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File Code: 1570/2350

Date: September 9, 2014

Ms. Katherine Davis  
Public Lands Campaigner  
Center for Biological Diversity  
PO Box 710  
Tucson, AZ 85702

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED  
NUMBER: 7000 2870 0000 1135 7289**

Dear Ms. Davis:

This is my decision on the appeal (#14-03-00-0149-A215) you filed on behalf of the Center for Biological Diversity, regarding the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) signed by Forest Supervisor Kelly Russell, for Travel Management on the Gila National Forest.

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

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

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

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



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

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

Sincerely,

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

Enclosures (2)

cc: Kelly M Russell



United States  
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Forest  
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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**

### **Center for Biological Diversity**

**Katherine Davis**

**Appeal #14-13-00-0149-A215**

**Gila Travel Management**

**ISSUE 1:** The Forest Service erred in failing to fully close the Lower San Francisco River to motorized use.

**Contention 1a:** The appellants contend by protecting the San Francisco River from the negative impacts of motorized uses, the Forest Service ensures compliance with its myriad of legal responsibilities pursuant to, among other laws, the National Forest Management Act (“NFMA”), the Endangered Species Act (“ESA”), and the Clean Water Act (“CWA”). They assert that ongoing motorized recreational use, by causing adverse impacts such as soil compaction, bank erosion, and damage to vegetation, will not only harm the ecological, biological, and recreational values of this area, but will also brush up against, if not exceed, legal thresholds provided by federal law. The Forest Service must consider the impacts of this route on loach minnow, spikedace, Gila trout, Southwestern willow flycatcher, Chiricahua leopard frog, any other threatened or endangered species, native fish, the spread of invasive species (specifically, but not limited to salt cedar), the potential for erosion, soil and water disturbance and contamination, degradation of water quality and habitat for aquatic species. In addition, the Forest Service must disclose and analyze its potential liability for designating a route that the Forest Service will not be able to maintain, that is inherently dangerous, does not and cannot meet engineering standards, and that must be re-signed at least twice per year when high water flows obliterate any signage that is put in place [Appeal, pp. 1-4].

**Response:** The appellants contend that adverse impacts from motorized recreational use will meet or exceed thresholds established in federal law, including the Endangered Species Act, Clean Water Act, and National Forest Management Act.

The Council on Environmental Quality (CEQ) regulations at 40 CFR 1502.16 address environmental consequences including direct and indirect effects and mitigation measures. 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 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.

The Forest Service Handbook (FSH) at FSH 1909.15, 26.21 addresses the content of the Record of Decision (ROD), directing that the ROD discuss findings required by other laws and the reasons for the decision.

The Forest analyzed and presented the direct, indirect, and cumulative effects of the alternatives in Chapter 3 of the FEIS [PR 2527, pp. 45-453]. Compliance with the Clean Water Act, Endangered Species Act, the National Forest Management Act, and other federal laws is also noted in Chapter 3 [PR 2527, pp. 119, 191, 240, 252, 453]. The Forest also prepared the documents required by other environmental review laws, including the biological assessment for the U.S. Fish and Wildlife Service [PR 2150].

The ROD discussed findings required by other laws, including those mentioned by the appellants. The selected alternative is consistent with the laws and regulations pertaining to each resource [PR 2526, pp. 13-14], including the Clean Water Act, Endangered Species Act, and National Forest Management Act. The ROD also discussed the effects analysis from the FEIS, including the analysis related to aquatic wildlife and sensitive plants, invasive species, and threatened and endangered species [PR 2516, pp. 7-8].

The appellants also allege that the Forest did not meet its obligations under NEPA to analyze the effects of motorized recreation use on the San Francisco River and the fish, wildlife, soils, water quality, and vegetation. The standard applied here is whether the analyses in question complied with the requirements of the appropriate resource guidance, and whether effects to listed species would jeopardize those species or adversely modify their critical habitat.

In accordance with FSM 2670, the Forest analyzed the effects to listed and sensitive species, including all listed and sensitive plants, fish and amphibians, in the Wildlife Specialist Report [PR 2535-23], Sensitive Plants Specialist Report [PR 2535-24], Aquatic Specialist Report [PR 2535-21]. In addition, the Forest analyzed the effects of invasive plants [PR 2535-25] and soils and watershed [PR 2535-20]. The analyses in these reports were summarized in the FEIS in Chapter 3 [PR 2527]. These analyses included species in the San Francisco River as well as other locations on the forest. Analysis on fish, wildlife, soils, water quality and vegetation is also included in the Inventoried Roadless Areas and Wilderness Study Areas report [PR 2516, pp. 52-59], which is included in the FEIS [PR 2527, pp. 153-157]. The analysis in the IRA/WSA report was pulled from the appropriate specialist reports.

In addition, for listed species the Forest initiated consultation on the project in February of 2011 [PR 2149; PR 2522-123; PR 2150]. The U.S. Fish and Wildlife Service issued a “No Jeopardy” Biological Opinion [PR 2535-28] and a “No Adverse Modification” opinion for designated critical habitat for the appropriate species.

The appellants also allege that the Forest Service must disclose and analyze its potential liability for designating a route that the agency will not be able to maintain because it is inherently dangerous. Section 212.55(a) of the final rule includes as criteria for designation “public safety ... [and] the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration” [PR 0029, p. 68289]. The analysis found that 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]. The analysis also found that none of the alternatives identify a road system that can be fully maintained with the current funding level. Furthermore, road maintenance budgets are forecasted to decline in the foreseeable future. However, designating a road system that matches available funding levels would result in a system that would not meet administrative or public access needs. Per 36 CFR 212.5, each unit “must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands.”

The Forest was previously managed as “open unless designated closed,” which has led to users creating roads into areas that are accessible. The San Francisco road is similar in that users created it long ago. Based on public comments, some users advocated the road remain motorized while others were opposed. These comments were used during the development of the alternatives. Engineering has worked on some of these drainage-bottom roads over the years in an effort to minimize impacts to the resource, but there is not a lot that can be done to roads located in drainage bottoms [PR 2528, pp. 705-706]. The responsible official selected Alternative G because it provides public access to the San Francisco River, and greatly reduces the impacts to resources adjacent to or along the San Francisco River [PR 2526, p. 6].

**Finding:** The Forest was in compliance with CEQ regulations under 40 CFR 1503.1(a)-(b) regarding requesting, considering, and responding to comments from other agencies. Additional requirements under 40 CFR 1505.25, 40 CFR 1502.16, and FSH 1909.15, 26.21 were also met. The Forest complied with the requirements to analyze effects under NEPA, and complied with the requirement under the ESA to ensure that those effects do not jeopardize a listed species or adversely modify its critical habitat. The Forest disclosed information on public safety and road maintenance costs in the FEIS.

**Contention 1b:** The appellants contend the Forest Service violated the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), the Wilderness Act, and Public Law 96-550 by failing to maintain the wilderness character of the Lower San Francisco and Hells Hole Wilderness Study Areas. In the 1986 Forest Plan, both Wilderness Study areas were “recommended for nonwilderness uses” and the portion of Lower San Francisco River below Mule Creek was closed to motorize use. The appellants state that until Congress takes further action on the recommendations, the agency has a duty to maintain or enhance the wilderness eligibility and the wilderness character, including the opportunity for solitude, of the area, relative to its state in 1980. They assert that by leaving a motorized access point open on the Lower San Francisco without exploring how this affects wilderness quality relative to a 1980 baseline, the Service fails to meet its obligations under Public Law 96-550, the Wilderness Act, NFMA, and NEPA [Appeal, pp. 4-7].

**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]. 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].

No baseline monitoring data has been collected for the wilderness character within these WSAs [PR 2517, p. 27]. However, the Forest has been managing these areas to maintain existing wilderness character, per direction in the Forest Plan [PR 2517, p. 27]. Additionally, the Forest did restrict motorized cross-country travel from Mule Creek downstream to the Arizona-New Mexico border [PR 2517, p. 30], per direction in the Forest Plan.

The Forest also analyzed the effects of the project 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 followed direction in the Forest Plan, and analyzed the effects of the action alternatives on wilderness character. The Forest Service did not violate NEPA, NFMA, the Wilderness Act or Public Law 96-550.

**ISSUE 2:** The Record of Decision (ROD) violates the Endangered Species Act (ESA).

**Contention 2a:** The appellants contend the Forest Service must initiate consultation with the U.S. Fish and Wildlife Service (USFWS) in light of the listing of the narrow-headed gartersnake and northern Mexican gartersnake as threatened under ESA effective August 7, 2014. They claim that this newly published information represents new information about the likely status of these species within the Gila National Forest and may affect the analysis of impacts of this action, especially the designation of new routes and trails within gartersnake habitat, on both gartersnake species. The appellants conclude that because the agency has not considered the information contained in the new ruling, and because this ruling represents a new listing of species, it is required to re-analyze the effects of this action on these species and reinitiate consultation with the USFWS, as required by the ESA [Appeal, pp. 7-8].

**Response:** The Gila National Forest initiated consultation with the U.S. Fish and Wildlife Service (USFWS) on the project in February of 2011 [PR 2149; PR 2522-123]. The Biological Assessment did not include the narrow-headed gartersnake or the northern Mexican gartersnake. The USFWS issued “No Jeopardy” opinions [PR 2535-28] for the gartersnake and a “No Adverse Modification” opinion for designated critical habitat on July 18, 2013. The Biological Opinion did not include either gartersnake as the species were not yet listed. The ROD for the project was signed on September 26, 2013 based on the effects of the July 18, 2013, BO [PR 2526].

The gartersnake listings were published in the Federal Register on July 8, 2014 and became effective on August 7, 2014.

Based on the consultation history in the record, consultation on the narrow-headed and northern Mexico gartersnakes did not occur.

**Finding:** 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 gartersnakes as threatened, the Forest is instructed to initiate consultation with the U.S. Fish and Wildlife Service to satisfy requirements of ESA.

**Contention 2b:** The appellants contend the Forest Service must revise the FEIS to acknowledge the listing of spikedace and loach minnow as endangered and the additional designation of critical habitat. They claim that if the Forest Service analyzed the action assuming that the loach minnow and spikedace were merely threatened, its determinations as to these species and the action as a whole are arbitrary and capricious [Appeal, pp. 8-9].

**Response:** The Gila National Forest initiated consultation on the project, including effects to spikedace and loach minnow, in February of 2011 [PR 2149; PR 2522-123]. At the time, spikedace 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 spikedace from threatened to endangered. The Service 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 spikedace 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 spikedace, loach minnow, and their designated critical habitat. The change in status from “threatened” to “endangered” should be corrected through an erratum.

**ISSUE 3:** The ROD violates NEPA.

**Contention 3a:** The appellants contend the Forest Service violated NEPA by designating unauthorized routes and trails as official system routes without completing site-specific analysis of these routes. They assert that the FEIS fails to analyze all unauthorized routes that will be designated for their specific impacts on forest resources. These routes, even if they existed on the ground pre-designation, should be treated the same as routes that would be designed and built by the Forest Service: site-specific NEPA analysis should be completed to understand the potential effects of use and maintenance of these roads on forest land. They contend the Forest Service cannot avoid its responsibilities under that law merely by incorporating new routes into the

official system during a forest-wide travel management process and analyzing the general impacts of the entire system [Appeal, pp. 9-11].

**Response:** The appellants contend that the designation of unauthorized, user-created, or previously decommissioned routes should have been treated as new construction or reconstruction of roads.

Unauthorized routes or user-created routes are defined under the Travel Management Rule (TMR) at 36 CFR 212.1 as “A road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas.” The TMR also allows for the designation of unauthorized routes, subject to evaluation at the local level and to the criteria at 36 CFR 212.55 [PR 0129-4, pp. 68268, 68281]. However, once the designation is made as to which roads, trails and areas are designated as open to motor vehicle travel all cross-country motor vehicle travel will be prohibited. The TMR also acknowledges that some user-created routes may be well-sited, provide excellent opportunities for outdoor recreation, and enhance the system of designated routes. Other user-created routes are poorly located and cause unacceptable environmental impacts [PR 0129-04, p. 68268].

Under 36 CFR 212.55, the responsible official is directed “to consider effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.”

The Forest Service Manual (FSM) 7703.2(3) addresses adding new roads to the transportation system: “decisions to add new roads to the transportation system are appropriate only where the resource management objectives, environmental impacts, and benefits have been carefully considered and documented,” and “... must be informed by a roads analysis process.”

Regional NEPA guidance (R3, 2007) for travel management states that the following actions 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. The ministerial action of identifying a designated route or area on a motor vehicle use map is not subject to the NEPA.

Many of these user-created routes on the Gila National Forest were developed because most of the forest is currently open to cross-country travel with a motorized vehicle, with the exception of designated wilderness areas and other areas closed by specific order. The Forest has acknowledged that it lacks a complete inventory of and information about the road system, including unauthorized or user-created routes [PR 2527, pp. 612, 664-665].

The Forest analyzed and considered the impacts and benefits of adding new roads to the transportation system. During the development of alternatives, an “alternative framework” was developed. This framework was based on the significant issues identified during the public comment period and laid out the criteria used for road designations for each of the alternatives [PR 1798].

The Forest also completed this roads analysis process per FSM7703.2(3). The resulting Travel Analysis Process report (TAP) describes the process for assessing problems, benefits and risks to determine road designation and identify camping corridors [PR 1796, pp. 17-19]. Appendix L of the report has a road-by-road evaluation [PR 1796].

The FEIS evaluated the impacts of adding a varying number of miles of unauthorized routes as roads or motorized trails to the forest transportation system. In the FEIS, tables 5 and 8 show the miles of unauthorized routes that would be designated as roads, motorized trails, or single track trails under Alternatives C, D, E, F, and G [PR 2527, pp. 25-26]. These tables also show the miles of Maintenance Level 1 (ML-1) closed or decommissioned roads proposed to be open under each of the five action alternatives. Reasons for including these routes are: (1) they are considered necessary for future management; (2) routes meet public access needs; (3) routes meet the criteria used to develop the alternatives; (4) routes avoid sensitive areas; (5) public requested the addition of the route; (6) route is under agency jurisdiction [PR 1798].

The resource analyses in Chapter 3 looked at changes in the travel system (i.e., increase, decrease, or changes from current uses) from the no action alternative (Alternative B) [PR 2527, p. 45]. Having complete information on the condition and motorized use of every mile and acre is not relevant to effectively analyzing impacts, and is not necessary under the TMR. The general effects of the existence and use of routes and off-road travel on natural and cultural resources are presented in the resource sections of Chapter 3 [PR 2527, pp. 52, 54, 60, 64, 66, 67, 69, 73, 75, 92, 108, 117-118, 173, 195, 214, 233-234, 297, 312, 322-323, 329, 328-329, 334, 343-344, 346, 353-354, 385, 433, 452]. The addition of unauthorized routes was also included in the discussions of methodology and assumptions. Although, for the most part, the analysis was a forestwide assessment; there were also areas, management areas, habitats, etc., where subsets of motorized routes, corridors, or areas were specifically assessed, depending on the resource area. The descriptions of analysis of the proposals can be found in Chapter 3 of the DEIS [PR 2527, pp. 45-453] and each specialist report.

**Finding:** The ROD designates a route system for motorized use. The decision does not entail construction or reconstruction of new routes. The identification and designation of unauthorized or user-created routes into the route system for motorized use is allowed under the travel management rule and other agency policies. The analysis of potential impacts resulting from changes in the route system for motorized use on natural and cultural resources complied with the NEPA and agency guidance.

**ISSUE 4:** The ROD violates the Travel Management Rule (TMR) and Executive Orders (E.O.) 11644 and 11989.

**Contention 4a:** The appellants contend the Forest Service violated the TMR by designating unauthorized routes and trails as official system routes without addressing how designation of these routes met the minimization requirements of the TMR. They assert that the Forest failed to apply the minimization criteria to newly designated routes in this decision. Nowhere in the FEIS does the Forest address how each unauthorized road was selected in order to meet the minimization criteria. The appellants also contend that the only mitigation measures included in this decision are to minimize impacts to cultural resources. No other mitigation measures are

included for unauthorized routes, or any route for that matter, even though the Forest admits that “[u]nauthorized routes may not be in acceptable condition, as they were created without engineering design.” The appellants conclude that the Forest has failed to comply with the minimization criteria contained within the TMR and executive orders in its designation of unauthorized routes as official system routes [Appeal, p. 11].

**Response:** The appellants contend that the Forest Service failed to apply the minimization criteria to the newly designated routes in this decision. 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 2, 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 2, p. 5]. Thus, these Executive Orders do not apply to “newly designated routes” as the appellants contend; 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.

Also see response to Contention 3a.

The appellants also contend that the only mitigation measures are to minimize impacts to cultural resources, and that no other mitigation measures are included. A section on mitigations is included in the FEIS. Mitigations are described as “things the Forest Service will do as part of implementing the decision to lessen any potential damage to natural or cultural resources” [PR 2527, pp. 30-31]. The mitigations listed in this section are specific to cultural resources. However, the final rule restates existing authority in §295.3 to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B in section 212.52(b)(2). This section of the rule governs temporary, emergency closures based on a determination of considerable adverse effects. “The Department believes that temporary, emergency closures based on a determination of considerable adverse effects should remain in place until the effects have been mitigated or eliminated” [PR 0029, p. 68280]. Furthermore, 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 allows the for the designations to be revised as needed to meet changing conditions (§212.54) [PR 0029, pp. 68289-68290].

**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 TMR also requires monitoring of designations, and allows for revision of designations as needed to meet changing conditions.

**ISSUE 5:** The ROD violates the Administrative Procedures Act (APA).

**Contention 5a:** The appellants contend the Forest Service route that provides access to and from Kelly Ranch should be designated as open to administrative use only. The designation of this road as open to public use is arbitrary and capricious [Appeal, p. 12].

**Response:** 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]. This comment is included in the response, but does not address the appellants concern. The appellant’s contention is in regard to the segment of road west of the private land parcel in section 14.

Regional guidance tells the forests that “existing roads and trails shall be coded so they appear on the MVUM as a National Forest System Road or National Forest System Trail open to motorized vehicle travel when jurisdiction remains unresolved, public access has not been ruled out with certainty, and motorized trail is the selected alternative” [PR 416, p.1]. By designating the road as open to motorized vehicle use, the Forest is asserting their right on that particular segment of road [PR 1774, p. 6], because the access is permitted and uncontested [PR 416, p. 3].

**Finding:** The Forest is following regional guidance in designating the segment of road in question as open to motorized vehicle use.

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

**Contention 6a:** The appellants point out a minor error in the area of the lower San Francisco River that should be corrected. On Map Index G-16, there is a small portion of Route 68 that is shown as being open within the San Francisco River. This is inconsistent with the FEIS and the appellants understanding of the Forest Service’s intent. The Forest Service must revise the map for Alternative G to show the closure of Route 68 within the San Francisco River [Appeal, p. 9].

**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.