



United States
Department of
Agriculture

Forest
Service

Southwestern Region
Regional Office

333 Broadway SE
Albuquerque, NM 87102
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570/2350

Date: September 9, 2014

Mr. Bill Carlis
PO Box 152
Santa Clara, NM 88026

**CERTIFIED MAIL – RETURN
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Dear Mr. Carlis:

This is my decision on the appeal (#14-03-00-0145-A215) you filed regarding the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) signed by Forest Supervisor Kelly Russell, for Travel Management on the Gila National Forest.

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

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

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

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



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

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

Sincerely,

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

Enclosures (2)

cc: Kelly M Russell



United States
Department of
Agriculture

Forest
Service

Tonto National Forest

2324 E. McDowell Rd.
Phoenix, AZ 85006
Phone: 602.225.5200
Fax: 602.225.5295
V/TTY: 602.225.5395

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

Bill Carlis

Appeal #14-03-00-0145-A215

Gila Travel Management

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

Contention 1a: The appellant believes the decision is flawed and should be changed. He argues that to so drastically change the way the working class and poor access and use their local forest is unconscionable, considering:

1. The expansion of range for jaguars and coatimundis occurred despite the existence of the former (supposedly destructive) freedoms that users enjoyed.
2. The Wolf Reintroduction Program should not be listed as a ‘reason’ to select Alternative G.
3. Alternative G will dramatically increase the likelihood of contact and confrontation with fellow campers and/or Forest Service law enforcement.
4. People will only be allowed to travel on numbered roads but road number signs are often missing.
5. The new camping and hunting restrictions of 300 feet either side of a road will affect tourism and the economies of the regional counties and destroys the concept of wildness and sense of adventure for vehicle-accompanied explorers and travelers.
6. Alternative G seems to be more interested in punishing hunters than coming up with reasonable game retrieval options.
7. Alternative G is the “californization” of the Gila.

Response: The appellant contends that the decision made by the Forest Service is flawed causing a drastic change to the access and use of the local forest by the working class and poor.

The Council on Environmental Quality (CEQ) regulations for implementing NEPA at 40 CFR 1508.14 require the “Human Environment” shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement.

Executive Order (E.O.) 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations - directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law. Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies (EPA website,

<http://www2.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice>).

The ROD [PR 2526, p. 9], discusses the access for disabled and elderly populations, firewood gathering, and jobs and income. The ROD discloses that all action alternatives may have an effect on people affected by age or disability. The action alternatives treat everyone the same, and therefore, are not considered discriminatory. The ROD states that none of the action alternatives are expected to have a disproportionately high and adverse human health or environmental effect.

The Socio-Economic Specialist Report describes the comments received from the public during the scoping period [PR 1842, p. 5], which includes the types of activities and lifestyle that have been enjoyed by local residents such as gathering of fuelwood and other forest products for personal use and hunting. The analysis, [PR 1842, p.16-59] describes the human environment and discusses the effects by each action alternative to minority populations and low-income populations. The Environmental Justice discussion [PR 1842, p. 90] concludes the issues raised by the public did not identify any specific concerns regarding aging and disabled populations in regard to motorized transportation on the Gila National Forest.

The appellants also contend that the decision made by the Forest Service is flawed by the seven points provided by the appellants.

The response:

1. The jaguar is a federally listed species (endangered, threatened, and experimental). Consideration of the jaguar was dropped from additional analysis because there are no recent occurrence records on the Gila National Forest, so there is no effect determination for the species [PR 2527, p. 260]. The white-nosed coati is a Forest Service Southwestern Region sensitive species [PR 2527, p. 261], and effects on this species were analyzed for the project, specifically as a focal species for small mammals that occur in low and middle elevation riparian areas [PR 2527, p. 294]. The analysis finds that there are effects to the species under the existing condition, that prohibiting motorized cross-country travel would greatly reduce impacts to the species, and that implementing the decision would also result in reduced impacts to the species [PR 2527, pp. 296-297, 300].
2. The Wolf Reintroduction Program is not in itself a reason to select Alternative G. The forest analyzed effects on all the resources, and selected alternative G based on the effects analysis presented in the FEIS [PR 2526, Chapter 3]. The Forest analyzed the effects on wildlife, and an effects analysis on the Mexican gray wolf was included in the wildlife analysis primarily because of its status as a federally listed species (endangered, threatened, and experimental) [PR 2527, p. 259] that exists on the Forest.
3. The recreation analysis in the FEIS states that most motorized campers would be accommodated by Alternative G, but designating motorized dispersed camping corridors **may** have the potential to affect motorized dispersed camping experiences and opportunities for some campers by limiting choice, and **may** have the potential to

concentrate use (emphasis added) [PR 2527, p. 100]. It is not known for sure that these changes would result in concentrated use, but it is a possibility. Additionally, camping opportunities itself are not limited to the designated motorized dispersed camping corridors. Visitors can still park their car up to one vehicle length from the side of any road that is open to motor vehicle use, and walk as far as they want to set up camp [PR 2528, pp. 631-632].

In terms of enforcement, Forest experience shows that compliance with new rules and regulations increases over time [PR 2528, p. 634]. The motor vehicle use map (MVUM) is the source for determining what routes are open for vehicle use. It is the public's responsibility to obtain the map (and which will be reissued annually) and stay on the designated routes. The Forest will continue to work with partners such as state police, sheriff departments, New Mexico Department of Game and Fish, and others to assist in enforcement. Outreach and education will also be used to help implement change [PR 2527, p. 9].

4. The Forest Service will continue to use signs widely to provide information and inform users on a variety of topics, including regulations and prohibitions. However, the agency has also found that posting routes as open or closed to particular uses has not always been effective in controlling use. Requiring each undesignated route and area to be posted as closed would be an unreasonable and unnecessary burden on agency resources and would tend to defeat the purpose of the final rule. Signs have also proven difficult to maintain and subject to vandalism. The TMR places more responsibility on users to have a copy of the motor vehicle use map (MVUM) from Forest Service offices or websites and to remain on routes and in areas designated for motor vehicle use regardless of whether or not a sign is present [PR 2528, p. 595].
5. Overall, the changes in employment and income are relatively minor under all alternatives (equivalent to less than one-third of one percent in the local economy). Approximately 1 percent of employment and income in the local economy comes from recreation activities on the Gila NF. Therefore, changes would not substantially affect regional employment conditions or county revenue [PR 2521, pp. 20-21]. The socioeconomic specialist report also identifies potential tradeoffs to the hunting sector. Restrictions may cause some people to not hunt on the Gila NF; however, if they continue to hunt in the local area (county region) there will be no net economic consequence. Furthermore, restrictions on motorized retrieval may cause some to hire an outfitter guide for game retrieval, which could increase hunting-related expenditures (and associated local economic impact) [PR 2528, p. 721].

The TMR provides for a system of NFS roads, trails and areas that are designated for motor vehicle use. The responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain designated routes solely for the purposes of dispersed camping or big game retrieval. But dispersed camping opportunities are not limited—visitors can still park their car up to one vehicle length from the side of any road that is open to motor vehicle use, and walk as far as they want to set up camp. It is the distance a visitor can drive off a road, and what roads they can

drive this specified distance off of, that is changed by the decision. A corridor for motorized access for dispersed camping designates which roads visitors can drive off, and how far they can drive off the road, to set up a camp. The Forest recognizes that the limit of 300 feet from the road centerline and not having designated corridors along some roads eliminates some of those opportunities or favorite spots. [PR 2528, pp. 631-632].

6. Alternative G would allow hunters to drive up to 300 feet from either side of roads designated with a corridor to retrieve their game. The Forest understands that this may not seem to be an adequate distance for some hunters, and may pose an obstacle to game retrieval, especially for elk or other large game animals. But, reducing motorized access and route density would have beneficial effects to big game species and their habitat, and the experience and/or quality of hunting may also benefit by reducing the probability of a motorized vehicle passing by and disturbing the hunt [PR 2526, p. 4].

Additionally, Alternative G considers hunters the same as campers by allowing them to drive in the same places. The Forest made this selection because the New Mexico Department of Game and Fish requested this treatment during coordination meetings and in comments, and it is consistent with other New Mexico national forests that proposed motorized big game retrieval corridors [PR 1630-28, p. 3; PR 2337, all; PR 2526, p. 4].

7. The purpose of the project is to comply with the Travel Management Rule (TMR) by providing a system of roads, trails, and areas designated for motor vehicle use by class of vehicle and time of year on the Gila National Forest [PR 2527, p. 4]. The purpose of the project is not to set the stage for charging fees on the Forest, as the appellant contends. The Department of Agriculture revised regulations regarding travel management on National Forest System lands in 2005 to clarify policy related to motor vehicle use, including the use of off-highway vehicles. The final rule requires designation of those roads, trails and areas that are open to motor vehicle use, and prohibits the use of motor vehicles off the designated system. The clear identification of roads, trails and areas for motor vehicle use on each National Forest will enhance management of National Forest System (NFS) lands; sustain natural resource values through more effective management of motor vehicle use; enhance opportunities for motorized recreation experiences on NFS lands; address needs for access to NFS 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 (E.O.) 11644 and E.O. 11989 regarding off-road use of motor vehicles on Federal lands [PR 0029, p. 68264].

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 Forest followed law, regulation, policy, and CEQ guidance. The Record of Decision discloses all action alternatives may have an effect on people affected by age or disability. The action alternatives treat everyone the same, and therefore, are not considered discriminatory. The decision is not flawed and meets the purpose and need by providing 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 TMR and by minimizing adverse effects to natural and cultural resources.