analyzing the change in miles of roads within a <u>reasonable dispersal distance from occupied sites</u> between the different alternatives…"

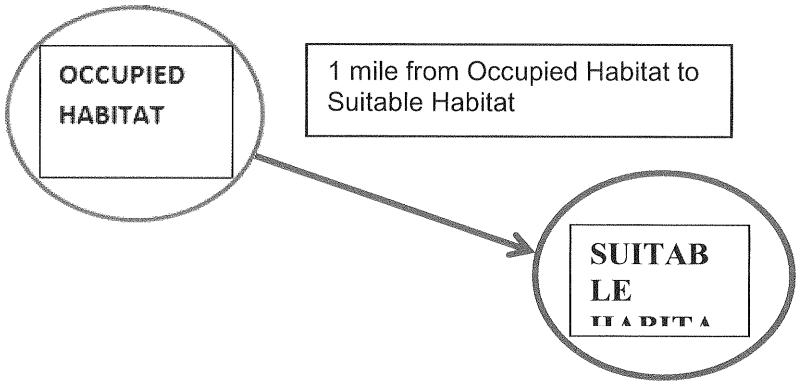
The analysis misunderstands the area for dispersal as being a circle one mile in diameter, that extends in all directions around an occupied site.



Accurate Depiction of Dispersal Distance: One mile distance between two points; <u>from</u> an occupied site <u>to</u> another suitable habitat site.

CMED p. II-2 says

"Reasonable dispersal distances for the frog <u>from</u> occupied habitats <u>to</u> sites being evaluated for occupancy include: a) within 1 mile overland,…"



Appeal Point 2: The Final Wildlife Report and Biological Evaluation states the effects for the CLF will be analyzed with two indicators; roads within dispersal distances, and number of road stream crossings within this zone.

> The effects were determined by using an approach that analyzed the change in habitats that focal species are associated with between the different alternatives. These selected

> species reflect general habitat conditions needed by other reptiles and amphibians with similar habitats. There is an exception to this approach of using habitat association as the analysis area. **For the federally listed Chiricahua leopard frog, the analysis examined the change in miles of road within dispersal distances of extant populations (the dispersal distance identified by the FWS), and the change in the number of road stream crossings within this zone** (Table 46).

In the previous point, we show that the Report misunderstands the dispersal distance in the CMED report it cites in response to our comment. The analysis erroneously uses a zone of the dispersal distance around existing populations. According to CMED, the dispersal distance is a line from an occupied site to a suitable site. The other indicator used in the analysis, stream crossings, is also wrong. The CMED report allows stream crossings even for perennial streams, if an established road exists

P. III-12

> Construction or development of a crossing for motorized vehicles across a perennial stream will not be permitted, **unless an established road already exists or where dry, intermittent sections occur.**

Appeal Point 3: The analysis uses existence of roads as a measure of impacts on CLF. There are no statements in CMED suggesting roads should be closed because of CLF habitat. The use of road mileage as an indicator is not supported by the CMED. We can't determine how the GNF came up with its idea of using road mileage as an indicator, but it didn't come from the CMED report.

Appeal Point 4: The CMED report reinforces our comment that CLF would never be on a dry road. CLF need permanent to semi-permanent water to survive, only move in wet conditions. At CMED p. I-6: (bold added)

> **3. Frogs – feeding, predators, dispersal, hibernation, and vulnerabilities**
> Post-metamorphic (i.e., metamorphs, subadults, adults) Chiricahua leopard frogs are primarily aquatic and **need permanent to semi-permanent water for survival**. Frogs are **rarely found far from water bodies except during transient, overland movements during wet periods, and even then must remain moist** (USFWS 2007: 14-15, 50). Frogs do inhabit intermittent bodies of water, however. In these habitats, **frogs may be able to survive the loss of surface water by moving to more permanent sites (if ambient conditions are moist enough to permit overland movement)** or by burrowing into muddy cracks and holes around drying water sources (USFWS 2007: 17, 50).

CMED states that dispersal requires wet conditions, CLF may move one mile overland, if the wet conditions permit. (p. I-8)

> Active movement of adult frogs up-and-down a drainage, or directional dispersal of metamorph and subadult frogs may be in response to deteriorating habitat (i.e., drying of breeding pond), predators (e.g., conspecifics and gartersnakes), or intraspecific competition (USFWS 2007: 14). Historically, it is likely that perennial corridors were important for dispersing individual frogs. In the absence of perennial corridors, movement by frogs is likely facilitated by the presence of seasonal surface waters (lotic and lentic) and otherwise wet conditions during the summer rainy season that permit overland movement in typically dry environments (USFWS 2007: 14-15; R. Jennings, pers. comm. 2006). Based on observations of various ranids in Arizona and New Mexico (USFWS 2007: 14-15), reasonable dispersal distances for the species are (1) one mile overland, (2) three miles along intermittent drainages, and (3) five miles along permanent water courses (USFWS 2007: D-2,3), or some combination thereof.

Tables 45 and 46 of the Final Wildlife Report and Biological Evaluation show that the analysis is still entirely based on two erroneous indicators of miles and stream crossings. These two indicators are irrelevant and contrary to all the references cited by the agency. The agency has refused to make any corrections or modifications to its analysis, even though these errors were pointed out at the draft stage, in our comments on the DEIS. The agency does not even offer any qualifying statements about CLF moving only on wet nights, or that adult survival is completely dependent on staying wet.

Table 45: Summary of potential motorized route affects, analysis factors, and analysis indicators for amphibians and reptiles

Road Associated Factors	Motorized Trail/ORV Associated Factors[1]	Combined Analysis Factors	Analysis Indicator
Collisions, Collection	Collisions[3] Collection	Harvest/Direct Effects	Route Miles
Disturbance, Displacement, Avoidance, Harassment	Disturbance, Displacement, Avoidance, Harassment	Disturbance/Indirect Effects	Disturbance Zone Summarized In Acres

Table 46 summarizes the harvest indicator, disturbance indicator, and analysis area that will be used to analyze the effects of the different alternatives to amphibians and reptiles.

Table 46: Summary of the harvest indicator, disturbance indicator, and analysis area used to analyze the effects of the different alternatives to amphibians and reptiles

Focal Species	Motorized Activity	Harvest Indicator	Disturbance Zone	Analysis Area
Chiricahua leopard frog	Motorized trail/ORV use	Route miles Number of stream crossings	Miles of routes within: - 1 mile overland - 3 miles along an ephemeral or intermittent drainage - 5 miles along a perennial stream	Occupied sites and the area within the disturbance zone.
Mexican gartersnake	Motorized trail/ORV and roads	Route miles	250 meters	Low elevation riparian
Arizona toad Narrow-headed gartersnake	Motorized trail/ORV and roads	Route miles	250 meters	Low, middle, and high elevation riparian
Retculate Gila monster	Motorized trail/ORV and roads	Route miles	250 meters	Desert shrub/Grassland

The agency insistence on the roads indicator is contradicted by the CMED. CMED recommendations on vehicle use are to prevent vehicles from going off established roads. There is nothing in CMED that motorized use of established roads is risk to the CLF.

p. III-12

Off-road vehicle activity should be kept to a minimum. Vehicles should be parked as close to roads as possible, and vehicles should use wide spots in roads to turn around.

p. III-4

7. Fire crews should, to the extent possible, obliterate vehicle tracks made during the fire where presence of tracks is likely to encourage off-road travel by recreationists.

p. III-7

Operation of off-road vehicles and creation of new routes will not occur around potential breeding sites.

p. III-11

Use of motorized vehicles during prescribed burns or other fuels treatment activities in suitable or occupied habitat will be restricted, to the extent feasible, to existing roads, trails, washes, and temporary fuelbreaks or site-access routes.

> All temporary roads, vehicle tracks, skid trails, and off-road vehicle (ORV) trails resulting from fire suppression and the proposed fire management activities will be rehabilitated (water bars, etc.), and will be closed or made impassible for future use.

Appeal Point 5: The analysis continues to misapply the dispersal zone for evaluating roads. The Final Wildlife Report and Biological Evaluation, p. 69:

> The effects were determined by using an approach that analyzed the change in habitats that focal species are associated with between the different alternatives. These selected species reflect general habitat conditions needed by other reptiles and amphibians with similar habitats. There is an exception to this approach of using habitat association as the analysis area. **For the federally listed Chiricahua leopard frog, the analysis examined the change in miles of road within dispersal distances of extant populations (the dispersal distance identified by the FWS),** and the change in the number of road stream crossings within this zone (Table 46).

We refer to the original comment, Part ii, p. 3. That provides the Recovery Plan definition and purpose of the dispersal distance. The dispersal distance is used to estimate what other suitable habitat is close enough to an occupied habitat, that the CLF might migrate to it. Recovery plan, as quoted in comment, p.3

> Potential recovery and population establishment sites within a metapopulation **should be within dispersal distance of other recovery sites or extant populations.**

Dispersal to another habitat area would happen only at night. We re-state the Dole study (cited in Recovery Plan) that migrations happen at night, and stop at daybreak:

> *In **nocturnal rains** leopard frogs occasionally made extended excursions off their ranges. Such movement differed from home range movement in being direct, **more or less continuous through the night**, and often covering distances of 100 m or more; one trailed frog moved 159 m in a single night. These **migratory movements stopped at daybreak**, the frogs commonly remaining in the region they had reached for several days, unless forced by unfavorable moisture conditions to move to more moist regions. Occasionally the **migration was continued on the night following the initial movement;** one trailed frog traveled 240 m in two consecutive nights.*

Summary Statement: Chiricahua leopard frog analysis omitted fact is that frogs disperse only on rainy nights. The DEIS omits traffic count data which the Gila National Forest has on ML-2 and ML-3 roads.

Response: Factors identified as being important include rainfall, humidity, perennial corridors, seasonal surface water, and mesic corridors. Some data exist on dispersal distances and the Gila used the USFWS recommendations for these distances (Southwest Endangered Species Act Team 2008 and U.S. Fish and Wildlife Service 2007). So, the existing information does suggest that frogs disperse on rainy nights, but additionally the literature discussed above and on page 159 of the DEIS indicates other conditions should be considered.

On pages 134 and 136, the DEIS discusses how traffic affects wildlife and how miles of road were used as an indicator of potential effects. Additionally, page 164 (table 84) of the DEIS discusses how reduced traffic would benefit this species.
The wildlife report acknowledges that the higher the level of use on a road, the greater potential to affect a species. Current traffic count data does not exist.

Appeal Point 1: See discussion above on CLF science omitted from analysis. The appeal point shows that the DEIS discussion at p. 134 and 136 is wrong because miles of roads contradicts the science on CLF, as presented in the cited references.

Appeal Point 2: Response claims that current traffic count data does not exist. That is a false statement. See appeal point 2 in response to 03032011-17, above. The DEIS cites traffic count data from the GNF document Final Engineering Judgments, dated Sept 21, 2007, File 7700-1.

03032011-17-10c p.766

Summary Statement: Chiricahua leopard frog analysis: Presence of roads themselves not a significant issue within the habitat.

Response: An overview of the analysis process used for all terrestrial species is documented on pages 134 to 137 of the DEIS. The analysis of direct and indirect effects to this species by alternative and a determination by alternative is documented on pages of 157 to 165 of the DEIS. Cumulative effects are documented on pages 207 to 212. Findings determination for reptiles and amphibians notes that none of the alternatives would affect the viability of reptiles and amphibians that occur on the Gila National Forest.

Appeal Point 1: The statement in the response says "none of the alternatives would affect the viability of reptiles and amphibians that occur on the Gila National Forest." By none, we take that to include Alternative B, no action. This contradicts the analysis in the Final Wildlife Report

and Biological Evaluation, that evaluated alternatives based on road mileage and stream crossings. Table 47 in the Report shows road and trail mileage and stream crossings for each alternative.

The report states effects of Alternative B are not the same as those of action alternatives. (report, p. 75)

> So under this alternative through time the potential for the direct loss of individuals and habitat would increase, as would the potential for disturbance effects to the species and its habitat.

The report says (p. 76) of the action alternatives:

> **The greater the reduction in miles of motorized routes and number of motorized stream crossing in the analysis areas the less the potential for direct and indirect effects.** Additionally, the more of these miles and crossings that go to administrative use only the less the potential for direct and indirect effects. The reduction in direct and indirect effects to the species and its designated critical habitat is relative to the amount of miles and stream crossings reduced and the reduction in use on these routes.

This clearly shows that the analysis does not consider impacts from all alternatives would not affect viability. Please clarify.

03032011-17-10d p.766

Summary Statement: Chiricahua leopard frog analysis: Cumulative effects analysis does not disclose what has caused the existing condition of the species.

Response: Page 159 of the DEIS acknowledges that disease has been a big contributing factor to the existing condition of this species, but there are other forest management actions that can cause direct and indirect effects including motorized use, as discussed on pages 157 to 165 of the DEIS.

Appeal Point 1: The FEIS fails to reference or cite the GNF's own 2001 Monitoring Report. We find this statement at p.40 of that report: (bold added)

> **Trend:** Most of the suitable and potential habitat for the Chiricahua leopard frog on the Gila has been excluded from management activities that have the potential to directly impact this species habitat; therefore, habitat conditions for this species are improving.

> Annual species monitoring by the Forest, New Mexico Department of Game and Fish and U.S. Fish and Wildlife service indicates that the population on the Forest continues to decline. **The continued decline is not related to Forest management activities. The decline is a result of competition with non-native species and disease.**

This states, in no uncertain terms, the factors causing the CLF decline are disease and predation from invasive species. Decline is not related to Forest management activities (e.g. travel management).

This is contradicted by statements in the FEIS, the Responses to Comments and the Final Wildlife Report and Biological Evaluation that attempt to implicate roads and motorized use with the species' decline. We request that the Gila National Forest 2011 Monitoring Report be added to the project record.

Roads and motorized use of roads are not a factor in the CLF decline, we note these statements within the Aquatics Specialist Report. First from page 7, stating the identified risk factors are highest in the no action alternative:

> The no action alternative includes the most miles of routes within 300 feet of streams including impaired waters, the highest number of motorized crossings on streams including impaired streams, and the highest density of motorized routes that will continue to have use on them. The risk of direct effects to stream banks, riparian habitat, and aquatic species at motorized stream crossings is the highest in this alternative. The risk of indirect effects from sediment movement, creation of drainage pathways, which channel water directly into streams instead of allowing runoff to be dispersed, is highest in this alternative.

Now we compare that to the following statements:

The Response at Appendix B p. 566 says road crossings impact the stream and aquatic species:

> The best available science supports our position that where roads cross streams there are **impacts to not only the stream but to aquatic species** occupying the stream. See aquatic specialist Report pages 6–8 and DEIS pages 103–105.

Response Appendix B, p. 572 says the overall trend for aquatic habitat is stable or improving:

> The aquatic specialist report states the following based upon personal observations of the forest aquatic, watershed, and soils specialists.
> "Although localized degraded habitats continue to be present, **the overall Forest trend for aquatic and riparian habitat is stable or improving** (pers. Obs. J. Monzingo, C. Koury, M. Natharius 2012) (draft aquatic specialist report page 58).

The response at p. 567 says this:

> The conclusions of the aquatic specialist appear on pages 119–125 of the DEIS. This conclusion identifies the relative risk of all alternatives as they relate to species identified in the aquatics section of the analysis, including Region 3 sensitive species that occur in the action area.

In sum, the FEIS has contradictory statements identifying roads as being a risk to habitat. The analysis makes statements about the potential damage to aquatic species from roads, and shows conclusions that alternatives that close more roads will benefit resources. But the empirical evidence stated is that the habitat existing condition is stable or improving, under the current management, which is Alternative B, No Action.

The statement of fact, that aquatic habitat is stable or improving, is contradicted by endless statements about how roads are so bad and can cause so much damage.
But, somehow, even after decades of unrestricted motorized use, the facts don't support the claims.

When the predictions are contradicted by facts, you hold to the facts and revise the theory. This is called science. If you discard the facts and insist on keeping the theory, it's called denial. NEPA analysis is supposed to employ science.

The resolution to this appeal is to remand the Decision and rewrite the EIS such that the science and literature are appropriately interpreted and utilized in the analysis of risk factors to the Frog. This will entail a revised decision, because the use of the citations to support the notion that miles of roads equals risk is so distorted.

The resolution to this appeal is to engage an independent review of all the theories and "risk zones" extrapolated by the Forest Service and correct those with mistakes, as this one needs. Then revise the conclusions about vehicle use and risk factors determining what routes can stay in use. This will require many changes downstream of the corrected scientific material, and will result in a different decision.

3.5.4 Use of roads v existence of roads

We are appealing this Decision because it does not employ high-quality and professionally performed analyses. The methodology is faulty, therefore the conclusions are wrong. This results in a Decision which does not consider any of the actual effects to the forest of motorized travel. it is in violation of:

40CFR 1500.1(b)

> The information must be of high quality. Accurate scientific analysis, expert comments, and public scrutiny are essential to implementing NEPA. (emphasis added)

and 40CFR1502.24 Methodology and scientific accuracy.

> Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other

> sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix. (emphasis added)

ERROR: The DEIS equates the existence of the roads with the use of the roads in its analysis of the Environmental Consequences.

DISCUSSION: The analysis methodology presented in the Wildlife section of Chapter 3 of the DEIS does not analyze 'motorized travel' as claimed (emphasis added):

> *"**For this analysis, motorized travel includes motorized travel on roads, motorized travel on trails or OHV use, cross-country motorized travel (including motorized big game retrieval), and motorized dispersed camping.** The objective of this analysis is to evaluate the potential effects of the different alternatives to different wildlife species or groups of wildlife species known or likely to occur on the Gila National Forest **within the context of specific road and travel conditions that exist on the forest.**"*

The DEIS analyzes the mileage of roads in an area and the acres of disturbance zone in an area. More miles of roads does not equal more effects from 'motorized travel'. The analysis fails to differentiate between the two, and instead conflates the roads themselves with the use of roads.

Roads are a physical entity that exist on the ground all the time whether used or not. Under the 's methodology, a high clearance road that may be used by only two vehicles per week is considered to have the same effects as the graded OML 3 or OML 4 road to a major developed recreation area used by hundreds of vehicles per week.

Motorized use is a short-lived activity, whose effect is largely dependent on intensity of use. A high clearance road used by two vehicles per week is clearly and empirically different than a graded OML 3 or OML 4 road used by hundreds of vehicles per week. Yet the analysis presented by the in the Wildlife section of Chapter 3 entirely ignores any discussion of intensity of use or any accounting for it in its estimate of impacts. The Wildlife specialist report clearly makes the distinction between the existence of the roads and the use of the roads in the significant issues identified (emphasis added)[33]:

> *Issues identified during scoping related to terrestrial wildlife species*
>
> *Motorized Routes*
>
> *The proposed motorized routes specifically the type, extent, **level of use** and location of motorized routes may lead to resource, recreation, social and economic impacts.*

But then the completely neglects to address or disclose the level of use in the Environmental Consequences analysis. The analysis also fails to consider thresholds for tolerance of disturbance. It fails to even acknowledge the potential cumulative effects of greatly concentrating human activity onto fewer miles of road. There are many studies (including those cited within the DEIS such as *Gaines et al (2003)* that is cited nine times) that show effects are

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[33] Wildlife Report and Biological Evaluation, p.19

directly related to the intensity of use (such as vehicle count). The either has no vehicle use data to present and study or it has failed to disclose this data.

This excerpt from the DEIS[34] clearly shows this muddled thinking which confuses roads with motorized use of roads:

> *"Research related to road effects to federally listed and Southwestern Region sensitive species in this region of the Forest Service is limited; the focal species approach uses information related to different groups of species to help evaluate the potential effects of motorized use to similar species in the group.*
>
> ***Analysis Indicators***
>
> *For this analysis, two separate analysis indicators were typically used to analyze the potential effects (harvest and disturbance) of motorized travel and recreation on terrestrial wildlife on the Gila National Forest. These indicators were: (1) total miles of routes within an analysis area and (2) the potential "Acres of Influence" for a species or group of species (focal species). Indicators were selected for project effects based on an extensive review of literature on the interaction between wildlife and motorized routes."*

Yet the same analysis in Chapter 3 has just identified the factors of wildlife response in Table 53 of the DEIS:

Table 53. Responses of wildlife to various disturbance factors

Road and Trail Associated Factors	Knight and Cole Recreation Activity	Liddle	Combined Analysis Factors
Disturbance, displacement, avoidance, harassment	Disturbance	Disturbance type 1	Disturbance
Physiological response	Disturbance	Disturbance type 1	Disturbance
Habitat loss and fragmentation	Habitat modification	Disturbance type 2	Disturbance
Negative edge effects	Habitat modification	Disturbance type 2	Disturbance
Snag and downed log reductions	Habitat modification	Disturbance type 2	Disturbance
Barriers to animal travel or movement	Habitat modification	Disturbance type 2	Disturbance
Route for competitors and predators	Habitat modification	Disturbance type 2	Disturbance
Collisions	Harvest	Disturbance type 3	Harvest
Harvest or collection facilitated by motorized travel	Harvest	Disturbance type 3	Harvest

[34] DEIS, page136.

You will note that the 'disturbance factor' for the first two and last two items on the list (the disturbance 'type 1' and 'type 3') depend entirely on the intensity of use. These factors go to nearly ZERO if the roads are infrequently used. Yet the , by using total miles of routes in the area and the acreage of disturbance zones in the area as the ONLY indicators, has made their analysis entirely dependent on the existence of roads instead of the intensity of use of the roads.

RESOLUTION: Apply an appropriate analysis methodology to the wildlife Environmental Consequences section. Choose a method that incorporates the intensity of use of the roads, both with and without motorized use, into the analysis. If the has no information on the intensity of use on the routes, clearly disclose this gap in information and the relevance of the unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment as required by the CEQ[35]. Ensure that the decision maker and the public have a Wildlife analysis that clearly connects cause (including the use of roads) with effects (impacts on the wildlife species and habitat) and adequately defines, explores, and documents that relationship. Then, and only then, will the decision maker and the public be supplied the necessary information to make a rational and defensible decision that balances the risks to the natural environment versus the value of continued motorized use.

3.5.5 Scale of effects on human environment

In our comments we noted that the Forest Service made no attempt to display any measurement of actual ground or vegetation disturbance. We cannot find any such calculation or data in the FEIS. Thus, we will appeal this Decision on the Forest Service's failure to accurately display the environmental consequences of the actual disturbances. We appeal because it in violation of NEPA Section 101b(3) and b(5) and Section102(B), (C)(i), and(ii).

In other words, the DEIS refuses to disclose anything about the "scale of effects" of the existing roads, and resulting effect on the human environment.

The effects of each alternative is compared to the other alternatives, as CEQ requires, but the Forest Service never compares the scale of the road footprint with the entire land base. We will do this calculation now, and then discuss the ramifications of knowing the answer.

Since the vast majority of roads under analysis in the DEIS which the Forest Service chooses to close are the 4,196 miles of OML-2 roads, we will limit our calculation to these roads. Table 17, p 43 of the DEIS says that OML 2 roads are 12 feet wide. The area occupied by the OML-2 roads is found with this formula:

4,196 miles x 12 ft wide x 5280 ft., divide that number by 43,560 to get the number of acres.

The answer is 6,105 acres. Divide 6,105 acres by 2,441,804.3 forest acres = .0025, then x 100, to get the actual percentage.

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[35] 40 CFR 1502.22

What the Forest Service declines to disclose to reviewers is this rather important fact: The OML2 roads occupy a mere **1/4th of one** percent of the land base, outside Wilderness (0.25%). Not even one whole percent. The roads occupy only one quarter of one percent. 99.75% is undisturbed.

This is a basic calculation every agency needs, to determine the scale of effects both to the natural environment and to the human environment. By omitting this calculation, the Forest Service evades the responsibility to disclose the real effects of the proposed closures on the human environment.

That effect is as follows: the roads in this DEIS represent only one-quarter of one percent of the forest land, but they represent 100% of the access.

Closing half the roads will only reduce the footprint to 1/8th of one percent, but it reduces the human access by fifty percent. In other words, every mile of closed road has an utterly miniscule effect on the natural environment, but a disproportionately large effect on the human environment.

We know we could add all of the other roads into the equation and based on our experience in reviewing DEIS's from other forests, the entire footprint of all of them will never exceed 5/10ths of one percent. That still leaves over 99 per cent undisturbed by roads.

However, it is the OML2 roads which provide the best recreation and access to the forest. That's why we limited our calculation to those miles.

Without doing this simple calculation, the Forest Service cannot possibly present the effects to the human environment accurately. Yet, to be a lawful analysis, the Forest Service must disclose this cumulative effect accurately. By disclosing this disproportionate effect on the human environment the Forest Service would be in compliance with the NEPA in Section 102 (C)(ii), but it would then have to realize that this decision falls into the realm of severe and significant adverse environmental effects[36] and would have to be reported as such in the Decision.

We particularly call attention to Section 102 (B)"... insure that presently unquantified environmental amenities and values be given appropriate consideration.." What are the unquantified amenities here? The road access to the national forest. The Deciding Officer had no knowledge of these unquantified amenities and values while making the Decision.[37]

And, we particularly call attention to NEPA 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..." What is the amenity that is being withdrawn by this Decision? That would be the present, widely available national forest access.

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[36] In NEPA, the word environment refers to the human environment.

[37] From our comment: "Americans cherish the National Forests and Grasslands for the values and multiple uses 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." These are many of the unquantified environmental amenities found with national forest access.

Based on the Forest Service's Decision, and on its failure to report this unavoidable adverse effect, it does not appear that the Forest Service has any regard for the instructions in NEPA Section 101 or 102. Because of this disregard, we believe the Decision could fail in any further action.

The relief we seek is for the Forest Service to withdraw this Decision and prepare a lawful EIS that supports a Decision which is in compliance with the NEPA, and which does not have this appalling adverse effect on the human environment.

3.6 New data added with no comment period

3.6.1 New watershed data

We are appealing the lack of a comment period for substantial new data in the FEIS. We have found time to roughly analyze one, and it reveals that it misinterprets and fails to make appropriate correlations, among other faults. We are appealing this per 40CFR1502.24, Methodology and scientific integrity. 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

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.

ISSUES:

1) The 6th Code Report fails to differentiate between wilderness and non-wilderness areas. The word "wilderness" appears in 32 places in the report. There is only one place where the report differentiates between resource conditions in wilderness and non-wilderness areas, at page 15:

> Impaired Waters *Appendix J* lists the water bodies that have been currently listed as in non-attainment of state water quality standards, and the probable causes of impairment. Currently there are 28 waterbodies (streams & lakes) within or adjacent to Forest system land that are not meeting State water quality standards. The impaired water bodies are found throughout the Forest. Approximately 49% are found within wilderness areas and 51% are found in non-wilderness areas of the Forest.

The absence of roads and motorized use in the "pristine, untrammeled" wilderness areas has not necessarily resulted in conditions superior to non-wilderness areas, with their long history of unrestricted motorized use. The 6th Code Report ignores this, and throughout it declares that road closures will produce improvements in resource conditions.

Evidence that the analysis included wilderness is found at page 272. The listing of road densities for watersheds shows 11 watersheds with road density of zero. The next 17 watersheds are 0.10 mile/sq. mile or less.

This statement at page 22 is typical, and presents 100% of the watersheds in the Forest. In this description of soil condition, the 6th Code Report does not differentiate between wilderness and non-wilderness (p. 24):

> Overall, on 42% of the 180 watersheds assessed on the Forest, the soil condition indicator was rated as Functioning Properly, 46% were rated as Functioning at Risk, and 12% were rated as having Impaired Function. Soil Condition is considered "poor" when there is evident alteration to reference soil conditions and overall soil disturbance is characterized as extensive.

Since 49% of impaired waters are within wilderness areas, there is no reason to presume that at impaired soils and vegetation conditions are caused primarily by roads or motorized use. Neither can one assume that impaired conditions for other indicators are in non-wilderness and that the good conditions are in wilderness areas.

There is also no correlation between water quality and route density or stream crossings. This statement on wilderness and non-wilderness condition is at p. 19 of the 6th Code Report: (bold added)

> Approximately half of the impaired water bodies on the Gila National Forest (198 miles out of 404 miles of impaired streams) are found within wilderness areas, with these watersheds having some of the lowest route density numbers on the Forest and no motorized stream crossings. Given multiple factors contributing to water quality impairments and the number of impaired waters within wilderness areas, this attribute is expected to remain the same.

These "multiple factors' contributing to wilderness area impaired waters are not identified and not considered as sources of impairment in the non-wilderness areas. Instead, the analysis always presumes that removing motorized use will improve conditions, even though the analysis never differentiates between road effects and effects from use.

FEIS p. 46 gives the planning area acreage as "*...approximately 2.44 million acres...*"

FEIS p. 56 shows the forest total and the wilderness totals (792,584 acres in 3 wilderness areas)

> *The administrative boundary encompasses 3,392,519 acres. Twenty-four percent of the forest's land mass is included in congressionally designated wilderness and is managed*

> *for primitive and semi-primitive nonmotorized use. These wilderness areas are the Gila Wilderness (559,688 acres), Blue Range Wilderness (29,099 acres), and Aldo Leopold Wilderness (203,797 acres).*

At 24%, wilderness is one-fourth of the forest, but holds half of the 28 impaired quality water bodies (49% compared to 51% outside wilderness). Waters in wilderness are twice as likely to be of impaired quality as waters outside wilderness. The p. 19 statement in the Report admits there is no correlation between road density, stream crossing and water quality. Yet the summary discussions of the alternatives all portray reduction of roads and crossings as producing benefits to water quality.

P. 26 states only 6,900 acres of surface are occupied by routes:

> Under the No Action Alternative, the existing motorized route system in place on the Forest would not change, continuing to impact over 6,900 acres of Forest where the routes are located.

As a percentage of the 2.44 million acres of non-wilderness lands, the routes occupy less than one-third of one percent of the surface. The report does not differentiate between wilderness and non-wilderness. Therefore, the forest wide assessment of watershed condition is on all 3.39 million acres. The 6,900 acres of routes represent 0.002 of the forest surface. That is one-fifth of one percent of the area assessed for conditions. In other words, the watershed conditions for soils, vegetation etc., are based on conditions of the 99.98% of the surface where there are no routes. Yet the report insists that removing one use on 0.02% of the surface will somehow improve the conditions on the 99.98%. This is simply not believable.

The analysis never states any possibility that impaired conditions might NOT be improved by road and trail closures. The discussions include generalized statements that there will be benefits from reductions in routes. For example, at p. 22, this discussion of riparian/wetlands is typical of the presumption of improvement. (bold added)

> All action alternatives would decrease the acres of motorized routes within wetlands, ranging from 6% (Alternative C) to 44% (Alternative E). A reduction in acres of motorized routes within riparian areas and wetlands often results in an improvement to these site-specific locations where the route previously was open and is now closed to motorized traffic.

2) Implementation Guide and Technical Guide for Watershed Condition

6th Code Report Page 6 refers to "Implementation Guide for Assessing and Tracking Changes to Watershed Condition".

> Road density in the 6th code watersheds across the Forest is displayed in *Appendix D*. 6th code watershed densities were evaluated using the criteria established in the Implementation Guide for Assessing and Tracking Changes to Watershed Condition. The Guide uses a Road and Trail Network Indicator as one of twelve factors to consider in assessing 6th code watershed condition. This indicator identifies the following three condition ratings for road densities:
>
> 1 mi/mi2 = Good (Functioning Properly)
>
> 1 mi/mi2 – 2.4 mi/mi2 = Fair (Functioning at Risk)
>
> 2.4 mi/mi2 = Poor (Impaired)

Pages 272-276 list the 180 6th code watersheds, in order of road density, and assigned a rating of good, fair or poor, depending on the road density.

3) There are two new USFS guides being applied. These are not listed as references in the FEIS. One is the Implementation Guide described above, the other (not mentioned in the FEIS or 6th Code Report) is the specific direction on how to do watershed condition analysis. This is the Watershed Classification Technical Guide (referred to in the Implementation Guide).

The Implementation Guide and Technical Guide are based entirely on the existence of roads and trails. Neither has any discussion at all of use of roads and trails, by either motorized or non-motorized users.

4) Prejudicial selective omissions in the 6th Code Report contradicted by statements elsewhere in the FEIS. Example: p. 20 of 6th Code Report:

> At the 6th code watershed level the trend for aquatic habitat would be upward at those site specific areas where a road is non-motorized or where stream crossings are eliminated as a result of this project. However, improvement to the Aquatic habitat indicator score would likely be immeasurable within a 10 year period. It is expected that the Aquatic Habitat Indicator would remain the same for all action alternatives, with upward trends in watershed and habitat conditions more prominent in Alternatives D, E, F and G.

That statement is constructed to convince the reader that "upward" improvements could come only from action alternatives, and from eliminating motorized use. By omitting the statement of the existing condition, it fails to honestly report that the overall trend for aquatic habitat is stable or improving now, under the No Action Alternative. Response Appendix B, p. 572:

> The aquatic specialist report states the following based upon personal observations of the forest aquatic, watershed, and soils specialists.

> "Although localized degraded habitats continue to be present, the overall Forest trend for aquatic and riparian habitat is stable or improving (pers. Obs. J. Monzingo, C. Koury, M. Natharius 2012) (draft aquatic specialist report page 58).

5) The 6th Code Report entirely omits the critical information in Technical Guide, which describes the limitations of the methodology, cautions against misuse, and how the methodology should be used so it is appropriate to the area. The 6th Code Report presents no discussion or evidence that that the methodology for roads and trails was properly applied, or even applied at all. The 6th Code report applied the road density parameters lifted straight from the Technical Guide, with no consideration of appropriateness.

The 6th Code Report "over-weights" the roads and trails indicator for negative effects. The 12 indicators in the Technical Guide are presented as discrete independent measures. The Terrestrial Physical category is assigned 30% and that holds both the roads and the soils indicators. The 6th Code Report provides no description of how the weighting factors were applied, if at all.

The following quotes are from the Technical Guide and describe the limits and the proper use of the factors and attributes. We find the following problems in the 6th Code Report

1. no evidence that the attributes were properly interpreted and appropriate for the watersheds.

2. Cause and effect relationship between road density and condition is assumed rather than demonstrated. Correlation does not equate to cause and effect

3. The quality of road density as a predictor depends on the research supporting it. The 6th Code Report shows no such research.

4. The 6th Code Report does not address whether or not default values should have been modified to fit the local conditions.

5. Item 5 at page 11 tells the forest to include recent large fires. Page 11 of the 6th Code Report says the Whitewater-Baldy Fire impacts have not been assessed.
The other factors from item 5 are also missing from the report: insect and disease maps, as well as local GIS data such as roads and trails, dams and diversions, active and abandoned mines,

forest cover

6. The other factors affecting condition (described in Technical Guide p. 28) are not described in the 6th Code Report.

From the Technical Guide:

p. 7

Numeric attributes have associated numeric values (e.g.,

road density <1 mile/mile2). Quantitative attributes are

simple to use but they need to be properly interpreted and appropriate for the geographical setting of the watershed.

p. 8

As simple surrogates for complex ecological processes, indicators do not necessarily represent cause-and-effect relationships. Indicators are derived from studies that correlate the behavior of indicators with environmental response variables of interest. For example, increasing road density has been correlated with increasing sediment yield in many studies nationwide. However, the true set of environmental conditions that produce sedimentation are complex, unmeasured, or unknown. Numerous other factors including soils, geology, slope, and road condition also influence sediment yield. The result is that road density is not a perfect predictor of the effects on sediment yield. The quality of an indicator ultimately depends on the quality of the research used to support it and its applicability to different environmental settings, but no single indicator is a perfect predictor of an environmental response.

p. 9

Forests may adjust attributes in one of three ways: 1. Modify the default values of an attribute. For example, the default ranges in the basic model for road density may be inappropriate for certain physiographic settings. Forests may adjust the range and breaks between good, fair, and poor ratings if they are supported by forest plans or local analysis and data.

p. 11

5. Arrange for support from forest GIS specialists who can

provide analysis support (e.g., road density, and road

proximity to water analysis) that summarizes data by 6thlevel

HUCs. Obtain the most current national GIS data coverage that is relevant to the analysis such as 303(d) impaired streams, Fire Regime Condition Class, and insect and disease maps, as well as local GIS data such as roads and trails, dams and diversions, active and abandoned mines, forest cover, recent large fires, etc.

The 6th Code report concludes that none of the alternatives would result in a change to the watershed condition classification of any watershed. But the report still claims that road closures would improve the conditions of water quality etc. (pp. 26-28)

> Alternative B – No Action
>
> The effects of past and present activities to watershed, soil, and aquatic conditions are described in the affected environment section of the FEIS.
>
> This recent assessment provides a "baseline" at which to assess all of the action alternatives versus the No Action Alternative.

(We remind the reviewer that this baseline does not differentiate between wilderness and non-wilderness, or between natural and manmade causes, and does not identify any rates of change.)

> Implementation of Alternative B – No Action would result in no change in cumulative impacts to watershed, soil and aquatic condition at the 6th code level, and thus no change to watershed condition classification of any watershed.
>
> Alternative C
>
> Alternative C proposes the least decrease in acres impacted by motorized routes across the Forest of all action alternatives.
>
> Cross country travel related to motorized dispersed recreation is reduced by 96%, which is comparable to all action alternatives.
>
> Alternative C would be similar to Alternative B – No Action in terms of cumulative effects, with some upward trends in watershed condition realized with reductions of motorized cross country travel. However, these upward trends would be immeasurable at the watershed scale and are not expected to result in large enough improvement to change overall watershed condition classification.
>
> Alternative D
>
> Alternative D proposes the second largest decrease in motorized routes across the Forest, behind Alternative E.
>
> Alternative D poses the second best opportunity of all alternatives for upward trends to occur in watershed condition, related to the watershed indicators of water quality, water quantity, aquatic habitat, aquatic biota, riparian/wetland condition, roads and trails, soils, and terrestrial invasive species. However, similar to Alternative E, these upward trends are not expected to result in large enough improvement across any individual watershed to change overall watershed condition classification in the next 10 years.
>
> Alternative E
>
> Alternative E proposes the largest decrease in motorized routes across the Forest.

Alternative E poses the best opportunity of all alternatives for upward trends to occur in watershed indicators of water quality, water quantity, aquatic habitat, aquatic biota, riparian/wetland condition, roads and trails, soils, and terrestrial invasive species. However, these upward trends are not expected to result in large enough improvement across a watershed within a 10-year period to change overall watershed condition classification.

Alternatives F and G

Alternatives F and G show similar reductions related to acres impacted by motorized routes and acres open to motorized dispersed recreation, behind Alternatives E and D.

Although there may be some upward trends to the attributes as described in the above section, implementation of either Alternative F or G is not expected to change the overall watershed condition classification in any watershed. Improvements expected in these two alternatives would be less than those expected in Alternatives E or D.

The 6th Code Report Appendix A details the percentage of ownership in each watershed. The analysis provides no discussion of any possible correlation between road density, water impairment, resource conditions and percentage of land ownership.

The 6th Code Report does not add the acreage of the watersheds, to describe how many acres are functioning in the different categories of good, at risk, and poor.

Appendix D lists the 180 forest watersheds classified by road density, with all watersheds over a certain road density listed as "Poor" condition. The watersheds listed as "Poor" are these twelve.

150400010501 T Bar Canyon	101.54	2.45	Poor
150400040305 SA Creek	87.93	2.49	Poor
150400030405 Thompson Canyon-Lordsburg Draw	114.96	2.52	Poor
150400040503 Campbell Blue Creek	135.42	2.53	Poor
150400020301 Willow Creek-Mangas Creek	138.31	2.54	Poor
150400040303 Stone Creek-San Francisco River	146.21	2.62	Poor
150400040302 Trout Creek	87.51	2.68	Poor
130302020201 Rio de Arenas	75.12	2.91	Poor
150400040203 South Fork Negrito Creek	149.82	3.02	Poor
150400040205 Sign Camp Canyon	133.30	3.25	Poor
130302020302 Headwaters Whitewater Creek	171.41	3.67	Poor
130302020203 Pipeline Draw-San Vicente Draw	306.55	5.56	Poor

Yet at p. 14, only one watershed, Snow Canyon, is shown as "Impaired Function."

As a result of this report, we want an independent review of all of the Forest Service science, to determine its scientific integrity. We expect significant changes to be recommended, and to resolve this appeal point the Forest Service must make the changes, and then in turn, change the expected outcomes. Where this report states that no change is expected to be significant over the next ten years, we want that to be the baseline stance for the study. It is imperative that the

Forest Service create straightforward and logical, rational statements in its scientific reporting and this report is a conflicting and confused document.

After the corrections are made, the downstream outcomes will also change. Please issue an SEIS to account for these changes. The fact that this report admits that there will not be any significant improvement in watershed condition under any of the action alternatives separates the Decision as it now stands, from reason. If there will be no change, the Forest Service fails to disclose the purpose of closing so many roads and trails.

In other words, there is no connection between the evidence before the agency and the Decision.

3.6.2 Water quality

We are appealing this Decision because it's claims of watershed damage by roads and motor vehicle use are based on faulty assumptions and conclusions.

The FEIS added a new specialist report, that wasn't with the DEIS. This is a 6rh code watershed analysis.

At Page 15:
Impaired Waters – *Appendix J* lists the water bodies that have been currently listed as in non-attainment of state water quality standards, and the probable causes of impairment. Currently there are 28 water bodies (streams & lakes) within or adjacent to Forest system land that are not meeting State water quality standards. The impaired water bodies are found throughout the Forest. **Approximately 49% are found within wilderness areas and 51% are found in non-wilderness areas of the Forest.**

49%-51% equals random. In other words, there is no correlation between waters being impaired and being in areas where motorized use is allowed.

Yet under cumulative effects, the FEIS claims it is analyzing the effects of motorized use. However we already know that half the impaired streams are in wilderness, where no vehicles are allowed.

AND.....the numbers at p. 18 also indicate there is no correlation between motorized use and water quality.

> *Water Quality*
> The indicator rating for water quality is driven by the amount of sediment that is currently in the stream. Overall, on 75% of the 180 watersheds assessed on the Forest, the water quality indicator was rated as Functioning Properly, 19% were rated as Functioning at Risk, and 6% were rated as having Impaired Function. Water quality is considered "poor" when there is significant impairment to beneficial uses of the water bodies in the watershed.
>
> The attributes contributing to the Water Quality Indicator score include *Impaired Waters* and *Other Water Quality Problems*. In 81% of the Forest's watersheds, the attribute of *Impaired Waters* was rated as Good, 3% were rated as Fair, and 16% were rated as Poor.

> For the attribute of *Other Water Quality Problems*, 71% were rated as Good, 21% were rated as Fair, and 8% were rated as Poor.

Remember, the Forest Service says of the impaired waters, half are the wilderness areas. Now remember also that in terms of sheer physical size, the non-wilderness area is 2.5 million acres and the wilderness is about 800,000. The wilderness has 24% of the land and half the impaired waters. So it appears that wilderness is twice as likely to have impaired waters as non-wilderness.

Or, more accurately, whatever is causing the problem is present throughout the forest and not only in areas where motor vehicle use is allowed.

Now at Page 15:

> Impaired Waters – *Appendix J* lists the water bodies that have been currently listed as in non-attainment of state water quality standards, and the probable causes of impairment. Currently there are 28 water bodies (streams & lakes) within or adjacent to Forest system land that are not meeting State water quality standards. The impaired water bodies are found throughout the Forest. Approximately 49% are found within wilderness areas and 51% are found in non-wilderness areas of the Forest.

49%-51% is generally considered a random outcome. In other words, there is no correlation between waters being impaired and being in areas where motorized use is allowed.

Unfortunately, under cumulative effects, the FEIS claims it is analyzing the effects of motorized use. However, half the impaired streams are in wilderness, where no vehicles are allowed.

AND.....the numbers at p. 18 also indicate there is no correlation between motorized use and water quality.

This paragraph below tells us that 75% of watersheds are fine, and for "other water quality problems," 71% were good.

> *Water Quality*
> The indicator rating for water quality is driven by the amount of sediment that is currently in the stream. Overall, on 75% of the 180 watersheds assessed on the Forest, the water quality indicator was rated as Functioning Properly, 19% were rated as Functioning at Risk, and 6% were rated as having Impaired Function. Water quality is considered "poor" when there is significant impairment to beneficial uses of the water bodies in the watershed.
>
> The attributes contributing to the Water Quality Indicator score include *Impaired Waters* and *Other Water Quality Problems*. In 81% of the Forest's watersheds, the attribute of *Impaired Waters* was rated as Good, 3% were rated as Fair, and 16% were rated as Poor. For the attribute of *Other Water Quality Problems*, 71% were rated as Good, 21% were rated as Fair, and 8% were rated as Poor.

Remember, the Forest Service said that of the impaired waters, half are the wilderness areas. Now remember also that in terms of sheer physical size, the non-wilderness area is 2.5 million acres and the wilderness is about 800,000. The wilderness has 24% of the land and half the impaired waters.

The GNF analysis is based on the assumption that there will be negative effects from roads near streams or drainages. That assumption totally contradicts the facts. The facts are that 1) the roads are there, 2) the streams are there, 3) the water quality impairment (what there is of it) is present whether there are roads or not.

It is the basic construction of the analysis, beginning with the assumptions, that provides this outcome, not the actual conditions on the Gila Forest:

The FEIS assumes roads cause damage. Then it grinds through all its calculations (using GIS) about how many miles of roads are within 300 ft of streams or drainages. Then it calculates how many of those miles would be closed under each alternative. Then it declares the alternatives that close more miles will result in more improved water quality.

The conclusions were built into the initial assumption that miles equal damage, and more miles equals more damage. Using the assumed guilt method, the analysis could not turn out any other way.

Yet the report does not correlate with this outcome at all. For one thing, 49% of the impaired water bodies have no motorized traffic whatsoever. 75% of the 180 watersheds outside wilderness were rated as *Functioning Properly.*

But the most telling data is that the impaired waters are split almost evenly between wilderness and non wilderness, so the assumption that motorized routes are a significant contributor to water quality problems just doesn't hold up. In other words, whatever is causing the problem is present forest wide, and motor vehicle travel is not present forest wide. This causes the assumption that roads are a significant contributor to impairment to be faulty.

This causes the FEIS prediction that water quality will improve if many miles of routes are closed to be "fanciful." It would fail the Administrative Procedures Act Standards of Review at Section 706 (E).

> E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute;

The resolution to this appeal point is to withdraw this decision and prepare a new EIS which accurately reports the reality of the situation on the Gila. Abandon the faulty assumptions. Then a decision that harmonizes population growth and resource use can be crafted.

Section 4: Conclusion

This appeal of the Record of Decision for Travel Management on the Gila National Forest Catron, Grant, Hidalgo, and Sierra Counties, New Mexico has been submitted because the U.S. Forest Service ("USFS") Gila National Forest is out of compliance with requirements for coordination with other public planning efforts, including those requirements for cooperating agencies, environmental consequences, elimination of duplication with State and local procedures, consistency requirements and joint planning requirements, as well as because the County strongly disagrees with portions of the Record of Decision that contains factual errors and omissions. These issues have been submitted by the County as comments to the DEIS, however the Responsible Official has failed to consider many of our comments and legitimate concerns. In addition to the arguments made herein, the County also raises any and all issues permitted under law.

The issues brought forth in this appeal aim to provide the evidence and rationale to support the County's desire that the Record of Decision be reversed.