

GRANT COUNTY

RESOLUTION R-11-08

A RESOLUTION TO PROVIDE COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR TRAVEL MANAGEMENT ON THE GILA NATIONAL FOREST

WHEREAS, public access to routes of travel is essential to Grant County's transportation and public access systems and for emergency purposes, protection of the rights and values of private property owners, natural resource management and for the economic and social well-being, and the custom and culture, of the communities and citizens of Grant County; and

WHEREAS, the Board or Grant County Commissioners realizes that the use of the forest has been a part of the Grant County residents' lives for many generations; and

WHEREAS, Rule 36 CFR 212.51 mandates a travel management plan that limits cross country travel, not the closing of any roads; and

WHEREAS, the Draft Environmental Impact Statement (DEIS) prepared by the USFS released on December 27, 2010, for public comment is incorrect and incomplete because it does not contain all the roads in the forest; and

WHEREAS, the DEIS does not adequately address the historical, cultural recreational needs of the people of Southwest New Mexico; and

WHEREAS, the Board of Grant County Commissioners wishes to submit comments and to establish standing for appeal in order to protect the health, safety and welfare of the residents and visitors of Grant County.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Grant County, New Mexico, that:

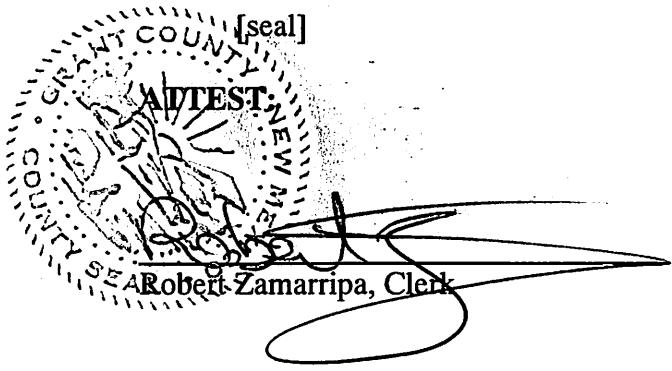
1. The Board of Grant County Commissioners compels the Gila National Forest to choose Alternative B because the full impact of the closure of roads is not known due to the fact that not all the roads were studied in the DEIS; and,

2. Furthermore, the Board of Grant County Commissioners directs that a new EIS be prepared that includes all the roads and trails in the forest because after reviewing the DEIS it is obvious that the road inventory is incomplete. There are numerous existing roads that do not appear on the closed roads list or on Alternative B, including the roads previously closed by the forest service. Because the road inventory is incomplete, the public and Grant County are unable to make fully informed comments and/or requests regarding the proposed Travel Management Alternatives. Consequently, the County

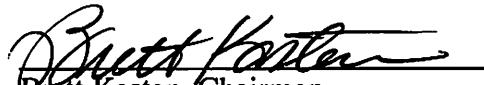
asserts that the DEIS and the accompanying maps must be corrected to reflect all of the existing roads and trails before a final EIS can be prepared; and,

3. Furthermore, the Board of Grant County Commissioners is submitting the attached additional comments on the DEIS for consideration by the Forest Service before continuing with the Final EIS.

Approved and adopted in a Regular Meeting of the Board of Grant County Commissioners on this 24th day of February 23, 2011.



**BOARD OF COUNTY COMMISSIONERS
GRANT COUNTY, NEW MEXICO**


Brett Kasten, Chairman


Gabriel Ramos, Member


Christy Miller, Member

**COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT
FOR TRAVEL MANAGEMENT ON THE GILA NATIONAL FOREST**

The following comments are submitted on behalf of the County of Grant, New Mexico:

Signature: 

Name (print): Jon P. Saari Date: 2-28-11

Address: PO Box 898

Phone: 575-574-0006

City: Silver City

State: New Mexico Zip: 88062

Email (optional): jsaari@grantcountynm.com

COMMENT 1:

**COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT
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The Grant County Commission primary legal responsibility is to protect the health, safety and wellbeing of our residents. As such we have heard from many constituents who have concerns about the outcome of the Gila NF TMP. As the elected local government of Grant County, the Commission is obligated to address the concerns of our constituents, as well as the concerns the County Commission has regarding health and safety concerns. The following issues are hereby submitted by Grant County Commission.

Most National Forest visitors use motor vehicles to access the National Forests, whether for recreational sightseeing; camping and hiking; hunting and fishing; commercial purposes such as logging, mining, and grazing; administration of utilities and other land uses; outfitting and guiding; or the many other multiple uses of NFS lands. For many visitors, motor vehicles also represent an integral part of their recreational experience. People come to National Forests to ride on roads and trails in pickup trucks, ATVs, motorcycles, and a variety of other conveyances. Motor vehicles are a legitimate and appropriate way for people to enjoy their National Forests, in the right places, and with proper management.

Americans cherish the National Forests and National Grasslands for the values and multiple uses they provide: opportunities for healthy recreation and exercise, natural scenic beauty, important natural resources, protection of rare species, wilderness, a connection with their history, and opportunities for unparalleled outdoor adventure. The agency must strike an appropriate balance in managing all types of recreational activities. To this end, a designated system of roads, trails, and areas for motor vehicle use, established with public involvement, will enhance public enjoyment of the National Forests while maintaining other important values and uses on NFS lands.

The requirement to take a hard look at the environmental consequences rather than making conclusive assertions has been included in the findings of numerous court decision that deal with environmental analysis and decisions. Also, 40 CFR 1502.24 states “*Agencies shall insure the professional integrity, including scientific integrity, of the discussion and analysis in environmental impact statements.*”

The requirements for the Gila NF to consider more than the environment and resources and to coordinate with local governments are found in the following federal laws:

- Organic Administrative Act of 1897
- Multiple-Use sustained-Yield act of 1960
- Forest and Rangeland Renewable Resource Planning Act of 1974
- National Forest Management Act of 1976
- Federal Land Policy and Management Act of 1976

Therefore, the Grant County Commissioners submits this letter to address some of the concerns and issues that the people of Grant County have with the Gila National Forest (GNF) Travel Management Plan (TMP) DEIS.

Issue 1: The DEIS fails to show the current level of management in the “No Action” alternative. Existing and currently used roads and motorized vehicle trails have been left off the map depicting the “NO ACTION” alternative, Alternative B. The “No Action” alternative should show the forest as it is currently being managed and used by the public since the “No Action” alternative was included to reflect the current conditions. The public and county governments have vigorously maintained over the past year that the agency's maps for travel management do not include a number of roads and motorized vehicle trails that are in public use. Hence, the County Commission petitions the GNF to redo the DEIS, displaying all the roads.

Issue 2: The Gila NF is out of compliance with its requirements to coordinate with the local governments. While the GNF did extend cooperating agency status to surrounding counties, the GNF did not fulfill the requirements specified in 36 CFR 2219.7. Of particular concern is the incomplete DEIS that is lacking consistency analysis documentation. This a process in which the GNF coordinates with Grant County Commission, working together, to review and analyze the consistencies and inconsistencies with Grant County related plans, programs and activities. Nowhere in the GNF DEIS is there a discussion of the GNF consistency analysis. As such, the County Commission is concerned about the lack of attention to County ordinances, resolutions, plans, and programs that occur on and adjacent to the GNF. As an example, Grant County Wildfire Prevention Plan is an active, cooperative project between the County and GNF, and access and roads are primary concerns for rapid response, as well as for other emergency services. Hence, Grant County Commission requests a meeting with the GNF to coordinate the consistency review. The consistency review and analyses must be displayed in the re-write of the DEIS and properly displayed in the Final EIS.

Issue 3: Throughout the effects analysis in the DEIS resource specialists have continued to make the argument that the mere presence of roads is a measure of disturbance. There is no effort to define the amount of traffic that uses a certain type or class of road in order to better address actual disturbance. The DEIS analysis does not differentiate between roads that are used by a vehicle once or twice a year from a road that is used by vehicles every hour of every day all year long. The analysis does not differentiate between the impacts of the different sizes and types of vehicles. A 10 ton truck and a 500 pound ATV are considered to have the same environment impacts. Also there is no effort made to display any measurement of actual ground and vegetation disturbance.

Issue 4: The DEIS fails to utilize the best available science and information to determine the impacts by off road vehicles to the natural vegetative and wildlife.

Issue 5: The DEIS contains no analysis of how law enforcement, fire protection, emergency medical services and search & rescue efforts that are provided by the local governments will be effected by the different alternative. The issue is addressed by saying that the agencies that provide these services are exempt from restriction under the TMR. Further analysis and clarification is needed. Furthermore, as stated in issue #2, above, GNF is required to conduct and display their consistency review so the public as and the County can understand how the GNF can make the claim that emergency services are exempt. They may be exempt from TMP rule but they still must travel roads that may be closed to the public and not properly maintained for rapid response. The only way to assure the County of this safety concern is through coordination as specified in 36 CFR 219.7.

Issue 6: There are inconsistencies of road miles affected by the various alternatives.

Issue 7: The DEIS fails to consider the economic impact of the various actions on Grant County residents.

Issue 8: In the “Economic Effects Common to all Alternatives” section on Page 257, the DEIS analysis assumes that jobs and income increase with more miles of roads and decrease with fewer miles of road, but later states that in the economic impact analysis that none of the alternatives will significantly affect jobs and income even though the miles of road are sharply decreased in most of the alternatives.

Issue 9: The DEIS does not consider all values, cultural, economic ,recreation and multiple use on an equal basis as it refers to natural resources. In the summary of the DEIS it states:

"Fewer open routes and the elimination of motorized cross-country travel tends to be more protective of natural and cultural resources....By these criteria, alternative E would best protect natural and cultural resources because it provides the fewest motorized opportunities."

By making such a statement it appears that the writers of the DEIS have made the decision on what is to come next

I do not believe that the best available science was taken into account during the planning process by using appropriate procedures including:

1. Timely and comprehensive gathering of peer-reviewed and other quality-controlled literature, studies, or reports related to the planning issues.
2. Assessing the information for pertinence based on objectivity, utility, relevance, and integrity.

The Grant County Commission will continue to track the concerns of our constituents and help ensure they are given proper consideration by the Gila NF.

We ask that you give the above issues your full consideration. We look forward to improved coordination with the GNF.

COMMENT 2:

**COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT
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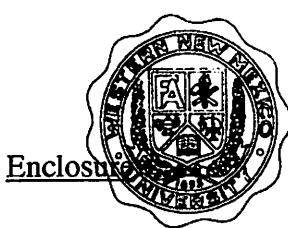
Phone: 575-574-0006

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Email (optional): jsaari@grantcountynm.com

COMMENT 2:



Enclosure

Western New Mexico University

Southwest Center
For
Resource Analysis

Bucky Allred, Chairman
Catron County Travel Management Committee
June 2, 2009
Catron County commission
Reserve, NM

Subj.: Potential Impacts from the US Forest Service Travel Management Proposal

Dear Bucky:

In response to your question about the potential impacts of Travel Management Regulations On Federal Forest Lands, Prepared by: Dr. Martin D. Moore, Research Associate with Southwest Center for Resource Analysis (Western New Mexico University) and I, Director of SCRA, submit the following potential effects for further consideration and analyses:

1. Tightly restricting Off Highway Vehicle (OHV) use to a handful of trails and roadways adversely impacts livestock operations, recreational hunting, dispersed camping, emergency rescue operations, recreational riding, etc. Costs tied to these impacts include:
 - a. Lost gasoline, food, lodging, and supplies revenues for local businesses
 - b. Lost sales tax revenues for counties and municipalities
 - c. Lost revenues for guides and outfitters
 - d. Reduced home values
 - e. Increased costs of emergency rescue operations and potential loss of life
 - f. Increased costs for law enforcement access to crime scenes on public lands.
 - g. Increased costs for livestock operators and potential loss of entire operations for those living on the "economic" margin.

2. A number of existing roads near or inside wilderness boundaries provide access to private property or legitimate livestock gathering, watering, and other areas. Closing roads that serve as access to legitimate activities may point to a potential taking of property.
3. Depending on the area of concentrated campers under the new travel regulations, these areas would be “sacrifice areas” with negative impacts upon range resources. Also if these concentrated campers are in the vicinity of improvements, distribution and well-being of livestock and wildlife could be affected.
4. Forest restoration efforts, such as reducing catastrophic wildfires, riparian and watershed treatments, would be arbitrarily restricted, similar to the restrictions in wilderness areas where it has been demonstrated that forest restoration, contributing to degradation in resources.
5. Big game that is not immediately downed after harvest often leaves the road. Prohibiting motorized travel to the point location of a downed animal (regardless of location) may result in a greater number of unretrieved downed animals or a reduction in big game harvest numbers.
6. Restricting fuelwood gathering to restricted areas may result in the following impacts:
 - a. Reduced opportunities to reduce dense thickets and fuels buildup, as well as removing undesirable vegetation matter
 - b. Reduced economic opportunities for commercial wood cutters, contributing to rural communities and providing firewood to our urban centers
 - c. Lost opportunities for cost savings in home heating and reducing energy demand for fossil fuels.
7. Rancher implementation of grazing permit terms and conditions requires road and off-road access for range and vegetative monitoring, livestock control and monitoring, protection of wildlife habitat and other environmental values. Many ranchers purchased grazing allotments with the expectation that these existing roads and trails, some dating back prior to 1900, would provide access to manage their range and grazing allotments. If these roads are reduced it will limit their ability to manage and maintain their grazing permits as well as their private property (both land and water).
8. One of the most serious impacts is the potential reduction of emergency response vehicles rural fire departments are first responders to many catastrophic wildfires on national forests. Emergency Medical Technicians (EMT) responses and sheriff enforcing laws enforcement responses, all, could be hampered when forest systems roads are shut down without reasons.

The Forest Service travel management initiative is putting the cart before the horse: the Forest service should first identify natural resources multiple use goals and direction, then, the agency would be in a better position to determine which roads should be closed and which roads should be left open for activities as such as emergency responses, forest restoration, recreation and other multiple uses.

Because of these findings it is suggested that the County and the Forest Service coordinate their concurrent travel management planning processes. Coordinated review of the consistencies between the two initiatives would enhance the planning process; improve the outcome and comply with federal and county laws.

If you should have any questions please get back with me.

Respectfully submitted,

/s/

Alex Thal, Ph.D., Director, SCRA
(575) 538-6312

COMMENT 3:

**COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT
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COMMISSIONERS

GABRIEL J. RAMOS
DISTRICT 1

BRETT A. KASTEN
DISTRICT 2

CHRISTY MILLER
DISTRICT 3

GRANT COUNTY



COUNTY MANAGER
JON PAUL SAARI

Telephone: (575) 574-0008
Fax: (575) 574-0073

Russel Ward
District Ranger Gila National Forest
3005 Camino del Bosque
Silver City, NM 88061

Mr. Ward:

Although the Board of Grant County Commissioners is issuing a Resolution to show their position on the GNF Travel Management Plan I too would like to document previous discussions that we have had during the meetings as a Cooperating Agency. After speaking with Ms. Mizuno on whether or not a document was needed for the input we have had throughout the process she informed me that all of our comments needed to be submitted during the comment period even though they were documented for assistance in the planning process.

During the review process several issues regarding forest usage were discussed besides just travel. Big Game retrieval, fuel wood gathering, camping, motorized vehicle use as well as historical and cultural uses would all have significant impacts under the proposed rule changes accept for alternative B. I will address concerns for each of these impacts as they have been brought to Grant County for representation.

-Big Game Retrieval was addressed within the EIS but usage of "empirical knowledge" or game department harvest information (harvest reporting systems to not include retrieval information) are rather poor indicators of how motorized vehicles are used to retrieve game. Information within this portion of the TMP is misleading in several instances.

- With the reduction of motorized roads and trails hunters will be forced to change the method in which they now hunt. Traveling by foot to access game areas will become more common and will extend the distance that people will have to travel to retrieve game. Subsequently will increase waste of game animals.
- A wounded animal will sometimes travel long distances and ethically a hunter is to make every effort to try and retrieve these wounded animals (mandated by current Game and Fish laws for game retrieval). Significant reduction in means to retrieve these animals will result in more waste of big game animals.

- A large percentage of hunters currently own ATV's for hunting as well as game retrieval. Within the EIS "horse and pack animal usage" is the alternative to motorized game retrieval. A greater percentage of hunters reside within an urban interface where these types of animals are not permitted. The ideology of replacing an ATV with a horse as an alternative and should be reevaluated.
- Each of the alternatives ends with a statement of "limited impact" as a result. I totally have to disagree as reduction in not only the amount of mileage for motorized usage compounded with limited distance surrounding these same miles will have a significant impact.
- Although elderly and mobility impaired hunters are mentioned within the EIS the evaluation of the impact for this population needs proper consideration as an aging population is now utilizing the forest more and more.

A reasonable alternative would be to choose a vehicle use alternative and include a 1 mile retrieval corridor to increase the instances where the rule would allow for safe retrieval while still maintaining TMR policy.

-Fuel Wood Gathering is a very large concern within the community. Although the TMP does not address this concern a draft fuel wood proclamation that does would be a huge aid in attempting to explain how designated fuel wood areas would impact the public.

-Camping is one of Southwest New Mexico largest recreational opportunities. Being able to "get away from it all" is a huge attraction for people from all over the United States as well as the world. Currently campers are able to utilize all of the forest roads for camping. It is difficult for me to understand why the camping has to be limited to designated areas. It is evident that because of the diverse area the impact from camping is limited. Once all of the camping is limited to defined areas impacts to these areas will become significant and even extreme. The experience of being able to get away will change and like in other areas where campsites are limited so becomes the usage.

Camping should be available to all areas where motorized vehicles are allowed. This will enable people to enjoy this recreational opportunity without restriction.

-Motorized Vehicle Use has become one of the most highly utilized means of recreation on the forest today. The popularity of ATV's within not only the forest but on all public land is continuing to grow annually. After review of the EIS a significant amount of impact comes from usage of motor vehicles. However the statement also uses scientific information from other areas of the country such as the Northwest U.S. where terrain, soils and of course rainfall are significantly different. Concern for the impact that vehicle make on the forest is understandable but there should be a balance between usage and riparian health considerations. The EIS seems to be one sided in that all of the ecological impacts are clearly stated but the impact to the users, economic impacts, and recreational impacts are very limited.

In virtually every instance concern of a persons' right to utilize public property is the question. Although the Gila National Forest has a directive from the federal government it seems that they should not only include public input but have some application of the comments they receive. The NEPA process is designed to gain knowledge from the public not to satisfy a requirement. Having examined all of the proposed alternatives giving special consideration to Alternative G numerous conditions and concerns from the public have been left to minimum comment and little or no scientific evaluation. Economics plays a big role in the usage of the GNF to all of the communities that surround as well as support the forest, yet there is no mention of economic impact that the TMP may have on neighboring communities. Forest areas have historically been open to the public for various uses while wilderness areas are designated for restriction on usage.

As a representative of Grant County I would like to formally request that my comments be submitted and that an alternative may be designed to address the concerns presented. I feel that Alternative G still needs some specific adjustment in order to reach a critical compromise with the users of the GNF.

Sincerely,



Anthony Gutierrez
Grant County Planning Director

cc: Grant County Commissioners, County Manager, Lisa Mizuno

COMMENT 4:

**COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT
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Issue: The Final EIS Must Recognize RS 2477 Rights

Grant County has reviewed the responses to previous comments regarding concerns over the RS 2477 rights-of-ways, and has reviewed the DEIS. The responses focus on the fact that only a court can adjudicate the RS 2477 rights, but adjudication is not the issue at this time. At this time, the issue is what effect does the closure of the RS 2477 rights-of-ways under the Gila Travel Management Plan have on the future adjudication of RS 2477 rights.

According to maps prepared for Grant County (see RS 2477 map attached), the number of potential RS 2477 roads are numerous; in fact, too numerous for a county with a limited budget, such as Grant County to be able to afford to adjudicate. Further, such adjudications, due to the number of the RS 2477 roads, would literally require numerous years of contentious and extensive litigation between Grant County and the Forest Service, and potential third parties. *See, e.g., Sierra Club v. Hodel*, 848 F.2d 1068 (10th Cir. 1988); *Wilderness Soc'y v. Kane County*, 2011 U.S. App. LEXIS 867 (10th Cir. Utah Jan. 11, 2011).

To suggest that adjudication is the only way for Grant County to exercise its RS 2477 rights, is essentially suggesting that Grant County will not be able to exercise its RS 2477 rights because such a task would be too costly and timely. Further, there is no reason why parties who have a dispute over property rights, such as RS 2477 rights, could not reach an agreement based on the evidence available that such rights either exist or don't exist, without court adjudication. Further, there is nothing preventing the Forest Service

from working with the counties and making its own internal determinations on RS 2477 rights, which could greatly assist the Forest Service in avoiding costly and timely litigation in the future over such rights.

The fact that the RS 2477 rights-of-way issue is not even mentioned in the “Significant Issues” section of the DEIS, or anywhere in the DEIS for that matter, gives the impression that the Forest Service wants to hide the issue or does not want to take the time to address the issue, and appears to fail to follow FSM 7715.75, which directs that valid existing rights, “including valid outstanding or reserved rights –of-way,” must be recognized.

Necessary Revisions and/or Action:

- 1) By submitting this comment, Grant County is formally asserting its rights and the rights of the Grant County citizens, in the RS 2477 rights-of-ways located in Grant County and on forest land, for purposes of public use (but not for purposes of accepting maintenance obligations);
- 2) That the Final EIS must recognize Grant County’s rights in the RS 2477 rights-of-ways located on forest land for purposes of public use, or at the very least recognize the RS 2477 rights-of-ways for purposes of public use *that are reflected on the attached RS 2477 map*;
- 3) That the Forest Service must obtain permission from Grant County prior to closing any RS 2477 road that is located in Grant County; and/or
- 4) **That at a minimum, the Final EIS must recognize the valid existing RS 2477 rights-of ways. Such recognition could be met by stating the following:**

Grant County may have valid existing rights to access routes under Revised Statutes (R.S.) 2477, Act of June 26, 1866, ch. 262, § 8, 14 Stat. 251, codified as amended at 43 U.S.C. § 932, repealed in 1976 by the Federal Land Policy and Management Act of 1976 (FLPMA), which provided that “[t]he right of way for the construction of highways over public land, not reserved for public uses, is hereby granted.” The Forest Service has been made aware that Grant County is currently asserting, and may again assert in the future, RS 2477 rights that are inconsistent with road closures under the proposed Gila Forest Travel Management Plan, and it is possible that those claims of RS 2477 rights are valid.

That in the event that Grant County asserts RS 2477 claims before or after closure of any such roads, paths, or trails, the Forest Service will work with Grant County to determine the validity of such claims, and to the extent that such RS 2477 claims by Grant County or its citizens are determined valid, the Forest Service will recognize and respect

those as valid existing rights in the implementation and enforcement of the Gila Forest Travel Management Plan, whether such rights have been previously adjudicated or not.

Nothing in the Gila Forest Travel Management Plan extinguishes any valid rights-of-ways, including those established under RS 2477. Further, nothing in this Plan alters in any way any legal rights that Grant County has to assert and protect R.S. 2477 rights, and to challenge in any appropriate venue, any road closures under this Plan that they believe are inconsistent with their rights.

Please feel free to contact us through the above provided contact for any questions or further information that you might require.