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Department of
Agriculture

Forest
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File Code: 1570/2350

Date: September 9, 2014

Ms. Faith Capps
PO Box 332
Pima, AZ 85543

**CERTIFIED MAIL – RETURN
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Dear Ms. Capps:

This is my decision on the appeal (#14-03-00-0129-A215) you filed regarding the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) signed by Forest Supervisor Kelly Russell, for Travel Management on the Gila National Forest.

My review of your appeal was conducted pursuant to, and in accordance with, 36 CFR 215.18. My review focused on the project documentation and the issues raised in your appeal. I specifically incorporate in this decision the project record, the references and citations in the project record transmittal documentation, as well as the Appeal Reviewing Officer (ARO) analysis and documentation.

After considering your issues and the project documentation, the ARO recommends the Forest Supervisor's decision be affirmed with instructions. A copy of the recommendation and the technical review of your appeal contentions are enclosed.

Based upon a review of the project documentation provided, I find the issues were adequately considered. I agree with the ARO analysis and conclusions in regard to your appeal issues. I find the Forest Supervisor made a reasoned decision and has complied with all laws, regulations, and policy. After careful consideration of the above factors, I affirm the Forest Supervisor's decision to implement Travel Management on the Gila National Forest with the following instructions:

- In light of the July 08, 2014, Federal Register notice (Vol. 79, No. 130, pp. 38678-38746) listing the narrow-headed garter snake and northern Mexico garter snake as threatened, the Forest must initiate consultation on these species with the U.S. Fish and Wildlife Service to satisfy requirements of ESA.
- Analyze the effects of the Forest Plan amendment to Management Area 7D, the Silver City Watershed. The Forest Plan amendment for MA 7D may not be implemented until the environmental effects are disclosed through a proper NEPA analysis.
- Row 3 of Table 16 is incorrectly labeled. Through an erratum, correctly label Row 3 in Table 16 to read "Annual Maintenance" instead of "Deferred Maintenance." This does not change the results of the analysis.



- Through an erratum, correct the listing status for spikedace and loach minnow from “threatened” to “endangered.” The Forest complied with ESA Section 7(a)(2) consultation requirements for spikedace, loach minnow, and their designated critical habitat so no further action is required.

This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)]. A copy of this letter will be posted on the National Appeals Web Page at <http://www.fs.fed.us/appeals>.

Sincerely,

/s/ Gilbert Zepeda
GILBERT ZEPEDA
Appeal Deciding Officer, Deputy Regional Forester

Enclosures (2)

cc: Kelly M Russell



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File Code: 1570/2350

Date: September 4, 2014

Route To:

Subject: Appeal Recommendation, Gila Travel Management

To: Deputy Regional Forester, Gilbert Zepeda

This is my recommendation on the disposition of the appeals filed regarding the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for Travel Management on the Gila National Forest.

BACKGROUND

Implementation of the Selected Alternative (Alternative G) makes the following changes to the Forest's current motorized travel system:

- Leaves open 3,334 miles of National Forest System roads for motor vehicle use.
- Increases all-terrain vehicle (ATV) trail opportunities from 16 to 179 miles.
- Maintains one 3-acre area for motorcycle and ATV use.
- Provides approximately 1,316 miles of motorized dispersed camping corridors of 300 feet and 36 areas.
- Allows motorized big game retrieval in the same 1,316 miles of motorized dispersed camping corridors.

Forest Supervisor Kelly Russell signed the ROD on September 26, 2013; however, the legal notice of her decision was not published until June 11, 2014. Because the ROD was signed within 6 months of the March 27, 2013 effective date of the 36 CFR 218 objection regulations, the decision is subject to administrative review under the 36 CFR 215 appeal regulations.

Twenty two appeals were filed as follows:

Appeal #14-03-00-xxxx-A215	Appellant	Remarks
0126	Tom Burris	Dismissed – Appellant did not comment on DEIS
0127	Bill and Bonni Jo Rogers	
0128	B. Keith Rogers	
0129	Faith Capps	
0131	James Baruch	



Appeal #14-03-00-xxxx-A215	Appellant	Remarks
0132	Donlee Martin	Dismissed – Appellant did not comment on DEIS
0133	Mark Werkmeister, New Mexico Off Highway Vehicle Alliance (NMOHVA)	
0135	W.D. Grubb	
0136	Larry McLaud	
0138	Joanne Spivack/Jo Anne Blount, NMOHVA	
0139	Hidalgo County	
0140	Catron County	
0141	Grant County	
0142	William Faust	Dismissed – Appellant did not comment on DEIS
0143	Coalition of Arizona/New Mexico Counties	
0144	Jo Anne and Larry Blount, Van Allred	
0145	Bill Carlis	
0146	Robert Williams, Keep Our Forest Open	
0147	Upper Gila Watershed Alliance, New Mexico Wilderness Alliance, Rio Grande Chapter of the Sierra Club, and WildEarth Guardians	
0148	Joanne Spivack	Dismissed – Appellant did not comment on DEIS on her own behalf
0149	Center for Biological Diversity	
0150	Joseph Faust	Dismissed – Appellant withdrew appeal

Pursuant to 36 CFR 215.17, attempts were made to seek informal resolution of the appeals. The record indicates that informal resolution was reached on the appeal filed by Joseph Faust who withdrew his appeal. Four appeals, filed by Tom Burris, Donlee Martin, William Faust, and

Joanne Spivack, were dismissed because the appellants failed to provide comments during the 60-day comment period. Informal resolution was not reached on the remaining appeals.

Review and Findings

As provided for under 36 CFR 215.19(c), I am consolidating the remaining appeals into one recommendation. My review was conducted in accordance with 36 CFR 215.19 to ensure that the analysis and decision are in compliance with applicable laws, regulations, policies, and orders. The appeal records, including the appellant's issues and requests for relief have been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeals and believe they are adequately addressed in the attached technical review and findings documents. Having reviewed the FEIS, ROD, and the project record file, as required by 36 CFR 215.19(b), I conclude the following:

- 1) The decision clearly describes the actions to be taken in sufficient detail that the reader can easily understand what will occur as a result of the decision.
- 2) The selected alternative should accomplish the purpose and need established. The purpose and need stated in the EIS reflect consistency with direction in the Forest Plan for the Gila National Forest.
- 3) The decision is consistent with policy, direction, and supporting evidence. The record contains documentation regarding resource conditions and the Responsible Official's decision documents are based on the record and reflect a reasonable conclusion.
- 4) The record reflects that the Responsible Official provided ample opportunity for public participation during the analysis and decision making process. The Responsible Official's efforts enabled interested publics the opportunity to comment and be involved in the site-specific proposal.

After considering the claims made by the appellant and reviewing the record, I found that the Responsible Official conducted a proper and public NEPA process that resulted in a decision that is consistent with the Gila National Forest Plan.

Recommendation

I recommend that the Responsible Official's decisions relating to these appeals be affirmed with instructions. I recommend the following instructions:

- In light of the July 08, 2014, Federal Register notice (Vol. 79, No. 130, pp. 38678-38746) listing the narrow-headed gartersnake and northern Mexico gartersnake as threatened, the Forest should initiate consultation with the U.S. Fish and Wildlife Service to satisfy requirements of ESA.

- Analyze the effects of the Forest Plan amendment to Management Area 7D, the Silver City Watershed. The Forest Plan amendment for MA 7D should not be implemented until the environmental effects are disclosed through a proper NEPA analysis.
- Review of the deferred maintenance data presented in the FEIS identified inconsistencies between Tables 16 and 23 that may cause confusion. Row 3 of Table 16 is incorrectly labeled and should be corrected through an erratum. Correctly relabeling Row 3 in Table 16 to read “Annual Maintenance” instead of “Deferred Maintenance” does not change the results of the analysis.
- The Forest complied with ESA Section 7(a)(2) consultation requirements for spikedace, loach minnow, and their designated critical habitat; however, the listing status for spikedace and loach minnow should be corrected from “threatened” to “endangered” through an erratum.

/s/ Neil J. Bosworth
NEIL J. BOSWORTH
Forest Supervisor

cc: Margaret Van Gilder

Review and Findings

Faith Capps

Appeal #14-13-00-0129-A215

Gila Travel Management

ISSUE 1: The Record of Decision (ROD) violates the National Environmental Policy Act (NEPA).

Contention 1a: The appellant contends the National Visitor Use Monitoring (NVUM) is not accurate because it does not take into account locals who use roads daily or summer residents who use the roads daily as well as 3 or 4 times weekly for recreational use [Appeal, p. 1].

Response: The agency works to fulfill regulation and policy aimed at analyzing the best and most relevant scientific data. The Council on Environmental Quality (CEQ) regulations note, agencies should insure the scientific integrity of the analyses and discussion, describe methodologies used, and cite references or sources used (40 CFR 1502.24).

The National Visitor Use Monitoring (NVUM) process is designed to provide an estimate of national forest recreation visits, and to help ensure Forest Service-wide consistency in data collection and establish a minimum standard of statistical accuracy [PR 2521-18, p. 3]. There are limitations to the NVUM survey results, which are disclosed in the NVUM report [PR 2521-18, pp. 5-6]. Despite the limitations, the NVUM program does provide reliable information about recreation visitors to national forest system managed lands at the national, regional, and forest level [PR 2521-18, p. 3]. It is also the best available data on visitation type and quantity [PR 2521, p. 18], and the only use data the Forest has collected [PR 2516, p. 4].

The CEQ regulations at 40 CFR 1502.22 address incomplete or unavailable information. If the information is important to the analysis and the cost to obtain it is not prohibitive, the agency shall do so. If costs are prohibitive or the information can't be found, or the means to obtain it can't be found, the agency shall make it clear in the statement that this information is lacking; the relevance of the information to the effects analysis; a summary of existing information relevant to reasonably foreseeable adverse impacts; and an evaluation of the information based on generally accepted methods or theoretical approaches.

The ROD [PR 2526, p. 3] disclosed the FEIS acknowledges incomplete or imperfect information. The Methodology and Assumptions section of the FEIS [PR 2527, p. 63], states data limitations and that a complete inventory of on-the-ground unauthorized routes has not been completed.

Regarding use specific to roads, again, the information provided in the NVUM is the best available data the Forest has. The Forest does not have complete information on the condition and level of use of its forest system roads and trails, unauthorized routes, or motorized cross-country use. Collecting that information over the entire forest system routes, an unknown amount

of unauthorized routes, and the entire National Forest System (NFS) lands would be exorbitant and time consuming. Having complete information on the condition and motorized use of every mile and acre is not relevant to effectively analyzing the reasonably foreseeable impacts on the human environment. The general effects of the existence and use of routes and off-road travel on natural and cultural resources are well documented and presented in each section of Chapter 3 [PR 2528, p. 612].

Finding: The NVUM survey provides statistically reliable information about recreation visitors to national forest system managed lands, and is the best available data the Forest has on visitor use. The Forest has enough information in order to effectively analyze effects on resources, as documented in Chapter 3 of the FEIS. The FEIS meets the intent of 40 CFR 1502.22 and 40 CFR 1502.24.

Contention 1b: The appellant contends that it is erroneous to act [close roads] on so little solid evidence no matter how controlled or scientific. She believes the agency has gotten caught up in trying to apply studies, literature, special interest groups, and environmentalists that it has lost all sense of reason and common sense. The appellant concludes that the agency has not considered or placed high priority on the needs of the American people [Appeal, p. 2].

Response: The purpose of the project is to comply with the Travel Management Rule (TMR) by providing a system of roads, trails, and areas designated for motor vehicle use by class of vehicle and time of year on the Gila National Forest [PR 2527, p. 4]. Chapter 3 of the FEIS summarizes the physical, biological, social, and economic environments of the project area and the effects of implementing each alternative on that environment. The CEQ regulations for implementing NEPA direct agencies to “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” (40 CFR 1502.24). Resource specialists cited the relevant studies and best available science to support their analysis. Numerous documents in the project record provide support for the analysis in the FEIS, including the FEIS itself [PR 2513, PR 2514, PR 2516, PR 2517, PR 2518, PR 2519, PR 2521, PR 2523, PR 2527].

The CEQ regulations for implementing NEPA at 40 CFR 1501.7 requires inviting participation of interested persons as part of an early and open process for determining the scope of the issues to be addressed and for identifying the significant issues related to a proposed action.

The CEQ regulations, 40 CFR 1506.6, require agencies to make diligent efforts to involve the public, provide notice of public meetings and the availability of environmental documents so as to inform those persons who may be interested or affected.

Other CEQ regulations at 40 CFR 1508.14 require the “Human Environment” shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.

36 CFR 212.55(b) states that “the responsible official shall consider effects on the following, with the objective of minimizing” damage to natural resources, harassment and disruption of

wildlife, and user conflicts. The decision maker is directed by Forest Service Manual 1950.40 to consider environmental documents, and public comments.

The Gila NF involved the public throughout the process: in developing the proposed action, in developing alternatives, and in making any needed modifications to the DEIS in preparing the FEIS. The FEIS [PR 2527, p. 6] describes the public involvement process. Forty-six public meetings and open houses were held across the forest between 2006 and 2007. Another 18 workshops during the fall of 2008 generated more than 2,000 public comments.

On September 11, 2009 the Forest Supervisor published the proposed action, marking the start of the scoping comment period. The proposed action was mailed to 4,000 people and 10 open houses were held. The Forest received almost 16,000 letters and emails in response to the scoping comment period. The content of the letters and emails formed the basis of the alternatives and environmental analysis. The FEIS continues with discussion about how the comments were, the general concerns and issues were handled. [PR 2527, p. 8-10].

When the DEIS was available for review and comment in December 2010, the Forest Supervisor notified 16,513 people and organizations via email or letter. The DEIS was also posted on the Forest website. The notice of availability of the DEIS for review and comment was published in the Federal Register on January 7, 2011. In conjunction with the 60-day notice and comment period, the Forest hosted four open houses. The Forest received more than 2,000 comment letters and emails on the DEIS.

Most public comments express values related to forest resources and management. However, the identified values vary considerably among the public. Some members of the public believe that unhampered motorized access improves public use and enjoyment of the forest. On the other hand, some comments express frustration with motorized use on the forest. These comments often identify resource conservation and the preservation of solitude as forest values that motorized use diminishes [PR 2521, p. 9]. Forests should provide access for both motorized and non-motorized users in a manner that is environmentally sustainable over the long term. The NFS is not reserved for the exclusive use of any one group, nor must every use be accommodated on every acre. It is entirely appropriate for different areas of the National Forests to provide different opportunities for recreation [PR 0029, p. 68266].

The decision and the rationale in the ROD [PR 2526, p. 3-5] discloses the responsible official considered the purpose of and need for action, the environmental analysis and public comments. Taking the diversity of comments into account, and the fact that forest is not reserved for the exclusive use of any one group, the responsible official selected Alternative G because it “provides a balanced effort to protect resources and provide for public access and continued Forest management” [PR 2526, p. 4].

Finding: The Forest met law, policy and regulations by considering the needs of the American people. The public was invited to participate throughout the process and provided comment in various ways. Resource specialists cited the relevant studies and best available science to support their analysis. Public comments often conveyed conflicting values, and the agency took all these

comments into account throughout the process, and selected the alternative that best responds to the conflicting values expressed.

Contention 1c: The appellant questions the closure of several roads including 4019Q off of 220 to Arizona 8181, Turner Peak; 4019H; 4025X; 4020Z; and a crossover road from county B 083 and B 058 [Appeal, p. 3].

Response: The purpose of the Travel Management Rule (TMR) is to “provide for a system of National Forest System (NFS) roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use. After these roads, trails, and areas are designated, motor vehicle use ... not in accordance with these designations is prohibited” [PR 0029, p. 68289]. The TMR includes criteria the responsible official must consider when making these designations [PR 0029, pp. 68289-68290]:

- 36 CFR 212.55(a) requires the responsible official to consider the general criteria when designating roads, trails and areas for motor vehicle use. These criteria include the effects of motor vehicle designations on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses, and the need for maintenance and administration of roads, trails, and areas.
- 36 CFR 212.55(b) applies only to trails and areas and requires the responsible official to consider, with the objective of minimizing damage to, natural resources, harassment and disruption of wildlife, and user conflicts.
- 36 CFR 212.55(c) applies only to roads and requires the responsible official to consider safety aspects such as traffic speed, volume, compositions, road geometry, road surfacing, and rights of access in addition to the general criteria in 36 CFR 212.55(a).
- 36 CFR 212.55(d) requires the responsible official to consider rights of access by recognizing valid existing rights and the rights of use of NFS roads and NFS trails under §212.6(b).

Again, the responsible official must consider the above criteria when making designations, so there is justification for the closures. For example, road 4019Q is being closed to motorized vehicle use because it is within a Mexican spotted owl Protected Activity Center (PAC) [PR 1284; PR 1796, Appendix L]. Road 4019H is open to a gate. Beyond the gate, the Forest determined that the road was not needed access, and that there were some possible riparian concerns [PR 1284; PR 1796, Appendix L]. Regarding road 4020Z, the Forest acknowledges that the road allows access across the forest to the area west of Luna without having to travel the highway. However, high resource values associated with Dillman Creek do not warrant providing motorized means of access [PR 2528, p. 682].

Finding: The road closures are justified because the responsible official must consider the criteria listed in §212.55 of the TMR when making designations.