



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

Ms. Cyndi Tuell  
Upper Gila Watershed Alliance  
PO Box 383  
Gila, NM 88036

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED  
NUMBER: 7000 2870 0000 1135 7272**

Dear Ms. Tuell:

This is my decision on the appeal (#14-03-00-0147-A215) you filed on behalf of the Upper Gila Watershed Alliance, WildEarth Guardians, New Mexico Wilderness Alliance, and the Rio Grande Chapter of the Sierra Club, 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**

**Upper Gila Watershed Alliance, et. al.**

**Cyndi Tuell**

**Appeal #14-13-00-0147-A215**

**Gila Travel Management**

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

**Contention 1a:** The appellants contend the cumulative effects of the entire National Forest Service Road System should have been analyzed. They assert that maintenance level (ML) 1 routes should have been included in the analysis of Alternative B to properly assess the impacts of these routes in terms of route density, habitat fragmentation, watershed, air quality and wildlife impacts. By not identifying and considering the environmental impacts of the entire transportation system including ML 1 roads the Forest Service fails to properly analyze cumulative impacts for this project [Appeal, pp. 5-6].

**Response:** The appellants claim that the Forest Service did not consider the overall cumulative effect of the project. According to 40 CFR 1502.16, the environmental consequences section of the EIS is what “forms the scientific and analytical basis for the comparisons” of the alternatives, including the proposed action. Agencies shall consider the cumulative effects of their actions. This includes the incremental effects of the action when added to the past, present, and reasonably foreseeable related future actions of the Forest Service, as well as those of other agencies and individuals, that may have a measurable and meaningful impact on particular resources (40 CFR 1508.7).

The FEIS addresses direct, indirect, and cumulative effects in Chapter 3 of the FEIS [PR 2527, pp. 45-454]. The effects analyses considered past and present actions as described in the cumulative effects section of each resource section [PR 2527, pp. 49, 55, 77-79, 85, 88, 93, 95, 100, 106, 109, 111, 113, 133-134, 161-163, 182-183, 222-226, 254-255, 369-380, 398, 406-407, 430-434, 447, 451]. No overall cumulative effect of the project was provided, and it is not required. However, the decision maker did consider all resource direct, indirect, and cumulative effects in the record of decision (ROD) [PR 2526, pp. 5-9].

The purpose of the project is to comply with the Travel Management Rule (TMR) [PR 2527, p. 4]. The Travel Management rule requires forests provide for a system of National Forest System (NFS) roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use by vehicle class, and if appropriate, by time of year [PR 0029, p. 68264]. There are no requirements in the TMR to analyze the entire road system and the purpose and need for the project did not identify the need to analyze the entire road system. In designating motorized use, the TMR requires responsible officials consider the criteria in 36 CFR 212.55. These criteria do not

include analysis of the entire road system. Travel planning for the designation of motorized uses should tightly focus decisions to the designation of motorized uses and “reconsideration of the entire transportation system is not required or appropriate” (Forest Service Manual (FSM) 7715.1).

When designating motorized uses under the TMR, FSM 7703.11 forests are required to use the travel analysis process outlined in FSM 7712 and Forest Service Handbook (FSH) 7709.55 20 to consider the criteria in 36 CFR 212.55. The purpose of travel analysis is to identify proposed changes to the forest transportation system (FSM 7712.13) and it should be based on the current inventory of NFS roads (FSM 7712.1). The Forest completed a travel analysis that complies with policy and manual direction and used the current forest road inventory as the basis for the analysis.

Alternative B is the no action alternative that represents the existing condition [PR 2527, p. iv]. Alternative B includes 4,613 miles of National Forest System Roads that are open for motor vehicle use by the public, i.e. operating as Maintenance Levels 2-5. [PR 2513, p. 4]. There are 530.9 miles of Operational maintenance level 1 roads. FSH 7709.59 62.32 describes ML 1 roads as roads that have been placed in storage and closed to vehicular traffic. The existing road system and the data sources used to define the existing road system are described in the Travel Analysis Process report [PR 1665, pp. 9-10] and in the Final Roads Report [PR 2513, pp. 3-4].

ML 1 roads are not considered part of the existing open motorized system in Alternative B and are not shown on the Alternative B maps. Although they are not included in Alternative B, ML 1 may be considered and analyzed in the NEPA process. The existing miles of designated road system that are not being closed or changed are not included in the proposed action; only the changes to the transportation system are included [PR 2527, p. 5].

The appellants contend the Forest should have included and analyzed ML 1 roads in this project. There are no requirements in the TMR to reconsider the entire road system and the rule allows responsible officials to incorporate previous administrative decisions, such as road maintenance level assignments. Agency policy allows forests to use previous decision to establish a starting point for proposals to change travel management decisions (FSM 7715.03). In using the agency’s definition of road maintenance levels, the responsible official followed agency guidance to incorporate previous decisions in establishing the open road system as the starting point for proposing changes.

However, ML 1 roads were included in road density calculations for each alternative [PR 2527, p. 240]. These density calculations were used in the environmental analysis as one way to measure watershed conditions [PR 2527, p. 240]. The reasons for including ML 1 roads in density are provided in the Environmental Consequences of the FEIS. For this analysis, it is assumed that when a road is closed it will continue to have impacts on the aquatic system because all of the action alternatives involve the closure of roads and unauthorized routes to vehicle use by the public rather than the physical removal of roads. However, curtailing or reducing use on those routes that are closed or open only by written permit will decrease impacts [PR 2527, p. 234]. The 6th Code Watershed, Soils, and Aquatics Cumulative Effects Analysis Report also cites specific reasons for including ML 1 roads in density calculations [PR 2502, p.

6-7] and lists the specific roads included in the current road density [PR 2502, Appendix D, p. 131]. Appendix L contains a summary of road density by alternative, which includes closed roads [PR 2502, p. 215].

**Finding:** The FEIS appropriately discussed and disclosed the cumulative effects associated with the proposed action and the alternatives. There are no requirements in the TMR or agency direction to analyze or reconsider the entire road system. The Forest used a travel analysis and a detailed Roads Specialist report that complied with agency direction to identify the existing condition and to tightly focus on motorized use designations in the analysis. The environmental effects analyses did consider the environment impacts of ML 1 by including ML 1 roads into road density calculations in the final environmental effects analysis.

**Contention 1b:** The appellants contend the analysis is also deficient with respect to the impacts from illegal motorized recreational use. They conclude that because the agency failed to consider the environmental impacts and cumulative effects of the entire transportation system and lack of compliance with regulations prohibiting motorized uses of certain areas and roads, the FEIS is deficient under NEPA [Appeal, p. 6].

**Response:** The appellants specifically mentioned that the FEIS did not analyze “the cumulative effects of continued illegal motorized uses off the designated system” [Appeal, p. 6]. Per 40 CFR 1508.7, all agencies shall consider the cumulative effects of their actions. This includes the incremental effects of the action when added to the past, present, and reasonably foreseeable related future actions of the Forest Service, as well as those of other agencies and individuals, that may have a measurable and meaningful impact on particular resources (FSH 1909.15\_15.1). According to 40 CFR 1502.16, the environmental consequences section of the EIS is what “forms the scientific and analytical basis for the comparisons” of the alternatives, including the proposed action.

Regulations at 36 CFR 220.4(f) address Forest Service requirements for cumulative effects: “With respect to past actions, during the scoping process and subsequent preparation of the analysis, the agency must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects... CEQ regulations do not require the consideration of the individual effects of all past actions to determine the present effects of past actions.” The Forest Service NEPA handbook at FSH 1909.15.2 includes the following additional information regarding cumulative effects analysis: “Spatial and temporal boundaries are the two critical elements to consider when deciding which actions to include in a cumulative effects analysis. Spatial and temporal boundaries set the limits for selecting those actions that are most likely to contribute to a cumulative effect. The effects of those actions must overlap in space and time for there to be potential cumulative effects.”

In Chapter 3 of the FEIS, a general assumption used in all of the resource analyses of direct, indirect, and cumulative effects assumed compliance with the restrictions on cross-country travel [PR 2527, p. 46]. Further assumptions regarding compliance and enforcement of regulations were also listed in the general assumptions for several resources areas in Chapter 3 [PR 2527, pp. 46, 64, 173]. Other resource areas in Chapter 3 also considered the prohibition on cross-country travel in the effects analysis [PR 2527, pp. 80, 141-142].

The specialist reports lists past, present, and reasonably foreseeable actions considered for cumulative effects and define the spatial and temporal boundaries of the analysis. Data limitations and assumptions are also noted. The actions and analysis boundaries considered in the cumulative effects analyses vary by resource. Effects resulting from restrictions on cross-country travel and/or unauthorized roads were considered relevant to the cumulative effects analysis in the following specialist reports: watersheds, soils and aquatics [PR 2508-0]; recreation [PR 2516-00], recreation-IRA-WSA [PR 2517-00], air quality [PR 2518-00], invasive species [PR 2520-00], social and economic [PR 2521-00], cultural resources [PR2523-00], sensitive plants [PR 2524-00], and wildlife [PR 2519-000]. “Illegal motorized uses” were not mentioned in any of the reports, but the cumulative effects analyses stated that reductions in or restrictions on cross-country travel would have beneficial impacts on resources.

See also the response to Contention 1a above, regarding cumulative effects.

**Finding:** The Forest was in compliance with NEPA regulations regarding cumulative effects. The cumulative effects analyses considered user compliance with regulations regarding motorized uses of certain areas and roads.

**Contention 1c:** The appellants contend the persistence of negative impacts caused by closed or unauthorized user-created routes not yet obliterated and restored or disguised by a soft closure are significant, inextricably intertwined components of route designation decisions and their cumulative impacts should have been addressed as part of the travel planning process. They recommend that the Record of Decision for this project include a statement that future decommissioning work will begin and include a timeline for the NEPA analysis required for any on-the-ground, ground-disturbing work that would occur with decommissioning [Appeal, p. 7].

**Response:** The purpose of the project is to comply with the Travel Management Rule (TMR) [PR 2527, p. 4]. The Travel Management rule requires forests provide for a system of NFS roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use by vehicle class, and if appropriate, by time of year [PR 0029, p. 68264]. There are no requirements in the project purpose and need or in the TMR to analyze closed (ML 1) or unauthorized roads that have not been decommissioned. The project is specifically focused on the designation of motorized uses. In designating motorized use, the TMR requires responsible officials consider the criteria in 36 CFR 212.55.

When designating motorized uses under the TMR, FSM 7703.11 requires forests to use the travel analysis process outlined in FSM 7712 and FSH 7709.55 20 to consider the criteria in 36 CFR 212.55. The purpose of travel analysis is to identify proposed changes to the forest transportation system (FSM 7712.13) and should be based on the current inventory of NFS roads (FSM 7712.1). These changes include a variety of actions, including the closing or decommissioning of unneeded roads as well as the addition of needed roads to the NF road system and changes to how existing roads are used and managed.

The Forest completed a travel analysis that complies with this agency direction by identifying issues, assessing benefits problems and risks, and making recommendations to change the existing road system [PR 1796]. Additional changes to the existing road system were identified

in the action alternatives [PR 2527, pp. 13-30] and analyzed in the environments effects analysis [PR 2527, pp. 45-444].

The appellants contend the Forest should have included and analyzed ML 1 roads in this project. The rule allows responsible officials to incorporate previous administrative decisions, such as the assignment of road maintenance levels. Agency policy allows forests to use previous decisions to establish a starting point for proposals to change travel management decisions (FSM 7715.03). Using the open road system as the start point to propose designated motorized use and changes to existing use complies with the TMR and agency policy.

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

Once the designation process is complete, motorized use on unauthorized roads is prohibited (FSM 7715.78 and 36 CFR 261.13). There are no requirements in the TMR to address specific decommissioning work and timelines for these unauthorized routes. However, Forests may consider addressing restoration and decommissioning of these roads when making travel management decisions [FSM 7715.78].

**Finding:** The TMR does not require a complete inventory or environmental analysis of all unauthorized roads in order to complete the motorized designation process. The Forest completed a travel analysis based on the existing road system and incorporated previous decisions into the project analyses in accordance with the TMR and agency direction. The decision for this project 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. Making further decisions regarding specific road decommissioning activities are beyond the scope and purpose of the project.

**Contention 1d:** The appellants contend the agency incorrectly included thousands of miles of "roads" from the INFRA database as system roads without NEPA analysis and failed to analyze these routes as new routes in the Travel Management Planning Process. They argue that the appropriate baseline of existing system routes consists of those routes which have been documented in relevant NEPA analysis. Any routes lacking documentation should be analyzed as new unauthorized routes, in recognition of the fact that there is no record of an administrative decision or analysis addressing the environmental impacts of motor vehicle use on these routes. The appellants conclude that the No Action characterization of the baseline transportation system and the extent of the road system that is currently open to motorized travel by the public is inaccurate, in violation of NEPA [Appeal, pp. 8-12].

**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," and "it may be thought of in terms of continuing with the present course of action until that action is changed." The Forest clearly discloses what is meant by the No Action alternative for this project [PR 2527, pp. 2-5, 13-14, 25-27]. In the description of the alternatives, the Forest describes the current management direction and indicates that management is based on previous decisions, some of which do not need to be revisited. These previous decisions include (1) management direction from the land use plan; (2) Wilderness designation, which closes areas to motorized travel; (3) all OML 1 roads are closed to public travel; and (4) 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 0129-04, p. 68268]. However, based on current management, the Travel Assessment Process (TAP), and information recorded in the INFRA database, the Forest describes its baseline condition for the No Action Alternative. The No Action Alternative description in Chapter 2 of the FEIS [PR 2527, pp. 13-14, 25-27, 33] displays existing conditions and provides a baseline for comparing the other alternatives. The documentation spreadsheet suggested by the appellants is not required or necessary.

See also the responses to contentions 1a and 3a in this document and the responses to comment #03072011-23-1/78-94/ 81-2/120-5a and #03072011-21-49/53/57/68/ 70/71/74 in Appendix B of the FEIS [PR 2528, pp. 664-666].

**Finding:** The Forest is in compliance with the Travel Management Rule and NEPA requirements at 40 CFR 1502.14(d) regarding the no action alternative.

**Contention 1e:** The appellants object to the designation of portions of FR 32 as a ML 1, Administrative or Permitted Use Only Route and contend that the FEIS fails to provide any reason to maintain this route as a system road for administrative or permitted uses below (downstream of) the private property located in Section 9 of T8S, R19W, or above (upstream of) the private property located in Section 31 of T8S, R19W. They also contend there is also no apparent reason for leaving FR 4317T or FR 4224D on the system as administrative or permitted routes [Appeal, p. 14].

**Response:** The TMR requires the responsible official to recognize rights of access in designating roads, trails, and areas. Rights of access include valid existing rights and rights of use of National Forest System (NFS) roads and NFS trails [PR 0029, p. 68290]. The TMR does not affect reciprocal rights-of-way between the Forest Service and private landowners [PR 0029, p. 68266].

From the response to comments: “Route 32 from the Reserve end of the road is proposed for administrative use for private land access in all action alternatives to private land in sections 9 and 21 T8S R19W. The segment between the parcel in section 21 to the parcel in section 29 is decommissioned. The segment of road between section 29 (T8S R19W) and section 14 (T9S R20W) is proposed for administrative use only to access private lands, which minimizes use. This route is considered by Catron County as RS-2477; however the route has not been adjudicated by a competent court” [PR 2528, pp. 667-668].

Route 4137T is proposed for administrative use to access range improvements in order to accomplish maintenance for stock tanks and other range infrastructure [PR 2528, p. 709]. Similarly, FR 4224D is also needed through annual operating instructions.

Additionally, routes designated for administrative use or by written authorization only will not appear on the motor vehicle use map (MVUM) [PR 2527, p. viii].

**Finding:** The Forest is in compliance with the TMR by recognizing valid existing rights.

**Contention 1f:** The appellants contend that allowing continued motorized access to Big Dry and Little Dry Creeks, within the actual creek beds, will result in continued degradation of the Lower San Francisco WSA. The appellants assert FR 68 is not actually a road, but could be considered a motorized trail. Therefore, the Forest Service has an obligation to comply with Executive Order 11644 and 11989 requirements to minimize impacts to natural resources and user-conflicts. The appellants state that in 2007, they submitted a closure petition that clearly outlined the rationale for closing FR 68. The Forest Service response to the 2007 petition was to defer any decision on FR 68 to the Travel Management Planning process. The failure to close FR 68 to motorized uses not only violated the Travel Management Rule, but also gives rise to a claim against the Forest Service for denying the 2007 petition [Appeal, pp. 15-16].

**Response:** The appellants contend that Forest Road 68 is not a road. FR 68 is considered a road, not a motorized trail [PR 2527, p. 137], therefore, the criteria for designation at §212.55(b) (which lists specific criteria for designation of trails and areas) does not strictly apply. However, when making the decision, the responsible official considered the criteria of the rule, the purpose and need for action, the issues and range of alternatives, environmental consequences, public comments on the DEIS and the original proposed action, the forest plan amendments, the FEIS, and the documents incorporated by reference, including resource specialist reports, and explains why she selected Alternative G throughout the ROD [PR 2526, all]. The project record also clearly reflects how the Forest applied the general and specific criteria for designation roads, trails and areas for motor vehicle use as required by 36 CFR 212.55 (Also see responses to Issue 5).

FR 68 is designated to be open to all motorized use in the decision. However, the analysis in the IRA/WSA report shows that prohibiting motorized cross-country travel would improve all four wilderness characteristics in both Hells Hole and Lower San Francisco River WSAs [PR 2517, pp. 34, 52-63] (Also see response to contention 4a).

The Forest Service response to the petition stated that the “existing closure of the San Francisco River from the confluence with Mule Creek downstream to the Arizona state line ... will remain closed after the Travel Management Planning process has been completed... [but] management of motorized vehicle use in Big Dry Creek and the remainder of the San Francisco River will be determined through the Travel Management Planning Process” [Appeal, Appendix C, p. 1]. Again, when making the decision, the responsible official considered the criteria of the rule, the purpose and need for action, the issues and range of alternatives, environmental consequences, public comments on the DEIS and the original proposed action, the forest plan amendments, the FEIS, and the documents incorporated by reference, including resource specialist reports, and explains why she selected Alternative G throughout the ROD [PR 2526, all]. The decision to keep FR 68 open to all motorized uses is supported by analysis in the FEIS [PR 2528, Chapter 3].

**Finding:** The failure to close FR 68 is not in violation of the TMR. FR 68 is a road, not a motorized trail, and all the action alternatives (with the prohibition of motorized cross-country travel) would improve wilderness character in the Lower San Francisco River WSA.

**Contention 1g:** The appellants contend they commented on specific routes that they believe should have been closed because the routes were causing unacceptable resource impacts but the agency failed to close those routes. They provide a list of routes on each Ranger District in their appeal [Appeal, pp. 19-21].

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

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

Again, the responsible official must consider the above criteria when making designations, so there is justification for the closures.

Additionally, the TMR requires the responsible official to monitor the effects of motor vehicle use on designated roads and trails and in designated areas (§212.57), and the final rule allows for revision of designations as needed to meet changing conditions (§212.54).

CEQ Regulation 1503.4 clarifies how agencies process comments on an EIS by stating that “all substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement. These regulations require agencies to assess, consider, and respond to comments on the DEIS; however, comments may be summarized. 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 responses to comments by the appellants were addressed in Appendix B of the FEIS [PR 2528, pp. 670, 700, 707, 708, 714, 715, 717].

**Finding:** The TMR requires the responsible official to consider criteria for designation of roads, trails, and areas. The final rule also requires the responsible official to monitor the effects of motor vehicle use, and allows the responsible official to make revisions of designations as needed. The agency also responded to comments per CEQ regulations.

**Contention 1h:** The appellants contend the agency response to their comments recommending road closures in the range of the Middle Fork Pack of wolves is insufficient and unresponsive. They argue that the justification to leave routes open to public use because they are valued for camping does not outweigh the need to close these routes in order to prevent take of this endangered species. Some of these routes are identified as motorized trails and/or have motorized corridors associated with their designations. However, there is no information in the FEIS explaining how the Forest Service has minimized the impacts of these routes to Mexican gray wolves [Appeal, p. 22].

**Response:** CEQ regulations at 1502.25 address environmental review and consultation. Agencies are to prepare the DEIS concurrently with and integrated with impact analyses and surveys and studies required by environmental review laws and executive orders including the Endangered Species Act and the National Historic Preservation Act.

FSM 2672 requires that the Forest analyze all the direct, indirect, and cumulative effects to listed species and their critical habitat. CEQ Regulations at 40 CFR 1502.16 address environmental consequences including direct and indirect effects and mitigation measures. The Forest analyzed the effects of road densities and motorized use by 6<sup>th</sup> code watershed, providing a high degree of site specificity [PR 2535-23, pp. 35-42]. The analysis showed all alternatives reduced actual and potential impacts to wolves over the current condition and found that the project was “Not Likely to Jeopardize” the Mexican gray wolf in accordance to the ESA Section 10(j) rule for the wolf [PR 2535-23, pp. 42-43]. The U.S. Fish and Wildlife Service concurred with this determination

on the Mexican gray wolf [PR 2535-28, pp. 2-4]. This information was summarized in the FEIS [PR 2527, pp. 283-284].

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. Comments may be summarized.

The responses to comments by the appellants were addressed in Appendix B of the FEIS [PR 2528, pp. 768-770]. The comments were consolidated and summarized with other comments related to the Mexican gray wolf. The appellants' comments regarding closure of specific roads were also addressed in Appendix B [PR 2528, p. 715]. The responses directed the reader to the parts of the EIS addressing direct and indirect effects on the wolf, including effects from increased road densities, motorized trails, and motorized corridors. The responses also note that changing conditions may result in additional road closures.

The appellants stated that responses to two comments # 03022011-15-18b [PR 2528, p. 756] and # 03072011-21-1511b [PR 2528, p. 769] were contradictory and therefore arbitrary and capricious. These comments addressed wolf deaths related to shooting and impacts on wolves related to road density and death by vehicle collisions. The response to comment #01192011-02-20 [PR 2528, pp. 269-270] addresses wolf deaths by various causes and distinguishes between illegal shootings of wolves and wolf deaths by vehicle collisions (accidental deaths). The responses do not contradict each other.

**Finding:** The Forest analyzed the effects to the Mexican gray wolf appropriately, and complied with the requirements of the ESA. Additional requirements under 40 CFR 1505.25, 40 CFR 1502.16, and 40 CFR 1503.1(a)-(c) were also met. The Forest was also in compliance with CEQ regulations under 40 CFR 1503.1 and 1503.4 regarding requesting, considering, and responding to comments from the public and other agencies.

**ISSUE 2:** National Forest Management Act (NFMA).

**Contention 2a:** The appellants contend that the Forest Plan language to “Maintain ORV (off-road vehicle) closure on the Gila River Bird Area” should not be changed because to allow yearly changes to the Motor Vehicle Use Map (MVUM) could seriously and negatively impact bird species that should be protected by this designation. They also contend the language to “Maintain current ORV restrictions” in the Silver City Watershed should be retained. The appellants argue that it is appropriate and acceptable for the Forest Plan to place certain areas completely off-limits to motorized uses regulated under the Travel Management Rule [Appeal, pp. 6-7].

**Response:** Forest Plan direction needs to be adaptable over time as new information comes on line or as conditions change on the ground. Such adaptations are taken care of through plan amendments, and are often addressed as part of the project NEPA. Since they should be addressed as part of project NEPA, the effects of making such adjustments should be contained within the NEPA document. Adjustments to the MVUM on an annual or otherwise basis will

also be accompanied by a NEPA analysis of the effects proposed in any update to the MVUM [PR 0029, p. 68269]. Therefore, the effects on species and their continued persistence, as well as the effects to watersheds, should always be addressed within the appropriate NEPA analysis. That applies whether for this project, for any future update to the MVUM, or for any future plan amendment that might be needed to adaptively improve management of the Forest.

The initial identification of the need to amend the transportation related portions of the Gila Plan [PR 0001] for the Gila Bird Area Management Area 7A and the Silver City Watershed Management Area 7D occurs within the FEIS [PR 2527, p. 17]. Thereafter, the effects to species are addressed for species that occur within the Gila Bird Area Management Area 7A in the environmental consequences analyses of the Wildlife Species section of Chapter 3 of the FEIS [PR 2527, pp. 305, 338, 341], as well as the Wildlife Specialist Report [PR 2535-22, pp. 70, 111, 115].

For the Silver City Watershed Management Area 7D, the FEIS identifies it as one of the areas of the Forest where motorized off-road use is currently restricted [PR 2527, p. 61], but thereafter no specific identification of effects (even if there may be no effect) are made due to amending the transportation portion of the Silver City Watershed Management Area. And no identification of the Silver City Watershed (effects of the amendment or otherwise) can be found in the Watershed and Soils Specialist Report [PR 2535-20], the 6<sup>th</sup> Code Watershed, Soils, and Aquatics Specialist Report [PR 2535-22], or the Aquatics Specialist Report [PR 2535-21].

**Finding:** The Gila Travel Management FEIS analysis properly identifies the Forest Plan amendments that are needed, and while not extensive, does address the effects to species for the amendment to the Gila Bird Area Management Area 7A. However, no analysis of effects could be found specific to the amending of the transportation portion of the Silver City Watershed Management Area 7D. This is inconsistent with the NFMA requirements to fully analyze (within a NEPA document) the effects of any proposed change (amendment) to a Forest Plan. The Forest is instructed to analyze the effects of the amendment to Management Area 7D, The Silver City Watershed. The Forest Plan amendment for MA 7D cannot be implemented until the environmental effects are disclosed through a proper NEPA analysis.

**ISSUE 3:** The ROD violates the Roadless Area Conservation Rule (36 CFR 294).

**Contention 3a:** The appellants contend the agency designated motorized roads in Inventoried Roadless Areas (IRAs) in violation of existing laws. They assert that the impacts of these routes are not disclosed in the FEIS or ROD, have never been analyzed, and therefore must be treated, for purposes of NEPA and the Roadless Area Conservation Rule, as new construction or reconstruction. This necessarily means that these routes cannot be added to the designated system because to do so would violate the Roadless Area Conservation Rule [Appeal, pp. 12-13].

**Response:** Regional NEPA guidance (R3, 2007) for travel management states that a decision to construct a route, add a route to the forest transportation system, or change authorization of or prohibitions on motor vehicle use on a route or in an area is subject to the NEPA. The ministerial action of identifying a designated route or area on a motor vehicle use map is not. The following actions do require NEPA: (1) proposals to construct new National Forest System (NFS) roads

and NFS trails; (2) proposals to reconstruct or relocate existing NFS roads and NFS trails; and (3) proposals to decommission existing NFS roads and NFS trails.

Further, it is not necessary to conduct NEPA to designate NFS roads and trails on NFS lands that are already managed for motor vehicle use where that use will continue unchanged. For IRAs, NEPA analysis should consider the impacts of proposed changes to the forest transportation system on the nine characteristics of roadless areas.

The “Roadless Area Conservation Rule,” 36 CFR Part 294, does not exempt or preclude an IRA’s analysis under the criteria for designation of roads, trails, and areas under 36 CFR 212.51 of the TMR. Under the rule, roads and motorized trails can be present within IRAs. The Roadless Rule does not prohibit travel on existing roads or motorized trails.

Presently, under all action alternatives motorized travel would be able to continue on unauthorized roads proposed to maintain as NFS system roads and/or NFS system motorized trail [PR 2527, pp. 124-125]. The effects of maintaining unauthorized and/or decommissioned routes proposed to be maintained on the road and motorized trail system within IRAs is displayed in the FEIS [PR 2527, pp. 118-132]. The effects of the proposed changes to motorized access by alternative were analyzed on each of the nine characteristics of roadless areas [PR 2527, pp. 117-118].

Motor vehicle travel, and cross country motor vehicle travel specifically were allowed and at the time the two areas were designated WSAs and continues to be allowed until designations are made under the Travel Management Rule.

**Finding:** The ROD designates a route system for motorized use. The decision does not entail route construction of routes or add routes to the forest transportation system or change authorization or prohibitions on motor vehicle use in IRAs. The analysis of potential impacts on IRAs and their values complied with the NEPA, which requires disclosure of expected impacts on forest resources, and the Roadless Area Conservation Rule.

**Contention 3b:** The appellants contend that the analysis of “roads” versus “trails” is arbitrary and capricious. They argue that in the analysis, the agency states that “[t]he types of effects of motorized trails are the same as the effects of roads” but then proceeds to treat the two types of routes differently for analysis of impacts to IRAs and the roadless rule [Appeal, p. 23].

**Response:** The appellants provided two quotes from pp. 74 and 111 of the FEIS. These quotes were not found in the “Travel Management FEIS for the Gila National Forest.” These quotes are from the “FEIS for Travel Management on the Santa Fe National Forest” and are not relevant here. Nonetheless, a brief explanation of the IRA analysis used on the Gila National Forest is presented here.

The term “motorized route” is used to describe the system of roads and trails on the Gila National Forest. In the Recreation section of Chapter 3 of the FEIS, the motorized route system within the Gila national Forest Boundary is described as: “Motorized routes within the Gila National Forest boundary include 4,572.6 miles of maintenance level 2 to 5 NFS roads, and 15.8

miles of NFS trails (vehicles less than 50 inches) designed and managed for motorized use. There are also 784.1 miles of county, State, and U.S. roads and highways within the administrative boundary; this mileage remains constant throughout all alternatives” [PR 2527, p. 60].

The effects on IRAs from motorized routes (both roads and trails) under each alternative were analyzed using the nine characteristics of roadless areas identified in the Roadless Rule in 36 CFR 294 [PR 2527, pp. 119-132]. These nine characteristics were used as the indicators in the effects analysis for IRAs [PR 2517-00, pp. 7-8; PR 2527, p. 117, 119]. Each action alternative proposed a combination of changes to the motorized route system (roads and trail) [PR 2527, p. 115]. Effects were focused on changes in the mileage of motorized roads because the mileage and changes by alternative were far greater than those for motorized trails [PR 2527, p. 115].

**Finding:** The analysis of the effects on IRAs is consistent with the Roadless Area Conservation Rule.

**ISSUE 4:** The ROD violates the Wilderness Act.

**Contention 4a:** The appellants contend the agency designated motorized roads in Wilderness Study Areas (WSAs) in violation of existing laws. They assert that designation of new or unauthorized routes is a violation of the Wilderness Act and would impair the wilderness characteristics of both the Hell’s Hole and San Francisco WSAs. Continued designation of the existing National Forest Service system road FR 68 and other system roads in this ROD would allow continued impairment of both areas because unauthorized routes would continue to proliferate. The appellants conclude that the impacts to WSAs should not have been analyzed as if unauthorized routes have always existed and not designating them will improve conditions in the WSA. Rather, these WSAs should be analyzed as if the unauthorized routes did not exist and the impacts of the *construction* or *creation* of those routes should be disclosed in the FEIS [Appeal, pp. 13-14].

**Response:** Public Law 96-550 states the wilderness study areas (WSAs) designated by this section (which includes Hells Hole and the Lower San Francisco), shall “be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System: *Provided*, That within the areas, current levels of motorized and other uses and improvements shall be permitted to continue subject to such reasonable rules and regulations as the Secretary of Agriculture shall prescribe” [PR 2516-08, p. 4]. This means that “motor vehicle travel, and cross country motor vehicle travel specifically were allowed at the time the two areas were designated WSAs and continues to be allowed until designations are made under the TMR” [PR 2528, p. 653]. Thus, designation of motorized roads in these two WSAs is not in violation of federal law. The Gila Forest Plan recommends that these areas not be designated as wilderness, but until such time that Congress acts on this recommendation, the forest plan calls for managing these lands to maintain existing wilderness character [PR 2517, p. 27].

The purpose of the TMR is to provide for a system of roads, trails and areas that are designated for motor vehicle use, and after these roads, trails and areas are designated, motor vehicle use not

in accordance with these designations is prohibited [PR 0029, p. 68289]. Unauthorized routes should not proliferate because motorized cross-country vehicle use is prohibited in the decision. Law enforcement is critical in ensuring compliance with laws and regulations, but outreach, education and time are also fundamental for implementing changes in travel management [PR 2528, p. 595].

The appellants also object to how the Forest analyzed the effects on the WSAs. Again, Public Law 96-550 specifically allows for motorized uses that occurred when the two areas were designated as WSAs. The Forest has been managing these lands to maintain existing wilderness character, so the way the Forest analyzed the effects is appropriate. The Forest analyzed the effects of the alternatives on wilderness character [PR 2517, pp. 34-41]. The analysis found that prohibiting motorized cross-country travel would improve all four wilderness characteristics in both WSAs [PR 2517, p. 34]. Additionally, the selection of Alternative G would improve all four qualities of wilderness character [PR 2517, pp. 37-41].

**Finding:** The Forest has been managing the two WSAs to maintain their existing wilderness character. The Forest analyzed the effects of the action alternatives on wilderness character. The Forest Service is not in violation of the Wilderness Act or Public Law 96-550.

**ISSUE 5:** The ROD violates the Travel Management Rule (TMR) and Executive Orders (E.O.) 11644 and 11989.

**Contention 5a:** The appellants contend that because of advances in technology and numbers of OHVs used by the public for general transportation, the Executive Orders should be applied on any route or area that allows OHV use. They argue that impacts from motorized use must be minimized, not simply reduced and that it is difficult to determine how the Forest Service actually applied the minimization criteria. The appellants claim the agency has changed the designation of some motorized “roads” to motorized trails that are located adjacent to or concurrent with the Continental Divide Scenic Trail (CDST), actually increasing the number of miles of CDST that overlap with motorized trails from zero to 5.4 miles, yet no information on minimization of impacts is provided [Appeal, pp. 16-18].

**Response:** The appellants contend that the Executive Orders should be applied on any route or area that allows OHV use. Executive Order 11644 requires agencies to develop regulations regarding the “designation of the **specific areas and trails** on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted” where damage to soil, watershed, vegetation, or other resources is minimized” (emphasis added) [PR 1835-01, p. 2]. Executive Order 11989 authorizes an agency head, upon a finding of considerable adverse effects on natural and cultural resources, to “close such **areas and trails** to the type of off-road vehicle causing such effects” (emphasis added) [PR 1835-02, p. 5]. Thus, these Executive Orders do not apply to any route that allows OHV use; they apply only to areas and trails that will be designated for motor vehicle use.

The preamble to the Travel Management Rule explains that “it is the intent of E.O. 11644 that motor vehicle use of trails and areas on Federal lands be managed to address to address environmental and other impacts, but that motor vehicle use on Federal lands continue in

appropriate locations. An extreme interpretation of ‘minimize’ would preclude any use at all, since impacts always can be reduced further by preventing them altogether. Such an interpretation would not reflect the full context of E.O. 11644 or other laws and policies related to multiple uses of NFS lands. Neither E.O. 11644, nor these other laws and policies, establish the primacy of any particular use of trails and areas over any other. The Department believes ‘shall consider...with the objective of minimizing...’ will assure that environmental impacts are properly taken into account, without categorically precluding motor vehicle use” [PR 0029, p. 68281].

The Travel Management Rule includes criteria for designating roads, trails, and areas for motor vehicle use [PR 34, pp. 68289-68290]:

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

Applying the minimization criteria is the appellants’ interpretation and goes beyond the purpose and need for the project as stated in the FEIS, which is to “comply with the Travel Management Rule by providing a system of NFS roads, NFS trails and areas on NFS lands designated for motor vehicle use by class of vehicle, and if appropriate, by time of year” [PR 2527, p. 4]. Again, 36 CFR 212.55(b) states that “*the responsible official shall consider effects on the following, with the objective of minimizing*” damage to natural resources, harassment and disruption of wildlife, and user conflicts. When making the decision, the responsible official considered the criteria of the rule, the purpose and need for action, the issues and range of alternatives, environmental consequences, public comments on the DEIS and the original proposed action, the forest plan amendments, the FEIS, and the documents incorporated by reference, including resource specialist reports, and explains why she selected Alternative G throughout the ROD [PR 2526, all]. The project record also clearly reflects how the Forest applied the general and specific criteria for designation roads, trails and areas for motor vehicle use as required by 36 CFR 212.55.

The appellants also contend that the agency has changed the designation of some motorized “roads” to motorized trails located adjacent to or concurrent with the CDST, yet no information on minimization of impacts is provided. As stated in the recreation specialist report, “it appears that motorized trail routes are being added to the CDST. However, Alternative D, F and G propose motorized open roads to change to the designation of trails open to vehicles less than 50 inches in width” [PR 2517, p. 53]. Analysis on effects to the CDST is discussed in Chapter 3 of the FEIS [PR 2527, pp. 90-93]. As for the minimization criteria, see previous four paragraphs.

**Finding:** E.O.s 11644 and 11989 only apply to the designation of trails and areas for motor vehicle use. The project record clearly reflects how the Forest applied the general and specific criteria for designating roads, trails and areas for motor vehicle use as required by 36 CFR 212.55. The decision is consistent with the Travel Management Rule and the Executive Orders, and also explains the rationale for the decision.

**Contention 5b:** The appellants contend the expansive application of the exemption for motorized dispersed camping and motorized big game retrieval does not meet the requirement that the Forest must “[a]pply the provision for big game retrieval and dispersed camping sparingly . . .” FSM 7703.11(4) (emphasis added). They contend the selection of Alternative G allows up to 2,663 motorized trips per year in IRAs but the number of motorized trips for dispersed camping is unknown and/or undisclosed. The appellants state there 14.1 miles of Continental Divide Scenic Trail (CDST) that now overlap with motorized dispersed camping or motorized big game retrieval corridors but there is no information on how this will negatively impact, over the long-term, the users of the CDST. The appellants conclude the FEIS and ROD fail to demonstrate how the Forest Service has minimized the impacts of designation of these corridors as required by the Executive Orders and Travel Management Rule [Appeal, pp. 18-19].

**Response:** The appellants contend that the FEIS and ROD fail to demonstrate how the Forest Service has minimized the impacts of designation of motorized dispersed camping and motorized big game retrieval corridors as required by the Executive Orders and the TMR. Executive Order 11644 requires agencies to develop regulations regarding the “designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted” where damage to soil, watershed, vegetation, or other resources is minimized [PR 1835-01, p. 2]. Executive Order 11989 authorizes an agency head, upon a finding of considerable adverse effects on natural and cultural resources, to “close such areas and trails to the type of off-road vehicle causing such effects” [PR 1835-02, p. 5].”

The preamble to the Travel Management Rule explains that “it is the intent of E.O. 11644 that motor vehicle use of trails and areas on Federal lands be managed to address to address environmental and other impacts, but that motor vehicle use on Federal lands continue in appropriate locations. An extreme interpretation of ‘minimize’ would preclude any use at all, since impacts always can be reduced further by preventing them altogether. Such an interpretation would not reflect the full context of E.O. 11644 or other laws and policies related to multiple uses of NFS lands. Neither E.O. 11644, nor these other laws and policies, establish the primacy of any particular use of trails and areas over any other. The Department believes ‘shall consider...with the objective of minimizing...’ will assure that environmental impacts are properly taken into account, without categorically precluding motor vehicle use” [PR 0029, p. 68281].

The Travel Management Rule includes criteria for designating roads, trails, and areas for motor vehicle use [PR 34, pp. 68289-68290]:

- 36 CFR 212.55(a) requires the responsible official to consider the general criteria when designating roads, trails and areas for motor vehicle use. These criteria include the effects of motor vehicle designations on National Forest System natural and cultural resources,

public safety, provision of recreational opportunities, access needs, conflicts among uses, and the need for maintenance and administration of roads, trails, and areas.

- 36 CFR 212.55(b) applies only to trails and areas and requires the responsible official to consider, with the objective of minimizing damage to, natural resources, harassment and disruption of wildlife, and user conflicts.
- 36 CFR 212.55(c) applies only to roads and requires the responsible official to consider safety aspects such as traffic speed, volume, compositions, road geometry, road surfacing, and rights of access in addition to the general criteria in 36 CFR 212.55(a).

When making the decision, the responsible official considered the criteria of the rule, the purpose and need for action, the issues and range of alternatives, environmental consequences, public comments on the DEIS and the original proposed action, the forest plan amendments, the FEIS, and the documents incorporated by reference, including resource specialist reports, and explains why she selected Alternative G throughout the ROD [PR 2526, all]. The project record also clearly reflects how the Forest applied the general and specific criteria for designation roads, trails and areas for motor vehicle use as required by 36 CFR 212.55.

The appellants also contend that the application of the exemption for motorized dispersed camping (MDC) and motorized big game retrieval (MBGR) does not meet the requirement that the Forest must “[a]pply the provision for big game retrieval and dispersed camping *sparingly*...” The TMR states that “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 does not define “sparingly,” and allows the provision for MBGR and MDC to be at the discretion of the responsible official [PR 0029, p. 68285]. “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 00289, p. 68274]. The Assumptions and Limitations section in Chapter 3 of the FEIS acknowledges that the entire 2.4 million acres of non-wilderness is not available for motor vehicle use and that slope, topography, and vegetation may limit motor vehicle use and access [PR 2527, p. 46]. Each alternative proposes fewer acres of corridors for MDC and MBGR than the current 2.4 million acres, and the amount of reduction varies from 0 in Alternative E to 2.2 million in Alternative C. The acres of corridors for MDC and MBGR proposed in Alternatives D (85,921) and G (95,994) are considerably less than the approximate 2.4 million acres that are currently open to cross-country travel. The indirect, direct and cumulative effects of MDC and MBGR are analyzed in Chapter 3 of the FEIS [PR 2527, pp. 95-107]. Regarding the number of motorized dispersed camping trips, the FEIS discloses that “user levels of motorized dispersed camping are expected to remain level in the short term and the long term” [PR 2527, p. 98].

The appellants also contend that the selection of Alternative G discloses the number of motorized trips per year in IRAs, but the number of motorized trips for dispersed camping is unknown and/or undisclosed. The analysis used different indicators for MDC and MBGR corridors. The indicator used to analyze the effects of the alternatives related to MDC corridors is the miles/acres of corridor for motorized access for dispersed camping available by New Mexico Game and Fish Game Management Units, and estimated travelable ground [PR 2527, p. 96]. One

of the indicators used for analysis related to MBGR corridors is the number of maximum trips per proposal estimated per hunting success of game proposes for retrieval [PR 2527, p. 102]. The 2,663 motorized trips is the maximum number of trips estimated to retrieve game [PR 2517, p. 7].

Finally, the appellants contend that there is no information on how MDC and MBGR corridors will impact users of the CDST. The miles per acres CDST located within proposed corridors for MDC and for MBGR are two indicators used to analyze the effects of the alternatives on the CDST [PR 2527, p. 90]. The direct, indirect and cumulative effects of alternatives on the CDST are discussed in Chapter 3 of the FEIS [PR 2527, pp. 90-93].

**Finding:** E.O.s 11644 and 11989 only apply to the designation of trails and areas for motor vehicle use. The project record clearly reflects how the Forest applied the general and specific criteria for designating roads, trails and areas for motor vehicle use as required by 36 CFR 212.55. The exemption for MDC and MBGR is applied appropriately. The effects of the alternatives on the CDST are disclosed in the FEIS. The decision is consistent with the Travel Management Rule and the Executive Orders, and also explains the rationale for the decision.

**Contention 5c:** The appellants contend there is no information in the FEIS indicating how the Forest Service minimized impacts on roads open to all vehicles, such as the North Star Road (FR 150). There is no information on how impacts from motorized users on ATVs or dirt bikes are going to affect other users of these areas and of this road. There is also no information on how use of this road by people driving ATVs or dirt bikes will impact natural resources. It is the use of these types of vehicles, ATVs and dirt bikes, rather than the type of route designation (road vs. trail) that triggers the requirement under the Executive Orders to minimize impacts and user conflicts [Appeal, p. 19].

**Response:** The appellants contend that the Forest Service did not provide information on how the Forest Service minimized impacts on roads open to all vehicles, and that it is the use of specific types of vehicles that triggers the requirement under the Executive Orders to minimize impacts and user conflicts. Executive Order 11644 requires agencies to develop regulations regarding the “designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted” where damage to soil, watershed, vegetation, or other resources is minimized [PR 1835-01, p. 2]. Executive Order 11989 authorizes an agency head, upon a finding of considerable adverse effects on natural and cultural resources, to “close such areas and trails to the type of off-road vehicle causing such effects” [PR 1835-02, p. 5]. Thus, these Executive Orders do not apply to “roads open to all vehicles” as the appellants contend; they apply only to areas and trails that will be designated for motor vehicle use. Similarly, the Executive Orders state that “areas and trails” should be closed to the type of off-road vehicle causing considerable effects. So contrary to the appellants’ interpretation, it is not the type of vehicle that triggers the requirements to minimize impacts. The focus is on the type of route designation, in this case, “areas and trails.”

The preamble to the Travel Management Rule explains that “it is the intent of E.O. 11644 that motor vehicle use of trails and areas on Federal lands be managed to address to address environmental and other impacts, but that motor vehicle use on Federal lands continue in

appropriate locations. An extreme interpretation of ‘minimize’ would preclude any use at all, since impacts always can be reduced further by preventing them altogether. Such an interpretation would not reflect the full context of E.O. 11644 or other laws and policies related to multiple uses of NFS lands. Neither E.O. 11644, nor these other laws and policies, establish the primacy of any particular use of trails and areas over any other. The Department believes ‘shall consider...with the objective of minimizing...’ will assure that environmental impacts are properly taken into account, without categorically precluding motor vehicle use” [PR 0029, p. 68281].

The Travel Management Rule includes criteria for designating roads, trails, and areas for motor vehicle use [PR 34, pp. 68289-68290]:

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

Applying the minimization criteria is the appellants’ interpretation and goes beyond the purpose and need for the project as stated in the FEIS, which is to “comply with the Travel Management Rule by providing a system of NFS roads, NFS trails and areas on NFS lands designated for motor vehicle use by class of vehicle, and if appropriate, by time of year” [PR 2527, p. 4]. Again, 36 CFR 212.55(b) states that “*the responsible official shall consider effects on the following, with the objective of minimizing*” damage to natural resources, harassment and disruption of wildlife, and user conflicts. When making the decision, the responsible official considered the criteria of the rule, the purpose and need for action, the issues and range of alternatives, environmental consequences, public comments on the DEIS and the original proposed action, the forest plan amendments, the FEIS, and the documents incorporated by reference, including resource specialist reports, and explains why she selected Alternative G throughout the ROD [PR 2526, all]. The project record also clearly reflects how the Forest applied the general and specific criteria for designation roads, trails and areas for motor vehicle use as required by 36 CFR 212.55.

The appellants also contend that there is no information on how impacts from motorized users on ATVs or dirt bikes are going to affect other users. The FEIS does include a discussion on motorized mixed use. “Motorized mix use” is defined as designation of a National Forest System road (NFSR) for use by both highway legal and non-highway legal motor vehicles. The Forest did an engineering analysis, and found that there would be low risk to public safety by allowing non-highway legal motorized vehicle use to continue [PR 2527, p. 48]. The analysis in the FEIS also found that traffic safety concerns are relatively low for the current road system under Alternative B, so safety-related concerns for all action alternatives would be the same as

Alternative B [PR 2527, p. 49]. Additionally, the recreation analysis does include discussion and analysis on user conflict. The analysis does disclose that there is no data available regarding user conflicts, so miles of proposed motorized activities has been used to estimate the risk of potential conflicts by alternative [PR 2516, p. 17]. The analysis also found that user conflicts on motorized routes is expected to be reduced by implementing the TMR under all action alternatives because researchers have found that such a system reduces direct conflicts [PR 2516, p. 16].

**Finding:** E.O.s 11644 and 11989 only apply to the designation of trails and areas for motor vehicle use. The project record clearly reflects how the Forest applied the general and specific criteria for designating roads, trails and areas for motor vehicle use as required by 36 CFR 212.55. The decision is consistent with the Travel Management Rule and the Executive Orders, and also explains the rationale for the decision. The FEIS included an analysis on user conflict.

**ISSUE 6:** Other Points Not Related to Violation of Law, Regulation, or Policy

**Point 6a:** The appellants point out a minor error in the area of the lower San Francisco River that should be corrected. The description of Alternative G regarding this section of the San Francisco River states that motorized use will be allowed in Little Dry and Big Dry Creeks and that motorized dispersed camping will be allowed at the confluence of Big Dry Creek and the San Francisco River. However, this is not represented on the map for Alternative G in the FEIS [Appeal, p. 3].

**Response:** Here is a description of the proposed changes to motorized access within the lower San Francisco river area: “Alternative G allows motorized use in Little and Big Dry Creeks. This alternative proposed to close routes along the San Francisco River. Motorized dispersed camping is proposed at the confluence of Big Dry and the San Francisco River. No motorized access will be allowed along the river. Alternative G proposes 0.7 miles of road, a reduction of 7.5 miles within the WSA, a 91% reduction. Approximately 0.2 acres of the motorized dispersed camping 300-foot corridor off of Road 4075D, located on the southern rim of the San Francisco River canyon near the Arizona state boundary extends into the WSA boundary. Big game retrieval for elk and deer is proposed within the same motorized dispersed camping 300-foot corridors. The same unauthorized routes, Glenwood Proposed Routes (GPR) 14, 15 and 16, totaling 0.3 mile proposed in alternative D are proposed to be designated as open to all vehicle types in alternative G” [PR 2527, p. 138; PR 2517, p. 33; PR 2517, Figure 3, p. 32].

The error the appellants point out is not clear in review of Map 16 [PR 2534, p. 17]. What is shown in Map 16 is consistent with the zoomed in view of the area in the IRA/WSA report [PR 2516, p. 32].

The TMR requires the Forest to monitor the effects of motor vehicle use on the designated system (36 CFR 212.57), and allows for revision of designations (36 CFR 212.54). The Forest will develop a monitoring plan to evaluate the effects of motor vehicle use on the designated system [PR 2528, p. 597], and designations may be revised as needed to meet changing conditions. Revisions in designations shall be made in accordance with the requirements for public involvement in §212.52, the requirements for coordination with governmental entities in

§212.55, and the criteria in §212.55, and shall be identified on a motor vehicle use map pursuant to §212.56 [PR 0029, p. 68289].

**Finding:** Map 16 accurately reflects the proposed changes in motorized access within the lower San Francisco River area.

**Point 6b:** The appellants point out that on February 23, 2012, the U.S. Fish and Wildlife Service published a rule changing the listing of spokedace and loach minnow from threatened to endangered and designating new critical habitat. (Fed. Reg. Vol. 77, No. 36. 10810 *et. seq.*, February 23, 2012.) This important change in the status of these two species is not clearly reflected in the FEIS and ROD for this project despite the fact the ROD was not signed until September 26, 2013. The FEIS and ROD should be corrected to reflect the listing of spokedace and loach minnow as endangered [Appeal, p. 3-4].

**Response:** The appellants contend that the change in status of the spokedace and loach minnow (from “threatened” to “endangered” under the ESA, and designated critical habitat) was not taken into consideration. The standard applied here is whether or not the ESA Section 7(a)(2) consultation on these species reflected the appropriate status.

The Gila National Forest initiated consultation on the project, including effects to spokedace and loach minnow, in February of 2011 [PR 2149; PR 2522-123]. At the time, spokedace and loach minnow were listed as “threatened” and critical habitat for both species was proposed. The letter and Biological Assessment [PR 2150, pp. 55-78] requested formal consultation for both fish species, and a conference on proposed critical habitat and formal consultation in the event critical habitat became designated.

The Biological Opinion [PR 2535-28, pp. 25, 34] issued by the U.S. Fish and Wildlife Service (USFWS) discloses the changed status of both loach minnow and spokedace from threatened to endangered. The USFWS issued “No Jeopardy” opinions for both species and a “No Adverse Modification” opinion for designated critical habitat for each species.

Based on the consultation history in the record, the consultation on loach minnow and spokedace took into account the change in status of the species and the designation of critical habitat.

**Finding:** The Forest complied with ESA Section 7(a)(2) consultation requirements for spokedace, loach minnow, and their designated critical habitat.

**Point 6c:** The appellants recommend that the Forest Service make it clear that areas designated for motorized dispersed camping and motorized big game retrieval are not areas in which the public may drive around looking for camp sites [Appeal, pp. 23-24].

**Response:** The TMR states that the responsible official may allow the “limited use of a motor vehicle 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]. Thus, motorized dispersed camping (MDC) corridors and motorized big game retrieval (MBGR)

corridors must be specifically designated if this activity is allowed beyond the distance of roadside parking [PR 2528, p. 631].

The FEIS explains that for MDC, “motor vehicle use within these motorized dispersed camping corridors would be limited to what is needed to provide access to and from the campsite off of the road and does not include general driving” [PR 2527, p. 16]. For MBGR, “retrieval of game should take a relatively direct and safe route... and follow applicable laws or regulations, such as: roads should not be damaged or left in a damaged condition; retrieval of big game should take a relatively direct and safe route; motor vehicle use off-road should not damage or unreasonably disturb the land, wildlife, or vegetative resources; use the minimum number of trips to retrieve a downed animal; only one vehicle would be allowed for game retrieval per harvested animal; [and] motor vehicle use should not damage any natural feature or other property of the United States [PR 2527, pp. 16-17].

**Finding:** The Forest Service did make clear in the FEIS the requirements around motor vehicle use in MDC and MBGR corridors.