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File Code: 1570/2350

Date: September 9, 2014

Ms. Sylvia Allen  
President

Coalition of Arizona/New Mexico Counties for Stable  
Economic Growth  
PO Box 92252  
Albuquerque, NM 87199

**CERTIFIED MAIL – RETURN**

**RECEIPT REQUESTED**

**NUMBER: 7000 2870 0000 1135 7241**

Dear Ms. Allen:

This is my decision on the appeal (#14-03-00-0143-A215) you filed on behalf of the Coalition of Arizona/New Mexico Counties for Stable Economic Growth, 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



United States  
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Forest  
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Tonto National Forest

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File Code: 1570/2350

Date: September 4, 2014

Route To:

Subject: Appeal Recommendation, Gila Travel Management

To: Deputy Regional Forester, Gilbert Zepeda

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

### **BACKGROUND**

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

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

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

Twenty two appeals were filed as follows:

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



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

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

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

### **Review and Findings**

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

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

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

### **Recommendation**

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

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

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

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

cc: Margaret Van Gilder

## Review and Findings

**Hidalgo County – Appeal #14-03-00-0139-A215**

**Catron County – Appeal #14-03-00-0140-A215**

**Grant County – Appeal #14-03-00-0141-A215**

**Arizona/New Mexico Coalition of Counties for Stable Economic Growth –  
Appeal #14-13-00-0143-A215**

### Gila Travel Management

Note: All of the Counties filed the same appeal but page numbers vary. Appeal page numbers referenced in this document are taken from the appeal filed by Hidalgo County.

**ISSUE 1:** The Record of Decision (ROD) violates requirements for coordination, consistency review, cooperating agencies, and joint planning.

#### A. National Forest Management Act (NFMA)

**Contention 1.A.1:** The appellants contend the agency is out of compliance with 36 CFR 219 planning rule requirements for coordination with local governments. They assert there has been no display, review, summary or evidence of Forest coordination with the County in the Draft Environmental Impact Statement (DEIS), the Final EIS (FEIS), or the ROD. Although the Forest provided a summary of consultation with affected Tribes, there is no summary of consultation with the County. There is no disclosure or discussion of inconsistencies or conflicts between the County's plans and policies or how the Forest can reconcile its proposed action with the local plan or law. The appellants conclude that true coordination to address consistencies, conflicts, opportunities for coordination, and coordinated monitoring, as specified in the planning rule must begin early on in the process, and must continue throughout the process, concluding with an agreed upon monitoring plan, per 219.7. They argue that because this did not happen, the FEIS and ROD are essentially invalidated by the lack of true engagement throughout the whole planning process [Appeal, pp. 5-12].

**Response:** The 1982 Planning Rule, section 7 (36 CFR 219.7) does address requirements of coordination with the planning efforts of other agencies, but those requirements only apply to forest planning, not to project level planning like the Gila Travel Management project. The coordination/consistency with other agencies planning efforts for project planning is addressed through the NEPA regulations. Section 219.7 of the 1982 Planning Rule calls on the responsible line officer to: “...*coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes*” (36 CFR 219.7(a)), “...*review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan*” (36 CFR 219.7(c)), “...*meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments...*” **in developing land and resource management plans** (36

CFR 219.7(d)), and “...seek input from other Federal, State and local governments, and universities...” **in developing the Forest Plan** (36 CFR 219.7(e)).

**Finding:** Section 219.7 of the 1982 Planning Rule clearly applies only to forest planning, not to project planning. Since it does not apply to projects like the Gila Travel Management project, there is no inconsistency with the 1982 Planning Rule, and therefore no inconsistency with NFMA.

## **B. National Environmental Policy Act (NEPA)**

**Contention 1.B.1:** The appellants contend the agency is not in compliance with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1506.2(d) which require that the agency “Discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the [EIS] should describe the extent to which the [federal] agency would reconcile its proposed action with the [local government] plan or law.” The appellants contend the DEIS failed to address consistency analysis with the County’s plans, programs and activities that include travel management components (e.g. County mini-NEPA plans, wildfire plans, comprehensive land use and resource plans, economic plans, and emergency services rapid response plans), even in instances when the Forest was an active participant in developing those plans [Appeal, pp. 6-7].

**Response:** CEQ Regulation 40 CFR 1506.2(d) addresses integration of planning processes with non-Federal governmental entities: “To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.”

The FEIS Response to Comments (Appendix B) regarding the sharing of information with the counties states the counties agreed to:

- Provide the Forest Service with relevant information related to the County Comprehensive Plan with respect to natural-resource-based industries, the economy, culture, and traditional uses.
- Provide the Forest Service with information and effects to the County transportation system planning for any lands within borders of the County [PR 2528, p. 574].

The Forest and Counties held a number of meetings and correspondences between October 2005 and February 2013 [PR 2506]. During this time the Forest received 28 letters covering topics such as cooperating agency status, coordination, data requests, FOIAs, and RS-2477; the Forest sent 13 responses and 53 other letters including invitations to meetings and other information; the Forest held 23 meetings and provided 10 presentations; and Catron, Grant, Sierra, and Hidalgo Counties were offered (2/11/2009) and accepted Cooperating Agency status. Memoranda of Understanding were signed March 3, 2009 [PR 1143, PR 1144, PR 1145, PR 1146]. Meetings and coordination on joint transportation planning occurred [PR 0034, PR 0437,

PR 0498, PR 1087, PR 1127, PR 1167, PR 1169, PR 1170, PR 1785, PR 1789] as promulgated in one of the Sierra County Comprehensive Plan's goal statements [PR 0014, p. 115] and in a Catron County Ordinance [PR 1167, p. 6]. Further, Grant, Sierra, and Hidalgo requested an extension of their MOUs (initially for 2 years) to continue cooperation and coordination throughout the travel management process [PR 2110, PR 2022, PR 2017].

**Finding:** The Forest Service complied with the regulations regarding coordination of conflicts with other land management plans, and State and Federal regulations, policies, and controls.

**Contention 1.B.2:** The appellants contend the agency is out of compliance with CEQ regulation 40 CFR 1501.6 Cooperating agencies, CEQ Directive (1/30/2002), CEQ Factors for Cooperating Agencies, and the Gila National Forest Travel Management Planning (TMP) Memorandums of Understanding (MOUs) with Counties to be Cooperating Agencies and participate on the TMP EIS ID Team. They state they requested to review all of the specialist reports but the Forest rejected the request, stating that the MOU with the Counties only committed to providing the Counties socioeconomic specialist report, not the other specialist reports related to the alternatives and impacts to the natural resources. The appellants also contend that the Forest rejected the Grant Soil and Water Conservation District's (SWCD) request for Cooperating Agency status, stating that the Grant SWCD was not a government entity in spite of the Grant SWCD presenting in detail, that it is a government according to New Mexico law [Appeal, pp. 8-10].

**Response:** CEQ Regulation 40 CFR 1501.6 is specific to cooperating agencies among Federal agencies. The two criteria for determining whether cooperating agency status should be granted include jurisdiction by law and/or special expertise. The only situation in which cooperating agency status *shall* be granted is in projects where other Federal agencies have jurisdiction by law. All other cases can be left to the lead agency to determine whether to establish cooperating agency status. A cooperating agency shall: participate in the NEPA process at the earliest possible time; participate in the scoping process; assume responsibility for developing information and preparing analyses; make staff support available to enhance interdisciplinary capability; normally use its own funds; and, make the lead agency aware when other commitments preclude any involvement or the degree of involvement requested by the lead agency (40 CFR 1501.6). CEQ regulation 40 CFR 1508.5, not included in the appeal letter, states that a "State or local agency of similar qualifications,"... "may by agreement with the lead agency become a cooperating agency."

CEQ Memorandum on Factors for Determining Whether to Invite, Decline or End Cooperating Agency Status (1/30/2002) reinforces the CEQ regulation that other governmental agencies *may* be cooperating agencies, and the listed factors may be used to help make that determination. The listed factors include questions the lead agency can use to determine if the cooperating agency status is a good and beneficial fit for a particular project such as "*Can the cooperating agency assist in preparing portions of the review and analysis...?*" Ultimately, each cooperating agency decision should be made on a case-by-case basis.

The Gila National Forest Travel Management Planning Memorandums of Understanding (MOUs) with Catron, Grant, Sierra, and Hidalgo Counties [PR 1143, PR 1144, PR 1145, PR

1146] are all the same and in them the Forest Service agreed to provide the following documents to the Counties for review and comment:

- a.) Draft proposed action
- b.) Preliminary range of alternatives
- c.) Preliminary draft of the social/economic section of the affected environment and environmental consequences
- d.) Draft EIS
- e.) Final EIS

The Forest Service, therefore, did meet the conditions of the MOUs by sharing the socioeconomic specialist report. The Forest Service (and the Counties) did not agree to share/review other specialists reports related to impacts to natural resources. The Forest responded in this fashion by letter to Catron County on July 19, 2010 [PR 1825].

The appellants also contend that the Forest inappropriately rejected the Grant Soil and Water Conservation District's (GSWCD) request for Cooperating Agency status [Appeal, pp. 8-10].

As stated above, according to CEQ Regulation 40 CFR 1501.6 the two criteria for determining whether cooperating agency status should be granted include jurisdiction by law and/or special expertise. The only situation in which cooperating agency status *shall* be granted is in projects where other Federal agencies have jurisdiction by law. All other cases can be left to the lead agency to determine whether to establish cooperating agency status. CEQ Regulation 40 CFR 1508.5 states that a "State or local agency of similar qualifications"... "may by agreement with the lead agency become a cooperating agency." In New Mexico, SWCDs are subdivisions of their respective state governments (NMSA 73-20-44, ARS 37-1002, 1036, 1054).

In a series of correspondences and comments from September 21, 2009 to March 18, 2011 [PR 1378, PR 1705, PR 1735, PR 1741, PR 1745, PR 1746, PR 1755, PR 1758, PR 2387], the GSWCD requested cooperating agency status and the Forest, after much discussion, denied the request.

In a response letter from the Gila National Forest's Forest Supervisor Richard Markley [PR 1705] to the GSWCD, the Forest initially suggested that they would work with the GSWCD through Grant County and their Memorandum of Understanding [PR 1144] for cooperating agency status. The GSWCD's involvement was not denied at this point, just situated through the County. The letter states, "I have conferred with Grant County on your request, and I would like for you to work through them as part of their responsibility to represent Grant County and its constituents."

A few months later, the GSWCD resubmitted a letter [PR 1735] clarifying that they are not a division of County government, but a division of State government, implying that they should be considered separately and individually as a cooperating agency. The letter also stated that if cooperating agency status was denied the Forest should provide a rationale for this. In a response letter dated January 21, 2010 [PR 1741], the Forest Service stated that the GSWCD did not have jurisdiction by law so the Forest Supervisor requested that the GSWCD, "Please provide me with

the type of expertise you can provide and I will consider granting cooperating agency status.” He also stated, “Whether GSWCD is granted cooperating agency status or not does not prevent us from meeting to discuss issues of interest to GSWCD. We will continue to provide information and address any questions that you might have.”

The GSWCD responded by listing the ways in which it could assist the Forest through its special expertise [PR 1745]. Based on this information and other correspondence [PR 1750], the GSWCD and the Forest agreed to meet in person on February 5, 2010. As a result of this meeting, the Forest decided to proceed with the GSWCD as an entity that participates in the public involvement and NEPA process for the Gila TMR project, but not as a cooperating agency. This decision is thoroughly documented for the project record [PR 1750]. It is clear through all of the documentation in the project record that the GSWCD did not agree with this decision nor was it satisfied with the outcome of the deliberation. However, the Forest never disregarded any information provided by the GSWCD nor did it otherwise deny the GSWCD’s involvement or participation in the NEPA and TMR process.

**Finding:** The Forest followed law, regulation, policy, CEQ guidance, and the established MOUs with the counties in releasing only the socioeconomic specialist report (and not others) for review and determining that the Grant Soil and Water Conservation District would not be granted cooperating agency status.

**ISSUE 2:** The ROD violates the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA).

### **A. Supplement Required**

**Contention 2.A.1:** The appellants contend that a supplement to the FEIS is required (40 CFR 1502.9) because there have been significant changes from the existing access condition that was extant at the beginning the TMR process, due to major fires on the Glenwood and Reserve and parts of the Wilderness Ranger Districts in Catron County, and the Silver City Ranger District and parts of the Wilderness Ranger District in Grant County. They contend there is no analysis in the FEIS of how the decision, on top of the changed condition from the fires, would affect the counties [Appeal, pp. 16-17].

**Response:** 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 FEIS examined effects at a forestwide scale; the analyses displayed effects as trends or potential effects [PR 2527, p. 45]. The Whitewater-Baldy Fire burned approximately 10 percent of the forest, much of that was in designated wilderness [PR 2527, pp. 187-188]. Designated Wilderness is outside the scope of the Travel Management Rule.

The FEIS did not mention the Silver fire. Effects from the Whitewater-Baldy fire were analyzed in Chapter 3 of the FEIS for some resource areas: (1) recreation [PR 2527, pp. 77-78, 88, 93]; (2)

watersheds and soils [PR 2527, pp. 187-189]; and (3) wildlife [PR 2527, pp. 256, 374, 379-380]. The recreation section notes that a closure order is in place for the Willow Creek area and trails within the fire area, including a portion of the Catwalk National Recreation Trail, and that some roads and trails may be closed for several years [PR 2527, p. 77-78]. Motorized designation of the Catwalk trail is not proposed under any of the action alternatives [PR 2527, p. 90].

The Whitewater-Baldy fire was also addressed in some specialist reports: sensitive plants [PR 2524-00, p. 24]; watersheds and soils [PR 2514-00, pp. 25-26]; wildlife [PR 2519-00, pp. 6, 162, 166, 171]; and watersheds-soils-aquatics cumulative effects [PR 2508-0, pp. 7-9, 11]. The fire area was expected to stabilize in 3-5 years, with full watershed recovery in 20-25 years [PR 2508-0, p. 9].

Appendix A of the FEIS [PR 2528, pp. 507-531] lists changes made to the proposed action since the DEIS. None of the changes listed were made in response to changed conditions after the Whitewater-Baldy or Silver fires.

**Finding:** The changed conditions did not result in substantial changes to the proposed action. The resulting impacts from the Whitewater-Baldy fire were within the scope and scale of the analysis for direct, indirect, and cumulative effects. The Forest was in compliance with 40 CFR 1502.9(c)(1)-(2) regarding supplements to an FEIS, and a supplement is not needed.

**Contention 2.A.2:** The appellants contend the agency has added significant new information to the environmental documents between the DEIS and FEIS. They claim that the addition of 192 pages to Chapter 3 (Environmental Consequences) in the FEIS is evidence that a broad range of additional data, information, analyses, and conclusions are being presented in the FEIS without an opportunity for the public to review and comment on the new information, in violation of 40 CFR 1502.9(c)(1)(ii). The appellants present several examples supporting this claim as discussed in contentions below [Appeal, pp. 75-76].

**Response:** According to CEQ Regulation 40 CFR 1502.9, agencies shall prepare supplements if substantial changes are made to the proposed action or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

Changes and corrections regarding roads, unauthorized routes, maps, dispersed camping corridors, and motorized areas made to the alternatives were displayed in appendix A of the FEIS [PR 2527, pp. 507-531]. These changes were made in response to comments and/or reflected the use of updated data. The source of the change is listed in the “Notes” column of the table.

Much of the additional data, information, and analyses in Chapter 3 were made in response to public comments: (1) analysis of the San Francisco River area [PR 2526, p. 6; PR 2528, p. 716]; and (2) analysis and information regarding Non-Motorized Opportunities, Equestrian, Quiet, Noise and User Conflicts, Concentrated Use, Motorized Routes (and Opportunities), Motorized Opportunities -Analysis, Cross Country Travel Prohibition, User-Created Routes, National Forest System Trails, Single Track Motorcycle Opportunities, Both Motorized Dispersed Camping and Big Game Retrieval, Motorized Dispersed Camping, Motorized Big Game

Retrieval, One Vehicle Length Parking, Motorized Areas, Recreation Opportunity Spectrum (ROS), Visual Quality Objectives and eligible Wild and Scenic Rivers [PR 2516-00, p. 1; PR 2527, pp. 56-163; PR 2528, pp. 618, 628, 636, 650, 655,].

Other changes reflected updated information: (1) Air Quality- fugitive dust and monitoring [PR 2528, pp. 539-540]; (2) Watershed and Soils- 6<sup>th</sup> code watershed conditions, riparian areas, cumulative effects, ephemeral channels [PR 2528, pp. 572, 731, 742, 743-747, 749; PR 2514-1, pp. 28, 37, 38, 47, 48, 51, 67; PR 2527, pp. 194-195]; (3) Invasive Species- cumulative effects, species list [PR 2528, pp. 598-600]; (4) Economics- current economic data [PR 2528, p. 722]; and (5) Wildlife- cumulative effects [PR 2528, pp. 756].

The corrections, updates, and additional analysis enhanced the discussion of environmental consequences but did not result in significant changes to the conclusions or the proposed action. Restating, improving, or modifying the analysis of a DEIS does not automatically require a supplemental EIS.

**Finding:** The Forest was in compliance with 40 CFR 1502.9(c)(1)-(2) regarding the issuance of a supplement to the draft or final environmental impact statement.

**Contention 2.A.3:** As an example supporting their claim that the FEIS presents new information requiring a supplement, the appellants contend that in the DEIS, the agency relied on the concept/methodology of “riparian risk zones.” In the FEIS, these risk zones have been dropped completely and the agency used an entirely new data/methodology: the 2011 Gila National Forest Riparian Map (RMAP) [Appeal, p. 74].

**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. Restating, improving, or modifying the analysis does not require a supplemental EIS.

The FEIS examined effects at a forestwide scale; the analyses displayed effects as trends or potential effects [PR 2527, p. 45].

Appendix A of the FEIS [PR 2528, pp. 507-531] lists changes made to proposed action since the DEIS. None of the changes listed were made in response to changed conditions resulting from the revised analyses.

The FEIS clearly articulates the changes that took place between the DEIS and FEIS [PR 2527, pp. 194-195] as a result of new, improved data being available from the State of New Mexico and the Forest Service. The new data did not change the outcome of the overall effects analysis for the watershed and soils resources [PR 2527, pp. 194-195].

**Finding:** The modified/improved analysis did not result in substantial changes to the proposed action. The revised effects were within the scope and scale of the analysis. The additional analysis enhanced the discussion of environmental consequences but did not result in significant changes to the conclusions.

**Contention 2.A.4:** In their second example, the appellants contend that the FEIS changes the underlying assumptions and methodology for road density calculations. They claim that the methodology has changed in that in the FEIS all routes, both Forest Service (FS) and non-FS are used to calculate density versus only Forest routes in the DEIS; the calculations presented have changed (the ranges of road density included in each category), and the results (the percentages) have all changed. The appellants contend the public has been denied its right and obligation to review and comment on this methodology and its accuracy because this significant new information was first presented in the FEIS [Appeal, pp. 74-75].

**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. Restating, improving, or modifying the analysis does not require a supplemental EIS.

The Forest used the same analysis methods for road density between draft and final – TIGER data was used in both the DEIS and FEIS to calculate road density by watershed [PR 1834\_45]. However, the Forest did change watershed boundaries by using a more updated analysis method, the 2011 Watershed Condition Classification, which analyzed the 6th code boundaries (in the FEIS) versus 5th and 6th code NRCS watershed boundaries [PR 2514\_00, p. 47] which slightly changed road densities.

Appendix A of the FEIS [PR 2528, pp. 507-531] lists changes made to proposed action since the DEIS. None of the changes listed were made in response to changed conditions resulting from the revised analyses.

The corrections, updates, and additional analysis enhanced the discussion of environmental consequences but did not result in significant changes to the conclusions or the proposed action. Restating, improving, or modifying the analysis from a DEIS to an FEIS does not automatically require a supplemental EIS.

**Finding:** The Forest was in compliance with 40 CFR 1502.9(c)(1)-(2) regarding supplements to an FEIS.

**Contention 2.A.5:** The appellants contend the addition of a whole new section of the Recreation Analysis in Chapter 3, *Recreation – Special Management Areas* is another example of significant content changes between the draft and final EIS that the public did not have the opportunity to review. They claim that there is so much new information that it required an entirely new and

additional underlying specialist's report: The inventoried roadless areas and wilderness study areas report (USDA Forest Service 2013b2) [Appeal, p. 75].

**Response:** Analysis can differ between the DEIS and the FEIS based on new information, additional analysis, comments, or correction of 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. Restating, improving, or modifying the analysis does not automatically require a supplemental EIS.

The FEIS examined effects at a forestwide scale; the analyses displayed effects as trends or potential effects [PR 2527, p. 45].

Appendix A of the FEIS [PR 2528, pp. 507-531] lists changes made to proposed action since the DEIS. None of the changes listed were made in response to changed conditions resulting from the revised analyses.

The FEIS included an evaluation of effects to roadless characteristics on inventoried roadless areas (IRAs) and qualities of wilderness character on wilderness study areas (WSAs) in response to comments on the DEIS [PR 2528, p. 618]. Due to the level of public comment, the responsible official also decided to have the Lower San Francisco River area specifically addressed in the FEIS [PR 2526, p. 6].

The modified/improved analysis did not result in substantial changes to the proposed action. The revised effects were within the scope and scale of the analysis. The additional analysis enhanced the discussion of environmental consequences but did not result in significant changes to the conclusions.

**Finding:** The Forest was in compliance with 40 CFR 1502.9(c)(1)-(2) regarding supplements to an FEIS.

## **B. Alternatives**

**Contention 2.B.1:** The appellants contend that the No Action alternative is unlawful because it does not provide an accurate baseline for comparison to the effects of the action alternatives. It does not accurately portray the current management direction. They argue that the Forest Service has created a No Action alternative which minimizes the difference between the present situation and what the situation will be like under the decision if it is implemented. The agency has done so by eliminating all operational maintenance level (OML) 1 roads, arbitrarily removing many miles of trails and roads from maps, and mostly disregarded the existence of an entire system of routes that the agency calls "unauthorized." In fact, the Forest Service does not know how many miles of routes there are in the Forest, yet miles of routes is the metric by which all impacts are measured. The appellants argue that a reasonable, feasible and lawful decision cannot be derived from such incomplete data about the main subject of the analysis. They assert that the basic accuracy of the entire document is in question because of these (perhaps) unintentional and

(admitted as) intentional omissions, and the decision is open to further independent action because of them. The appellants conclude that even if these omissions are honestly committed, the decision does not live up to the standards of the APA standards of review [Appeal, pp. 18-30].

**Response:** The CEQ regulations at 40 CFR 1502.14(d) require EISs to include the alternative of No Action in the discussion of alternatives with no additional guidance in regulation. The CEQ's 40 Most Asked Questions, No. 3, provides guidance and explanation of two ways to consider describing the no action. One way describes the No Action Alternative as, "no change from current management direction or level of management intensity." It may be thought of in terms of continuing with the present course of action until that action is changed. In the description of the alternatives the Forest describes the current management direction [PR 2527, pp. 2-5, 13-14, 25-27] and how this represents current management direction or the "existing condition of travel management" on the forest. The Forest describes the current management direction [PR 2527, pp. 2-5, 13-14, 25-27] and indicates that management is based on previous decisions, some of which do not need to be revisited. The TMR also allows the responsible official to incorporate previous administrative decisions regarding travel management made under other authorities [PR 0029, p. 68289]. These previous decisions include but are not limited to management direction from the land use plan; Wilderness designation areas are closed to motorized travel; all OML 1 roads are closed to public travel; the forest, except in areas indicated as closed, is open to cross-country travel. 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.

The Travel Management Rule does not require forests to have a complete inventory of routes prior to engaging in the travel management process of designating a system of roads [PR 0029, p. 68269]. However based on current management, the Travel Analysis Process (TAP), and information recorded in the INFRA database, the Forest describes its baseline for the No Action Alternative. The No Action Alternative is described in Chapter 2 of the FEIS [PR 2527, pp. 13-14, 25-27, & 33] through narratives and tables and displays existing conditions and provides a baseline for comparing the other alternatives. In Chapter 3 (analysis) the Forest consistently compares the impacts of the no action to the impacts of the action alternatives.

The Forest develops and uses a framework for impact analysis which is how alternatives will be evaluated and compared. It also describes the function of measurement indicators (FSH 1909.12, Section 12.3). In the case of the road system the Forest used the metric of road miles and where road miles could not be quantified or the analysis made more sense, the Forest used acres of forest lands.

**Finding:** The No action Alternative accurately portrays a continuation of the current management direction against which the action alternatives can be meaningfully and realistically compared and meets the requirements of NEPA and CEQ regulations. The No Action complies with law, regulation, and policy. The FEIS documents a NEPA process, completed by the Gila National Forest, which is lawful and meets the standards of the NEPA and APA.

**Contention 2.B.2:** The appellants contend the range of alternatives is too narrow. They argue the range of alternatives is constrained by the perception that the TMR is a mandate to close roads and trails, primarily because of the instruction in the TMR that directs the Forest Service to consider noise, emissions, and essentially, the mere presence of motorized vehicles. The appellants contend this instruction is unlawful because it forces the alternatives to crowd only one end of the spectrum of reasonable alternatives. They believe that in a complete range of alternatives, an expansion of the existing system would be at one end of the range and a contraction of the system would be at the other. The appellants argue that the Forest Service cannot claim it is expanding the system because it is designating roads and trails where there was virtually no designation before. They contend that the agency needs an accurate inventory of the existing road and trail situation before it can formulate alternatives. The appellants contend the exemption from having a complete inventory is inappropriate because the inventory is the subject of the analysis. The direct, indirect and cumulative effects cannot be estimated without the inventory. The appellants conclude there are two faults constraining the construction of a true range of alternatives: the Forest Service is incorporating philosophical values into its alternative construction, and, the subject of the analysis is unknown [Appeal, pp. 32-34].

**Response:** CEQ guidance on range of alternatives is provided in the document “*Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations.*” The phrase “range of alternatives” refers to all the alternatives discussed in environmental documents. It includes “reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them” (40 CFR 1502.14). In determining a range of reasonable alternatives, “[A]n agency must look at every reasonable alternative, within the range dictated by the ‘nature and scope of the proposed action’ and ‘sufficient to permit a reasoned choice’” (Idaho Conservation League v. Mumma, 956 F. 2d 1508, 1520 9th Cir. 1992). For an alternative to be reasonable, it must meet the stated purpose and need and address one or more issues. The formulation of alternatives is driven by significant issues identified in scoping [40 CFR 1501.2(c)]. The FEIS explained how comments were used to determine issues and develop alternatives based on these issues [PR 2527, pp. 8, 13].

Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and use common sense, rather than simply desirable from the standpoint of the applicant. Whether an alternative is “reasonable” also depends on whether it would fulfill the purpose of, and need for, the proposed action. In addition to the six alternatives that were considered in detail in the DEIS and FEIS, two other alternatives were considered but dismissed from further analysis in the EIS process. Chapter 2 of the FEIS [PR 2527, pp. 13-32] contains a brief discussion of these alternatives, as is required by 40 CFR 1502.14(a). All alternatives presented in Chapter 2, both those analyzed in detail and those considered but eliminated from detailed study, represent a range of reasonable alternatives, given the purpose and need and key issues presented [PR 2527, pp. 4-5 and 9-10]. The FEIS appropriately discloses direct, indirect and cumulative effects of the alternatives that were analyzed in detail through the environmental review process [PR 2527, pp. 45-453].

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]. In a sense, the TMR does mandate closures because the final rule prohibits the use of motor vehicles off the designated system (i.e., cross-country motor vehicle use will be prohibited except where specifically designated), and restricts motor vehicle use to the designated system. The rule is also focused on motor vehicle use and the effects of motor vehicle use in the criteria for designation of roads, trails and areas (§212.55) because the purpose of the TMR is to “provide for a system of NFS roads, NFS trails, and areas on NFS lands that are **designated for motor vehicle use**” (emphasis added). The TMR implements Executive Order (E.O.) 11644 (Use of off-road vehicles on public lands) and E.O. 11989 (Off-road vehicles on public lands), both of which have to do with off-road motor vehicle use on public lands.

Furthermore, the TMR does not require a complete inventory prior to making a designation decision. As stated in the preamble to the TMR: “The Department disagrees that a complete inventory of user-created routes is required in order to complete the designation process. As a practical matter, such an inventory may never be fully complete, as new routes will continue to be created during the inventory process. A complete inventory would be very time-consuming and expensive, delaying completion of route designation. Advance planning based on public involvement, careful design, and site-specific environmental analysis provide the best hope for a sustainable, managed system of motor vehicle routes and areas addressing user needs and safety with a minimum of environmental impacts” [PR 0029, p. 68269]. The Forest discloses that it does not have complete information on the condition and level of use of its forest system roads and trails, unauthorized routes, or motorized cross-country use [PR 2528, p. 612]. It is also disclosed in the FEIS that “specialists presented any limitations and assumptions in their analyses in accordance to the Council on Environmental Quality; Regulations for Implementing NEPA; 40 CFR Section 1502.22; Incomplete or unavailable information” [PR 2527, p. 46]. This disclosure is in compliance with NEPA and with the CEQ regulations.

**Finding:** The FEIS complies with the NEPA and conforms to CEQ regulations. The decision-maker had a suitable range of alternatives to consider in making a reasoned choice between the alternatives. The TMR does not require a complete inventory prior to making a designation decision, nor does the Department believe a complete inventory is needed in order to complete the designation process.

### **C. Effects**

**Contention 2.C.1:** The appellants contend the full impacts of the decision are unknown because it is based on incomplete information. In their comments on the DEIS, they stated that the Forest does not know the “full impact of the closure of roads due to the fact that not all the roads were studied in the DEIS.” They argue that 40 CFR 1500.2(b) explicitly states that the EIS “must be supported by evidence that agencies have made the necessary environmental analyses.” The appellants assert that the EIS has no such evidence, in fact, the EIS stands behind the Forest Service regulations (which are subordinate to CEQ) that they do not need to do a route by route analysis because it would cost too much. The appellants contend the full impact is not known without completing a route by route analysis and knowing the specific circumstances of each road, its importance in access and connectivity, its value for forest management, and its value to

the forest-visiting and using publics. The appellants conclude that the Forest Service has used its own regulatory scheme to circumvent both the letter and the spirit of the CEQ regulations and that the TMR regulations are in conflict with CEQ [Appeal, pp. 34-36].

**Response:** The regulations at 40 CFR 1502.22 address incomplete or unavailable information. The agency shall include a statement in the impact statement that there is (1) incomplete or unavailable information, (2) the relevance of the incomplete or unavailable information to evaluating significant adverse impacts, and (3) a summary of credible scientific evidence that is relevant to evaluating such impacts, and the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

The Forest discloses that it does not have complete information on the condition and level of use of its forest system roads and trails, unauthorized routes, or motorized cross-country use [PR 2528, p. 612]. It is also disclosed in the FEIS that “specialists presented any limitations and assumptions in their analyses in accordance to the Council on Environmental Quality; Regulations for Implementing NEPA; 40 CFR Section 1502.22; Incomplete or unavailable information” [PR 2527, p. 46]. Additionally, the TMR does not require a complete inventory prior to making a designation decision. As stated in the preamble to the TMR: “The Department disagrees that a complete inventory of user-created routes is required in order to complete the designation process. As a practical matter, such an inventory may never be fully complete, as new routes will continue to be created during the inventory process. A complete inventory would be very time-consuming and expensive, delaying completion of route designation. Advance planning based on public involvement, careful design, and site-specific environmental analysis provide the best hope for a sustainable, managed system of motor vehicle routes and areas addressing user needs and safety with a minimum of environmental impacts” [PR 0029, p. 68269].

Forest Service Manual (FSM) 7700 requires that units use a Travel Analysis to inform decisions related to 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. Forest Service Handbook (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, or to do a complete route by route analysis. 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 completed the Travel Analysis Process (TAP), and used the TAP to inform the decision. The TAP itself is not a decision process; the result of the TAP is a set of recommendations for changes to the transportation system which decision makers may consider before beginning the NEPA process [PR 1796, p. 1]. Step 4 of the TAP is a route by route assessment to determine a designation and identify suitable dispersed camping corridors [PR 1796, p. 17]. Step 6 listed the summary of recommendations from the analysis, which provided the basis for the proposed action [PR 2527, p. 5].

**Finding:** The TMR is not in conflict with CEQ regulations. An effects analysis based on incomplete information does not circumvent CEQ regulations. The TMR does not require a complete inventory prior to making a designation decision.

**Contention 2.C.2:** The appellants contend the agency failed to adequately consider the economic impacts of the decision in violation of NEPA. They assert that the agency did not use the best available information on economic effects because it used its own study 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. 38-42].

**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 (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).

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"<sup>1</sup> have been considered and referenced in the agency's reports [PR 2521, pp. 5 and 19; PR 2527, pp. 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 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.

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<sup>1</sup> 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."

The economic analysis did not omit effects – direct, induced and indirect – derived from visitor spending. In fact, 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. Employment, 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 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.

**Contention 2.C.3:** 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, p. 43].

**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 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 from 2010 [PR 2521, p. 4].

NVUM data revealed that recreation visitation on the Gila NF differed greatly between 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 analysis incorporated additional activities into the motorized category. 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].

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 evaluating the range of alternatives.

**Contention 2.C.4:** The appellants contend the agency treats the economic effects as linear: more miles equal more economic activity; fewer miles equals 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, pp. 43-48].

**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 informed the decision.

**Contention 2.C.5:** The appellants contend the decision violates Section 101(b) of NEPA because the Forest Service is not assuring a productive environment; rather, it is dramatically reducing the productivity in a sacrifice to natural values. Additionally, the agency has not struck a balance between resource use and productivity. The appellants contend the agency is placing natural values above all others and is not and has never considered the County’s place in the forest nor has the agency considered their concerns [Appeal, p. 49].

**Response:** The appellants contend that the Forest Service is placing natural values above all others and not considering the County’s place in the forest.

Title 1, Section 101(b) of NEPA notes that in addition to setting forth a policy so that the Nation may, “...fulfill the responsibilities of each generation...” the policy also is designed to “...achieve a balance between population and resource use...”

The ROD recognizes that Alternative G provides “...for a system of roads, trails, and areas designated for motor vehicle use by class of vehicle and time of year as specified in the Travel Management Rule (rule)...” while “...minimizing adverse effects to natural and cultural resources ...” [PR 2515, pp. 3-5]. There is no indication of any violation of NEPA policy.

The Department believes that a well-planned, well-designed system of designated roads, trails, and areas, developed in coordination with Federal, State, local, and tribal governments and with public involvement, offers better opportunities for sustainable long-term recreational motor vehicle use and better economic opportunities for local residents and communities [PR 0029, p. 68271].

The Forest worked extensively with the Counties and did record and listen to their concerns. A number of meetings and interactions took place between October 2005 and February 2013 [PR 2506]. During this time the Forest received 28 letters covering topics such as cooperating agency status, coordination, data requests, FOIAs, and RS-2477; the Forest sent 13 responses and 53 other letters including invitations to meetings and other information; the Forest held 23 meetings and provided 10 presentations; and Catron, Grant, Sierra, and Hidalgo Counties were offered (2/11/2009) and accepted Cooperating Agency status. Memoranda of Understanding were signed March 3, 2009 [PR 1143, PR 1144, PR 1145, PR 1146]. Further, Grant, Sierra,

and Hidalgo requested an extension of their MOUs (initially for 2 years) to continue cooperation and coordination throughout the travel management process [PR 2110, PR 2022, PR 2017].

The Forest also considered the concerns of the general public which reflected a broad spectrum of values. According to the FEIS, “Some members of the public believe that unhampered motorized access improves public use and enjoyment of the forest. On the other hand, some comments express frustration with motorized use on the Forest. These comments often identify resource conservation and the preservation of solitude as forest values that motorized use diminishes” [PR 2527, p. 437].

A number of social and economic issues were identified in the public comments associated with the development of this plan. Employment and income effects related to recreation were analyzed [PR 2527, pp. 446]. Effects on fuelwood gathering, elderly and disable access, traditional and tribal uses, as well as lifestyles, values, beliefs and attitudes have been considered in the social and economic evaluation [PR 2521, pp. 22-23]. Several economic indicators were also described and considered as part of the economic analysis, such as the relative size of industries, average annual employment rate, county level employments by industry, and median household income in the planning area [PR 2527, p. 441; PR 2521, pp. 11-13].

**Finding:** The selection of Alternative G follows NEPA law. Effects of all action alternatives to the natural environment and the human environment are analyzed and disclosed. The Forest listened to the concerns of the Counties and the general public in reaching its decision. Ultimately, the Forest did not select the environmentally preferred alternative; however, Alternative G would provide a balance of the human environment and the natural environment.

**Contention 2.C.6:** The appellants contend the decision is based on speculation and declarative statements that are not supported by facts. They assert that the FEIS discusses what might happen instead of what has actually happened. The appellants use Table 1 Gila National Forest Management Indicator Species (MIS) Summary to support their argument. They claim the table indicates that all MIS on the Forest are not threatened in any significant way by roads and trails yet the FEIS predicts only the worst outcomes [Appeal, pp. 59-62].

**Response:** The appellants allege that the analyses in the FEIS are predicated on a false premise of negative impacts to wildlife that is not factual, since most wildlife species are not at risk due to current road use. They cite to Management Indicator Species (MIS) as an example. The standard applied here is, firstly, did the wildlife analyses utilize an appropriate baseline consistent with requirements under FSM 2672, and, secondly, was the MIS analysis consistent with the standards imposed through judicial review.

The Wildlife Specialist Report [PR 2535-23], Aquatic Specialist Report [PR 2535-21, and Sensitive Plant Report [PR 2535-24] all compare metrics such as road density, miles of road within a certain distance of habitat, crossings of roads with streams, and miles of road with reduction in use/non-reduction in use in relation to the amount of habitat for each status species as required under FSM 2672. Assumptions are well documented in each report, and each report

cites to literature which demonstrates the negative effects that vehicle use on and off road, as well as the presence of roads themselves, has on the various species analyzed. Nothing in any report states that the current condition is either good or bad; they merely state that vehicle travel and/or the presence of roads will be reduced in each of the action alternatives, and these reductions translate to lower impacts to wildlife based on the scientific literature. The findings of each of the reports are summarized in the EIS [PR 2527].

In terms of MIS, the Wildlife Specialist Report [PR 2535-23, p. 12] incorporates the forest-wide MIS report by reference [PR 2519-236]. This contains habitat and population trend for each MIS on the forest. The Aquatic Specialist Report [PR 2535-21] and Wildlife Specialist Report [2535-23] analyze the effects to MIS habitats and populations, and made determinations as to whether these impacts would affect forest-wide trends. This information was summarized in the FEIS [PR 2527].

**Finding:** The Forest used the appropriate baseline for analysis and comparison of alternatives regarding effects to fish, wildlife, and rare plants. The Forest also complied with requirements for MIS.

**Contention 2.C.7:** The appellants contend the decision violates NEPA because it arbitrarily places natural values above all others [Appeal, pp. 65-67].

**Response:** Title 1, Section 101(b) of NEPA notes that in addition to setting forth a policy so that the Nation may, "...fulfill the responsibilities of each generation..." the policy also is designed to "...achieve a balance between population and resource use..."

The purpose of the Travel Management Rule (TMR) is to provide for a system of National Forest System roads, trails and areas designated for motor vehicle use by class of vehicle and, if appropriate, by time of year. The TMR at 36 CFR 212.55 sets forth general and specific criteria that must be considered by the responsible official in designating routes and areas, including the provision of recreational opportunities. The Department believes that a well-planned, well-designed system of designated roads, trails, and areas, developed in coordination with Federal, State, local, and tribal governments and with public involvement, offers better opportunities for sustainable long-term recreational motor vehicle use and better economic opportunities for local residents and communities [PR 0029, p. 68271].

In responding to public comments on the promulgation of the Travel Management Rule, the Department of Agriculture reiterated that National Forests are managed by law for multiple use, including timber, grazing, mining and outdoor recreation. These uses must be balanced, rather than one given preference over another. The Department further emphasized that National Forests should provide access for both motorized and nonmotorized users in a manner that is environmentally sustainable. National Forests are not reserved for the exclusive use of any one group, nor must every use be accommodated on every acre. It is entirely appropriate for different areas of the National Forests to provide different opportunities for recreation. Such choices and evaluations are best made at the local level, with the full involvement of Federal, tribal, State and local governments, motorized and nonmotorized users, and other interested parties [PR 0029, p. 68266].

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 2526; PR 2527; PR 2516]

The resulting decision reduces, but does not eliminate the places where people can drive, and it does not restrict where people's nonmotorized activities may take place [PR 2526, pp. 3-5].

The responsible official selected Alternative G because it meets the purpose and need by providing for a system of roads, trails, and areas designated for motor vehicle use as specified by the TMR. It minimizes adverse effects to natural and cultural resources, prohibits driving off roads or motorized trails unless in a designated area or fixed-distance corridor, clarifies which roads and trails are open to motorized use, and amends the forest plan to be consistent with the TMR. Alternative G balances the desires of motorized recreation users while maintaining natural and cultural resource values [PR 2526, pp. 3-5]. The ROD recognizes that Alternative G provides "...for a system of roads, trails, and areas designated for motor vehicle use by class of vehicle and time of year as specified in the Travel Management Rule (rule)..." while "...minimizing adverse effects to natural and cultural resources ..." [PR 2526, pp. 3-5]. Nothing in the decision conflicts with, violates, or is inconsistent with statutory regulations.

The Forest worked extensively with the Counties and did record and listen to their concerns. A number of meetings and interactions took place between October 2005 and February 2013 [PR 2506]. During this time the Forest received 28 letters covering topics such as cooperating agency status, coordination, data requests, FOIAs, and RS-2477; the Forest sent 13 responses and 53 other letters including invitations to meetings and other information; the Forest held 23 meetings and provided 10 presentations; and Catron, Grant, Sierra, and Hidalgo Counties were offered (2/11/2009) and accepted Cooperating Agency status. Memoranda of Understanding were signed March 3, 2009 [PR 1143, PR 1144, PR 1145, PR 1146]. Further, Grant, Sierra, and Hidalgo requested an extension of their MOUs (initially for 2 years) to continue cooperation and coordination throughout the travel management process [PR 2110, PR 2022, PR 2017].

The Forest also considered the concerns of the general public which reflected a broad spectrum of values. According to the FEIS, "Some members of the public believe that unhampered motorized access improves public use and enjoyment of the forest. On the other hand, some comments expressed frustration with motorized use on the forest. These comments often identify resource conservation and the preservation of solitude as forest values that motorized use diminishes" [PR 2527, p. 437].

**Finding:** The decision does not place natural resource values above other all others. It provides motorized access throughout the Forest, fully considers the opportunities and values afforded by roads and motorized trails, and results in a transportation system that is sustainable. The decision is consistent with NEPA.

**Contention 2.C.8:** The appellants contend the FEIS sets forth no standards for how people can get special permission to use roads that will be open by written authorization only. They argue that the “written permission” stipulation must be abandoned because it provides too much opportunity for arbitrary or otherwise unlawful activity on the part of the agency [Appeal, pp. 67-68].

**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 decision, 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 are 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 FEIS 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 2.C.9:** The appellants contend the decision does not employ high-quality and professionally performed analyses because the FEIS equates the existence of the roads with the use of the roads. They argue that by using total miles of routes in the area and acreage of disturbance zones in the area as the only indicators for effects on wildlife, the agency has made the analysis entirely dependent on the existence of roads instead of the intensity of use of the roads. The appellants contend that the agency failed to consider that all of the factors selected (disturbance and harvest) go to zero in a case of zero use [Appeal, pp. 91-93].

**Response:** The appellants allege that the analyses in the FEIS are predicated on a false premise of negative impacts to wildlife that is not factual, since most wildlife species are not at risk due to current road use. The standard applied here is whether the wildlife analyses utilize an appropriate baseline consistent with requirements under FSM 2672.

The Wildlife Specialist Report [PR 2535-23], Aquatic Specialist Report [PR 2535-21, and Sensitive Plant Report [PR 2535-24] all compare metrics such as road density, miles of road within a certain distance of habitat, crossings of roads with streams, acres open to dispersed motorized camping or big game retrieval, and miles of road with reduction in use/non-reduction in use in relation to the amount of habitat for each status species as required by FSM 2672. Assumptions are well documented in each report, and each report cites to literature which demonstrates the negative effects that vehicle use on and off road, as well as the presence of roads themselves, has on the various species analyzed. Nothing in any report states that the current condition is either good or bad; they merely state that vehicle travel and/or the presence of roads will be reduced in each of the action alternatives, and these reductions translate to lower impacts to wildlife based on the scientific literature. The findings of each of the reports are summarized in the FEIS [PR 2527].

**Finding:** The Forest used the appropriate baseline for analysis and comparison of alternatives regarding effects to fish, wildlife, and rare plants.

**Contention 2.C.10:** The appellants contend FEIS fails to display any measurement of actual ground or vegetation disturbance. They assert the agency needs to determine the scale of effects both to the natural environment and to the human environment but the agency failed to compare the scale of the road footprint with the entire land base. In making that calculation, the appellants claim that closing half the roads will only reduce the footprint to 1/8<sup>th</sup> of one percent, but it reduces the human access by fifty percent [Appeal, pp. 93-95].

**Response:** CEQ Regulation 1502.24 states that agencies shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.

The Forest Service has the discretion to use the best, most appropriate, analysis methods to give the decision-maker the most informed interpretation of outcomes possible. The Forest did look at the impacts caused by the road footprint on the landscape and did take into account the average width of different types of roads and trails [PR 2527, pp. 45, 206] but did not associate this analysis method with human access.

Even though the Forest may not designate certain roads for public use, nonmotorized access on the Forest does not change. The ROD acknowledges that changes to motorized access will change but also stated that the majority of the roads to be closed to motor vehicle use are less than 1/2 mile in length; some had signs of little to no use; some had cultural or natural resource concerns; and some were duplicates of others or parallel to each other and ended near the same locations [PR 2526, p. 4]. Ultimately, the decision-maker felt “the designated motorized roads and trails open to the public and the roads and trails under administrative use only, provides the access needed for both the public and management of the Forest.”

**Finding:** The Forest followed law, regulation, and policy in selecting the best and most appropriate analysis methods it deemed necessary to making an informed decision.

**Contention 2.C.11:** The appellants contend the agency’s claims of watershed damage by roads and motor vehicle use are based on faulty assumptions and conclusions. They argue that because 49 percent of impaired water bodies are found in wilderness and 51 percent are found in non-wilderness no correlation between waters being impaired and being in areas where motor vehicle use is allowed can be made [Appeal, pp. 103-106].

**Response:** The Watershed and Soils Specialist Report cites the rationale supported by scientific references in establishing the effects of motorized vehicles use including roads on sediment delivered to watersheds [PR 2514, pp. 48-55].

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].

The 6<sup>th</sup> 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.

**Finding:** The relationship of roads and vehicle use upon watersheds within wilderness and nonwilderness areas is established within the project record.

#### **D. Response to Comments**

**Contention 2.D.1:** The appellants contend the agency failed to lawfully respond to their DEIS comments on the need for roads for emergency response vehicles. They object to the agencies response that the TMR exempts certain users, specifically emergency vehicles because they believe that once the road is closed, it becomes abandoned and unmaintained, making it unpassable. The appellants conclude that the agency disregarded the public safety issues they raised [Appeal, pp. 37-38].

**Response:** CEQ regulation 1503.4 clarifies how agencies process comments on an EIS by stating that the agency can: (1) Modify alternatives including the proposed action. (2) Develop and evaluate alternatives not previously given serious consideration by the agency. (3) Supplement, improve, or modify its analyses. (4) Make factual corrections. (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

The Forest responded to the appellant’s comments by stating that “Vehicles responding to or that are needed for activities such as search and rescue; fire, law enforcement, etc., are exempt under 36 CFR §212.51 from the designations” [PR 2528, pp. 595-596]. Under 36 CFR 212.51, Designations of roads, trails, and areas of the Travel Management Rule: “the following vehicles

and uses are exempted from these designations: (5) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes” [PR 2527, p. 9].

In regard to public safety, the responsible official specifically noted in the Record of Decision that the analysis in the FEIS indicates that there is no overall difference in the action alternatives from the current situation in which public safety concerns are relatively low [PR 2526, p. 5].

**Finding:** The Forest considered public safety as required by the Travel Management Rule (36 CFR 212.51). The Forest also followed CEQ Regulation 1503.4 and appropriately assessed, considered, and responded to comments on the DEIS.

**Contention 2.D.2:** The appellants contend the agency did not respond to their comments according to CEQ regulations at 40 CFR 1503.4. They identify several comments they believe agency did not respond to and conclude that because the agency failed to respond, their comments did not inform the decision [Appeal, pp. 62-65].

**Response:** CEQ regulations at 40 CFR 1503.1(a)-(b) require agencies to request comments from other Federal, State, and local agencies and the public after preparing a DEIS. CEQ regulations at 40 CFR 1503.4(a)-(c) require agencies to assess, consider, and respond to comments on the DEIS.

The Gila National Forest requested comments on the DEIS both from the public and Sierra, Hidalgo, Grant, and Catron Counties [PR 1886-1890]. Sierra and Grant Counties returned comments on the DEIS. These comments addressed topics including fuelwood access, RS-2477, access for emergency vehicles, forest management, effects, the alternatives, and coordination and consistency [PR 2343, PR 2345]. The Forest responded to those comments in the FEIS [PR 2528, pp. 541, 574, 595-596, 664-665].

Catron, Grant, Sierra, and Hidalgo Counties requested and received Cooperating Agency status [PR 1143-1146]. As cooperating agencies, they agreed to provide the Forest Service with information regarding natural-resourced based industries, the economy, culture, and traditional uses, and information and effects regarding county transportation system planning. The Counties provided documents with social and economic information [PR 1742, PR 1792] for use in the effects analysis; the reasons for using or not using this information were explained by the Forest Service economist [PR 1872-02].

There were over 100 main interactions between the Forest Service and the Counties from 2005-2013. These interactions are documented in a list in the project record [PR 2506]. The Gila National Forest contacted and/or met with county officials from Grant, Sierra, Catron, and Hidalgo Counties prior to and during scoping for the travel management EIS. This effort was acknowledged in the DEIS, FEIS, and ROD [PR 1865, pp. ii, 6; PR 2527, p. 6; PR 2526, p. 10].

**Finding:** The Forest Service met the requirements of 40 CFR 1503.1 and 40 CFR 1503.4(a)-(c) regarding inviting comments and responding to comments. The Forest Service also considered information submitted by the Counties during the analysis.

## **E. Unquantified Amenities**

**Contention 2.E.1:** The appellants contend the decision violates Section 102(B) of NEPA which directs agencies to “identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations” because the agency has failed to consider the customs and culture of the people of the county. They claim the agency developed no methods or procedures to identify and consider unquantified amenities [Appeal, pp. 69-71].

**Response:** CEQ regulations at Section 102(2)(B) state that agencies shall “identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations.”

Direction for economic and social valuation is found in the Forest Service Manual, FSM 1970, which fulfills the requirements under Section 102(2)(B) of the NEPA. Within FSM 1970, Parts FSM 1972 and FSM 1973 address economic and social valuation, respectively. The procedures outlined in the Forest Service Manual were used in the analysis in the Social and Economic specialist report [PR 2521-00, p. 1]. This report summarizes FSM 1973.2, that “social analysis may be qualitative or quantitative, as appropriate” [PR 2521-00, p. 2]. The manual states that qualitative methods and information sources that can be used to determine the existing social environment and trends include: scoping, scientific literature and other reports, primary data collection, and information on attitudes, beliefs and values, lifestyle, and demographics.

Aspects of the economic and social analysis were described qualitatively in the Social and Economic Specialist report. Information sources that were listed were used to describe the social environment are also listed in the report [PR 2521-00, pp. 3-4]. Recreation use, attitudes, beliefs and values, lifestyles, non-market values, and other aspects of the social environment were also described in the report [PR 2521-00, pp. 8-11, 16]. Social effects were discussed in qualitative terms [PR 2521-00, pp. 21-24]. This report was summarized in both the DEIS and FEIS [PR 1865, pp. 247-258; PR 2527, pp. 115-145 and 153-159].

**Finding:** Analysis of the social environment and unquantified environmental amenities and values met the requirements of Section 102(2)(B) of the NEPA and Forest Service Manual and Handbook direction on economic and social analysis.

## **F. User Conflict Issue**

**Contention 2.F.1:** The appellants contend the agency is exceeding its statutory authority because it is identifying “user conflict” (as manifested by the philosophical differences between motorized and some motorized users) as an issue that must be addressed [Appeal, pp. 71-73].

**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 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, “user conflicts” is identified as part of two of the significant issues which drive the development of alternatives [PR 2528, p. 10]. 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 2528, pp.9-10]. User conflict was determined to be a significant issue during scoping [PR 1716, pp. 8-9].

**Finding:** Per the TMR, conflict among uses is one of the many criteria the responsible official must consider when designating roads, trails and areas for motor vehicle use. Additionally, user conflicts were determined to be a significant issue during scoping, which the Forest interdisciplinary team conducted as required by the CEQ regulations.

## **G. Methodology and Scientific Integrity**

**Contention 2.G.1:** The appellants contend that with respect to the analysis on Chiricahua leopard frog (CLF), the FEIS has contradictory statements 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. But the empirical evidence stated is that the habitat existing condition is stable or improving, under the current management, which is Alternative B, No Action. The appellants conclude that the statement of fact, that aquatic habitat is stable or improving, is contradicted by endless statements about how roads are so bad and can cause so much damage. But, somehow, even after decades of unrestricted motorized use, the facts don’t support the claims [Appeal, pp. 76-90].

**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 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 that determined the action would not jeopardize or adversely modify critical habitat for the Chiricahua leopard frog [PR 2535-28, p. 81].

**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 2.G.2:** The appellants contend the FEIS 6<sup>th</sup> 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% of impaired waters are found in wilderness areas [Appeal, pp. 96-98; 103-104]

**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, p. 98]

**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 6<sup>th</sup> 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, p. 98].

**Response:** The Watershed Condition Classification Technical Guide, 2011; publication FS-978 is in the References section of the 6<sup>th</sup> 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 6<sup>th</sup> 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, pp. 98-99]

**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 6<sup>th</sup> 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 6<sup>th</sup> Code Watershed, Soils, and Aquatic Cumulative Effects Analysis Report clearly discloses that the less motorized disturbance to watershed, soil and aquatic 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 6<sup>th</sup> 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 6<sup>th</sup> 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 6<sup>th</sup> Code Watershed, Soils, and Aquatic Cumulative Effects Analysis Report.

- e) The 6<sup>th</sup> 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 6<sup>th</sup> 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. 99-100].

**Response:** The 6<sup>th</sup> 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. 100-102].

**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 6<sup>th</sup> 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 aquatics resources the less opportunity for negative cumulative impacts to occur and the greater the opportunity for beneficial effects [PR 2508, p. 25].

**Finding:** The 6<sup>th</sup> 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 6<sup>th</sup> Code report:
- The analysis does not discuss the link between land ownership, road density, water quality, and other resource conditions [Appeal, p. 102].
  - 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. 102].
  - 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. 103].

**Response:** The relative extent of 6<sup>th</sup> code HUC watershed with regards to land ownership is discussed in the 6<sup>th</sup> 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 6<sup>th</sup> 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 6<sup>th</sup> 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].

**ISSUE 3:** The ROD violates the Travel Management Rule.

**A. Mandate to Designate**

**Contention 3.A.1:** The appellants contend that the agency has misunderstood and misinterpreted the TMR. The TMR does not mandate closures on any scale, and especially not on the scale that the agency has chosen for the Gila National Forest. The appellants argue the TMR is a mandate to designate roads and trails, and include new routes as they are inventoried and classified. They contend the only language that indicates any limitations is the instruction to limit access for dispersed camping and big game retrieval, yet the TMR does not tell what distances from the roads a forest may choose to allow. They claim the distance that the Gila has selected, 300 feet, is unsupported by any factual information which would indicate that is the proper or ideal distance that anyone can travel off the roads.

The appellants assert that the TMR is subordinate to the statutory requirements as set forth by Congress, in numerous laws directed at the Forest Service to have a comprehensive transportation system. The transportation system must be of sufficient scale to adequately meet all of those statutory requirements. Congress never directed the Forest service to close massive mileage to public access. The appellants conclude the Gila National Forest has the concept exactly backward. The text of the TMR discusses creating a system of designated roads and trails. The Forest has failed to follow the instruction and mandate from the TMR as set forth at 36 CFR 212.50 (b) [Appeal, pp. 36-37].

**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]. In a sense, the TMR does mandate closures because the final rule prohibits the use of motor vehicles off the designated system (i.e., cross-country motor vehicle use will be prohibited except where specifically designated), and restricts motor vehicle use to the designated system.

The TMR is not a mandate to “include new routes as they are inventoried and classified,” as the appellants contend [Appeal, p. 37]. The TMR does allow for the revision of designations as needed to meet changing conditions. But the “revisions of designations shall be made in accordance with the requirements for public involvement in §212.52, the requirements for coordination with governmental entities in §212.53, and the criteria in §212.55, and shall be reflected on a motor vehicle use map pursuant to §212.56 [PR 0029, p. 68289].

The appellants contend “the only language that indicates any limits is the instruction to limit access for dispersed camping and big game retrieval” [Appeal, p. 37]. This is not technically true, since the TMR does prohibit motor vehicle use not in accordance with the designations (which essentially prohibits motorized cross-country use). Regarding corridors for motorized dispersed camping and big game retrieval, the appellants are correct in that the TMR does not specify the width of the corridor. “In designating routes, the responsible official **may** include in the designation the limited use of motor vehicles within a specified distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of dispersed

camping or retrieval of a downed big game animal by an individual who has legally taken that animal” [PR 0029, p. 68289]. The TMR itself does not specify a corridor width because “the Department believes that designation decisions should be made at the local level, based on site-specific evaluation of local conditions and public involvement” [PR 0029, p. 68274]. The Department also “expects the Forest Service to apply this provision sparingly, on a local or State-wide basis, to avoid undermining the purposes of the final rule and to promote consistency in implementation. Provision for cross-country travel for big game retrieval and dispersed camping will be at the discretion of the responsible official” [PR 0029, p. 68285]. In compliance with the TMR and how designation decisions should be made at the local level, the Southwestern Regional Guidelines also do not specify a corridor width. Regional Guidelines ask that the Forest collaborate with the State Game and Fish Departments to “determine what, if any, cross-country motorized big game retrieval to authorize, considering the following needs: need to meet State big game harvest and management objectives; need to avoid spoilage of big game; and need to provide for State programs related to disabled hunters” [PR 0484, p. 11]. The Forest analyzed a range of corridor widths in the FEIS (from no corridors to a 1-mile wide corridor) [PR 2527, Table 10 p. 27], and analyzed the effects of the differing corridor width on resources [PR 2527, Chapter 3]. The selection of Alternative G and the 300 foot corridors is supported by the analysis found in Chapter 3 of the FEIS. The Forest also coordinated with the State of NM Department of Game and Fish in determining the corridor width. The NM Department of Game and Fish recommendations included: “overall, the Department recognizes that any OHV use off designated roads and trails establishes tracks that stimulate additional unintended use and subsequent habitat degradation, thereby compromising effective control; the Department encourages USFS to consider hunting-related OHV activities similar to any other recreational OHV activity that occurs on USFS lands and apply appropriate restrictions equally; the Department especially encourages the Travel Management effort of USFS to acknowledge that current road closures under the State Habitat Protection Act have resulted in the provision of reasonable and accepted access while at the same time increasing quality hunting areas, enhancing sportsmen experiences and promoting wildlife interest” [PR 1630-28, pp. 1-2]. The NM Department of Game and Fish support Alternative G (the decision), and find that the proposed motorized dispersed camping and game retrieval corridor of 300 feet is consistent with their previous recommendations [PR 2337, p. 1].

Federal regulations are issued by federal agencies, boards or commissions. They explain how the agency intends to carry out a law. 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 purpose of the TMR is not to “close massive mileage to public access,” as the appellants contend. The public still has access to the National Forests. As stated previously, 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].

**Finding:** The agency did not misunderstand or misinterpret the TMR. The decision is in compliance with the TMR, and the public still has access to the Forest. The corridor width of 300 feet is supported by the analysis in the FEIS.

**ISSUE 4:** Revised Statute (RS) 2477

**Contention 4.A.1:** The appellants contend the agency is attempting to adjudicate RS 2477 issues with the decision. They claim the agency is changing the use of, or closing, certain roads which the counties have claimed under their RS 2477 rights [Appeal, pp. 50-52].

**Response:** Concerns regarding motorized designations, closures, or changes to roads that could become public roads under RS 2477 were raised and addressed during the DEIS comment and response period [PR 2528, pp. 663-664]. The Forest Service has not been delegated the adjudicative authority to determine valid RS 2477 rights [PR 0029, p. 68276]. The authority to determine valid RS 2477 rights is retained by a court of competent jurisdiction and there are five required elements for establishing a public road under RS 2477. While counties have declared RS 2477 rights, final determination has not been determined by a competent court. Until valid RS 2477 are validated by a court, the Forest should administer and manage the use and operation of such roads according to agency policy and guidance [PR 2528, pp. 663-663].

The purpose of this project is to comply with the Travel Management Rule [PR 2527, p. 4] by designating motor vehicle use in accordance with 26 CFR 212.50. Decisions regarding motorized designation on roads where counties have declared RS 2477 rights do not validate or invalidate future RS 2477 claims. Such claims will be evaluated by a court using the five required elements under RS 2477 [PR 2528, pp. 663-664].

Many roads where counties have claimed RS 2477 rights have already been conveyed to the county through easements. The project considered these easements as valid rights by counties and no changes to their allowed used on these roads are made with this project [PR 2528, pp. 663-664].

**Finding:** The motorized designations and decisions made with this project do not adjudicate RS 2477 rights. Only a court of competent jurisdiction can conclusively make such a determination.

**ISSUE 5:** The ROD violates NFMA.

**Contention 5.A.1:** The appellants contend the decision violates NFMA because Congress never directed the agency to dismantle the forest transportation system. They argue, instead, that NFMA 1.) Establishes that roads are not an irretrievable commitment of resources; 2.) Directs the agency to maintain a transportation system; 3.) Sets forth a funding system for roads; and 4.) Includes outdoor recreation as one of the resources to be protected [Appeal, pp. 53-54].

**Response:** The National Forest Management Act (NFMA) does address transportation systems in section 8 of the act. NFMA recognizes that a Forest's transportation system will not be static

over time; that some roads are temporary, put in place for resource management purposes and then removed when no longer needed, and that the permanent transportation system will be adjusted over time with additions and contractions to the system. Paragraph (b) of section 8 addresses the following: *"(b) Unless the necessity for a permanent road is set forth in the forest development road system plan, any road construction on land of the National Forest System in connection with a timber contract or other permit or lease shall be designed with the goal of reestablishing vegetative cover on the roadway and areas where vegetative cover has been disturbed by the construction of the road, ... Such action shall be taken unless it is later determined that the road is needed for use as a part of the National Forest Transportation System"* [PR 2523-08, p. 8]

The objectives for the Travel Management Rule are to identify what the appropriate transportation system for each Forest should be. The 2005 rule states that: *"This final rule requires designation of those roads, trails, and areas that are open to motor vehicle use."* And that *"The clear identification of roads, trails, and areas for motor vehicle use on each National Forest will enhance management of National Forest System lands; sustain natural resource values through more effective management of motor vehicle use; enhance opportunities for motorized recreation experiences on National Forest System lands; address needs for access to National Forest System lands; and preserve areas of opportunity on each National Forest for nonmotorized travel and experiences. The final rule is consistent with provisions of Executive Order 11644 and Executive Order 11989 regarding off-road use of motor vehicles on Federal lands"* [PR 0129-04, p. 68264]

Further, both the FEIS [PR 2527, p. 4] and ROD [PR 2526, p. 1] for the Gila Travel Management project clearly lay out that the Purpose and Need for this project as the following: *"The purpose of this project is to comply with the Travel Management Rule 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 (36 CFR 212.50). On the Gila National Forest:*

- *There is a need to comply with 36 CFR 212.51(a), which requires the forest to designate a system of roads, trails, and areas for vehicle use by vehicle class and, if appropriate, by time of year..."*

**Finding:** The purpose and need for the Gila Travel Management project, as identified in both the FEIS and ROD is clearly consistent with both the Travel Management Rule and NFMA on the need to identify the Forest's transportation system. The decision made in the ROD is not a dismantling of the road system, but rather a proper realignment of that system to provide for sustainable protection of a multitude of resources based on the analysis conducted in the FEIS.

**Contention 5.B.1:** The appellants contend the agency has circumvented the rule of law by making up a new name for the existing roads and trails – 'unauthorized.' They claim it is illegal because the Forest Plan authorized the operation of motor vehicles anywhere in the forest (i.e. open to cross country travel). The appellants contend that by choosing to rename all user-made routes "unauthorized," the agency is attempting to retroactively make all past cross country travel illegal also. They assert that the Forest Plan is the only set of regulations that protects these traditional, existing and in-use routes [Appeal, pp. 68-69].

**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]. Appellants equate “unauthorized” with “prohibited,” which misconstrues its definition in TMR [Appeal (Hidalgo County), p. 69]. The Travel Management Rule did not define *user created road*. However, 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 travelways 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 2 in the corporate database [PR 1796, pp. 9-10]. This occurred prior to the issuance of the TMR. Step 4 of the TAP describes the process used to assess the benefits, problems, and risks of the existing roads [PR 1796, pp. 17-18]. The TAP included unauthorized or user-created roads in the analysis. As stated previously, the Forest had already inventoried user-created routes and had already incorporated them into the corporate database as Forest System roads, prior to the issuance of the TMR.

Further analysis of unauthorized roads was carried in the FEIS. 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]. The appellants contend that in all areas of the Forest which were designated as “open to cross country travel,” use of any road or trail is lawful regardless of whether the road or trail is in the Forest Atlas. The Forest Service has circumvented the rule of law by calling these existing roads and trails “unauthorized.” They further claim that the Forest Plan is the only set of regulations that protects these traditional, existing and in-use routes, and that it is illegal for the Forest Service to ignore the Forest Plan [Appeal (Hidalgo County), pp. 68-69].

The appellants are correct in stating that the use of any road or trail, regardless of its status in the forest transportation atlas, is currently allowed in areas of the Forest that are open to motorized cross-country travel. The agency is not claiming otherwise in the FEIS. However, as explained above, roads and trails that are not part of the transportation system are unauthorized. While the use of these routes in areas open to motorized cross-country travel is not illegal, it does not make them system routes.

The decision amends the Forest Plan to prohibit motor vehicle use off the designated system of roads, trails, and areas, and outside of corridors for motorized big game retrieval and dispersed camping, except as identified on the Motor Vehicle Use Map (MVUM) [PR 2527, pp. 17-18]. With this amendment, the Forest no longer is open to motorized cross-country travel except as shown on the MVUM.

**Finding:** The agency did not make up the term “unauthorized” for what the appellants claim are existing roads and trails. The use of the term “unauthorized” was established by the Travel Management Rule and the agency direction. The Forest complied with both by correctly using new terminology defined in the TMR. Additionally, the decision to manage motorized travel as shown on the MVUM is consistent with the Forest Plan as amended.

**ISSUE 6:** The ROD violates the Multiply Use Sustained Yield Act (MUSY).

**Contention 6.A.1:** The appellants contend the decision violates the MUSY because it does not strike a balance in managing all types of recreation while maintaining other values and uses. They claim the decision denies access to the point of destroying the harmonious utilization of the resources and fails to give any consideration to changing needs and conditions. The appellants claim that no consideration is given to the harmonious and coordinated management of the various resources and no consideration is given to the productivity of the land [Appeal, pp. 54-57].

**Response:** The Travel Management Rule (TMR) [PR 0129-04, p. 68272, Column 3] states: Multiple Use-Sustained Yield Act (MUSY) gives “the Forest Service broad authority to manage NFS lands for multiple uses. MUSY defines “multiple use” in part as “management of all the various \*\*\* resources of the National Forests so that they are utilized in the combination that will best meet the needs of the American people \*\*\*.” MUSY specifically provides “that some land will be used for less than all of the resources” (16 U.S.S. 531(a).” MUSY does not direct that all NFS lands be open to all uses.

The Gila National Forest is managed under the principles of sustained multiple use as directed under MUSY [PR 2516-01] and other legislation relating to the national forests. In carrying out this task, the Forest Service strives to manage timber, livestock grazing, mining and outdoor recreation in a manner that is environmentally sustainable over the long term [PR 2528, p. 601]. Recreation is just one type of activity allowed on National Forest System (NFS) lands, and motorized use is one type of recreational activity that is allowed on NFS lands. The decision continues to allow motorized use on NFS lands, but only on designated roads, trails and areas that are open to motor vehicle use. Executive Order (E.O.) 11644 [PR 1835-01], as amended by E.O. 11989 [PR 1835-02], 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. The magnitude and intensity of motor vehicle use have increased to the point that the intent of E.O. 11644 and E.O. 11989 cannot be met while still allowing unrestricted cross-country travel. Thus, a designated and managed system of roads, trails and areas for motor vehicle use is needed [PR 0029, pp. 68264-68265].

**Finding:** The Gila Travel Management project analyzed and identified the transportation system needed to address a multitude of resources while maintaining the productivity of the land in a sustainable manner. The decision in the ROD is thus clearly consistent with the MUSY Act.

**ISSUE 7:** The ROD violates the Organic Act.

**Contention 7.A.1:** The appellants contend the decision violates the Organic Act because it unduly restricts access [Appeal, p. 57].

**Response:** The Organic Administration Act of 1897 (16 U.S.C. 551) authorizes the regulation of national forests [PR 21, p. 5]. Under the “Public and Private Uses” section of the Organic Act of 1897, part 7 states: “Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating and developing the mineral resources thereof: *Provided*. That such persons comply with the rules and regulations covering such forest reservations.”

Part 8 states: “The public entering, crossing, and occupying the reserves, for the purposes enumerated in the law, are subject to a strict compliance with the rules and regulations governing the reserve.”

The Organic Act allows access into and within the National Forests, but states that there would be compliance with the rules and regulations covering such areas. The TMR is one of those rules established by the Department of Agriculture, Forest Service. The TMR does not restrict access to the National Forests—the purpose of the TMR is to provide for a system of NFS roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use, and to prohibit motor vehicle use that is not in accordance with these designations.

**Finding:** The decision and the TMR do not violate the Organic Act. The decision and the TMR do not restrict access to the National Forests—the purpose of the TMR is to provide for a system of NFS roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use, and to prohibit motor vehicle use that is not in accordance with these designations.

**ISSUE 8:** The ROD violates the National Forest Roads and Trail Act

**Contention 8.A.1:** The appellants contend the decision violates the National Forest Roads and Trail Act because the agency is dismantling the basic infrastructure needed to accommodate increasing demand [Appeal, p. 58-59].

**Response:** The decision and the TMR do not violate the National Forest Roads and Trails Act of October 13, 1964, as amended (16 U.S.C. 532-538). The National Forest Roads and Trails Act is “an act to enable to the Secretary of Agriculture to construct and maintain an adequate system of roads and trails for the national forests, and for other purposes” [16 U.S.C. 532-538]. The Act simply authorizes road and trail systems for the national forests. The Act also authorizes granting of easements across NFS lands, construction and financing of maximum economy roads (FSM 7705), and imposition of requirements on road users for maintaining and reconstructing roads, including cooperative deposits for that work [PR 21, p. 4]. The Act does not speak to the administration of the Forest transportation system (subpart A), the designation of roads, trails and areas for motor vehicle use (subpart B), or use by over-snow vehicles (subpart C).

Federal regulations are issued by federal agencies, boards or commissions. They explain how the agency intends to carry out a law. The Administrative Procedures Act (5 U.S.C. Subchapter II) is the law under which U.S. government federal regulatory agencies create the rules and regulations necessary to implement and enforce major legislative acts. The Travel Management Regulation (36 CFR Part 212, Subparts A, B and C) does not fall under the authority of the National Forest Roads and Trails Act. Subpart A of the TMR falls under the authority of 16 U.S.C. 551 (Protection of national forests) and 23 U.S.C. 205 (Forest development roads and trails). Subpart B and C both fall under the authority of 7 U.S.C. 1011(f) (Powers of Secretary of Agriculture), 16 U.S.C. 551 (Protection of national forests), Executive Order 11644 (Use of off-road vehicles on the public lands), and Executive Order 11989 (Off-road vehicles on public lands).

The decision does not “dismantle the basic infrastructure needed to accommodate increasing demand,” as the appellants contend [Appeal (Hidalgo County), p. 58]. The Gila National Forest is managed under the principles of sustained multiple use as directed under the Multiple Use Sustained Yield Act and other legislation relating to the national forests. In carrying out this task, the Forest Service strives to manage timber, livestock grazing, mining and outdoor recreation in a manner that is environmentally sustainable over the long term [PR 2528, p. 601]. Recreation is just one type of activity allowed on National Forest System (NFS) lands, and motorized use is one type of recreational activity that is allowed on NFS lands. The decision continues to allow multiple uses on NFS lands, and the decision continues to allow motorized use on NFS lands. However, motorized use is only permitted on designated roads, trails and areas that are open to motor vehicle use. Executive Order (E.O.) 11644, as amended by E.O. 11989, 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. The magnitude and intensity of motor vehicle use have increased to the point that the intent of E.O. 11644 and E.O. 11989 cannot be met while still allowing unrestricted cross-country travel.

Thus, a designated and managed system of roads, trails and areas for motor vehicle use is needed [PR 0029, pp. 68264-68265].

**Finding:** The decision does not violate the National Forest Roads and Trail Act. The decision does not dismantle the basic infrastructure needed to accommodate increasing demand.