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Agriculture

Forest
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File Code: 1570/2350

Date: September 9, 2014

Ms. Joanne Spivack
New Mexico Off Highway Vehicle Alliance
1700 Willow Rd. NE
Rio Rancho, NM 87144

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
NUMBER: 7000 2870 0000 1135 7197**

Dear Ms. Spivack:

This is my decision on the appeal (#14-03-00-0138-A215) you filed on behalf of the New Mexico Off Highway Vehicle Alliance and Jo Anne Blount of the Mogollon-Apache-Gila Riders, 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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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

New Mexico Off Highway Vehicle Alliance (NMOHVA) Mogollon-Apache-Gila Riders (MAG)

Joanne Spivack and Jo Anne Blount

Appeal #14-13-00-0138-A215

Gila Travel Management

Overview: The appellants contend that the Forest Service failed to adequately respond to comments they submitted on the project. They contend that they identified material mistakes and process errors in their comments on the Draft Environmental Impact Statement (DEIS) but the agency failed to remedy the errors in the Final EIS (FEIS). These alleged errors are identified as separate issues and contentions below.

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

A. Effects – Cumulative

Contention 1.A.1: The appellants contend the FEIS does not show cause and effect between motorized use of routes and existing conditions in the environment as shown in data. The analysis doesn't analyze the activity that it claims to analyze; motorized use of routes. It analyzes roads; roads are not an activity. They argue that even considering the roads analysis, the information provided in the FEIS indicates lack of correlation between existence of routes and watershed conditions. The FEIS and responses to comment refuse to examine that serious and pervasive problem in the analysis. Instead of looking at the facts on the ground, the FEIS clings to its insistence of 'damage caused by roads', cited from studies done in other place that have different conditions. The Council on Environmental Quality (CEQ) requires that the FEIS properly draw conclusions from the information presented. The appellants conclude that the FEIS fails to comply with that direction [Appeal, pp. 7-13].

Response: The appellants used the term "cause and effect" in regard to cumulative effects and effects in general [Appeal, pp. 7, 13], and used watershed conditions as an example. Forest Service regulations at 36 CFR 220.4(f) address analysis of cumulative effects: "Cumulative effects analysis shall be carried out in accordance with 40 CFR 1508.7 and in accordance with "The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis" dated June 24, 2005." This memorandum states: "With respect to past actions, during the scoping process and subsequent preparation of the analysis, the agency must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects."

CEQ regulations at 40 CFR 1508.7 define cumulative impact as: “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”

CEQ regulations at 40 CFR 1502.16 (a) (b) (d) address direct effects, indirect effects, and the environmental effects of the proposed action and the alternatives.

Scientific integrity is addressed in the CEQ regulations at 40 CFR 1502.24 and directs agencies to insure the scientific integrity of the discussions and analyses in the EIS.

The analysis is a cause-and-effect analysis at the forest level and analyses are displayed as trends or potential effects. This is stated in the FEIS at the beginning of Chapter 3 [PR 2527, p. 45] and in the watershed and soils section [PR 2527, pp. 194, 196]. Cumulative impacts for watersheds and soils were analyzed at the 6th code watershed level [PR 2527, p. 194]. Important assumptions related to the analysis noted that sediment delivery is related to both roads themselves and use of roads [PR 2527, pp. 195-196]. Data limitations were noted and in most cases, the relevance or significance was stated [PR 2527, pp. 196-197]. The watershed and soils section of Chapter 3 looked at both the effects of motorized routes, motorized off-road travel, motorized dispersed camping areas, and motorized big game retrieval [PR 2527, pp. 194-226]. Cause and effect was demonstrated: (1) “Soil compaction is a direct result of the weight of a motor vehicle and its wheels coming into contact with the surface of the ground,” and (2) “Effects of motorized off-road travel by all vehicle types (for the purpose of camping, parking, game retrieval and recreational use) to soil productivity include soil compaction, loss of vegetative ground cover, decreased soil porosity, increased soil bulk density, displacement of litter or duff layer leaving bare soil exposed, soil displacement, reduced infiltration rates, decreased plant growth, disturbance to soil biotic crusts and reduced nutrient cycling. All of these lead to increased and concentrated overland flow and sediment transport to downslope areas and connected stream courses following storm events, which pose a risk to long term soil productivity, downstream water quality and overall watershed condition” [PR 2527, pp. 198, 199].

The cumulative effects for watersheds and soils was analyzed at a broad scale and describes “how implementation of a motorized route system and cross-country travel across the Forest would have the ability to impact attributes that are used to assess watershed condition,” or the less motorized disturbance, the fewer negative effects on watersheds and soils and the greater opportunity for beneficial effects [PR 2527, p. 222]. This and other statements in the cumulative effects section of Chapter 3 and the 6th code watershed, soils, and aquatics cumulative effects analysis report [PR 2508-0] demonstrate cause and effect.

The Forest Service met the intent of 40 CFR 1502.24 by creating an interdisciplinary team of resource professionals with the relevant education and experience appropriate for analysis and document preparation in their specialty areas. Each specialist reviewed pertinent data, scientific studies (including opposing viewpoints), monitoring, and used professional judgment to draw conclusions about the effects of each alternative and the appropriateness of the information sources, including scientific literature, used in the analyses.

Finding: The analysis of direct, indirect and cumulative effects followed Forest Service and CEQ guidelines. Cause and effect relationships were demonstrated in the analyses. CEQ requirements regarding scientific integrity were met.

Contention 1.A.2: The appellants contend the agency did not adequately respond to their concerns regarding cumulative effects in the 6th Code Watershed report and Water and Soils report. The appellants conclude the analysis in the Water and Soils report does not meet CEQ guidelines regarding cause and effect relationships and cumulative effects analysis guidance in *Considering Cumulative Effects under the National Environmental Policy Act* (CEQ, 1997) and provide examples. The cumulative effects analysis does not disclose or account for the amount of non-Forest Service roads in the analysis area, and thus exaggerates the effects of limiting OHV use on the forest [Appeal, pp. 28-31, 34]. The FEIS does not analyze motorized use and provides no evidence that motorized use is harming resources on the Gila NF [Appeal, pp. 7-8, 11-13]. The analysis in the 6th Code report does not discuss factors contributing to cumulative effects. In addition to activities, natural conditions, processes, and functions contribute to cumulative effects; this includes geothermal activity. The Water and Soils report states that conditions, processes, and functions are considered when evaluating watershed condition; therefore, they should be considered in cumulative effects analysis [Appeal, pp. 28-32].

Response: Forest Service regulations at 36 CFR 220.4(f) address analysis of cumulative effects: “Cumulative effects analysis shall be carried out in accordance with 40 CFR 1508.7 and in accordance with The CEQ’s “Considering Cumulative Effects under the National Environmental Policy Act” dated January 1997 and the more recent “The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis” dated June 24, 2005.” This memorandum states: “With respect to past actions, during the scoping process and subsequent preparation of the analysis, the agency must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects.”

CEQ regulations at 40 CFR 1508.7 define cumulative impact as: “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”

This is stated in the FEIS at the beginning of Chapter 3 [PR 2527, p. 45] and in the watershed and soils section [PR 2527, pp. 194, 196]. Cumulative impacts for watersheds and soils were analyzed at the 6th code watershed level [PR 2527, p. 194]. Important assumptions related to the analysis noted that sediment delivery is related to both roads themselves and use of roads [PR 2527, pp. 195-196]. Data limitations were noted and in most cases, the relevance or significance was stated [PR 2527, pp. 196-197]. The watershed and soils section of Chapter 3 looked at both the effects of motorized routes, motorized off-road travel, motorized dispersed camping areas, and motorized big game retrieval [PR 2527, pp. 194-226].

The was analyzed at a broad scale and describes “how implementation of a motorized route system and cross-country travel across the Forest would have the ability to impact attributes that are used to assess watershed condition,” or the less motorized disturbance, the fewer negative

effects on watersheds and soils and the greater opportunity for beneficial effects [PR 2527, p. 222]. This and other statements in the cumulative effects section of Chapter 3 and the 6th code watershed, soils, and aquatics cumulative effects analysis report [PR 2508-0] demonstrate cause and effect.

The cumulative effects summary for watersheds and soils [PR 2527, pp. 224] acknowledges past and ongoing activities on the Gila National Forest including a variety of actions such as fuel wood harvest, timber sale activities, mining, prescribed fires and wildfires, road and trail construction and maintenance, rangeland grazing, hunting/camping, wildlife use, OHV use, other recreational uses, and water impoundments.

Finding: The analysis of cumulative effects followed Forest Service and CEQ guidelines. Cause and effect relationships were demonstrated in the analyses.

Contention 1.A.3: The appellants contend that in their comments on the DEIS, they argued that there is no place in the analysis that considers the factor of time and that the analysis ignored historical uses and the historic existing condition. They contend the analysis must disclose what conditions have been in the past, and make some assessment of what has changed, where and by how much. There must be some effort to disclose what portion of the existing condition has historic causes and was not caused by any human use (motorized or non-motorized) in the modern era [Appeal, p. 46].

Response: The appellants contend the analysis does not consider the past actions that have led to the existing condition, including those that are not caused by human use.

Forest Service Handbook (FSH) guidance states that past actions and events need to be analyzed to determine how the present situation has been affected by history, and to identify trends or patterns that may exist. The objective of doing this is to establish a baseline for assessing future events (FSH 1909.15.2b).

Existing conditions, which are the result of past actions and events, are discussed in the context of the need for action by discussing the relationship between the desired condition and the existing condition in order to answer the question, “Why consider taking any action?” (FSH 1909.15_10).

FSH 1909.15_10 provides the guidance on developing a framework for the analysis by defining measurement indicators and effects analysis boundaries, both spatially and temporally.

The CEQ regulations, however, do not require agencies to catalogue or exhaustively list and analyze all individual past actions. Simply because information about past actions may be available or obtained with reasonable effort does not mean that it is relevant and necessary to inform decision-making (36 CFR 220.4 (f)).

The regulations at 40 CFR 1502.15 direct the agency that the EIS shall succinctly describe the environment of the area to be affected or created by the alternatives under consideration.

The FEIS describes the temporal boundaries of each resource analysis in terms of years or, for some resources in terms of decades. The impacts of past actions and events; including land management activities by the Forest Service (such as prescribed burning or vegetation management activities), commercial uses of the national forest (such as construction of utility corridors or construction of logging roads), individual use (such as fuel wood harvest or hunting) and natural events (such as bark beetle infestations or wildfires) to the resources are considered in the analysis [PR 2527, pp. 49, 77, 78, 113, 133, 247, 256, 370, 371, 372, 374, 406, 430, 436, 439, 448]. Chapter 3 of the FEIS further describes the affected environment for all action alternatives [PR 2527, pp. 45-453]. A change in a resource may be used in an analysis to identify trends or patterns; however it is the effect of the alternatives on the existing condition that is analyzed.

Finding: The Forest has followed law, policy and guidance in the analysis. The FEIS discloses the temporal boundaries for each resource analysis, including past human actions and natural events. Analysis considered how past human actions and natural events formed the existing conditions.

B. Effects – Economic

Contention 1.B.1: The appellants contend the agency failed to adequately consider the economic impacts of the decision in violation of NEPA. They assert that the agency deliberately left outfitter guide business data out of the economic analysis. They assert that the agency did not use the best available information on economic effects because it used its own study (IMPLAN) rather than the University of New Mexico's study "Economic Impacts of the Gila National Forest." The appellants contend the agency produced an economic report that erroneously concludes the closures won't have a substantial impact on regional employment or county revenue. The agency 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 appellants contend the conclusion drawn from the analysis has two flaws. First, the analysis 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 [Appeal, pp. 81-88; 91-95; 98-103].

Response: In accordance with NEPA, the agency established policy and principles for conducting economic and social evaluation of programs, resource plans, and projects. Social and economic evaluation provides responsible officials with information sufficient to support planning and management decisions (Forest Service Manual (FSM) 1970.2). Social and economic evaluations are conducted by or in concurrence with subject matter experts, and utilize generally accepted methods, practices and data relevant to the planning process and decision (FSM 1970.3). It is the Forest Service's policy that the responsible line officer determines the scope, appropriate level, and complexity of economic and social evaluations to meet overall objectives and policy. The cost and availability of social and economic data may be considered when determining scope (FSM 1970.6). Information and results from the social and economic

analyses have been considered in the responsible official's decision to select and implement the preferred alternative [PR 2526, p. 9].

The FEIS documented that there are 86 outfitter and guide operations that provide services on the Gila National Forest [PR 2527, p. 58]. The 2010 and 2011 National Visitor Use Monitoring (NVUM) data used to represent recreational visits and spending for estimating economic impacts [PR 2521, pp. 18-19] does not explicitly account for spending (and therefore impacts) on outfitters and guides. However, the analysis recognized that "*the changes proposed in motorized access could affect the outfitters operation and hunting opportunities provide*" [PR 2528, p. 65]. The economic analysis also discussed that "*outfitters may experience increased business in big game hunting and retrieval due to limitations on motorized retrieval*" [PR 2521, p. 20].

The agency employed best available scientific information in its analysis. Relevant literatures such as the 2007 University of New Mexico's study "Socioeconomic Assessment of the Gila National Forest"¹ have been considered and referenced in the agency's reports [PR 2521, pp. 5 and 19; PR 2527, p. 439 and 440]. A more targeted analysis was conducted by the agency in order to adequately evaluate the effects across proposed action and alternatives in the FEIS, as well as to adhere to the best available scientific information requirement. The 2007 UNM study utilized National Visitor Use Monitoring (NVUM) recreation visitation estimates from 2006, and IMPLAN data from 2002 [PR 1872, p. 87]. Consistent with FSM 1970.3, the agency used the best available data at the time of its analysis – 2011 NVUM and 2010 IMPLAN data [PR 2521, pp. 18-19]. More importantly, while the UNM study estimated the overall impacts of the Gila NF within the four-county study area; the agency's analysis targeted the estimations according to different motorized opportunities across alternatives in order to adequately consider the effects of the proposed action and alternatives in the FEIS.

The economic analysis did not omit effects – direct, induced and indirect – derived from visitor spending. The NVUM visitor expenditure profiles specific to the Gila NF formed the underlying basis of the agency's analysis [PR 2521-24, p. 39; PR 2521-17, pp. 23-25; PR 2521-18, pp. 22-25]. The total employment effects consisted of the summation of direct, indirect as well as induced impacts of the travel management alternatives [PR 2527, p. 446; PR 2521, p. 19].

The FEIS estimated employment and income effects sensitive to the proposed action and alternatives – changes in motorized recreation opportunities. When these effects are viewed within the context of the regional four-county economy [PR 2521, pp. 11-13], the changes in employment and income are equivalent to less than one-third of 1 percent in the local economy [PR 2521, pp. 20-21; PR 2527, p. 446]. It is appropriate to examine these effects in the context of the larger regional economy. As the appellants pointed out, it is important to include induced and indirect effects of visitor spending. Employments, income and other economic factors linked to Forest Service managements do not occur in a vacuum. All economic activities such as visitor spending trigger ripple effects across the larger regional economy, creating additional indirect and induced effects [PR 2521, p. 19] both in and outside of the immediate spending area. Input-Output models such as IMPLAN are capable of estimating those effects in the four-county analysis area (Catron, Grant, Hidalgo, and Sierra counties in New Mexico). These counties

¹ The title of the study is not 'Economic Impacts of the Gila National Forest' as purported by the appellants; rather, it is titled "Socioeconomic Assessment of the Gila National Forest."

composed the primary project assessment area for the social and economic analysis. The largest incorporated area within the assessment area is Silver City (population 10,330) [PR 2527, p. 435]. In sum, it is appropriate to view the economic effects in the context of the larger regional economy.

Finding: The FEIS did not omit visitor spending from its analysis, and it is appropriate to view the economic effects in the context of the larger economy. The agency adequately analyzed and considered the economic effects of the decision using best available scientific information consistent with NEPA. Review of this issue finds no violation of law, regulation, or policy.

Contention 1.B.2: The appellants contend the agency failed to consider the economic impact from the catastrophic fires and state the analysis should have examined the loss of tourist spending and lodging receipts. They claim that this change is permanent in terms of the timeframe of the planning, and will have long term effects on visitation and recreation spending. The GNF study fails to consider that the fire made part of the forest unusable for recreation. This reduction makes the opportunity to use the remaining forest even more important and valuable. The appellants also contend the economic analysis fails to mention the removal of the historic Catwalk in Glenwood [Appeal, pp. 88-90].

Response: The cost and availability of social and economic data may be considered when determining scope, according to Forest Service direction [Forest Service Manual (FSM) 1970.2]. Detailed analysis of economic impacts of wildfires (e.g., 2012 Baldy-Whitewater fire), including regression analysis as demonstrated in past Forest Service research is beyond the resource and time constraints of this travel management decision. Mitigation of past wildfire impacts was not identified as a significant issue in the FEIS [PR 2527, pp. 9-10], and travel management decisions, designed to meet the purpose and need, therefore do not focus on altering the economic impacts of past wildfires.

There are numerous factors in past, present, and the foreseeable future that could affect the public's recreational opportunities. Future wildfires are likely to occur on the Forest, as well as other areas, but it is not possible to project the location or impacts of those fires. It would not be effective to tailor a travel management plan to address the impacts of specific fires, but instead develop a plan that provides for balanced recreational opportunities and motorized access that accommodates a variety of future uncertain events and conditions over long-term. According to the FEIS [PR 2527, p. 78], 'alternatives emphasizing a mix of both motorized and non-motorized recreation opportunities' are analyzed. The ROD [PR 2526, p. 3] states, "the designated motorized roads and trails open to the public ... provide the access needed for ...the public."

Recent wildfires have impacted specific areas, such as areas around Glenwood NM, implying potential shifts in motorized recreation demand to other areas. Current closures in place for fire areas, including restoration efforts, as well as closures in substitute areas of the Apache-Sitgreaves NFs due to fire are considered in the FEIS section regarding recreation-motorized routes [PR 2527, p. 77-78]. The FEIS acknowledges that some closures may persist for years. The FEIS considers the temporary closure of the catwalk trail [PR 2527, p. 77] and recognizes that the closure will be lifted as soon as safety conditions warrant [PR 2527, p. 93]. Decisions about re-installing the actual steel catwalk itself are outside the scope of this decision.

The proposed travel management plan is expected to provide substitute opportunities in other areas of the Forest during the time of the fire related closures (projected to be ‘several years’) [PR 2527, pp. 77-78]. However, the recreation section of the FEIS acknowledges that all action alternatives have the potential of contributing to cumulative losses in motorized recreation opportunities throughout the forest lands in the Southwestern Region and New Mexico [PR 2527, p. 79]. The cumulative effects for economic analysis considered other areas within Arizona and New Mexico as possible substitutes for recreational opportunities. The analysis concluded that the cumulative effect of implementing travel management decisions across Forest Service and BLM lands are generally resulting in fewer opportunities for OHV use that can change the relative contributions of motorized and non-motorized recreation to local economic activity beyond what is estimated [PR 2527, p. 447; PR 2521, p. 25].

Finding: The agency adequately analyzed and considered the cumulative effects of the decision using best available scientific information consistent with NEPA.

Contention 1.B.3: The appellants contend the agency report grossly underestimates the impact of road closure by assuming the effects are only on motorized recreation and failing to consider the effects of closures on non-motorized use [Appeal, pp. 90-91].

Response: The analysis recognized that other forest activities, such as non-motorized and wilderness recreation, may be more attractive to additional users, as conflicts with off-road motorized users become less likely with the implementation of the travel management plan [PR 2521, p. 20]. Because visits associated with activities that involve only non-motorized elements are held constant across alternatives, the FEIS [PR 2527, p. 447] acknowledges that differences in recreation-related employment and income between Alternative B and action alternatives are likely over-stated. However, although the focus of the economic analysis was on the motorized recreation-related employment and income effects by alternative, additional activities have been incorporated. This stemmed from the understanding that many of the recreation activities could include both motorized and non-motorized elements, for example, hunting, fishing, and camping, and other activities requiring some road access [PR 2521, p. 29]. By including portions of those recreation visits (using a percentage between 25 to 75 percent) into the motorized category, motorized visits accounted for 26.3 to 49.5 percent of all recreation visits in the Gila NF [PR 2521, p. 30]. The reasonable ranges in employment and income results reflect the above percentages for motorized recreation [PR 2521, pp. 30-31]. Further, the total recreation-related (which included all non-motorized visits) economic effects (in terms of employment and labor income) were estimated and included in the economic analysis [PR 2521, p. 20].

Finding: The economic analysis is appropriate, meets the needs of the FEIS, and provides adequate information in terms of economic effects across alternatives in order for the decision maker to evaluate the range of alternatives.

Contention 1.B.4: The appellant contends the agency treats the economic effects as linear: more miles equal more economic activity; fewer miles equal less economic activity. They argue that studies show the effect is not linear and that there is no demonstrated correlation between miles and dollars at all, let alone a linear one. They conclude the agency is making declarative statements with no supporting evidence [Appeal, p. 94-98].

Response: Social and economic evaluation provides responsible officials with information sufficient to support planning and management decisions (FSM 1970.2). It is Forest Service policy that the responsible line officer determines the scope, appropriate level, and complexity of economic and social evaluations to meet overall objectives and policy. The cost and availability of social and economic data may be considered when determining scope (FSM 1970.6).

The precise connection between motorized opportunities and visitation is uncertain. The adoption of non-linear assumptions about the functional form of such relationships requires information about how the rate of change in visitation varies for this function that cannot be determined with available information [PR 2521, p. 18]. Given data and resource limitation, the simplest and most reasonable and defensible assumption of a linear relationship between motorized opportunities and motorized visitation is least likely to bias the analysis toward either motorized or non-motorized interests [PR 2527, p. 446; PR 2521, pp. 18-19]. In doing so, the results as presented in the FEIS and specialist report display the relative effects of recreation-related employment and income by alternative [PR 2521, p. 20-21], thus providing the decision maker with information to support planning decision consistent with agency policy.

Finding: The level and complexity of the analysis was appropriate to meeting the overall objective – provide the responsible officials with sufficient information to compare alternatives and inform the decision.

Contention 1.B.5: The appellants contend there is a major unexplained change in final numbers in the Final Social Economic Report. The analysis in the Final Social Economic Report has greatly increased the number of jobs (from 3 to 73-138) and the income for motorized recreation (from \$64,243 to \$1.5-2.9 million). The appellants question the credibility of a report that has 100 percent variability within its own figures, and is 2400 percent different from its prior version [Appeal, pp. 102-103].

Response: It is agency policy that social and economic evaluations are conducted by or in concurrence with subject matter experts, and utilize generally accepted methods, practices and data relevant to the planning process and decision (FSM 1970.3). The cost and availability of social and economic data may be considered when determining scope (FSM 1970.6). The social economic specialist reports considered and employed best available data and relevant methodologies as they became available to the subject matter expert.

Updated data and modeling methodology became available during the time period between the DEIS and FEIS. The economic analysis supporting the DEIS was completed in 2010, which utilized NVUM visitation data and regional economic model/data system from 2006 [PR 1872, p. 6]. The economic analysis supporting the FEIS was completed in 2013, utilizing NVUM visitation data from 2011 and regional economic model/data system from 2010 [PR 2521, p. 4].

NVUM data revealed that recreation visitation on the Gila NF differed greatly between surveys conducted in 2006 and 2011. Total estimated recreation site visits to the Gila National Forest was 398,000 from the 2006 NVUM data [PR 1872, p. 9]; while the 2011 NVUM data showed a total of 699,000 site visits [PR 2527, p. 58].

The economic analysis supporting the DEIS modeled motorized recreation visits differently than the analysis supporting the FEIS. The economic analysis in the DEIS only accounted for those activities explicitly labeled as motorized into the motorized recreation category: OHV use, driving for pleasure, snowmobiling, and other motorized activities [PR 1872, pp.23-24]. The FEIS adjusted the accounting criteria by including additional activities into the motorized category. This stemmed from the understanding that many of the recreation activities could include both motorized and on-motorized elements, for example, hunting, fishing, and camping, and other activities requiring some road access [PR 2521, p. 29]. By including portions of those recreation visits (using a percentage between 25 to 75 percent) into the motorized category, motorized visits accounted for 26.3 to 49.5 percent of all recreation visits in the Gila NF [PR 2521, p. 30]. The reasonable ranges in employment and income results reflect the above percentages for motorized recreation [PR 2521, pp. 30-31].

The applications of updated data and methodologies contributed to the differences in results exhibited between the DEIS and FEIS. Various limitations on economic modeling, data, and methodologies were also documented [PR 2521, pp.18-19 and pp. 29-31; PR 2527, p. 443].

Finding: The social economic specialist reports considered and employed best available data and relevant methodologies as they became available to the subject matter expert. The analysis is appropriate, meets the needs of the FEIS, and provides adequate information in terms of economic effects across alternatives in order for the decision maker to evaluate the range of alternatives.

C. Effects – San Francisco River

Contention 1.C.1: The appellants contend that social values for the San Francisco River are not mentioned anywhere in the FEIS or underlying reports. Social values are not in the original Recreation report, the revised Recreation WSA/IRA report, and are not in the Social-Economic report. The appellants assert that the only concerns addressed in the FEIS are from one side, the side that wants motorized use banned. There is not one single statement speaking to the value of the local traditional uses, and the unique value of the San Francisco River to local residents [Appeal, pp. 105-106].

Response: The section on proposed changes to motorized access within lower San Francisco WSA by alternative was introduced by a discussion on the controversial nature of use in the corridor. The FEIS, the ROD and the Recreation WSA/IRA report disclose information on social values of the area. Different people place different values upon the use of the lower San Francisco WSA; some wish to see more effective implementation of the non-motorized corridor, while some wish the use could continue. The range of opinion and the concerns raised were considered in developing the proposed action and in the development of alternatives [PR 2516, p. 30; PR 2527, p. 137; PR 2526, p. 6]. Similarly, the Social/Economic report discusses lifestyles, values, beliefs and attitudes. However, the discussion in the Social/Economic report is more general to differing public values around motorized use and access itself, as opposed to values specifically around the lower San Francisco River area [PR 2521, pp. 9-10; PR 2528, p. 445].

The lower San Francisco River area is located within the Lower San Francisco River inventoried roadless area (IRA). IRAs are managed for nine Roadless Characteristic Resources or features, so the analysis on IRAs focuses on the effects of each alternative on each Roadless characteristic [PR 2516, pp. 1-26; PR 2528, pp. 114-134]. The lower San Francisco River area is also located within the Lower San Francisco River Wilderness Study Area (WSA). A WSA is an area that Congress deemed worthy of consideration by Congress for wilderness designation. The Gila National Forest Plan recommends that the area not be designated as wilderness, but until Congress acts on the recommendation, the Forest manages the WSA in a manner as to prevent impairment of the area's suitability for wilderness designation [PR 2516, p. 27; PR 2528, pp. 134-135]. As such, the analysis on the WSAs focuses on the effects of each alternative on the four qualities of wilderness character [PR 2516, pp. 33-41; PR 2528, pp. 134-145].

The ROD explains the responsible official's rationale in making her decision. Regarding the lower San Francisco River, the responsible official felt that Alternative G "is the best choice to provide public access to the San Francisco River, continue the parking and camping opportunities currently used near the river, and greatly reduce the impacts to resources adjacent to or along the San Francisco River" [PR 2526, p. 6].

Finding: Social values were discussed in the FEIS and in some of the underlying reports. The analysis is focused on effects to roadless characteristics and to wilderness character, but the responsible official did consider the differing social values around the area when making her decision.

Contention 1.C.2: The appellants state that the New Mexico Off Highway Vehicle Alliance (NMOHVA) had made a photographic record of homestead artifacts along the river between Glenwood and Reserve. They are concerned that the agency will "cleanse" the area of evidence of inhabitation and human use, in order to make it suitable for wilderness designation proposals [Appeal, p. 107].

Response: This is speculation, and falls outside the scope of Travel Management. There is no evidence in the FEIS that the agency is considering removal of the homesteads and artifacts. Removing artifacts and "cleansing" an area of evidence of human use is contrary to the laws and policies of the agency.

Finding: The appellants concern is noted, but it is speculation and falls outside the scope of Travel Management.

Contention 1.C.3: The appellants contend the analysis is entirely obsessed with demonizing motorized use and the uses and access that are so important to the community. The analysis portrays the area solely in terms of IRA's, WSA's, wilderness characteristics, and the usual recitation of "potential" resource issues. There is no social analysis, there is no mention of any historic roads protected under the National Historic Preservation Act (NHPA) [Appeal, pp. 107].

Response: The FEIS recognizes the important role vehicles play in people's enjoyment and use of their National Forest and reiterates that motor vehicles are a legitimate and appropriate way for people to enjoy their National Forests – in the right places and with proper management.

Driving a vehicle is recognized as an important part of virtually every activity on the Forest. The ROD, FEIS and Final Recreation Specialist Report discuss the importance of motorized recreation, provide a description of the existing condition and examine the provision of recreational opportunities in detail [PR 2515; PR 2527; PR 2516]

The section on proposed changes to motorized access within lower San Francisco WSA by alternative was introduced by a discussion on the controversial nature of use in the corridor. The FEIS, the ROD and the Recreation WSA/IRA report discloses information on social values of the area. Different people place different values upon the use of the lower San Francisco WSA; some wish to see more effective implementation of the non-motorized corridor, while some wish the use could continue. The range of opinion and the concerns raised were considered in developing the proposed action and in the development of alternatives [PR 2516, p. 30; PR 2527, p. 137; PR 2526, p. 6]. Similarly, the Social/Economic report discusses lifestyles, values, beliefs and attitudes. However, the discussion in the Social/Economic report is more general to differing public values around motorized use and access itself, as opposed to values specifically around the lower San Francisco River area [PR 2521, pp. 9-10; PR 2528, p. 445].

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The ROD explains the responsible official's rationale in making her decision. Regarding the lower San Francisco River, the responsible official felt that Alternative G "is the best choice to provide public access to the San Francisco River, continue the parking and camping opportunities currently used near the river, and greatly reduce the impacts to resources adjacent to or along the San Francisco River" [PR 2526, p. 6].

The National Historic Preservation Act (NHPA) does not require the "protection" of cultural resources. Section 106 of NHPA requires that the agency "take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register" [PR 1868-21, p. 59]. The FEIS identifies "historic roads" as one of the types of cultural resources found on the forest on page 408, and again under Cumulative Effects on page 431 [PR 2527, pp. 408, 431]. The Specialist's Report also identifies historic roads as a site type [PR 2523-00, pp. 5, 40]. The Forest has recorded more than 6500 cultural resources [PR 2523-00, p. 6] and some of these are roads [PR 2523-00, p. 5]. Regardless of type of site, all are subject to NHPA requirements. The FEIS discloses that it complies with NHPA on page 453 [PR 2527, p. 453]

Finding: The FEIS recognizes the important role vehicles play in people’s enjoyment and use of their National Forest and reiterates that motor vehicles are a legitimate and appropriate way for people to enjoy their National Forests. Social values were discussed in the FEIS and in some of the underlying reports. The analysis is focused on effects to roadless characteristics and to wilderness character, but the responsible official did consider the differing social values around the area when making her decision. The Forest identifies historic roads as a type of cultural resource. All sites, including historic roads, are subject to the provisions of NHPA.

Contention 1.C.4: The appellants contend the FEIS fails to disclose the enormous and powerful flood water flows that periodically scour the valley. The magnitude and force of seasonal flows create massive changes in soils and configurations in the riverbed. They assert that the effects from motorized use are absurdly trivial compared to the natural events. The appellants conclude the analysis fails to present impacts from motorized use in the proper context of comparison [Appeal, pp. 108-112].

Response: Flooding is addressed throughout the FEIS and is primarily related to the effects of wildfire [PR 2527, p. 93], climate change [PR 2527, p. 170] and motorized vehicles in riparian and wetland habitat [PR 2527, p. 236]. The effects of flooding within the Lower San Francisco drainage are predicted to remove existing travel routes within the next ten years [PR 2527, p. 140]. It is assumed that the effects of roads on the peak flows on streams and the subsequent conditions of aquatic habitat are minor. Research on small watersheds typically has shown that peak flows do not increase until more than 12 percent of the watershed is covered with roads and other impermeable surfaces [PR 2514, p.49].

The direct and indirect creation of drainage pathways that follow motorized route trends can alter surface water pathways of both the immediate stream, as well as its associated high water pathways, throughout the 100-year floodplain, during periods of flooding [PR 2527, p. 236].

Finding: The FEIS addresses the effects of flooding in the context of disturbances and roads under existing and future climates. It is not within the scope of the project to compare the magnitude of floods caused by any one type of disturbance.

D. Response to Comments

Contention 1.D.1: The appellants contend that some responses to comments misrepresented the comments, omitted issues, were irrelevant to the summary statement, or were disconnected from the original comment. Some comments were co-listed or aggregated and the examples and conclusions were disconnected from the argument. Responses did not conform to CEQ guidelines [Appeal, p. 47].

Response: The CEQ regulations for implementing NEPA at 40 CFR 1503.4(a) require that 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: (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 analysis; (4) Make factual corrections; (5) Explain why

the comments do not warrant further agency response, citing sources, authorities, or reasons which support the agency's position and, if appropriate; indicate those circumstances which would trigger agency reappraisal or further response. And, the regulations at 40 CFR 1503.4(b) provide for agencies to summarize comments received on draft statements where the response has been exceptionally voluminous.

Forest Service Handbook 1909.15 Chapter 20 gives guidance that when the responsible official determines that a summary of responses is appropriate, the summary should reflect accurately all substantive comments received on the draft EIS.

Additionally, the CEQ regulations required that all substantive comments be attached to the final statement regardless of whether the comment is thought to merit individual discussion (40 CFR 1503.4(b)). While the Responsible Official must demonstrate consideration of comments, not incorporating a comment from the public into the selected alternative does not mean the comment was not considered.

In December 2010, the agency published the Draft Environmental Impact Statement (DEIS) for Travel Management on the Gila National Forest. The availability of the DEIS was announced in the Federal Register on January 7, 2011 [PR 1865]. The public was also advised of the availability via newspaper articles, legal notice and open house schedules [PR 1968, 1969, 1979, 1980, 1981, 2006, 2007, 2008, 2009, 2010, 2025, 2026, 2121], and public meetings [PR 2048, 2061; 2092, 2138]. The appellants submitted extensive comments on behalf of New Mexico Off Highway Vehicle Alliance (NMOHVA), Mogollon-Apache-Gila Riders (MAG), Gila Roads and Trail Alliance (GRATA), and Gila Trail Riders Associations (GRTA) [PR 2344-016]. In part, the appellant's comments expressed concerns related to the adequacy and accuracy of the information presented in the DEIS, concerns related to: the description of existing condition and affected environment, assumptions and methodology, and effects analysis. All comments, including those submitted by the appellants were considered. Because the comments received from the appellants and many other interested individuals and parties were so voluminous, the Forest appropriately summarized and responded to the comments received [PR 2528, pp. 533-771]

The comments are categorized into a topic, summarized and then a response was provided. Many comments are grouped together into similar topics. The response to comments provides clarification for the commenter and in some cases has led to updates and new information added into a specialists report and or the FEIS.

Upon review of the Appendix B there are six comments from the appellants that result in a clarification for the commenter, or an update to a specialists report and or the FEIS [PR 2528, pp. 731, 732, 733, and 734]. Please see Letter/Comment # 03032011-17-20 and the following response from the Forest as an example.

“The watershed and soils specialist report discusses impacts related to routes and impacts related to off-highway travel, indicating that current impacts are minimal. See pages 45 and 99. The report and FEIS will be further clarified to ensure that these effects are clearly stated. The watershed and soils specialist report displays potential effects to water quality as a result of routes. It is not attempting to determine why impairments to water quality are occurring.

The State of New Mexico Surface Water Quality Bureau is responsible for this determination.

The water quality information presented in the summary table on page 20 was extracted from the following website <http://www.nmenv.state.nm.us/swqb/303d-305b/>. The report does not attempt to assign importance on any one factor more than another. As this is unclear, it will be clarified in the final watershed and soils specialist report and in the FEIS.”

In reaching her decision, the responsible official considered the criteria, purpose and need for the action (to comply with the TMR), issues and range of alternatives, and environmental consequences. She also considered public comments including input from Federal, State, local and tribal governments [PR 2526, all].

Finding: The Forest complied with NEPA and appropriately considered specific comments submitted by the appellants.

Contention 1.D.2: The appellants contend that they could not find responses to the following list comments in appendix B of the FEIS. These comments were found in a document that listed the comments by subject, but there were no responses. Responses to other comments were inadequate or did not address all of the issues in the comment. The appellants provided detailed discussion regarding each letter and the comments submitted.

03032011-17-2, issue 2 [Appeal, pp. 18-19]
03032011-17-4, [Appeal p. 46]
03032011-17-6, [Appeal, pp. 48-50]
03032011-17-8 [Appeal, pp. 58-61]
03032011-17-9 [Appeal, p. 62]
03032011-17-14 [Appeal, p. 104]
03032011-17-17 [Appeal, p. 105]

Response: CEQ regulations 40 CFR 1503.4 (a) address how an agency preparing an FEIS 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: (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 analysis. (4) Make factual corrections. (5) Explain why the comments do not warrant further agency response, citing sources, authorities, or reasons which support the agency’s position and, if appropriate; indicate those circumstances which would trigger agency reappraisal or further response

Additionally, the CEQ regulations require that all substantive comments be attached to the final statement regardless of whether the comment is thought to merit individual discussion (40 CFR 1503.4(b)).

All comments received during the DEIS 60-day comment period, including those submitted by the appellants [PR 2344-016], are in the project record. The receipt of comment letter is recorded in Appendix C of the FEIS [PR 2528, p. 816] and referred to as #03032011-17-2.

The interdisciplinary team of resource professionals read and considered all of comments received on the DEIS. Based on comments received, modifications were made to one or more of the action alternatives as described in Appendix A [PR 2528, pp. 507-531]. The response to substantive comments is found in Appendix C [PR 2528, pp. 773-828].

The responses to the appellant's comments are found in Appendix B [PR 2528]. The comment letter # 03032011-17-2 is subdivided into topics and assigned alpha numeric identification; #03032011-17-2a through #03032011-17-2o. Upon review of the appellants comments listed above in the contention and review of the Appendix B response to comments, the summary statements provided by the Forest are brief summaries of voluminous comments made by the appellants [PR 2528, pp. 543, 601, 602, 603, 604, and 660]. The responses provided by the Forest, although sometimes brief and answered collectively with similar comments, are found to be appropriate and meet the law, policy, and regulations.

Finding: The Forest followed law, regulation, and policy in the process they used to evaluate and respond to the comments in the FEIS. Upon review, all comment letters were determined to be contained and responded to in the project record. The summary and response to the appellant's comments are contained in the FEIS and the project record.

E. Methodology and Scientific Integrity

Contention 1.E.1: The appellants contend the agency did not respond to their criticism of the riparian buffer zone methodology used in the Water and Soils Report. The forest misapplied the science presented in Belt et al. (1992) to establish buffer zones. Belt et al. uses the variable width method, not a single width as used in the FEIS. The appellants contend the methodology used in the watershed report to establish a 600 foot buffer zone for riparian areas is flawed [Appeal, p. 14-22].

Response: According to 40 CFR 1500.1(b), environmental information must be made available to public officials and the public before decisions are made and actions are taken. This information must be of high quality, and accurate scientific analyses are essential.

Regarding scientific information and accuracy, the 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).

Incomplete and unavailable information is addressed in 40 CFR 1502.22. Here, the regulations state that the agency shall include within the environmental impact statement: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts of the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

The Forest Service has not defined “best available science” in policy; instead, the agency works to fulfill regulation and policy aimed at analyzing the best and most relevant scientific data.

The Forest Service has met the intent of 40 CFR 1502.24 by creating an interdisciplinary team of resource professionals with the relevant education and experience appropriate for analysis and document preparation in their specialty areas [PR 2527, pp. 455-458]. Each specialist reviewed pertinent data, scientific studies, monitoring, and used professional judgment to draw conclusions about the effects of each alternative.

The Draft Watershed and Soils Report and Final Watershed and Soils Report present additional scientific references in addition to Belt et al 1992 to support the use of the buffer zones for the watershed analysis [PR 1834, p. 134; PR 2514, p. 73]. The 600 foot riparian risk zone buffer as discussed in the DEIS [PR 1834, p. 13] was not included in the FEIS.

Finding: The FEIS meets law, policy and regulation in the manner that science was applied to the analysis. The Forest insured scientific integrity by using science and methodology that is accepted in the scientific community.

Contention 1.E.2: In their comments on the DEIS, the appellants claimed the Water and Soils Report misrepresented the New Mexico State water quality information. The appellants contend the agency did not adequately respond to their concerns regarding manipulation of New Mexico Environment Department (NMED) data. The Watershed and Soils report does not list the other probable sources of impairment for the 12 stream reaches in question. NMED does not list OHV use as a probable source of impaired water quality, but the report does. The Water and Soils report invents causes and relationships regarding OHV use and water quality not included in the NMED table (table 6) in the report. The Water and Soils report exaggerates the blame NMED puts on OHV use as a probable source of water quality impairment. The appellants argue that the report fails to mention that (1) the NMED data comes from measurements taken in an environment that is affected by roads and off-road travel; (2) ignores effects of geothermal activity; (3) does not distinguish between wilderness and non-wilderness lands; and (5) does not include effects of roads not under Forest Service jurisdiction.

The appellants’ review of the data shows that OHV use is only a minor contributing source to water quality impairment, including water temperature. As a source, OHV use is primarily only coincidental with the major sources of impairment: silvicultural and fire suppression practices and grazing. The report focuses on OHV use and falsely attributes water quality impairment to OHV use. The appellants provided examples of misrepresentation of the data in the original comment letter and the appeal [Appeal, pp. 25-39].

Response: The Watershed and Soils report in citing the "State of New Mexico CWA 303 (d)/305(b) Integrated List and Report; 2012-2014 US EPA-Approved" (State of New Mexico 2012) identifies probable sources of impairment as either off-road vehicles or highway/road/bridge runoff [PR 2514, p. 29]. Probable sources listed for any particular water body have not been proven to be a source or the only sources of the identified impairment. It is based on qualitative field observations made by NMED field staff for assessment units sampled during rotational watershed surveys and watershed restoration projects. This is combined with knowledge of

known land management activities that have the potential to contribute to the identified impairment. Recreation, including off road vehicles is listed as one of the top ten sources of surface water quality impairment in New Mexico [PR 2514-41, p. 47]. The summary of probable sources of impairment of water quality within the Watershed and Soils Report objectively identifies multiple potential sources and not just off road vehicles [PR 2514, pp. 3-33] affecting water quality.

Geothermal activity and whether it is responsible for temperature-related impairments is outside the scope of this project [PR 2529-2534, p. 734].

The 6th Code Watershed, Soils, and Aquatics Cumulative Effects Analysis Report clearly addresses the impaired waters in wilderness and nonwilderness areas [PR 2508, p. 15]. Approximately 49 percent of impaired waters are found within wilderness areas and 51 percent are found in non-wilderness areas of the Gila National Forest.

All roads within a 6th code watershed that intersects the Gila NF were considered [PR 2508, p. 7] towards analyzing the road density. This includes roads that are under ownership other than the Gila NF, including county, state, and federal and adjacent National Forests. Road density and trails is an indicator of watershed condition. The effects of motorized use on watershed condition, and specifically water quality, are captured in the Summary of 2012-2014 State of New Mexico CWA 303(d) and 305(b) integrated list and report [PR 2514, pp. 30-32]. Of the 28 water bodies listed within and adjacent to the Gila NF eleven reaches have listed a probable source of impairment as either off-road vehicles or highway/road/bridge runoff [PR 2514, p. 29; PR 2509, pp. 202-205].

Finding: Information from the State Water Quality report is presented in a comprehensive and objective manner.

Contention 1.E.3: The appellants contend the methodology used to assess user conflicts and related impacts is faulty and that the agency did not respond to their specific issues with the methodology in a substantive and meaningful way, as required by CEQ regulations. The agency's responses to other comments on user conflict did not address their issues and concerns. The appellants provide numerous examples of inconsistencies in the responses and inadequate responses to their concerns and those of other commenters regarding user conflicts. The appellants contend that there is nothing in the TMR that tells the agency to consider user conflict [Appeal, pp. 40-45].

Response: The CEQ regulations require that, "*As part of the scoping process the lead agency shall: ... Determine the scope ... and the significant issues to be analyzed in depth in the environmental impact statement... [40 CFR 1501.7(a)(2)] ... Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review...*" [40 CFR 1501.7(a)(3)]. The Forest followed the NEPA regulations, conducted scoping, received comments, and identified issues [PR 2527, pp. 9-10]. User conflict was determined to be a significant issue during scoping [PR 1716, pp. 8-9]. However, user conflict was not identified as a significant issue that was used to develop the alternatives, or as a separate

indicator in the analysis [PR 2528, p. 628]; instead, it was identified as a concern related to the issue of motorized routes and the issue of areas [PR 2527, pp. 9-10].

The TMR requires the agency to consider user conflict when designating roads, trails, and areas. The TMR at 36 CFR 212.55(a) sets forth general criteria that must be considered by the responsible official in designating roads, trails and areas for motor vehicle use and specific criteria at 36 CFR 212.55(b) for designating motorized trails. In designating roads, trails and areas, the responsible official must consider “conflicts among uses of National Forest System lands.” In designating trails for motor vehicle use, the responsible official must consider, with the objective of minimizing, conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and conflicts among different classes of motor vehicle uses of National Forest lands or neighboring Federal lands, and others [PR 0029, p. 68289]. Furthermore, the TMR regulations implement Executive Orders 11644 and 11989, both of which direct Federal agencies to ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users on those lands, and to minimize conflict among the various uses of those lands [PR 0029, p. 68264].

As required by the TMR, user conflict is discussed in the recreation specialist report. The recreation report also explains the methodology used to address user conflict. Since there is no data available regarding user conflicts, “miles or proposed motorized activities has been use to estimate the risk of potential conflicts by alternative” [PR 2516, p. 17]. Comments regarding user conflict were responded to, and are consistent with each other [PR 2528, pp. 626-630]

Finding: The TMR requires the agency to consider user conflict when designating roads, trails and areas. Comments regarding user conflict were responded to, are consistent with each other, and are adequate per CEQ regulations.

Contention 1.E.4: The appellants contend that contrary to CEQ regulations, the FEIS failed to disclose reasons why any particular road was closed. There is no methodology disclosed for how any specific closure was decided [Appeal, pp. 48-50].

Response: Regarding scientific information and accuracy, the 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 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).

The TMR also does not require agencies to have a complete inventory of routes before completing the designation process [PR 0029, p. 68289].

The Forest shared its process for route designation [PR 0511-38], which is in compliance with the TMR and 40 CFR 1502.24. The process is also briefly explained in the response to comments: Many roads were visited on each district as part of the Priority 1 and 2 coarse filter inventory and stream crossing surveys. During development of the proposed action and the alternatives, an interdisciplinary team consisting of district rangers, resource specialists, and other field-going personnel systematically reviewed each road, trail, corridor and area one by one using the Forest GIS route information, natural and cultural resource information, other available land management information, and imagery [PR 2528, p. 612]. The Forest also received and considered site-specific input from the public [PR 2528, pp. 738; PR 0511; PR 1079; PR 1082; PR 1084; PR 1085]. The FEIS itself does not discuss each individual route that is proposed to be closed and why. However, information on specific routes can be found in the TAP and in the proposed action tables [PR 1796; PR 1283].

In compliance with 40 CFR 1502.24, assumptions and methodologies are listed within each resource area of the FEIS [PR 2527, pp. 46, 63, 86, 90, 166, 195, 233, 264, 381, 402, 411-413, and 443] and each of the resource specialist reports: 6th code Watershed, Soils and Aquatics Cumulative Effects Analysis [PR 2508], Final Roads Report [PR 2513], Final Watershed and Soils Specialist Report [PR 2514], Final Recreation Report [PR 2516], Recreation-Inventoried Roadless Areas and Wilderness Study Areas Report [PR 2517], Final Air Quality Specialist Report [PR 2518], Final Wildlife Report and Biological Evaluation [PR 2519], Final Invasive Species Specialist Report [PR 2520], Final Social and Economic Report [PR 2522], Aquatic Specialist Report [PR 2522], Final Cultural Resources Specialist Report [PR 2523], and the Final Sensitive Plant Species Report [PR 2535].

Finding: The FEIS is in compliance with CEQ regulations and with the TMR. The methodology for how any specific closure was decided was disclosed to the public.

Contention 1.E.5: The appellants contend the agency failed to use the tools and data that were readily available to assess the impacts of motorized use of roads. They argue that with the agency's GIS capabilities, it could have created maps to compare all sorts of data and look for correlations (Comment letter, 03032011-17-9) [Appeal, p. 62].

Response: According to 40 CFR 1500.1(b), environmental information must be made available to public officials and the public before decisions are made and actions are taken. This information must be of high quality, and accurate scientific analyses are essential. The statement should avoid including needless detail.

Regarding scientific information and accuracy, the 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 agency did use pertinent tools and data to assess the impacts of motorized use of roads, which included using GIS [PR 2509; 203; PR 1815-5; PR 1834-45; PR 1855-110; PR 1866-116; PR 2528, pp. 47, 114, 173, 188, 196, 237, 256, 384, 402, 411-412].

In compliance with 40 CFR 1502.24, assumptions and methodologies are listed within each resource area of the FEIS [PR 2527, pp. 46, 63, 86, 90, 166, 195, 233, 264, 381, 402, 411-413, and 443] and each of the resource specialist reports: 6th code Watershed, Soils and Aquatics Cumulative Effects Analysis [PR 2508], Final Roads Report [PR 2513], Final Watershed and Soils Specialist Report [PR 2514], Final Recreation Report [PR 2516], Recreation-Inventoried Roadless Areas and Wilderness Study Areas Report [PR 2517], Final Air Quality Specialist Report [PR 2518], Final Wildlife Report and Biological Evaluation [PR 2519], Final Invasive Species Specialist Report [PR 2520], Final Social and Economic Report [PR 2522], Aquatic Specialist Report [PR 2522], Final Cultural Resources Specialist Report [PR 2523], and the Final Sensitive Plant Species Report [PR 2535].

Finding: The Forest met law, policy, and regulation by using pertinent tools and data to assess the impacts of motorized use of roads, which included using GIS.

Contention 1.E.6: The appellants contend that with respect to the analysis on Chiricahua leopard frog (CLF), the FEIS has contradictory statements identifying roads as being a risk to habitat. They assert that 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. The appellants contend that they submitted responsible opposing viewpoints regarding CLF in their comments on the DEIS but the agency did not revise the analysis in the FEIS in response to the opposing viewpoints or present this information in the FEIS. They also contend the response ignores data and references provided by the appellants in their comment letter 03032011-17-10, regarding the leopard frog, vehicle collisions, and traffic data. The response also ignored the appellants' challenge to the science cited in the analysis (Fahrig et al. 1999) [Appeal, pp. 63-77].

Response: The appellants contend that the analysis of effects to the Chiricahua leopard frog is inconsistent and therefore arbitrary. Since the Chiricahua leopard frog is a listed species with designated critical habitat, the standard applied here is whether the provisions of the Endangered Species Act (ESA) Section 7(a)(2) have been met sufficient for the effects of the project on this listed species to be disclosed, and the action would not jeopardize the existence, nor adversely modify critical habitat, of the frog.

The Wildlife Specialist Report [PR 2535-23] analyzes effects to the frog [PR 2535-23, pp. 68-77] using the miles of roads within reasonable dispersal distance of occupied habitat. These results were summarized in the FEIS [PR 2527, pp. 304-310]. The Biological Assessment submitted to the U.S. Fish and Wildlife Service (USFWS) for consultation [PR 2150, pp. 97-105] found that effects of the action alternatives would be reduced, but would still create adverse impacts to the frog. The USFWS issued a Biological Opinion [PR 2535-28, p. 81] that determined the action would not jeopardize or adversely modify critical habitat for the Chiricahua leopard frog.

In regards to comment 03032011-17-10, the Forest response was appropriate. Although road density within range of occupied habitat was used as one of several indicators of effect, it is noted in the BA [PR 2150, pp. 103-104] and the Wildlife Specialist Report [PR 2535-23, pp. 13-17; 75-76] that the direct mortality associated with vehicle use was only one potential impact from vehicle use of roads.

Finding: The analysis of the effects to Chiricahua leopard frog was appropriate and the effects complied with Section 7(a)(2) of the ESA.

Contention 1.E.7: The appellants contend the responses to their comments do not acknowledge their criticism of the methodology to assess effects on dispersed camping or respond to the alternate methodology presented by the appellant. In their comments, the appellants stated, “The DEIS methodology causes it to severely understate the closure of dispersed camping and does not disclose the cumulative effects of the true degree of closure. Mileage and acreage numbers for dispersed camping were calculated only from ML-2 forest roads and 593 miles of county roads. The baseline for mileage excluded the agency’s ML-1 and decommissioned roads, and roads not under the jurisdiction of the agency. The disclosed camping opportunity, the reduction of camping opportunity and the statements of effects are drastically understated” [Appeal, pp. 78-80].

Response: The CEQ regulations at 40 CFR 1503.4 (a) address how an agency preparing an FEIS 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: (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 analysis. (4) Make factual corrections. (5) Explain why the comments do not warrant further agency response, citing sources, authorities, or reasons which support the agency’s position and, if appropriate; indicate those circumstances which would trigger agency reappraisal or further response

Additionally, the CEQ regulations require that all substantive comments be attached to the final statement regardless of whether the comment is thought to merit individual discussion (40 CFR 1503.4(b)).

Regarding methodology, the 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 CEQ regulations at 40 CFR 1508.7 define cumulative impact as: “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”

The Forest did acknowledge the comment that “cumulative effects of camping corridors are not analyzed. The DEIS severely understates the closure of dispersed camping and does not disclose the cumulative effects of the true degree of closure,” and agreed with it, stating that the “FEIS will update the cumulative effects analysis for the project regarding motorized dispersed camping” [PR 2528, p. 636].

In compliance with 40 CFR 1502.24, assumptions and methodologies in regards to recreation resources are listed in the FEIS [PR 2527, pp. 46, 63, 86, 90] and the resource specialist reports; Final Recreation Report [PR 2516], and Recreation-Inventoried Roadless Areas and Wilderness Study Areas Report [PR 2517].

One of the features of Alternative B (no action) is that the Forest would “continue to allow motorized dispersed camping throughout the forest (except in off-road vehicle restricted areas such as wilderness and research natural areas)” [PR 2527, p. 14]. The recreation specialist report says the same, stating that “currently on the Gila National Forest, 2,443,391 acres are open to motorized dispersed camping” [PR 2516, p. 59]. It is explained in the motorized routes section of the report that “there is approximately 2.44 million acres of National Forest lands outside of wilderness and other areas restricted to off-road vehicle use that is open to motorized uses” [PR 2516, p. 12]. This is the baseline.

The significant issues listed in Chapter 1 were used to develop alternatives to the proposed action (as modified). The action alternatives all approach the purpose and need differently. Only alternatives C, D, F and G propose designating motorized dispersed camping corridors. The location of the motorized dispersed camping corridors (i.e., what roads would have motorized dispersed camping corridors) and the width of the corridor varies by alternative [PR 2527, p. 16; PR 2516, pp. 63-65]. Motorized dispersed camping corridors are proposed along NFS roads, and along county roads that go through the forest.

The cumulative effects section explains that the “the change from open, cross-country travel to the use of designated motorized camping corridors has the potential to exclude places and areas where motorized dispersed camping has previously occurred in all action alternatives... [so] there would be a potential to affect motorized dispersed camping experiences and opportunities due to a more limited choice of motorized dispersed campsites with the potential to concentrate use” [PR 2516, p. 64]. Table MDC D1 in the recreation specialist report shows the miles of road and the acres of corridors for motorized dispersed camping by game management unit (GMU) by alternative [PR 2516, p. 99].

Finding: The Forest meets law, policy, and regulation and did acknowledge the comment, and updated the analysis and the cumulative effects sections in response. The Forest acknowledges that there would be a potential affect.

Contention 1.E.8: The appellants contend the agency failed to adequately respond to their criticism of agency methodology for use of a buffer zone. In their comments on the DEIS, the appellants contended the action alternatives improperly propose to close some undisclosed amount of routes by creating a ½ mile buffer zone border for ‘reasons’ which include wilderness areas, roadless areas and trails that are legally open to motorized use. It also proposes closures for unspecified ‘noise’ and ‘user conflict’ reasons although 60 percent of the forest is managed for motorized use under the Forest Plan (Comment 03032011-17-14) [Appeal, p. 104].

Response: The Forest did respond to the comment. The summary statement of the comment on the DEIS is as follows: “The ½ mile buffer in the recreation section is not appropriate for the analysis and is not backed by citations or science.” The response is as follows: “We agree that the ½ mile buffer is not the appropriate analysis tool for the recreation section. The alternatives considered and analyzed in the DEIS do not include travel buffer zones in areas surrounding wilderness. However, the DEIS includes analysis on the effects and impacts of travel in the area adjacent to wilderness. The analysis will be updated in the FEIS” [PR 2528, p. 618].

The recreation specialist report uses “roads leading to wilderness boundary to within a ¼ mile” as a motorized route indicator for wilderness areas. The report explains that “the ¼ mile distance was chosen as an indicator to accommodate the width of NM-15, a road corridor within the Gila Wilderness, and FR 150, a road corridor between the Gila Wilderness and the Aldo Leopold Wilderness areas...this ¼ miles distance indicator was not chosen to be a buffer, but to identify and illustrate the effects of proposals that are adjacent to a wilderness boundary” [PR 2516, p. 40]. Otherwise, the recreation specialist reports do not use a ½ mile buffer zone in the analysis [PR 2516, all; PR 2517, all].

Finding: The agency responded to the comment. The recreation reports do not use a buffer zone in the analysis, other than using a ¼ mile distance indicator to aid in describing effects adjacent to a wilderness boundary (not a buffer).

Contention 1.E.9: The appellants contend the FEIS 6th Code Watershed, Soils and Aquatics Cumulative Effects report was not included with the DEIS, therefore the public did not have the opportunity to comment on the methodology and scientific integrity of the report. The appellants note a number of issues they have with the report.

- a) This report does not distinguish between wilderness and non-wilderness conditions, except in regard to non-attainment of state water quality standards. The analysis of impacts on soil and water conditions is faulty because soil and water conditions in wilderness were improperly included in the effects analysis. The report concludes that closing roads will result in improvements in resource conditions. The conclusion presumes that impaired soil and vegetation conditions are caused by roads and motorized use, even though 49 percent of impaired waters are found in wilderness areas [Appeal, p. 29; pp. 119-120].

Response: Analysis can differ between the DEIS and the FEIS based on new information, additional analysis, comments, or correcting factual errors. According to 40 CFR 1502.9(c)(1)-(2), supplements to a draft or final environmental impact statement should be issued when there are: substantial changes to the proposed action; new circumstances or information relevant to

environmental concerns, the proposed action or its impacts; and when the agency determines that doing so will further the purposes of NEPA.

The watershed and soils specialist report does not determine cause and effect relationships with impaired stream listings on the Forest. Thus, an analysis was not done to correlate all land uses and activities, within and outside of wilderness, and their potential impacts on impaired streams [PR 2528, pp. 731-738]. Activities that were addressed in the cumulative effects analysis include those that occur forestwide including mining, grazing, fire, vegetation management and road density. However, only those watershed condition factors that are impacted by motorized routes, motorized disperse recreation and motorized big game retrieval and motorized areas were used in non-wilderness analysis [PR 2508, p. 18]

Finding: The Watershed and Soils Specialist Report outlines the sources of information in relationship to impaired waters in nonwilderness areas.

- b) There is no rational connection between the analysis and conclusion regarding effects on water quality from road density and stream crossings, contrary to CEQ regulations (40 CFR 1508.8(b) and 40 CFR 1502.16(a)). The report states that there is no correlation between water quality and road density or stream crossings, yet concludes that reducing roads and stream crossings will benefit water quality. Wilderness and non-wilderness areas are combined, and roads are a very small part (.0002 percent) of the total area of the forest [Appeal, pp. 120-121].

Response: The analysis did not discriminate between wilderness and non-wilderness areas. This forest-level analysis looked at the relative risk of route impacts on watershed and soils resources, using science-based indicators and accepted methodologies as described in the watershed and soils section in Chapter 3 of the FEIS [PR 2527, pp. 195-196]. The reduction or elimination of vehicle traffic on a road or a trail near a stream will result in less sediment delivered from the road to the stream over time [PR 2527, p. 195]. It is acknowledged that overall road density forestwide is low however roads are one of the larger contributors of sediment to the drainage network. With many roads across the forest lacking adequate drainage features, roads have been identified by the State as being one probable source of impairment for some of these streams [PR 2527, p. 225].

Finding: The analysis does provide references and State of New Mexico water quality reports that indicate roads are a probable source of sediment impacting water quality.

- c) The 6th Code specialist report refers to two new guides used to assess watershed conditions- (1) *Implementation Guide for Assessing and Tracking Changes to Watershed Condition* and (2) *Watershed Classification Technical Guide*. These new guides are not listed as references in the FEIS [Appeal, pp. 121-122].

Response: The Watershed Condition Classification Technical Guide, 2011; publication FS-978 is in the References section of the 6th Code Watershed, Soils, and Aquatics Cumulative Effects Analysis Report [PR 2508, p. 31]. The Implementation Guide for Assessing and Tracking

Changes to Watershed Condition, Review Draft, 2010 is referenced in the Draft Watershed and Soils Specialist Report [PR 1834, p. 126].

Finding: Both references are located in the project record.

- d) The 6th Code report omits a statement about the existing condition and overall trend of aquatic and riparian habitat. Omission of this statement about the existing condition is misleading and is not consistent with the FEIS. The report leads readers to believe that “upward improvements” in aquatic and riparian habitat result from the elimination of motorized use under the action alternatives only. It does not report that overall trends are stable or improving under the no action alternative. And thus does not accurately portray the overall trend for aquatic habitat [Appeal, p. 122].

Response: The FEIS addresses the condition and trend as related to the assessment of aquatics resources and specifically riparian, wetlands and upland wet meadows from the use of the Proper Functioning and Condition (PFC) process [PR 2527, p. 190]. Whereas, the 6th Code Watershed, Soils, and Aquatic Cumulative Effects Analysis Report addresses aquatic habitat as an indicator within the Watershed Condition Classification framework [PR 2508, pp. 19-21]. The PFC process is a direct, site specific measure within the streamcourse of the riparian area whereas the aquatic habitat indicator is part of a broad integrated, multi-factor watershed approach within the Watershed Condition Classification process. Both sources of information are essential to the overall analysis of aquatic and riparian resources. The comparison of alternatives within the 6th Code Watershed, Soils, and Aquatic Cumulative Effects Analysis Report clearly discloses that the less motorized disturbance to watershed, soil and aquatics resources the less opportunity for negative cumulative impacts to occur, and the greater opportunity for beneficial effects [PR 2508, p. 25]. Furthermore, as described in the 6th Code Watershed, Soils, and Aquatic Cumulative Effects Analysis Report for the No Action alternative, the contribution to cumulative impacts of watershed, soil and aquatic resources at the 6th code watershed scale would continue to occur at the current rate with little to no increases expected.

Finding: The overall status and trend of the aquatics resources is disclosed and there is no inconsistency between the description of aquatics resource between the FEIS and 6th Code Watershed, Soils, and Aquatic Cumulative Effects Analysis Report.

- e) The 6th Code report does not discuss the limitations of the methodology used in the above guides and appropriate use of the methodology for specific areas. It is not clear how or if the guidelines were adapted for local conditions. It also appears that negative effects from roads and trails were given too much weight. The appellant lists six specific problems with the 6th code report (p. 123). These problems are related to the use of the technical guides to assess conditions. The appellants also provide quotes from the guides regarding use and adaptation of the methods to local conditions [Appeal, pp. 123-124].

Response: The 6th code Watershed, Soils, and Aquatics Cumulative Effects Analysis report explicitly states the watershed condition classification system is a national forest-based, reconnaissance-level evaluation of watershed condition. It offers a systematic, flexible means of classifying watersheds based on a core set of national watershed condition indicators. The system

relies on professional judgment exercised by Forest interdisciplinary teams, existing data to the extent available (range, riparian, road, aquatic, timber, fire), local knowledge, GIS data, and national databases to the extent they are available [PR 2508, pp. 9-10]. The watershed condition ratings for the Gila NF are disclosed in the same report [PR 2508, pp. 177-182]. Furthermore, the limitations of the watershed condition classification are disclosed [PR 2508, p. 10].

Finding: The limitations of the watershed condition classification are disclosed in the project record.

- f) Because the methodology in the technical guides was not used properly, the effects analysis and conclusions are faulty. The conclusions that none of the alternatives would result in a change in watershed condition classification and that closing roads would improve water quality and other resource conditions are faulty [Appeal, pp. 122, 124-125].

Response: Implementation of the Travel Management Rule Project on the Gila National Forest would not impact all of the indicators that were used to derive the watershed condition rating; only those watershed condition indicators that are impacted by motorized routes, motorized dispersed recreation, motorized big game retrieval and motorized areas [PR 2508, p. 18]. Because of the limited number of factors potentially impacted by the specific activities the overall watershed condition class rating may not change. Those indicators impacted include: water quality, water quantity, aquatic habitat, aquatic biota, riparian/wetland vegetation, roads and trails, soils, and terrestrial invasive species [PR 2508, p. 18]. A detailed assessment of the indicators and their influence upon the watershed condition class rating as a result of the effects of the alternatives is clearly presented in the 6th Code Watershed, Soils, and Aquatic Cumulative Effects Analysis Report [PR 2508, pp. 19-24]. Under the comparison of alternatives each alternative was compared to the No Action alternative to assess which one provided the greatest opportunity to reduce the existing cumulative impacts related to motorized routes and cross-country travel. It is disclosed that the less motorized disturbance to watershed, soil and aquatic resources the less opportunity for negative cumulative impacts to occur and the greater the opportunity for beneficial effects [PR 2508, p. 25].

Finding: The 6th Code Watershed, Soils, and Aquatic Cumulative Effects Analysis Report clearly describes the effects of the alternatives to the watershed condition indicators.

- g) There are several errors and omissions found in the 6th Code report:
- The analysis does not discuss the link between land ownership, road density, water quality, and other resource conditions [Appeal, p. 125].
 - The report does not add the acreage of watersheds to describe the number of acres in the watershed function categories of good, at risk, and poor [Appeal, p. 125].
 - The watershed condition ratings shown in appendix A, p. 135, lists 12 watersheds in “Poor” condition, but the watershed condition classification table (table 2, p. 14) only shows one watershed, Snow Canyon, as “Impaired Function” [Appeal, p. 126].

Response: The relative extent of 6th code HUC watershed with regards to land ownership is discussed in the 6th Code Watershed, Soils, and Aquatic Cumulative Effects Analysis Report [PR 2508, p.5; pp. 33-66]. The watershed condition ratings are for National Forest System lands only.

The degree of road density *and* watershed condition rating by 6th code HUC is displayed in Appendix D of this same report [PR 2508, pp.131-135]. Water quality is an indicator within the watershed condition classification. Therefore, the linkages between road density, water quality and other resource indicators is made through the use of watershed condition indicators; the overall rating of watershed condition.

The condition rating for road density (good, fair and poor) are displayed in the Appendix D of the 6th Code Watershed, Soils, and Aquatic Cumulative Effects Analysis Report [PR 2508, pp. 131-135]. Road density is described as the *average* per watershed, mile per square mile. This is the standard metric as outlined in the Watershed Condition Classification technical Guide [PR 2508-7, pp. 26-28].

The condition rating in Appendix D is related to the road condition *indicator*, within the watershed [PR 2508, pp. 131-135]. Whereas the “impaired function” for the Snow Canyon watershed represent the overall watershed condition *classification* for that watershed [PR 2508, p.11].

Finding: The 6th Code Watershed, Soils, and Aquatic Cumulative Effects Analysis Report does not contain any errors or omissions.

F. Unauthorized Routes

Contention 1.F.1: The appellants contend that the statement in the response to comments that the forest does not have complete information regarding unauthorized routes “fails to satisfy the CEQ requirements for disclosure. They claim that information about unauthorized routes used in the analysis was not made available to the public and should have been included in the project record. The appellants conclude that the public participation process was inadequate because important documents were not made available to the public [Appeal, p. 113].

Response: The CEQ regulations acknowledge there may be situations where there is incomplete or unavailable information, noting that in such situations, the agency shall always make clear that such information is lacking (40 CFR 1502.22).

The DEIS discloses the inconsistent data in several sections [PR1865, pp. 3-4, 31 and 45] and also discloses the methodology and assumptions used for the analysis [PR 1865, p. 75].

In the ROD, the responsible official discusses incomplete or unavailable information noting, “The FEIS uses the best available science, as evidenced by the extensive literature citations (FEIS reference section) and, where appropriate, acknowledges incomplete or imperfect information” [PR 2526, p. 3]. Further, Chapter 3 of the FEIS addresses “uncertain” and “unknown” information for several resources, and explains the analysis methodologies and assumptions made to address the incomplete information [PR 2527, pp. 45-453].

“The definition of an unauthorized road or trail in the TMR makes clear that unauthorized roads and trails are not part of the forest transportation system and are not officially recognized by the Forest Service...User-created roads and trails may be identified through public involvement and

considered in the designation process. After public consideration and appropriate site-specific environmental analysis, some user-created routes may be designated for motor vehicle use” [PR 0029, p. 68277]. Again, user-created or unauthorized roads and trails may be identified through public involvement, to be considered in the designation process.

The Forest shared its process for route designation [PR 0511-38], which is in compliance with the TMR. The Forest also received and considered site-specific input from the public [PR 2528, p. 738; PR 0511; PR 1079; PR 1082; PR 1084; PR 1085; PR 1237; PR 1774]. The FEIS describes the public involvement in the project, stating that the public had an opportunity to review maps and provide input, and that information from all of the public involvement meetings and comments were used to develop the proposed action [PR 2527, p. 6]. The proposed action maps, which include input from the public, were made available to the public [PR 1237], as were the draft DEIS and associated maps [PR 1865]. All of these documents are included in the project record.

Finding: The Forest meets law, policy, and regulations by disclosing where there is incomplete or unavailable information. Information about unauthorized routes used in the analysis was made available to the public, and is included in the project record.

Contention 1.F.2: The appellants state that the effects analysis concluded that unauthorized routes or their use would have more or different effects than the use of authorized routes. This is based on the assumption that unauthorized routes are inferior to engineered routes. They contend this analysis is flawed because of the changes in methods and coding used during road inventories conducted in the 1990s labeled many unauthorized routes as OML-2 roads. The appellants conclude that because the original code has been lost it is nearly impossible to determine if a route was engineered or unauthorized and the actual effects cannot be determined [Appeal, p. 114-116].

Response: The issuance of the Travel Management Rule in November 2005 defined an *unauthorized route* as “a road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas” [PR 0029, p. 68287]. The Department addressed “user created” routes in the response to the proposed Travel Management Rule. Some respondents asked the agency to acknowledge such routes as legal legitimate travel ways and to require specific documentation and analysis to close them. Other respondents asked the agency to treat all such routes as illicit and subject to immediate closure. In its response, the Department noted that “user-created routes were developed without agency authorization, environmental analysis, or public involvement and do not have the same status as NFS roads and trails included in the forest transportation system.” The Department response further explained that evaluation of user created routes is best analyzed in at the local level [PR 0029, p. 68265].

The requirement to address unauthorized roads at the local level was carried forward by the agency in FSM 7700 which requires that units use a Travel Analysis to inform decisions related implementation of 36 CFR 212.51 and to identify proposals for changes to travel management direction, including decisions to add roads to the forest transportation system. FSH 7709.55 12.1 sets the baseline for travel analyses as a “complete and accurate” inventory of NFS roads and NFS trails and areas that or managed for motor vehicle use. There are no requirements to analyze

each existing unauthorized route. Instead it requires that units establish a process for identifying unauthorized routes that should be considered in travel analysis. FSM 7715.78 states the unauthorized roads and trails may be identified through a travel analysis and considered for travel management decisions.

The Forest used a Travel Analysis Process (TAP) to inform this decision. In the TAP, the Forest explains that they inventoried user-created routes in the 1990s, and included these user-created routes as National Forest System roads operating at Maintenance Level (ML) 2 in the corporate database. The Gila National Forest completed most of its inventory of “unauthorized” roads before the tools to track them separately became available in 2001 and at this time, the Gila NF cannot determine exactly which of their existing NFSRs are “user-created” [PR 1796, pp. 9-10].

This inventory occurred prior to the issuance of the TMR, and the inventoried user-created routes were added to the corporate database as ML2 roads. Because the forest cannot differentiate between which ML2 roads are user-created and which were part of the original forest road system, the entire database as is became the starting point of the travel management analysis [PR 1796, p. 10].

When the Forest began the travel management process, it shared its process for route designation [PR 0511-38], which is in compliance with the TMR. The Forest also received and considered site-specific input from the public [PR 2528, p. 738; PR 0511; PR 1079; PR 1082; PR 1084; PR 1085; PR 1237; PR 1774]. The FEIS describes the public involvement in the project, stating that the public had opportunity to review maps and provide input, and that information from all of the public involvement meetings and comments were used to develop the proposed action [PR 2527, p. 6]. All of the action alternatives proposed to add unauthorized roads. Tables 5 and 8 in the FEIS describe the miles of unauthorized roads proposed for designation by alternative [PR 2527, pp. 25-26]. In compliance with 40 CFR 1502.24, Chapter 3 of the FEIS discloses the site-specific analysis of adding the proposed miles of unauthorized routes and designating them as part of the system [PR 2527, Chapter 3].

Finding: The analysis is not flawed. The inventoried user-created routes were added to the corporate database as ML2 roads. Because the Forest cannot differentiate between which ML2 roads are user-created and which were part of the original forest road system, the entire database became the starting point of the travel management analysis.

Contention 1.F.3: The appellants contend that the response to their comments on unauthorized routes indicated the existence of methods to track unauthorized routes, and that the Roads Report mentions the existence of a complete inventory of routes over 50 inches wide. They conclude that the agency failed to disclose significant information about existing inventories of unauthorized routes in the FEIS as required by CEQ regulations [Appeal, pp. 114-115].

Response: The CEQ regulations note that agencies should describe methodologies used (40 CFR 1502.24). Additionally the CEQ regulations acknowledge there may be situations where there is incomplete or unavailable information, noting that in such situations, the agency shall always make clear that such information is lacking (40 CFR 1502.22).

The Roads Report describes the background of the roads on the Gila National Forest and the road inventory efforts since the 1990's [PR 2513-0, pp. 1-2]. In the travel analysis process (TAP), the Forest explains that they inventoried user-created routes in the 1990s, and included these user-created routes as National Forest System roads operating at Maintenance Level (ML) 2 in the corporate database. The Gila National Forest completed most of its inventory of "unauthorized" roads before the tools to track them separately became available in 2001 and at this time, the Forest cannot determine exactly which of their existing NFSRs are "user-created" [PR 1796, pp. 9-10].

This inventory occurred prior to the issuance of the TMR, and the inventoried user-created routes were added to the corporate database as ML2 roads. Because the Forest cannot differentiate between which ML2 roads are user-created and which were part of the original forest road system, the entire database as is became the starting point of the travel management analysis [PR 1796, p. 10]. This is confirmed in the FEIS, where it describes the existing transportation system as consisting of "roads that are stored in the INFRA database as "existing" and "operational maintenance level 2 through 5" [PR 2527, p. 2]. Motorized roads or trails that are designated as ML1 closed roads and decommissioned roads are not considered part of the existing open motorized system [PR 2527, p. 4].

Finding: The Forest followed law, policy, and regulation by disclosing information about the previous inventory of user-created routes in the TAP and describing uncertainties with past data collection and processing. The inventoried user-created routes were included in the existing transportation system, the starting point for the analysis.

G. Irreversible or Irretrievable Commitments of Resources

Contention 1.G.1: The appellants contend that the Recreation, IRA/WSA and Watershed and Soils Specialists' Reports do not meet CEQ requirements at 40 CFR 1502.16 regarding identification of irreversible or irretrievable commitment of resources. The appellants claim the statement in the Recreation, IRA/WSA report ("All of the action Alternatives may or may not result in the irreversible or irretrievable commitment of some of the forest's soil resources in the IRAs.") is inaccurate about what the Water and Soils report says. They contend the statement on p. 109 of the Final Water and Soils report is false because it is written as if roads closed to motorized use will cease to be used, and could possibly revert to an uncompacted and vegetated state, and hence not be an irreversible or irretrievable commitment of resources. The appellants list 6 reasons why the statement is false. These reasons are related to assumptions or characterization about the commitment of soil resources in relation to motorized and non-motorized use, designation of motorized routes, and the minimum road system [Appeal, pp. 127-130].

Response: CEQ requirements at 40 CFR 1502.16 explain what should be included in the environmental consequences discussion. This section should include discussion of direct effects, indirect effects, and environmental effects of alternatives including the proposed action, amongst other requirements. The discussion will also "include the environmental impacts of the alternative including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's

environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which should be involved in the proposal should it be implemented” (40 CFR 1502. 16). All of the identified reports include the listed discussion points as required by CEQ [PR 2516, pp. 18-81; PR 2517, pp. 7-26, pp. 33-63; PR 2514, pp. 53-109]. The Recreation IRA/WSA report does state that “all of the action alternatives may or may not result in the irreversible or irretrievable commitment of some of the forest’s soil resources within IRAs” [PR 2517, p. 26]. The statement is not inaccurate about what the Watershed and Soils report states because it defers to the Watershed and Soils report for more information [PR 2517, p. 26].

The statement in the Watershed and Soils report the appellants claim is false is in bold: “Alternative B (No Action) already possesses an intrinsic commitment of the soil resource. **Undoubtedly, it would be very difficult, if not impossible, to reverse, retrieve, or restore soil productivity back to its original condition if, hypothetically, all routes were removed.** Continuation of unlimited motorized cross-country travel would allow for the opportunity of new soil resource degradation to occur, possibly having future irreversible and/or irretrievable impacts” [PR 2514, p. 109]. The appellants misinterpret the above statements in the Watershed and Soils report. Here is the statement rephrased: If hypothetically all routes were removed, it would still be difficult, if not impossible, to reverse, retrieve, or restore soil productivity back to its original condition. There is no assumption or statement that roads closed to motorized use would cease to be used, because the terms “if” and “hypothetically” are used. Those are not assumptions, but speculation that even **if** these routes disappeared, soil productivity would still not be restored to its original condition. So the statement is not written in the way the appellants contend.

Finding: The identified reports meet CEQ regulations at 40 CFR 1502.16. The statement in the Watershed and Soils report does not assume that roads closed to motorized use will cease to be used.

Contention 1.G.2: The appellants contend that equating the soil commitment from the public road system with the minimum road system does not account for the existing maintenance level (ML) 1 roads designated as authorized use only. They argue that the amount of ML 1, authorized use only roads listed in the action alternatives changed drastically between the DEIS and FEIS making the soil commitment from “authorized use only” roads hard to determine [Appeal, pp. 130-132].

Response: The appellants contend that the effects of ML 1 on soils and watersheds are not accounted for in the analysis. ML 1 roads were included in road density calculations for each alternative [PR 2527, p. 240]. Density calculations were used in the environmental analysis as one way to measure watershed conditions [PR 2527, p. 240]. The reasons for including ML 1 roads in density calculations are provided in the Environmental Consequences of the FEIS. For this analysis, it is assumed that when a road is closed it will continue to have impacts because all of the action alternatives involve the closure of roads and unauthorized routes to vehicle use by the public rather than the physical removal of roads [PR 2527, p. 234].

Effects on watershed, soils, and aquatics are analyzed at the 6th-code watershed level [PR 2527, p. 186]. Road density calculations include closed roads under the jurisdiction of the Forest Service as well as all open roads under non Forest Service ownership, including county, state, federal and adjacent National Forests [PR 2508, p. 7]. Appendix D lists the road densities by 6th code watershed on the Gila NF. These densities include all FS and non FS roads [PR 2508, p. 131]. Appendix M is a summary of road density for all routes (FS and non FS) for all watersheds on the Forest [PR 2508, p. 215]. These road densities are used throughout the environmental analysis in Chapter 3 of the FEIS. By including ML 1 roads in density calculations and using road densities to in the effects analysis, ML 1 are accounted for in the analysis.

The appellants also contend the proposed changes to ML 1 roads changed significantly between the DEIS and FEIS, making it difficult to determine the effects of authorized use on soils and watersheds. Road densities computed in the 6th Code Watershed, Soils, and Aquatics Cumulative Effects Analysis Report and considered in effects analysis include all open and closed roads under Forest Service jurisdiction and well as all open roads under other ownerships [PR 2508, p. 7]. Changes to the road system by alternative are summarized in Table 5 of the FEIS [PR 2527, p. 25] and in Table 5 of the DEIS [PR 1865, p. 24]. In regards to ML 1 roads, these changes include reopening existing closed roads and closing existing open roads. The miles of ML 1 roads opened or closed by alternative are not significantly different between the DEIS and the FEIS. Changes in use of ML 1 roads do not significantly affect the analysis and the effects on soils. Closed roads were still considered a part of the road system for the density calculations, as decommissioning of closed roads is currently not scheduled or planned as part of this project [PR 2508, p. 7] and it is assumed that when a road is closed it will continue to have impacts because all of the action alternatives involve the closure of roads and unauthorized routes to vehicle use by the public rather than the physical removal of roads [PR 2527, p. 234].

The FEIS discloses that the direct and indirect effects to soils of motorized routes are common to all alternatives including the no action. With the implementation of any of the action alternatives, there will be a continued commitment of the soil resource and associated negative impacts, with effects remaining the same, increasing, or decreasing. Impacts to the soil resource will vary to some degree by alternative, with the potential for negative impacts varying by the number of roads that will remain open for motorized use, acres available for motorized cross-country travel, acres of motorized dispersed recreation, acres of big game retrieval and motorized areas affected by parking one vehicle length off of road in each proposal [PR 2527, p. 198].

Finding: By including ML 1 roads in density calculations and using road densities in the effects analysis, ML 1 roads are accounted for in the analysis. The effects of authorized use on soils are common to all alternatives because road densities are based on irreversible and/or irretrievable loss of soil productivity and vegetative cover due to long-term compaction and off-site soil loss from the road, not authorized uses.

Contention 1.G.3: The appellants contend the analysis of soil commitment does not account for new unauthorized routes created by non-motorized use and the use of decommissioned roads that were not removed (obliterated) from the landscape. Hundreds of miles of decommissioned, authorized use roads were not included in the analysis when actually, they are still being used [Appeal, pp. 132-133]

Response: The purpose of the project is to comply with the Travel Management Rule (TMR) [PR 2527, p. 4]. The Travel Management rule requires forests provide for a system of NFS roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use by vehicle class, and if appropriate, by time of year [PR 0029, p. 68264].

In designating roads, trails, and areas for motor vehicle use, forests must consider, as applicable, both the general and specific criteria in 36 CFR 212.55(a) through (c). There are no requirements in these criteria or the project purpose and need to analyze or account for all unauthorized roads or unauthorized use of previously decommissioned roads. The project is specifically focused on the designation of motorized uses. The analysis does however, account for unauthorized roads (including previously decommissioned roads) proposed to be added to the system. Table 24 in the FEIS summarizes the total miles proposed to be added to the road system by alternative [PR 2527, p. 54]. These miles are then accounted for in each alternative and the analysis of each alternative. Chapter 2 of the FEIS describes the miles included in each alternative. Table 15 summarizes the miles of roads open to the public for motorized use by alternative [PR 2527, p. 33].

The appellant's contention that the negative impacts of unauthorized road should be analyzed requires a comprehensive and complete inventory of unauthorized roads. The Forest does not have complete information on unauthorized roads. Collecting that information on an unknown amount of unauthorized routes on all National Forest System lands would be exorbitant and time consuming [PR 2528, p. 612] and is not necessary for designation of motorized uses and is not required [FSM 7711.12 and FSM 7712.1]. A complete inventory of unauthorized routes would be very time consuming and expensive delaying completion of route designation [PR 2528, p. 621].

Finding: The appellant's contention to include the effects of all unauthorized uses in the analysis is beyond the scope of the project and not required by travel management regulations.

Contention 1.G.4: The appellants contend that roads not under Forest Service jurisdiction were not identified as a major commitment of the soil resource. These roads were only identified in original the Roads Specialist Report (p. 8) and were not part of the decision, but they are a source of impacts caused by the existing condition and should be analyzed [Appeal, p. 133].

Response: The purpose of the project is to comply with the final Travel Management Rule [PR 2527, p. 4]. While the rule applies to National Forest System roads [36 CFR 212.1], Chapter 3 of the effects analysis describes how the miles of roads may vary in the analyses. For analysis measures, miles of routes may include more than Forest Service jurisdiction, such as county, State, Federal, or private roads including roads outside the forest boundary [PR 2527, p. 45].

The project analysis address effects at the 6th-code watershed level [PR 2527, p. 186]. Road density calculations in the 6th Code Watershed, Soils, and Aquatics Cumulative Effects Analysis Report include closed roads under the jurisdiction of the Forest Service as well as all open roads under non Forest Service ownership, including county, state, federal and adjacent National Forests [PR 2508, p. 7]. Appendix D lists the road densities by 6th code watershed on the Gila NF. These densities include all FS and non FS roads [PR 2508, p. 131]. Appendix M is a summary of road densities that include all routes (FS and non FS) for all watersheds on the

Forest [PR 2508, p. 215]. These road densities are used throughout the environmental analysis in Chapter 3 of the FEIS.

Finding: The effects of non-Forest Service jurisdiction roads on soils were considered in the environmental analysis through the use of road densities that were based on all roads, including Forest Service and non-Forest Service.

H. Effects on Grazing Permittees

Contention 1.H.1: The appellants contend the FEIS does not disclose or discuss the effects of reduced access on the efficiency and economic viability of ranching operations, or on the local economy if ranching declines as a result of access issues. The economic impact analysis only addresses impacts on recreation-based jobs, and no other sectors [Appeal, pp. 134, 136].

Response: Impacts to grazing or ranching are not identified as significant issues in the FEIS [PR 2527, pp. 9-10]. Exemptions from the designations include motor vehicle use specifically authorized under a written authorization issued under Federal law or regulation (36 CFR 212.51). Motor vehicle use that is specifically authorized under a written authorization may include activities such as livestock operations, mining, logging, firewood collection, forest products, private land access, and maintenance of pipeline and utility corridors (36 CFR 212.51(a)(8) and 261.13(h)). Response to comment [PR 2528, p. 535] stated “if a written authorization for activities such as grazing...specifically provides for motor vehicle use, that use is exempted from designations and prohibitions regarding motor vehicle use, and may continue.”

In the social and economic analysis, recreation-based tourism employment is likely to be more sensitive to the proposed action and alternatives than other employment because of the Travel Management Rule’s provision for exempting written authorization applicable to livestock grazing permits, mining plans of operations, etc. [PR 2521, p. 3].

Finding: Exemptions from the designations include motor vehicle use specifically authorized under a written authorization issued under Federal law or regulation (36 CFR 212.51). The economic analysis is appropriate, meets the needs of the FEIS, and provides adequate information in terms of economic effects across alternatives in order for the decision maker to evaluate the range of alternatives.

Contention 1.H.2: The appellants contend the record of decision does not discuss the administrative decision-making process that would explain the existing access system for permittees. The FEIS does not explain why or how ranchers can negotiate for access or their recourse if an agreement on road use can’t be reached [Appeal, pp. 134, 138].

Response: The purpose of subpart B 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 by 36 CFR 216.13” [PR 0029, p. 68289]. The TMR also lists vehicles and uses that are exempted from these

designations; “motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations” is one of the exemptions [PR 0029, p. 68289].

Setting forth standards for how people can obtain a written authorization is outside the scope of the TMR, the ROD, and the FEIS. “Local Forest Service officials retain the authority to regulate uses under a written authorization and to determine whether and under what conditions to authorize motor vehicle use on routes and in areas not generally open to motor vehicle use” [PR 0029, p. 68284; PR 2538, p. 537]. Furthermore, local Forest Service officials in the Southwestern Region should comply with the Southwestern Regional Travel Management Rule Guidelines (Guidelines). These Guidelines outline the process and considerations to obtain written authorization for motorized cross-country travel, or for motorized travel on roads that are not designated for motorized use [PR 0484, pp. 13-20]. The purpose of the Guidelines is to provide a level of consistency in travel management planning across the Region [PR 0484, p. 1]. The Forest also provided information on written authorizations, and how to obtain written authorization (which complies with the Guidelines) [PR 2047-17, all; PR 2657, all].

Finding: The TMR provides for motor vehicles use that is specifically authorized under a written authorization issued under Federal law or regulation. It is beyond the scope of the ROD to set standards on how to obtain a written authorization. Regional Guidelines outline the process and considerations to obtain written authorization for motorized cross-country travel, or for motorized travel on roads that are not designated for motorized use.

Contention 1.H.3: The appellants contend the FEIS does not discuss the impacts of motorized use on existing routes used by grazing permittees, and does not even mention the number of grazing permittees on the forest. Without this analysis, reduction of motorized use by permittees cannot be justified [Appeal, p. 134].

Response: The purpose of subpart B 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 by 36 CFR 216.13” [PR 0029, p. 68289]. The TMR also lists vehicles and uses that are exempted from these designations; “motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations” is one of the exemptions [PR 0029, p. 68289]. Motor vehicle use that is specifically authorized under a written authorization may include activities such as livestock operations, mining, logging, firewood collection, forest products, private land access, and maintenance of pipeline and utility corridors (36 CFR 212.51(a)(8) and 261.13(h)).

Motorized vehicle use authorized under grazing permits is a current activity and would continue under all alternatives. If a written authorization for activities specifically provides for motor vehicle use, that use is exempted from designations and prohibitions regarding motor vehicle use and may continue [PR 2528, p. 536].

Finding: Exemptions from the designations include motor vehicle use specifically authorized under a written authorization issued under Federal law or regulation (36 CFR 212.51). Review of this issue finds no violation of law, regulation, or policy.

Contention 1.H.4: The appellants contend the requirement to negotiate access creates uncertainty for grazing permittees, as they don't know which roads they'll be able to use from year-to-year. There is no transparency or openness to the process of gaining road access. Changes to the road system used by the general public must be documented in a public process, and such changes can be challenged, but there is no such process for permittees. This change is not fair [Appeal, pp. 134-135, 138].

Response: The purpose of subpart B 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 by 36 CFR 216.13” [PR 0029, p. 68289]. The TMR also lists vehicles and uses that are exempted from these designations; “motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations” is one of the exemptions [PR 0029, p. 68289].

“Local Forest Service officials retain the authority to regulate uses under a written authorization and to determine whether and under what conditions to authorize motor vehicle use on routes and in areas not generally open to motor vehicle use” [PR 0029, p. 68284; PR 2538, p. 537]. Furthermore, local Forest Service officials in the Southwestern Region should comply with the Southwestern Regional Travel Management Rule Guidelines (Guidelines). These Guidelines outline the process and considerations to obtain written authorization for motorized cross-country travel, or for motorized travel on roads that are not designated for motorized use [PR 0484, pp. 13-20]. The purpose of the Guidelines is to provide a level of consistency in travel management planning across the Region [PR 0484, p. 1]. The Forest also provided information on written authorizations, and how to obtain written authorization (which complies with the Guidelines) [PR 2047-17, all; PR 2657, all].

Finding: The TMR provides for motor vehicles use that is specifically authorized under a written authorization issued under Federal law or regulation. Regional Guidelines outline the process and considerations to obtain written authorization for motorized cross-country travel, or for motorized travel on roads that are not designated for motorized use.

Contention 1.H.5: The appellants contend the travel management rule creates a de facto “caste system” where non-motorized uses and users have more rights and privileges than motorized uses and users, including grazing permittees. The travel management rule manages and restricts motorized use and is applicable to the entire National Forest System; policies regarding non-motorized use are not uniform. Non-motorized users have no restrictions and can travel anywhere, including cross-country. The appellants conclude that road access and use for permittees is unreliable and arbitrary as compared to other motorized users and non-motorized users [Appeal, pp.135-136].

Response: The purpose of the 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 by 36 CFR 261.13” (§212.50(a)) [PR 0029, p. 68289]. The TMR is a regulation that implements Executive Order (E.O.) 11644 and E.O. 11989. These Executive orders direct federal agencies to ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands [PR 0029, p. 68264].

Again, the focus of the TMR is on motorized vehicles. At this time, the Department does not see the need for regulations requiring establishment of a system of routes and areas designated for nonmotorized uses. All uses, including hiking, biking, horseback riding and motor vehicle use, have environmental impacts and can affect the experience of other users. Local Forest Service officials may choose to designate routes and areas for nonmotorized uses and enforce those designations under 36 CFR part 261, subpart B [PR 0029, p. 68272, 68283].

“Local Forest Service officials retain the authority to regulate uses under a written authorization and to determine whether and under what conditions to authorize motor vehicle use on routes and in areas not generally open to motor vehicle use” [PR 0029, p. 68284; PR 2538, p. 537]. Furthermore, local Forest Service officials in the Southwestern Region should comply with the Southwestern Regional Travel Management Rule Guidelines (Guidelines). These Guidelines outline the process and considerations to obtain written authorization for motorized cross-country travel, or for motorized travel on roads that are not designated for motorized use [PR 0484, pp. 13-20]. The purpose of the Guidelines is to provide a level of consistency in travel management planning across the Region [PR 0484, p. 1]. The Forest also provided information on written authorizations, and how to obtain written authorization (which complies with the Guidelines) [PR 2047-17, all; PR 2657, all].

Finding: The purpose of the TMR is to provide for a system of roads, trails, and areas lands that are designated for motor vehicle use. The focus is on motorized vehicles, because the Department does not see a need for regulations requiring a system of routes and areas designated for nonmotorized uses. Local Forest Service officials retain authority to regulate nonmotorized uses. The TMR provides for motor vehicles use that is specifically authorized under a written authorization issued under Federal law or regulation. Regional Guidelines outline the process and considerations to obtain written authorization for motorized cross-country travel, or for motorized travel on roads that are not designated for motorized use.

Contention 1.H.6: The FEIS does not consider the social impacts of the travel management decision on grazing permittees, including the psychological effects on ranchers of removing assured access, impacts on this traditional cultural practice and the ability of future generations to continue ranching, and quality of life [Appeal, pp. 134, 136].

Response: The purpose of subpart B 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 by 36 CFR 216.13” [PR 0029, p. 68289]. The TMR also lists vehicles and uses that are exempted from these designations; “motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations” is one of the exemptions [PR 0029, p. 68289]. Motor vehicle use that is specifically authorized under a written authorization may include activities such as livestock operations, mining, logging, firewood collection, forest products, private land access, and maintenance of pipeline and utility corridors (36 CFR 212.51(a)(8) and 261.13(h)).

Motorized vehicle use authorized under grazing permits (and mining permits) is a current activity and would continue under all alternatives. If a written authorization for activities specifically provides for motor vehicle use, that use is exempted from designations and prohibitions regarding motor vehicle use and may continue [PR 2528, p. 536].

Finding: Exemptions from the designations include motor vehicle use specifically authorized under a written authorization issued under Federal law or regulation (36 CFR 212.51). My review of this issue finds no violation of law, regulation, or policy.

Contention 1.H.7: The appellants contend the Social-Economic Report is flawed because the grazing permittees’ use [and access of road system] under all alternatives was not included in the analysis. The analysis assumes that use and access will continue and economic impacts would be small [Appeal, pp. 136-137].

Response: Impacts to grazing or ranching are not identified as significant issues in the FEIS [PR 2527, pp. 9-10]. Exemptions from the designations include motor vehicle use specifically authorized under a written authorization issued under Federal law or regulation (36 CFR 212.51). Motor vehicle use that is specifically authorized under a written authorization may include activities such as livestock operations, mining, logging, firewood collection, forest products, private land access, and maintenance of pipeline and utility corridors (36 CFR 212.51(a)(8) and 261.13(h)). Response to comment [PR 2528, p. 535] stated “if a written authorization for activities such as grazing...specifically provides for motor vehicle use, that use is exempted from designations and prohibitions regarding motor vehicle use, and may continue.”

Finding: Exemptions from the designations include motor vehicle use specifically authorized under a written authorization issued under Federal law or regulation (36 CFR 212.51). The economic analysis is appropriate, meets the needs of the FEIS, and provides adequate information in terms of economic effects across alternatives in order for the decision maker to evaluate the range of alternatives.

Contention 1.H.8: The appellants contend the method of analysis used to assess impacts on grazing permittees is not appropriate or meaningful. The indicator used is mileage [miles of road]. The appropriate measure is qualitative and should consider the roads that permittees need to access [Appeal, p. 137].

Response: The purpose of subpart B 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 by 36 CFR 216.13” [PR 0029, p. 68289]. The TMR also lists vehicles and uses that are exempted from these designations; “motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations” is one of the exemptions [PR 0029, p. 68289]. Motor vehicle use that is specifically authorized under a written authorization may include activities such as livestock operations, mining, logging, firewood collection, forest products, private land access, and maintenance of pipeline and utility corridors (36 CFR 212.51(a)(8) and 261.13(h)).

Motorized vehicle use authorized under grazing permits is a current activity and would continue under all alternatives. If a written authorization for activities specifically provides for motor vehicle use, that use is exempted from designations and prohibitions regarding motor vehicle use and may continue [PR 2528, p. 536].

Finding: Exemptions from the designations include motor vehicle use specifically authorized under a written authorization issued under Federal law or regulation (36 CFR 212.51).

Contention 1.H.9: The appellants contend the FEIS does not consider or analyze whether the use of roads by grazing permittees is a valid existing right or if it should be handled as an authorization to use certain roads [Appeal, pp. 137-138].

Response: The purpose of subpart B 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 by 36 CFR 216.13” [PR 0029, p. 68289]. The TMR also lists vehicles and uses that are **exempted** (emphasis added) from these designations; “motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations” is one of the exemptions (§212.51(a)(8)) [PR 0029, p. 68289]. Motor vehicle use that is specifically authorized under a written authorization may include activities such as livestock operations, mining, logging, firewood collection, forest products, private land access, and maintenance of pipeline and utility corridors (36 CFR 212.51(a)(8) and 261.13(h)).

The Travel Management Rule (TMR) requires the responsible official to recognize rights of access as criteria (emphasis added) for designation of roads, trails, and areas. Right of access include valid existing rights and rights of use of National Forest System (NFS) roads and NFS trails (§212.55(d)) [PR 0029, p. 68290]. “Nothing in the final rule revokes any rights-of-way held by miners or others...” [PR 0029, p 68282].

Finding: Exemptions from the designations include motor vehicle use specifically authorized under a written authorization issued under Federal law or regulation (36 CFR 212.51). Grazing and mining both fall under that category, as long as the permittee has a written authorization that specifically provides for motor vehicle use. Valid existing rights is a criteria that the responsible official must consider when designating roads, trails and areas

Contention 1.H.10: The appellants contend the Forest did not consider an alternative that designated a system of roads for ranching operations, similar to the Minimum Road System for agency use [Appeal, p. 138].

Response: The purpose of subpart B 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 by 36 CFR 216.13” [PR 0029, p. 68289]. The TMR also lists vehicles and uses that are exempted from these designations; “motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations” is one of the exemptions (§212.51(a)(8)) [PR 0029, p. 68289]. Motor vehicle use that is specifically authorized under a written authorization may include activities such as livestock operations, mining, logging, firewood collection, forest products, private land access, and maintenance of pipeline and utility corridors (36 CFR 212.51(a)(8) and 261.13(h)).

Ranching operations is an activity that is exempted under the TMR, as long as the permittee has a written authorization that specifically provides for motor vehicle use. Thus, an alternative that designated a system of roads only for ranching operations was not considered. However, the Forest did consider ranching operations in the travel analysis process (TAP). The TAP provides the framework and the explanation of the Forest process from which recommendations for designation are outlined that may be examined in the NEPA process [PR 1796, p. 1]. Some examples of how the Forest considered ranching operations in the TAP: “The management area boundaries are major Ranger District subdivisions developed around specific management activities such as range allotments, timber stands, or other administrative boundaries” [PR 1796, p. 11]; access for range permittees was identified as an issue [PR 1796, p. 15]; access for range permittees was considered during the road by road assessment [PR 1796, pp. 17-18]; and designating roads for administrative use only or specific permitted uses only was identified as a recommendation from the TAP [PR 1796, p. 20].

Finding: Exemptions from the designations include motor vehicle use specifically authorized under a written authorization issued under Federal law or regulation (36 CFR 212.51). However, the Forest did consider ranching operations in the travel analysis process (TAP).

I. User Input Maps

Contention 1.I.1: The appellants contend the FEIS does not disclose the presence of the user input maps created by the public during the scoping process. The maps are no longer found on the website and are not in the project record. These maps are the only record of the routes identified by the public as roads and trails they use and demonstrate the positive attributes of motorized routes. These maps inform the decision-maker of the desires, needs, and requests of the public and should be added to the project record [Appeal, pp. 139-141].

Response: Regulations at 40 CFR 1502.21 address incorporating material by reference: “Agencies shall incorporate material into an environmental impact statement by reference.... No

material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment.”

Forest Service regulations at 36 CFR 220.4(h) address the same subject: “Material may be incorporated by reference into any environmental or decision document. This material must be reasonably available to the public and its contents briefly described in the environmental or decision document.”

Public involvement in the project is described in the FEIS, including the fact that the public reviewed maps and provided input, and that the “information from all of the public involvement meetings and comments were used to develop the proposed action” [PR 2528, p. 6].

The public input maps are available in the project record [PR 0511-10; PR 0511-14; PR 0511-18; PR 0511-22; PR 0511-34; PR 0511-49; PR 0511-50; PR 0511-51; PR 0511-52].

Finding: The FEIS describes the public involvement in the project, including how the public reviewed maps and provided input. The maps are available in the project record.

J. Failure to Account for Value of Roads

Contention 1.J.1: The appellants contend the roads report and FEIS account for the costs of road maintenance, but fail to account for the costs of the loss of infrastructure or the value of the roads themselves when they are allowed to deteriorate. They claim there is a high degree of uncertainty in the figures for deferred maintenance in the FEIS. Deferred maintenance is listed as being \$5.1 million in table 16 (page 34) and \$272 million (54 times higher) on page 50 [Appeal, pp. 142-143].

Response: The purpose of the project is to comply with the Travel Management Rule (TMR) [PR 2527, p. 4]. The Travel Management rule requires forests to provide for a system of NFS roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use by vehicle class, and if appropriate, by time of year [PR 0029, p. 68264]. In designating motorized use, the TMR requires responsible officials consider the criteria in 36 CFR 212.55. When designating motorized uses under the TMR, FSM 7703.11 requires forests to use the travel analysis process (TAP) outlined in FSM 7712 and FSH 7709.55 20 to consider the criteria in 36 CFR 212.55. The purpose of travel analysis is to identify proposed changes to the forest transportation system [FSM 7712.13] and it should be based on the current inventory of NFS roads [FSM 7712.1].

In designating roads, trails, and areas for motor vehicle use, forests must consider, as applicable, both the general and specific criteria in 36 CFR 212.55(a) through (c) [FSM 7715.5]. One of these criteria is the consideration of the need to maintain roads.

The consideration of the maintenance needs for the project is addressed in the Travel Analysis Report [PR 1796, pp. 10-11], the Roads Specialist Report [PR 2513, pp. 7-9], and the environmental analysis [PR 2527, pp 46-52]. The TAP provides a breakdown and description of the existing road system, a description of how roads are maintained, and a summary of historical funding levels. The Roads Specialist Report uses information in the TAP to provide more detailed information on the forest’s road maintenance capabilities based on past and projected

funding levels. The environmental effects analysis in Chapter 3 of the FEIS uses the information in the Road Specialist Report to determine the cost to fully maintain the existing road system [PR 2527, p. 51] as well as the road system in each alternative [PR 2527, p. 53]. The information and the analysis of road maintenance needs meet the criteria in the TMR.

The appellants contend the project should have also included an analysis of the dollar value of the existing road system and how that value changes as system roads are decommissioned or deteriorate to the point where they are no longer useable due to lack of maintenance. While an analysis of the value of the road system may provide interesting information, it is not required by the TMR as one of the criteria that must be considered. In addition, the Forest Service does not have a process to collect or track the dollar value of roads. The analysis in the Roads Specialist Report does however, address the deferred maintenance needs of the existing road system [PR 2513, p. 8] and the FEIS compares the deferred maintenance needs of the road system by alternative [PR 2527, p. 34]. Deferred maintenance is the result of the Forest's inability to perform full maintenance and is an estimate of the costs to bring the entire road system to established maintenance standards [PR 2513, p. 8 and p. 13]. Deferred maintenance estimates do not place a dollar value on the road system but instead place a dollar value on the needs of each alternative.

The appellants also claim there is a high degree of uncertainty of the deferred maintenance in the FEIS. The unit costs used to estimate both annual and deferred maintenance needs were compiled from random surveys across various NFS roads within Region 3 obtained from the "Identifying a Financially Sustainable Road System Spreadsheet Tool" [PR 2527, pp. 50-51]. These unit costs are based on the Forest Service Roads Deferred Maintenance Reporting protocols and summaries. The analysis in the FEIS estimates the total deferred maintenance cost of the existing road system to be approximately \$272 million [PR 2527, p. 50]. A complete description of how this total deferred maintenance estimate was determined and what is included in that estimate is contained in the Roads Specialist report [PR 2513, p. 8].

Table 16 in the FEIS is a comparison of resources by alternative. The third row in this table is labeled "Deferred Maintenance Needs (costs)" [PR 2527, p. 34]. The deferred maintenance needs for Alternative B (the existing system) is reported to be \$5,169,689 in Table 16. Table 23 in the Affected Environment Analysis of the road system in the FEIS contains a summary of the annual maintenance costs by alternative [PR 2527, p. 53]. The data in Table 23 and the data in row 3 of Table 16 is the same. Review of the data in Tables 16 and Table 23 shows that Table 16 is labeled incorrectly. Row 3 should be titled "Annual Maintenance" instead of "Deferred Maintenance Needs."

Finding: The Forest completed an analysis of the road maintenance needs for all alternatives that meets the criteria in the TMR. The Forest met the criteria to consider the need for maintenance by completing an analysis of annual maintenance and deferred maintenance that uses the best cost data available. Determining and analyzing a dollar value of the road system is outside the scope and purpose of the project.

Review of the deferred maintenance data presented in the FEIS finds that the appellants have correctly identified inconsistencies between Tables 16 and 23 that may cause confusion. Row 3 of

Table 16 is incorrectly labeled and should be corrected. Correctly relabeling Row 3 in Table 16 to read “Annual Maintenance” instead of “Deferred Maintenance” does not change the results of the analysis.

Contention 1.J.2: The appellants contend the FEIS and the TAP do not place a value on the existing road system. The dollar value of roads that are decommissioned or otherwise destroyed or lost through neglect was not acknowledged or considered. The appellants estimate that OML-2 roads have a current value of at least \$166 million. In addition to construction costs, the monetary cost of road replacement also includes the costs of NEPA analysis and archaeological clearances [Appeal, p. 143-144].

Response: See response to Contention 1.J.1. In addition:

Deferred maintenance is the result of the Forest’s inability to perform full maintenance and is an estimate of the costs to bring the entire road system to established maintenance standards [PR 2513, p. 8 and p. 13]. Deferred maintenance estimates do not place a dollar value on the road system but instead place a dollar value on the needs of each alternative. The unit costs used to estimate both annual and deferred maintenance needs were compiled from random surveys across various NFS roads within Region 3 using the “Identifying a Financially Sustainable Road System Spreadsheet Tool” [PR 2527, pp. 50-51]. These unit costs are based on the Forest Service Roads Deferred Maintenance Reporting protocols and summaries and do include factors to account for the costs to complete NEPA, obtain heritage clearances, and inflation [PR 2513-08].

Finding: The Forest completed an analysis of the road maintenance needs for all alternatives that meets the criteria in the TMR. The Forest met the criteria to consider the need for maintenance by completing an analysis of annual maintenance and deferred maintenance that uses the best data available. Determining and analyzing a dollar value of the road system is outside the scope and purpose of the project.

Contention 1.J.3: The appellants contend the FEIS and TAP do not provide a site-specific analysis of the benefits, values, or uses of roads. Motorized use designation keeps roads open and passable. The FEIS and TAP do not account for this benefit. Conversion to non-motorized use reduces the monetary value of the road system. These costs must be accounted for in any analysis otherwise the decision-maker cannot compare the alternatives [Appeal, p. 144].

Response: The purpose of the project is to comply with the Travel Management Rule (TMR) [PR 2527, p. 4]. The Travel Management rule requires forests provide for a system of NFS roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use by vehicle class, and if appropriate, by time of year [PR 0029, p. 68264]. In designating motorized use, the TMR requires responsible officials consider the criteria in 36 CFR 212.55.

When designating motorized uses under the TMR, forests are required to use the travel analysis process outlined in FSM 7712 and FSH 7709.55 20 to consider the criteria in 36 CFR 212.55. The purpose of travel analysis is to identify proposed changes to the forest transportation system (FSM 7712.13) and it should be based on the current inventory of NF roads (FSM 7712.1). Travel analysis may be conducted at a broad scale when used to inform decisions related to the

designation of motorized uses (FSM 7712.1). Travel analysis provides a comprehensive view of the road system across a broad landscape. Some travel management issues are best addressed at a broad scale while some are best addressed at a smaller scale. The TAP process outlined in FSH 7709.55 allows for flexibility in scale of the TAP (FSH 7709.55, Ch. 13). The TAP conducted for this project was on a Forest-wide level to ensure consistency in data management and outputs, and to best utilize limited personnel and time [PR 1796, p.3]. There are no requirements to conduct site specific analysis of road when informing designations for motorized uses.

In designating roads, trails, and area for motor vehicle use, forests must consider, as applicable, both the general and specific criteria in 36 CFR 212.55(a) through (c). The general criteria in 36 CFR 212.55(a) apply to roads, trails, and areas. The specific criteria in 36 CFR 212.55(b) apply to trails and areas. The specific criteria in 36 CFR 212.55(c) apply to roads. For roads, the general criteria includes the consideration of effects on NFS natural and cultural resources, public safety, provision of recreation opportunities, access needs, conflicts among uses of NFS lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated, and availability of resources for maintenance and administration. The specific criteria for roads include consideration of speed, volume, composition, and distribution of traffic on roads; and compatibility of vehicle class with road geometry and road surfacing (FSM 7715.5).

The appellant is correct in that the Forest did not consider the monetary value of the road system and how converting roads to non-motorized uses changes that value. While an analysis of the value of the road system may provide interesting information, it is not required by the TMR and is not one of the criteria that must be considered.

Finding: The Forest completed a travel analysis that complies with policy and manual direction at an appropriate scale determined by the responsible official.

ISSUE 2: The ROD violates the Travel Management Rule (TMR).

Contention 2.A.1: The appellants contend the agency mischaracterizes the TMR because TMR explicitly tells the Forest to designate a motorized use system, not a motorized route system. The FEIS and ROD identify roads, trails and areas where dispersed camping and motorized game retrieval are allowed. The TMR tells the agency to identify the roads, trails and areas where motorized use is allowed [Appeal, pp. 23-25].

Response: The agency did not mischaracterize the TMR. The purpose of the 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, including the class of vehicle and time of year, not in accordance with these designations is prohibited by 36 CFR 261.13” [PR 0029, p. 68289]. The TMR is clear in that the purpose is to designate roads, trails and areas (or routes) for motor vehicle use. The purpose of the project is to comply with the 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].

Finding: The project complies with the TMR by providing a system of roads, trails, and areas that are designated for motor vehicle use.

Contention 2.B.1: The appellants contend the TMR is an illegal Categorical Exclusion [Appeal, pp. 51-58].

Response: The Travel Management Rule is a revision of the Department of Agriculture regulations on National Forest System lands. The Forest Service regulations at 36 CFR 212 governing administration of the forest transportation system and regulations at 36 CFR 295 governing use of motorized vehicles off National Forest System roads are combined and clarified in the TMR. These regulations implement Executive Order (E.O.) 11644 (February 8, 1972), “Use of Off-Road Vehicles on the Public Lands,” as amended by E.O. 11989 (May 24, 1977). Further details about the Rule and the public involvement process can be found in the Federal Register/Vol. 70, No. 216 [PR 0129-04].

The Federal Register/Vol. 72, No. 46 gives notice of the Forest Service proposed directives and request for comment. The Federal Register gives the background and an analysis of the proposed directives. This notice also provides the agency’s conclusion that the proposed Travel Management Forest Service directives are excluded from documentation in an environmental assessment or environmental impact statement as they are “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” (Section 31b of Forest Service Handbook 1909.15)

The term categorical exclusion, in the context of NEPA, means a category of actions which do not individually or cumulatively have significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required” [40 CFR 1508.4].

The Forest determined the proposed changes to the current system of National Forest System roads, motorized trails, and areas, as required by the Travel Management Rule, warranted completion of an environmental impact statement (EIS). They did not categorically exclude this project from further analysis.

Finding: The action of revising the Forest Service Travel Management directives is outside the scope of the Gila National Forest Travel Management EIS.

ISSUE 3: The ROD violates the 1982 Planning Rule.

Contention 3.A.1: The appellants contend the FEIS fails to comply with the 1982 Planning Rule because it does not identify the current level of goods and services. The failure to describe the goods and services is caused by the faulty No Action Alternative that excludes 37 percent of the roads and trails that were legal to use. They contend that the exclusion from the analysis caused a predetermined result that any choice made by the decision-maker will be missing 37 percent of the recreation goods and services. The appellants also contend the agency failed to respond to the other comments they made regarding the no action alternative.

- Unauthorized Routes Not Added to INFRA as per Region 3 Guidelines
- Failure to Use the Public Input Data, Failure to Admit it has Public Input Data

- Undisclosed Methodology and Criteria for Inclusion of Unauthorized Routes in Alternatives

[Appeal, pp. 58-61].

Response: The appellants misapply provisions from the 1982 planning rule. The 1982 planning rule section 36 CFR 219.12(f)(7) speaks to the formulation of alternatives. And specifically to the identification of the current level of goods and services in the No Action alternative:

36 CFR 219.12(f) (7): “At least one alternative shall reflect the current level of goods and services provided by the unit and the most likely amount of goods and services expected to be provided in the future if current management direction continues. Pursuant to NEPA procedures, this alternative shall be deemed the “no action” alternative.”

However, that 219.12 section is a section within the planning rule specific to the process of Forest Planning – it is not applicable to project planning for NEPA projects such as the Gila Travel Management project. In fact, the title of section 219.12 is very specific: “*Sec. 219.12 Forest planning--process,*” so it is clear it applies on to Forest Planning processes, not project planning processes.

That said, the No Action alternative for the Gila Travel Management project does identify the current level of goods and services in accordance with NEPA procedures. Since this project is not a Forest Planning project (not Forest Plan Revision), there is no requirement to identify the goods and services according to the 1982 planning rule in the no action alternative. The FEIS [PR 2527, p. 5] and ROD [PR 2526, p. 11] clearly identify that the Travel Management Rule [PR 0129-04, p. 68268, columns 1 and 2, and p. 68289, column 1] allows for the incorporation of previous administrative travel management decisions, which led to the exclusion of previously closed/decommissioned roads and unauthorized routes from the No Action alternative. The No Action alternative addressed the level of goods and services for the area that was included within the proposed action; and rightfully excluded areas containing previously closed/decommissioned roads and unauthorized routes.

The Forest addressed the comments in the three bullet points in the response to comments and/or in the FEIS. In the response to comments, the Forest explains 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” [PR 2528, p. 664]. This is in compliance with the Region 3 Travel Management Rule Implementation Guidelines [PR 2535-06, pp. 3-4]. To be clear, the Regional Guidelines do not instruct forests to add unauthorized routes to the INFRA database [PR 2535-06, p. 4].

In the response to comments, the Forest also explains that “through public input over the years, many of the routes were surveyed and recommended for inclusion in the Travel Management process” [PR 2528, p. 664]. The Forest also describes public involvement in the project in the FEIS, including the fact that the public reviewed maps and provided input, and that the “information from all of the public involvement meetings and comments were used to develop

the proposed action” [PR 2527, p. 6]. The public input maps are also available in the project record [PR 0511-10; PR 0511-14; PR 0511-18; PR 0511-22; PR 0511-34; PR 0511-49; PR 0511-50].

In the response to comments, the Forest also discloses methodology and criteria for inclusion of unauthorized routes in alternatives [PR 2528, p. 620]. The Forest explains that the TMR allows for the designation of unauthorized routes as open to subject to evaluation at the local level, and that the DEIS evaluated the impacts of adding a varying number of miles of unauthorized routes as roads or motorized trails to the forest transportation system [PR 2528, p. 620]. This analysis is carried over into the FEIS [PR 2527, pp. 16-24, Chapter 3]. In evaluating unauthorized routes for designation, the routes also need to be evaluated against the criteria listed in §212.55 of the TMR [PR 0029, pp. 68289-68290; PR 2528, p. 621].

Finding: The Gila Travel Management project properly identified the current level of goods and services within the No Action alternative, consistent with NEPA procedures. The 1982 Planning Rule does not apply, as the No Action goods and services clause of that Rule applies to Forest Planning only, not project planning. Therefore, the ROD is consistent with NFMA. The Forest did respond to the comments made regarding the no action alternative.

ISSUE 4: The agency has violated the Freedom of Information Act (FOIA).

Contention 2.A: The appellants contend that the agency’s failure to provide the project record index when requested violates NEPA regulations at 40 CFR 1502.21 [Appeal, p. 117].

Response: The FOIA allows a request to capture responsive records in existence on the date the search for records begins, unless the requester provides a specific timeframe.

40 CFR §1502.21 directs that agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action and that no material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment.

The appellant, and Mark Werkmeister of NMOHVA, made a request for materials that were incorporated by reference into the wildlife specialist’s report and a list of documents in the project record [PR 2073 and 2134]. At that time, the Forest did not have the project record or index which would provide the list of documents [PR 2147]. However, the Forest offered to provide the appellant the documents of interest. FOIA case 6792 [PR 2112 and 2113] show the materials incorporated by reference into the wildlife specialist’s report were provided to JoAnne Blount.

The project record shows that Mark Werkmeister of NMOHVA then made FOIA requests for specific records [PR 2148 and 2185]. FOIA cases 6844 [PR 2177, 2271 and 2341] and 6961 [PR 2351], document the requests were fulfilled.

The requests and material were provided well within the 60-day DEIS comment period which was January 7 and ending March 7, 2011.

In light of the statement in the DEIS [PR 1865, p. 1] that the project record is located at the Gila National Forest Supervisor's Office, neither the project record or the project record index was available at the time of the appellant's request. The project index is merely a list of the documents used to inform or support the decision, such as specialist reports, literature citations and meeting notes. The project record is the organized accumulation of those documents. The project record is compiled as project development moves forward. The project record index is generally compiled at the administrative review stage of a project or once a decision has been made.

Finding: The Forest did not violate the NEPA regulations at 40 CFR 1502.21 which refers to making material incorporated by reference reasonably available for inspection by potentially interested persons within the time allowed for comment. The Forest met the underlining intent by providing the material to the appellant for review prior to the appellant commenting on the DEIS. The CEQ regulation does not state that a project record or a project record index shall be provided. The FOIA requests for the specific reports were fulfilled well before the end of the 60-day DEIS comment period.

Contention 2.B: The appellants contend that the agency's use of Exemption 5 on their request for the entire contents of the project record is invalid. They claim this exemption does not apply to an entire body of documents according to Department of Justice guidelines and legal decisions. To support their claim, the appellants point out that the Gila NF responded to their FOIA request in 2011 without claiming an exemption and the Santa Fe National Forest did not use Exemption 5 on the same FOIA request sent by NMOHVA for that forest's Travel Management DEIS [Appeal, p. 117-118].

Response: Exemption 5 of the FOIA, 5 U.S.C. §552(b)(5), was used only for Case 2013-FS-R3-05354-F. The request was for "a complete current listing of all specific records residing in the project record . . ." The Forest advised the appellants that the project record index was still being developed and in the "draft" stage. Exemption 5 was used to withhold the "draft" project record index, which is a list of all the documents contained in the project record. The exemption was not used to withhold the documents contained in the project record.

Regarding the Santa Fe NF - Exemption 5 was not used because that Forest had a project record index available at the time the appellants requested it.