

Mr. Steve Best
Forest Supervisor, Apache-Sitgreaves National Forest
PO Box 640
30 S. Chiricahua Dr.
Springerville, AZ 85938

John Devens Gust, Jr
Morgan Gust

Dear Mr. Best:

We are writing to comment on the Apache-Sitgreaves Public Motorized Travel Management Plan #22692, which was opened for public comment at the end of August, 2019. We are distressed to note that the **preferred Alternative #2 fails to address an important concern that we have brought up to the Forest Service multiple times over the many years that the travel plan has been under development. In particular, Alternative #2 opens for public travel Road 8486 and Road 8486A. Opening Road 8486 to public travel is in violation of our priority rights to this right-of-way as established by a permanent, recorded easement granted by the Forest Service, and will expose the Forest Service to liability for damage to our pipeline that lies in this roadbed. If Alternative #2 is adopted, it should be modified to close Road 8486 to public travel, and to close Road 8486A as well, because it will no longer lead anywhere.** Alternatives #1 and #3 do not suffer from this deficiency.

Our family owns a 115 acre parcel surrounded by the National Forest located in Section 11, Township 9 North, Range 25 East and associated water rights as reflected in State of Arizona Water Right No. 623. Since at least 1957, we have had a Special Use Permit from the Forest Service for a pipeline acknowledging our rights to bring water from Gust Spring on Pulcifer Creek approximately 6000 feet to our property, where it has long been and is currently used for, among other things, agriculture, livestock, supplying water to two ponds and a wet meadow that are managed partly as havens for wildlife inhabiting the area, and for domestic use. The ponds and land are enrolled under the Partners for Wildlife program of the US Fish and Wildlife Service, with additional support from the Arizona Game and Fish Department. In 1999, under the Ditch Bill, the Forest Service confirmed to us a permanent easement for the pipeline. Copies of the easement and accompanying map are attached. It is vital to keep this pipeline in operation to satisfy these uses.

When the current pipeline was installed, replacing a prior pipeline, it was buried under Road 8486. This was done with agreement from the Forest Service to close Road 8486 to public travel. The road had previously been in use in conjunction with a timber sale, which was then complete. The closure was intended to prevent damage to the underlying plastic pipeline. At present, Road 8486 is designated as "open to administrative use only" (see map of Alternative #1). A new barrier blocking the road was installed by the Forest Service after the San Juan Fire. However, there are currently no closed signs or barriers, and the road has been used by highway and off-road vehicles. At times, these vehicles have eroded the roadbed and nearby areas, exposing the pipeline. The pipeline has been broken at least three times by damage to the road.

Morgan Gust has brought these considerations up to the Forest Service several times during the period that the Travel Plan has been under development, and provided extensive documentation.

We can supply copies of these comments and the documentation in the event that they are required. The material consists of:

1. Letter to Monica Fleiderer, USFS, from M. Gust, dated 12/6/2012.
2. ASNF Travel Management Plan Comment by M. Gust, dated 12/7/2010.
3. Correspondence among M. Gust, Ryan Domsalla, and Paula Cote concerning travel plan, dated June, 2010.
4. Letter to ASNF Travel Management from M. Gust, dated 1/3/2008.
5. Letter to Chris Bielecki, ASNF, dated 15 May, 2007.
6. Deeds to subject property.
7. Certificate of Water Right, date of priority 1894.
8. Recorded survey map showing Gust Spring, Gust Reservoir, pipeline, and ditch from reservoir, dated 11/14/1996.
9. USFS issuance of permanent easement for pipeline and associated system, dated 3/3/1999.
10. Correspondence between Devens Gust Sr. (our father) and District Ranger William L. Chapel concerning approval of road closure, with dates from 1973 to 1975.

As mentioned, the following actions would satisfy these issues:

1. Adopt Alternative #2, but change it so that Roads 8486 and 8486A remain closed, but giving us access for maintenance of Gust Spring, the pipeline, Gust Reservoir and the associated ditch, as we currently have, and the Forest Service for administrative purposes.
2. Adopt Alternative #1, leaving Road 8486 open only for administrative purposes, including access by us for maintenance of Gust Spring, the pipeline, Gust Reservoir and the associated ditch.
3. Adopt Alternative #3, but leave Road 8486 open only for administrative purposes, including access by us for maintenance of Gust Spring, the pipeline, Gust Reservoir and the associated ditch.

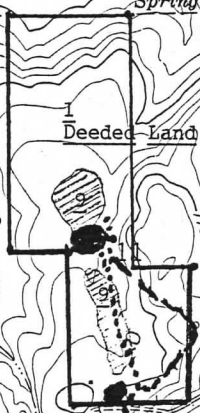
These actions are necessary for us to continue to use our vested water rights, which predate the creation of the National Forest, and also for us to maintain one of our uses of our property, as a wildlife haven and source of game for the surrounding National Forest. We believe that this is more beneficial to all users of the National Forest than would be opening up another short section of road to public vehicle travel.

There are two related matters that we want to bring to your attention. First, although it is unclear from the Plan maps available to us, we want to confirm that the Plan does not contemplate a “dispersed camping” location immediately adjacent to the access to our property by Roads 2 and 8483. Our buried pipeline and ditch go right through this area and one of our ponds is immediately adjacent to this location. A camping location here would obviously result in serious conflicts including encouraging trespass to the pond and the breaking down of our fences (problems we already fight), likely damage to the pipeline and ditch, and shooting of firearms near our house and improvements. A dispersed camping location here is unnecessary as there are many others quite close along Road 61. Second, we also own land located in Section 7, T1N, R28 E which is surrounded by the National Forest. Alternative #3 would close off the only access to this land by closing the very short Road 217Q. We are sure this is just an oversight on the part of the Forest Service, but it needs to be remedied if Alternative #3 is adopted.

Other than the above issues, we support the Forest Service adopting a Travel Management Plan to protect the forest resources from further degradation caused by indiscriminate use of off-highway vehicles. Thank you for your consideration.

John Devens Gust Jr.

**RECORDABLE SURVEY MAP OF AGRICULTURAL
IRRIGATION AND LIVESTOCK WATERING SYSTEMS LOCATED
ON NATIONAL FOREST LANDS IN
SECTIONS 11 AND 14, TOWNSHIP 9 NORTH RANGE 25 EAST
OF THE GILA AND SALT RIVER BASE AND MERIDIAN**



CERTIFICATION: The undersigned certifies that this map identifies the location of agricultural irrigation and livestock watering systems located on National Forests Lands.

STATE OF ARIZONA
COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me this 14th day of November, 1996 by Morgan Gust.

My commission expires: 2-2000

Morgan Gust
Morgan Gust
Bosque Spring Notary Public
OFFICIAL SEAL
HILDA U. GLESS
Notary Public - State of Arizona
MARICOPA COUNTY

DECISION MEMO

**ISSUANCE OF A CONDITIONAL PERMANENT EASEMENT
FOR THE
MORGAN GUST SPRING LINE**

USDA FOREST SERVICE
SOUTHWESTERN REGION
APACHE NATIONAL FOREST
APACHE COUNTY, STATE OF ARIZONA

The Forest Service has received an application from Morgan Gust for the issuance of a conditional permanent easement for an agricultural irrigation and livestock watering system on National Forest System lands. This system is located within sections 11&14, T9N, R25E, G&SR Meridian, and is used for agricultural irrigation and livestock watering purposes from a spring located on National Forest System land, to non-Federal land owned by the applicant.

The Act of October 27, 1986, directs the Secretary of Agriculture, through the Forest Service, to issue conditional permanent easements to all who apply for and meet specific criteria in the Act. The Forest Service has reviewed the application submitted in this particular case, and has found that it meets the criteria identified in the Act. Therefore, pursuant to that Act, the applicant is entitled to the issuance of an easement.

The Forest Service has conducted an environmental analysis of the use and occupancy of National Forest System land requested in this application.

It is my decision to respond to this application with the issuance of the Agricultural Irrigation and Livestock Watering System Easement (form FS-2700-9a). The subject facilities use and occupy less than five (5) contiguous acres of National Forest System lands. Therefore, I have determined that, consistent with agency policy at Chap. 31.2 of Forest Service Handbook 1909.15, this is an action which has been categorically excluded from documentation in an environmental assessment or environmental impact statement (see Item #3, Chap. 31.2, Forest Service Handbook 2709.15).

This easement grant is consistent with the standards and guidelines in the Forest Land and Resource Management Plan.



JOHN R. KIRKPATRICK
Deputy Regional Forester

3/3/99

DATE

U.S. DEPARTMENT OF AGRICULTURE Forest Service AGRICULTURE IRRIGATION AND LIVESTOCK WATERING SYSTEM EASEMENT Act of October 21, 1976, Act of October 27, 1986 (Pub. L. 99-545), 36 CFR 251, Subpart B	Holder No.	Issue Date	Expir. Date
	Type Site	Authority 676	Auth. Type 10
	Region/Forest/District		State/County
	Cong. Dist.	Latitude	Longitude

THIS EASEMENT issued this 3rd day of March, 19 99, by the **UNITED STATES OF AMERICA**, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to **MORGAN GUST**, a person of the State of Arizona, hereinafter called the Holder(s).

WHEREAS, the Holder has applied for an easement under Section 501 of the Federal Land Policy and Management Act of October 21, 1976, as amended by P.L. 99-545 (90 Stat. 2743; 43 U.S.C. 1761), for agricultural irrigation or livestock watering system facilities located on lands owned by the United States on the Apache-Sitgreaves National Forests, in the County of Apache, State of Arizona.

WITNESSETH

WHEREAS, upon acceptance of this easement the Holder relinquishes all right, title, and interest in and to any easement issued for the same lands by the United States by any previous grant or permit.

NOW THEREFORE, the United States does hereby grant, subject to valid existing rights, an easement for occupancy with water conveyance system facilities of lands as depicted on that certain survey plat recorded in Land Surveys Book 7, page 139, official records of Apache County, State of Arizona, as provided by the Holder and hereby accepted by the Authorized Officer.

This easement is issued subject to the following terms, provisions, and conditions applicable to the Holder, its permittees, contractors, assignees, and successors in interest.

1. **AUTHORIZED USE.** This easement authorizes only the right-of-way and water conveyance system facilities as constructed and operated on October 21, 1976, as specified herein.
2. **EXTENSIONS or ENLARGEMENTS.** This easement does not authorize extensions or enlargements of the water conveyance system.
3. **FEES.** This easement is issued free of charge.
4. **TRANSFERABILITY.** This easement is fully transferable provided the water conveyance system facilities are used for agricultural irrigation or livestock watering. Holder shall notify Grantor within sixty (60) days of any address change or change in ownership.