

July 23, 2019

USDA Department of Agriculture Certified Mail No. 7017 1000 0000 2114 4185
Gila National Forest
Adam Mendonca Forest Supervisor
Attn : Environmental Coordinator: Stateline Range NEPA
3005 E. Camino Del Bosque
Silver City, NM 88061

Re: File Code: 1950, 2200 Dated July 1, 2019

CONSTRUCTIVE NOTICE OF OBJECTION IN WHOLE TO STATELINE RANGE NEPA
PROJECT

This report appears to be a counterfeit document without an apparent delegation of authority from Congress, from the Secretary of Interior or from the Secretary of Agriculture and is TRUST FRAUD by acting outside of the public trust. This objection and opposition is founded upon the De Facto Officer's Doctrine.

As the recorded beneficiary of the Pleasant Valley and Hickey Allotments that are being held in trust as *Cestui Que Trusts* created by Acts of Congress that predate the establishment of the Black Mesa Forest Reserve (later Apache-Sitgraves National Forests) in 1905 and recognized in the 1897 Organic Act as "private land claims" and surveyed by the Surveyor General, I Daniel Gabino Martinez reject your proposed action as being unlawful and in conflict with existing federal law, do not consent and do not approve of this administrative action and oppose it in its entirety. See THE EXISTING LAWS of the UNITED STATES and relating to the SURVEY AND DISPOSITION OF THE PUBLIC DOMAIN, December 1, 1880 Washington Government Printing Office 1880 ISBN 44440060922588PB Chapter twenty Private Land Claims Section 462-465, Section 476 (2 Stat. 445,480; 1 Op.. Att. Gen. 164,180, 471,475, 703; 2 Op. Att. Gen. 575; 3 Op. Att. Gen. 255, 566; 7 Op. Att. Gen. 535; 10 Op. Att. Gen. 71, 184.

The authority for opposing this proposed action is the following:

1. The U.S. Ninth Circuit Court of Appeals plainly puts the responsibility and burden of knowing whether or not the officer acting is de jure or de facto squarely on the party against whom the officer is acting or about to act. According to the following Ninth Circuit Court's holding it may be presumed that the courts have recognized that government officers are often liars and thieves who routinely and regularly engage in the custom and usage of racketeering. Persons dealing with the government are charged with knowing government statutes and regulations and they assume the risk that government agents may exceed their authority and provide misinformation. *Lavin v. Marsh*, (Ninth Cir., 1981), 644 F. 2d 1378, 1383. All persons in the United States are chargeable with the knowledge of the Statutes at Large and it is well established that anyone who deals with the government assumes the risk that the agent acting in the government's behalf has exceeded the bounds of his authority. *Bollow v. Federal Reserve Bank of San*

Francisco, (Ninth Cir, 1981), 650 F.2d 1093. The U.S. Supreme Court has apparently endorsed the people's right to inquire into the authority of government agents with whom they have dealings and demand proof of their claimed authority and proof of the title claimed to the office which they are holding. In *Federal Crop Insurance Corp v. Merrill* the high court has held: Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rulemaking power. And this is so even though, as here, the agent himself De Facto Officer Doctrine, V. 1.08 17 may have been unaware of the limitations upon his authority. See, e.g., *Utah Power & Light Co. v. United States*, 243 U. S. 389, 409; *United States v. Stewart*, 311 U. S. 60, 70, and see generally 74 U. S. 7 Wall. 666. *Federal Crop Ins. Corp v. Merrill*, 332 U.S. 380 (1947)

2. Your proposed plan, proposes to trespass or to encourage the trespass upon my "pre-existing rights" which is **TRUST FRAUD**. I reject your proposed action and find no cause for you to be proceeding without a delegation of authority and against established laws that have granted these rights. 16 U.S. Code § 1604 - National Forest System land and resource management plans (i) Consistency of resource plans, permits, contracts, and other instruments with land management plans; revision Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans. Those resource plans and permits, contracts, and other such instruments currently in existence shall be revised as soon as practicable to be made consistent with such plans. When land management plans are revised, resource plans and permits, contracts, and other instruments, when necessary, shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights. [emphasis added] See ARS 44101 Statute of Frauds.
3. For purposes of compliance with Title 5 Government Organization and employees Section 302 **Delegation of Authority**, Please provide your delegation of authority as required by Congress. I have searched the Code of Federal Regulations Title 7 Agriculture Vol 1 Part 2 DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT Subpart A -T and cannot find any delegation of authority to the Chief of the Forest Service. No response will be a negative one.
4. Because I have concluded that your document is a counterfeit with no authority in law I would like to know if you (you means all those agencies listed at the end of this Opposition) can provide me the statute that authorizes you to be outside of Washington D.C. ? 4 U.S.C. Section 72 *All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law.* [emphasis added]

5. Because I have concluded that your document is a counterfeit with no authority in law I would like to know if you can provide me with the authority that has granted you the authority outside the scope of the Transfer Act of February 1, 1905 (33 Stat. 628) 16 U.S.C. 472, 524, 554, Sections 1, 2, 3. All that was transferred to the Department of Agriculture was the trees. See. *United States v. New Mexico*, 438 U.S. 696 (July 3, 1978). Organic Administration Act of June 4, 1897, 30 Stat. 34, 16 U. S. C. § 473 et seq. (1976 ed.). In particular, Congress provided: "No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use Page 707 and necessities of citizens of the United States ; but it is not the purpose or intent of these provisions, or of [the Creative Act of 1891], to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes." 30 Stat. 35, as codified, 16 U. S. C. § 475 (1976 ed.) (emphasis added).

The legislative debates surrounding the Organic Administration Act of 1897 and its predecessor bills demonstrate that Congress intended national forests to be reserved for only **two purposes** -- "[to] conserve the water flows, and to furnish a continuous supply of timber for the people."^{inl4} 30 Cong. Rec. (1897) (Cong. McRae). See *United States v. Grimaud*, 220 U.S. 506, 515 (1911). National forests were not to be reserved for aesthetic, environmental, recreational, or wildlife-preservation purposes.^{inl5}

"The objects for which the forest reservations should be made are the protection of the forest growth against destruction by fire and ax, and preservation of forest conditions upon which water conditions and water flow are dependent. The purpose, therefore, of this bill is to maintain favorable forest conditions, without excluding the use of these reservations for other purposes. They are not parks set aside for nonuse, but have been established for economic reasons." 30 Cong. Rec. 966 (1897) (Cong. McRae).[emphasis added]

6. Because I have concluded that your document is a counterfeit with no authority in law, federal law at 40 U.S.C. 104 defines federal land or property, **(9)PROPERTY.**—The term "property" means any interest in property except—(A)(i)the public domain;(ii) land reserved or dedicated for national forest or national park purposes; (iii) minerals in land or portions of land withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws; and (iv) land withdrawn or reserved from the public domain except land or portions of land so withdrawn or reserved which the Secretary, with the concurrence of the Administrator, determines are not suitable for return to the public domain for disposition under the general public land laws because the lands are substantially changed in character by improvements or otherwise; [emphasis added] 28 U.S.C. 3002 **(12)"Property"** includes any present or future interest, whether legal or equitable, in real, personal (including choses in action), or mixed property, tangible or intangible, vested or contingent, wherever located and however held

(including community property and property held in trust (including spendthrift and pension trusts)).

7. Because I have concluded that your document is counterfeit with no authority in law and you have conducted a NEPA study for a request for federal expenditure, I need to see the Bonds or the eligible obligations as approved by the Secretary of Treasury as required by law. 31 U.S.C. 9303; 31 CFR 225; 31 CFR 380.
8. Because I have concluded that your document is counterfeit with no authority in law and you are interfering with commerce by your actions are in violation of 15 U.S.C. § Trusts, etc., in restraint of trade illegal; penalty *Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.* See 28 U.S.C. 3002(15) defines the United States as a corporation.
9. Because I have concluded that your document is counterfeit with no authority in law and you are proposing to alter the Inclusive survey performed by the Secretary of Interior See 43 U.S.C. 52 as required by Organic Administration Act of June 4, 1897, 30 Stat. 34.
That in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding the area the tract covered by his claim or patent; and no charge shall be made in such cases for making the entry of record or issuing the patent to cover the tract selected: Provided further, That in cases of unperfected claims the requirements of the laws respecting settlement, residence, improvements, and so forth, are complied with on the new claims, credit being allowed for the time spent on the relinquished claims. [emphasis added]. See 16 U.S.C. 536 all these records are within the office of the Secretary of Interior. See Forest Service Handbook 5509.12 Land Status Records System Handbook Section 25.1 "Outstanding Rights" outside the Forest Reservation. See 46th Congress 3d Session, HOUSE OF REPRESENTATIVES. Ex. Doc. 47 Part III LAWS of THE UNITED STATES of a LOCAL OR TEMPORARY CHARACTER, EXHIBITING THE ENTIRE LEGISLATION OF CONGRESS UPON WHICH THE PUBLIC LAND TITLES IN EACH STATE AND TERRITORY HAVE DEPENDED, December 1, 1880 Volume II Public Land Commission, Washington: Government Printing Office 1881, Arizona Territory page 979 Section 2222 July 15, 1870(16 Stat. 291) "That it shall be the duty of the surveyor-general of Arizona, under such instructions as may be given by the

Secretary of the Interior, to ascertain and report upon the origin, nature, character, and extent of the claims to lands in said Territory under the laws, usages, and customs of Spain and Mexico; and for the purpose he shall have all the powers conferred, and shall perform all the duties enjoined upon the surveyor-general of New Mexico by the eighth section of an act entitled "An act to establish the office of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers, and for other purposes," approved July twenty-second, eighteen hundred and fifty-four, and his report shall be laid before Congress for such action thereon as shall be deemed just and proper. [emphasis added] See Restatement of the Law Property 2d Donative Transfers Part IV Restraints on Interference with Transferor's Dispositive Plan.; See The Laws of Mexico, A Compilation and Treatise relating to Real Property, Mines, Water Rights, Personal Rights, Contracts, and Inheritances, 1885 Frederic Hall With a New Introduction by Peter L. Reich Professor of Law & Sumner Scholar, Whittier Law School. ISBN 978-1-58477-995-7 Chapter IX Section 172-173 Manner of Obtaining grants under the Spanish Government.; Chapter VI Servitudes, Chapter VII Prescription, Chapter XV Donations, Chapter XXIII Partitions, Chapter IV possession, Chapter III Property in General, Chapter IV Possession, amongst others.

See FS Handbook 2700 Special Use Management

2734.2 - Reserved or Outstanding Rights-of-Way

The holder of outstanding rights perfected on acquired land prior to Forest Service acquisition, reservation in deeds, easements, or agreements made at the time of acquisition of the land or easement by the United States may exercise those rights without obtaining a special use authorization, unless the document creating the rights provides for an additional authorization.

Such rights are limited to the rights existing at the time of acquisition, and the holder cannot enlarge them without a special use authorization. Carefully examine the basis or grounds for a claim of right-of-way and secure a legal opinion if necessary in order to determine the extent of outstanding or reserved rights. Authorize any enlargement of the rights with an appropriate special use authorization. [emphasis added]

Considering all of the above pre existing rights that existed prior to the Creation of the Black Mesa Forest Reserve. I would like to meet in good faith with someone with the Delegated Authority within the FS to present the facts and the Public Land Laws to the Secretary of Interior for a determination of these unperfected claim based on the records of the General Land Office and the records submitted to Congress, that were there prior to the formation of the Forest Reservation, to make a determination of the extent of these rights and make a determination of as to whether these rights are outstanding as required by law and recognized by the 1897 Organic Act and surveyed by the Secretary of Interior's office. If securities and bonds have been created by any trust documents to Redeem these bonds by Administrative offset (31 CFR 5) Until that

determination can be determined there will constantly be conflict in the relationship between neighbors.

On January 8, 2018, I responded to the proposed Study and I was totally ignored as federal public employees you have committed TRUST FRAUD. Attached for reference. See **63 C Am.Jur.2d Public Officers and Employees, Sec 247**

"Fraud in its elementary common law sense of deceit-and this is one of the meanings that fraud bears [483 U.S. 372] in the statute. See United States v. Dial, 757 F.2d 163, 168 (7th Cir 1985)—includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, including, in the case of a judge, the litigants who appear before him and if he deliberately conceals material information from them, he is guilty of fraud. McNally v. United States, 483 U.S. 350 (1987)."

Respectfully submitted,

By 

Cc:

Ed Holloway
Clifton Ranger District
397240 AZ Hwy 75
Duncan, Arizona 85534

Stephen Best Certified Mail No. 7017 1000 0000 2114 4192
Forest Supervisor
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Honorable David Bernhardt
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January 8, 2018

USDA Department of Agriculture Certified Mail No. 7017 1000 0000 2114 4048
Gila National Forest
Attn : Environmental Coordinator: Stateline Range NEPA
3005 E. Camino Del Bosque
Silver City, NM 88061

Re: File Code: 1950, 2200 Dated December 15, 2017

CONSTRUCTIVE NOTICE AND DEMAND THAT YOU PRODUCE THE FOLLOWING

As the recorded beneficiary of the Pleasant Valley and Hickey Allotments that are being held in trust as *Cestui Que Trusts* created by Acts of Congress that predate the establishment of the Apache-Sitgraves National Forests in 1905 and recognized in the 1897 Organic Act as "private land claims" and surveyed by the Surveyor General, I Daniel Gabino Martinez reject your proposed action as being unlawful and in conflict with existing federal law, do not consent and do not approve of this administrative action.

Your proposed plan, proposes to trespass or to encourage the trespass upon my "pre existing rights". I reject your proposed action and find no cause for you to be proceeding without a delegation of authority and against established laws that have granted these rights. 16 U.S. Code § 1604 - National Forest System land and resource management plans (i) Consistency of resource plans, permits, contracts, and other instruments with land management plans; revision

Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans. Those resource plans and permits, contracts, and other such instruments currently in existence shall be revised as soon as practicable to be made consistent with such plans. When land management plans are revised, resource plans and permits, contracts, and other instruments, when necessary, shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section **shall be subject to valid existing rights.** [emphasis added]

For purposes of compliance with Title 5 Government Organization and employees Section 302 Delegation of Authority, Please answer the following requests so that I may determine who may be responsible in the event your actions cause me harm or damage.

1. Please provide your delegation of authority from the Secretary of Agriculture under the authority granted to him by law, for you to impair, diminish or abrogate my rights of occupancy and use granted to my predecessors by Acts of Congress prior to the establishment of the Forest Reserves?

2. Please provide any contracts you may have with me that, subjects me to your authority.

3. Please provide An Act of Congress that has granted the USDA the authority to change surveyed boundary lines of the Hickey and Pleasant Valley Allotments.

4. Please provide where in the Transfer Act Feb. 1, 1905, ch. 288, § 1, 33 Stat. 628. (16 U.S.C. 472) it granted the USDA authority to interfere with "private Land Claims" or to alter surveyed boundaries. ".....of this title, or sections supplemental to and amendatory thereof, after such lands have been so reserved, **excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.**"[emphasis added]

5. Please provide where an Act of Congress (Vol. page and section) has authorized you to grant "permits" to pre-existing rights.

6. Please provide where Congress has authorized this civil administrative process to proceed against my Congressional Grants that predated the forest reserves. See 16 U.S.C. Section 480 for reference. "The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State."

(June 4, 1897, ch. 2, § 1, 30 Stat. 36; Mar. 1, 1911, ch. 186, § 12, 36 Stat. 963.)

7. Please provide where Congress authorized your proposed actions outside the State of Arizona' livestock laws. 16 U.S. Code § 553 – "Duties of officials of Forest Service; stock laws; protection of fish and game Officials of the Forest Service designated by the Secretary of Agriculture shall, in all ways that are practicable, aid in the enforcement of the laws of the States or Territories with regard to stock, for the prevention and extinguishment of forest fires, and for the protection of fish and game, and with respect to national forests, **shall aid the other Federal bureaus and departments on request from them, in the performance of the duties imposed on them by law.** [emphasis added]

(May 23, 1908, ch. 192, 35 Stat. 259.)

8. Please provide the records within the Secretary of Interiors of office in regards to these recorded records of my valid pre-existing rights at 16 U.S. Code § 536 - Recording of instruments; furnishing of instruments affecting public domain lands to Secretary of the Interior "Copies of all instruments affecting permanent interests in land executed pursuant to sections 532 to 538 of this title shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from the public domain shall be furnished to the Secretary of the Interior.

(Pub. L. 88-657, § 5, Oct. 13, 1964, 78 Stat. 1089.)

9. Please provide where Congress has authorized your actions that would interfere with my water rights. 16 U.S. Code § 526 - Establishment and protection of water rights “There are authorized to be appropriated for expenditure by the Forest Service such sums as may be necessary for the investigation and establishment of water rights, including the purchase thereof or of lands or interests in lands or rights-of-way for use and protection of water rights necessary or beneficial in connection with the administration and public use of the national forests.” [emphasis added]

(Sept. 21, 1944, ch. 412, title II, § 213, 58 Stat. 737.)

10. Please provide where Congress has authorized your actions that would interfere with my pre-existing rights” that have been surveyed. 16 U.S. Code § 474 - Surveys; plats and field notes; maps; effect under Act June 4, 1897 “Surveys, field notes, and plats returned from the survey of public lands designated as national forests undertaken under the supervision of the Director of the United States Geological Survey in accordance with provisions of Act June 4, 1897, chapter 2, section 1, thirtieth Statutes, page 34, shall have the same legal force and effect as surveys, field notes, and plats returned through the Field Surveying Service; and such surveys, which include subdivision surveys under the rectangular system, approved by the Secretary of the Interior or such officer as he may designate as in other cases, and properly certified copies thereof shall be filed in the respective land offices of the districts in which such lands are situated, as in other cases. All laws inconsistent with the provisions hereof are declared inoperative as respects such survey. A copy of every topographic map and other maps showing the distribution of the forests, together with such field notes as may be taken relating thereto, shall be certified thereto by the Director of the Survey and filed in the Bureau of Land Management.” [emphasis added]

(June 4, 1897, ch. 2, § 1, 30 Stat. 34; Mar. 3, 1925, ch. 462, 43 Stat. 1144; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100; Pub. L. 102-154, title I, Nov. 13, 1991, 105 Stat. 1000.)

11. Please provide where your actions fall within the authority of protection of the forest under 16 U.S.C. 551 Protection of the Forest Rules and Regulation , protection from fire or depredation. “The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests which may have been set aside or which may be hereafter set aside under the provisions of section 471 [1] of this title, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of the provisions of this section, sections 473 to 478 and 479 to 482 of this title or such rules and regulations shall be punished by a fine of not more than \$500 or imprisonment for not more than six months, or both. Any person charged with the violation of such rules and regulations may be tried and sentenced by any United States magistrate judge specially designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401(b) to (e) of title 18

(June 4, 1897, ch. 2, § 1, 30 Stat. 35; Feb. 1, 1905, ch. 288, § 1, 33 Stat. 628; Pub. L. 87-869, § 6, Oct. 23, 1962, 76 Stat. 1157; Pub. L. 88-537, Aug. 31, 1964, 78 Stat. 745; Pub. L. 90-578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 101-650, title III, § 321, Dec. 1, 1990,)

12. Please provide the certification of my right of subrogation to file a claim for damages that you may cause me by your unlawful and unauthorized actions.

This proposed action is intended to deprive me of my property rights that pre dates the formation of the Black Mesa Forest Reserve now known as the Apache Sitgreaves National Forest. In the event you ignore my Constructive Notice and proceed without providing me with my requests for your Delegation of Authority and cause me damage, please provide me with your final ruling or order so I may seek judicial review of your actions and may my claim for damages under my right of subrogation.

18 U.S.C. § 241 - U.S. Code - Unannotated Title 18. Crimes and Criminal Procedure § 241.
Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the **free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States**, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured--They shall be fined under this title or imprisoned not more than ten years, or both;

18 U.S. Code § 242 - Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the **deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States**, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death. [emphasis added]

Yours truly,

Cc:

Ed Holloway
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397240 AZ Hwy 75
Duncan, Arizona 85534

Robert Robertson
Glenwood District
Gila National Forest
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Kent Ellett
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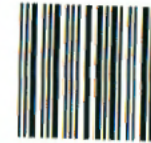
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JUL 26 2019
GILA NATIONAL FOREST

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Silver City, NM 88061

