



May 19, 2023

James Duran, Forest Supervisor

Sent via CNF's public comment portal at:

<https://cara.fs2c.usda.gov/Public/CommentInput?Project=61390>

Re: Taos Ski Valley Gondola and Other Improvements Project

Dear Supervisor Duran:

The New Mexico Acequia Association (NMAA) provides the following comments on the "Taos Ski Valley Gondola and Other Improvements Project" Draft Environmental Assessment (Draft EA). NMAA is a statewide, grassroots organization of acequias and community ditches working to protect acequias and agricultural water rights through community education, organizing, and advocacy. Our mission is to protect water and acequias, support agriculture, and honor our cultural heritage. Of particular concern to NMAA and local acequias to be impacted by the Proposed Project is the protection of vital community and cultural assets, of New Mexico's unique cultural heritage, and of our most precious resource – water.

The Draft EA acknowledges that the Proposed Project would occur within and near environmental justice communities and therefore applies Executive Order 12898 to the required analyses under the National Environmental Protection Act (NEPA), conducting an environmental justice analysis for direct, indirect and cumulative impacts of the Proposed Project.¹ Draft EA, pp. 30-33. However, the Draft EA erroneously, arbitrarily and capriciously²

¹ 42 U.S.C. §§4331 and 4332; Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994, as amended) (<https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>, last accessed April 14, 2022); *see also* "Community Guide to Environmental Justice and NEPA Methods," Product of the Federal Interagency Working Group on Environmental Justice & NEPA Committee (March 2019) (<https://www.energy.gov/sites/default/files/2019/05/f63/NEPA%20Community%20Guide%202019.pdf>), last accessed May 17, 2023.

² Federal appellate courts, including the D.C. Court of Appeals, have ruled that if an agency [BLM] includes an environmental justice analysis in an environmental impact statement or EA, the analysis is subject to review under an Administrative Procedures Act arbitrary and capricious standard. *See Latin Ams. for Social & Econ. Dev. v. Fed.*

concludes that, “Overall, because there would be no effects to identified minority or low-income populations and the proposed action would be compliant with Executive Order 12898, there would be no cumulative effects to environmental justice.” Draft EA, p. 33.

NMAA noted in its May 2022 NEPA Scoping Comment Letter that the United States Department of Agriculture recently issued its Equity Action Plan, in support of Executive Order 13985. Advancing Racial Equity and Support to Underserved Communities, acknowledging its long history of inequity and discrimination, committing to rooting out systemic racism, and “advancing justice, equity, and opportunity for all.”³

In light of this history of inequity, discrimination and systemic racism, and of numerous environmental justice mandates, policy and guidance,⁴ NMAA strongly urged the Carson National Forest (CNF) to first and foremost include acequias and land grants with political subdivision of the state status as cooperating agencies in this NEPA process. We also requested that the CNF conduct a full environmental impact statement (EIS) to meaningfully address the Proposed Project’s many harmful ecological and environmental justice impacts to acequias, the Rio Hondo Watershed, and the Taos Valley. Finally, we requested that a No Action Alternative be analyzed in either an EIS or an EA.

NMAA is disappointed that the United States Forest Service (Forest Service) dismissed all our requests and has instead issued a woefully deficient Draft EA.

NMAA hereby submits the following comments on the Draft EA and requests that either a full Environmental Impact Statement be conducted or a revised Supplemental Draft Environmental Assessment be prepared due to the Draft EA’s many deficiencies including:

Highway Admin., 756 F.3d 447, 465 (6th Cir. 2014); *Coliseum Square Ass’n, Inc. v. Jackson*, 465 F.3d 215, 232 (5th Cir. 2006); *Cmtys. Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678, 689 (D.C. Cir. 2004); *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 440 F. Supp. 3d 1, 9 (D. D.C. 2020), *vacated by, in part, affirmed by, in part, Standing Rock Sioux Tribe v. United States Army Corp of Eng’rs*, 985 F.3d 1032 (D.C. Cir. 2021).

³ <https://www.usda.gov/media/press-releases/2022/04/14/usda-releases-equity-action-plan>, last accessed April 14, 2022, and <https://www.usda.gov/sites/default/files/documents/usda-equity-action-plan-508c.pdf>, last accessed May 17, 2023.

⁴ Supra footnote 1; and Executive Order 13985 Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>), last accessed on April 14, 2022); and April 21, 2023 Executive Order Revitalizing Our Nation’s Commitment to Environmental Justice for All (<https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/21/executive-order-on-revitalizing-our-nations-commitment-to-environmental-justice-for-all/>), last accessed on May 15, 2023. See also “Promising Practices for EJ Methodologies in NEPA Reviews” (March 2016), developed by the federal Environmental Justice Interagency Working Group (EJIWG), https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf, last accessed April 14, 2022; and also the White House Council on Environmental Quality (CEQ)’s “Environmental Justice: Guidance Under the National Environmental Policy Act” (December 1997), https://www.epa.gov/sites/default/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf, last accessed April 14, 2022.

- Failure to disclose consultant preparers, one of which may have a significant financial interest in the outcome of this matter, and failure to make readily available to the public referenced material such as studies and other relevant information;
- Failure to review an appropriate range of alternatives including a No Action Alternative;
- Failure to solicit cooperation of acequias and land grants with political subdivision of the state status that have jurisdiction by law or special expertise on environmental issues that should be addressed in the environmental analysis;
- Failure to meaningfully analyze the cultural and socioeconomic impacts (direct, indirect and especially cumulative) to environmental justice communities;
- Failure to adequately analyze hydrologic impacts to both surface and groundwater resources and senior water rights holders; and
- Failure to adequately evaluate impacts to fish and wildlife, including Carson National Forest-identified species of conservation concern and species listed as threatened or endangered under the New Mexico Wildlife Conservation Act.

NMAA reserves the right to amend these comments and to raise any additional arguments regarding the Draft EA, and further incorporates by reference the many concerns raised by the Acequia de San Antonio, the Taos Valley Acequia Association, the Arroyo Hondo Arriba Land Grant and Community, the New Mexico Land Grant-Merced Consejo, La Jicarita, Valdez resident Kevin Bersell, Winter Wildlands Alliance, Amigos Bravos, the Friends of the Rio Hondo, Friends of the Wheeler Peak Wilderness, and the numerous community members who provided verbal public comments at the May 9, 2023 CNF “public meeting.”⁵

I. The Draft EA fails to disclose consultant preparers, one of which may have a significant financial interest in the outcome of this matter, and fails to make readily available to the public referenced material such as studies and other relevant information.

40 CFR §1506.5(b)(3) provides in pertinent part:

The agency shall include in the environmental document the names and qualifications of the persons preparing environmental documents, and conducting the independent evaluation of any information submitted or environmental documents prepared by an applicant or contractor, such as in the list of preparers for environmental impact

⁵ La Jicarita has written a summary of individual comments provided on the Draft EA and overall NEPA process implemented by the CNF and has links to audio recordings of the comments here: <https://lajicarita.wordpress.com/2023/05/10/acequia-community-takes-on-forest-service-over-tsv-draft-ea/>; and here: <https://culturalenergy.org/mp3/TSV9may23-69m35s.mp3>, last accessed May 17, 2023.

statements (§ 1502.18 of this chapter). It is the intent of this paragraph (b)(3) that acceptable work not be redone, but that it be verified by the agency.

The Draft EA fails to comply with this requirement. *See* Draft EA, p. 47, Table 4-2 Consultant Team.

One way for the public to learn who the Draft EA contractors are is by reviewing the technical reports attached to the Draft EA. Based on this review, NMAA has learned that Rocky Mountain Ecology, LLC is a sub-contractor and the SE Group is the lead contractor.⁶ The SE Group's mission is to "help our clients create places that provide a high quality of life and an exceptional experience for community residents and visitors alike."⁷ The role of the SE Group to secure permits necessary for expansion of the Taos Ski Valley, Inc. indicates that there may exist a significant financial interest in securing federal permitting for the Proposed Project. 40 CFR §1506.5(b)(4) requires contractors preparing EAs or EISs to submit a disclosure statement that specifies any financial or other interest in the outcome of the action. No disclosures have been included in the Draft EA or made readily available to the public. *See* Draft EA, p. 47.

A third undisclosed consultant has been identified by NMAA in its review of a handout⁸ disseminated by the CNF at the May 9, 2023 public meeting titled, "Water Rights & Usage FAQ, Taos Ski Valley, Inc." The handout appears to have been prepared by Glorieta Geoscience, Inc. This handout asserts that "the Ski Resort's permitted consumptive use is approximately 1% of the permitted consumptive use of other water users in the entire Rio Hondo watershed (not including domestic wells)," and cites to an "initial study of the overall watershed." Neither this handout nor the initial study it relies upon are referenced in the Draft EA or have been made readily available to the public, in violation of 40 CFR §1501.12.

Finally, the Draft EA fails to identify the CNF staff responsible for independently evaluating the information submitted and/or the environmental document prepared by the applicant and/or the contractors. 40 CFR §1506.5(b)(3). It is important to note that the CNF is ultimately responsible for "the accuracy, scope...and content of environmental documents prepared by the agency or by an applicant or contractor under the supervision of the agency." 40 CFR §1506.5(a).

Due to these deficiencies, the CNF should, at a minimum, revise and supplement the Draft EA with this required information so that the public's right to meaningfully comment on the Draft EA and its supporting studies, and to evaluate whether contractors preparing the Draft EA have any conflicts of interest, can be realized.

⁶ Rocky Mountain Ecology, LLC's Wildlife Report and Biological Assessment were prepared for SE Group for submittal to the CNF.

⁷ <https://segroup.com/about/>, last accessed May 16, 2023.

⁸ This handout is attached to NMAA's comments.

II. The Draft EA fails to review an appropriate range of alternatives including a No Action Alternative.

As stated by Valdez resident, parciante and acequia commissioner Kevin Bersell in his May 17, 2023 Draft EA Comment Letter:

Conflicts over water in New Mexico have been documented since the Pueblo Revolt of 1680. More recently the Abeyta (aka Taos Pueblo Water Rights Settlement) has dominated conversations about water rights in the Taos Area. Filed in 1969 the Abeyta lawsuit was settled in 2013 but the issues are still contentious as the components of the agreement are being implemented. The Abeyta settlement includes waters of the Rio Hondo. Conflicts over water were demonstrated during the Scoping Notice phase of this project as numerous commenters, including Acequia Associations objected to TSVI use of the Rio Hondo. Land is another ongoing issue of contention in Taos County.

Conflicts over land have been occurring since New Mexico's founding. Land Grant lands are a particular source of conflict in the Rio Hondo valley and have been especially heated since Statehood. In 1996 the District Court of New Mexico decided "Committee to Save the Rio Hondo v. Lucero". That case involved permitting of Taos Ski Valley Inc land use plans in the Ski Valley. More recently numerous letters from Land Grants were received during the Scoping Notice comment period for this Project; they and others cited land use issues in the Ski Valley.⁹

NEPA requires analysis of actual and reasonable alternative actions, including a No Action Alternative, when there are unresolved conflicts concerning alternative uses of available resources. It is only when there are no unresolved conflicts that the EA "need only analyze the proposed action and proceed without consideration of additional alternatives." 36 CFR §220.7(b)(2)(i); §4332.C(iii) and (E); *see also* Forest Service Handbook 1909.15, Chapter 10.

The Draft EA acknowledges that there are unresolved conflicts about the proposal requiring analysis of a range of alternatives that would resolve such conflicts (Draft EA, p. 4), yet, confusingly, the Draft EA treats each component of the Proposed Action as an "alternative action" instead of analyzing actual and reasonable alternatives to the Proposed Action, in violation of the law. Draft EA, pp. 4-9. Though the Tenth Circuit Court of Appeals has held that, "The [agency] may eliminate alternatives that...do not meet the purposes and needs of the project," this discretion does not permit the elimination of all possible alternatives. *Biodiversity Conservation Alliance v. Bureau of Land Mgmt.*, 608 F.3d 709, 715 (10th Cir. 2010). The Tenth Circuit has made clear that, "While it is true that defendants could reject alternatives that did not meet the purpose and need of the project, they could not define the project so narrowly that it foreclosed a reasonable consideration of the alternatives." *Utah Env't Cong. V. Bosworth*, 439 F.3d 1184, 1195 (10th Cir. 2016) (internal citations omitted).

The CNF should therefore either revise and supplement the Draft EA to include the legally mandated alternatives analysis or proceed with a robust EIS, with either the EIS or a Supplemental EA including a No Action Alternative analysis.

⁹ Page 37 of Mr. Bersell's May 17, 2023 Draft EA Comment Letter.

III. The CNF failed to solicit cooperation of acequias and land grants with political subdivision of the state status that have jurisdiction by law or special expertise on environmental issues that should be addressed in the environmental analysis.

40 CFR §1501.5(e) mandates that, “Agencies shall involve the public, State, Tribal, and local governments, relevant agencies, and any applicants, to the extent practicable in preparing environmental assessments.” Moreover, NEPA regulations provide that “a State, Tribal, or local agency of similar qualifications [having special expertise with respect to any environmental issue] may become a cooperating agency by agreement with the lead agency”. 40 CFR §1501.8(a); *see also* Forest Service Handbook 1909.15 - National Environmental Policy Act Handbook, Chapter 10, 11.31b - Cooperating with Other Agencies, p. 12 (March 3, 2023). NMAA, the Taos Valley Acequia Association, and several other local acequias all urged the Forest Service to invite acequias, land grants, and Indigenous sovereigns to serve as cooperating agencies in this NEPA process. While acequias and land grants are uniquely qualified to address environmental issues in this area, the Forest Service has not provided an explanation why these groups were not allowed to participate as cooperating agencies.

The CNF’s failure to include acequias and land grants as cooperating agencies also runs afoul Executive Order 12898, Executive Order 13985, Executive Order 14096, and President Biden’s recently issued Executive Order on Revitalizing Our Nation’s Commitment to Environmental Justice for All on April 21, 2023.¹⁰ Four major highlights of this new Executive Order applicable to the Forest Service and the NEPA process are:¹¹

- Making clear that the pursuit of environmental justice is a duty of all executive branch agencies and should be incorporated into their missions and is central to the implementation of our bedrock civil rights and environmental laws;
- Directing agencies such as the Forest Service to consider measures to address and prevent disproportionate and adverse environmental harms and health impacts on communities, including the cumulative impacts of pollution and other burdens like climate change;
- Recognizing that communities with environmental justice concerns have long experienced exclusion and other significant barriers to having a voice in federal decision-making, and directing agencies to actively facilitate meaningful public participation and just treatment of all people in agency decision-making; and

¹⁰ <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/21/executive-order-on-revitalizing-our-nations-commitment-to-environmental-justice-for-all/>, last accessed on May 15, 2023.

¹¹ *Supra* footnote 2, and <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/21/fact-sheet-president-biden-signs-executive-order-to-revitalize-our-nations-commitment-to-environmental-justice-for-all/>, last accessed May 15, 2023. If the CNF finds that this E.O. does not apply to the Draft EA due to a retroactive application issue, NMAA requests that the CNF revise and supplement the Draft EA in order for this E.O. to apply.

- Advancing the analysis of cumulative impacts and to make information on environmental and health concerns more publicly accessible to communities.

The Forest Service has a long history of excluding acequias and land grant communities from the federal decision-making process.¹² Including acequias and land grants as cooperating agencies in this NEPA process could have resulted in an EIS or EA that meaningfully and lawfully analyzes the Proposed Project's impacts to environmental justice communities and to the natural resources they rely upon.

While the Draft EA acknowledges acequias and the communities of Valdez, Arroyo Hondo, and Arroyo Seco as members of the New Mexico Acequia Association and as “ancient gravity powered ditches” in its environmental justice impacts analysis, Draft EA, Section 3.4.1, p. 30, the Draft EA fails to acknowledge that these communities and acequias are political subdivisions of the state and are therefore eligible under NEPA to serve as cooperating agencies. These political entities have expertise in environmental, cultural and socioeconomic issues and acequias specifically have local jurisdiction over the water rights they serve. These entities have also been experiencing negative impacts from the Taos Ski Valley for nearly four decades. Since the CNF and the Draft EA failed to include accurate factual information regarding acequias and their role in northern New Mexico and our state as a whole, the NMAA provides the following information vital to a meaningful environmental justice impacts analysis.¹³

Acequia is a word with Arabic roots that means “water bearer.”¹⁴ An acequia is a physical irrigation system, a ditch, but the term “acequia” in New Mexico also describes a philosophy about water and community. That philosophy encompasses the concept that water is so essential to life that it is a communal resource, one which must be shared. This philosophy shapes the human and natural environments in our watersheds and has created a resilient natural and cultural system. Most acequias were established over a hundred or more years ago and are scattered throughout the state with the majority found in the northern counties. While water is wealth throughout the arid West, to the small-scale farmer and rancher in these traditional communities the acequia culture represents even more: Acequias are the means by which you support your family and by which you participate in your community. A Spanish dicho or saying

¹² Supra footnotes 2 and 3.

¹³ See also recently published book, *Water for the People: The Acequia Heritage of New Mexico in a Global Context*, a collection of essays that “celebrates acequia practices and traditions worldwide and shows how these ancient irrigation systems continue to provide arid regions with a model for water governance, sustainable food systems, and community traditions that reaffirm a deep cultural and spiritual relationship with the land year after year.” University of New Mexico Press (April 1, 2023). <https://bookshop.org/p/books/water-for-the-people-the-acequia-heritage-of-new-mexico-in-a-global-context-enrique-r-lamadrid/18970753>, last accessed May 19, 2023.

¹⁴ <https://www.taosacequias.org/acequias>, last accessed May 17, 2023; see also *Acequias: Trust and Hydrosocial Territory*, Dr. Sylvia Rodriguez, *Sustainability and Water Management in the Maya World and Beyond*, edited by Jean T. Larmon, Lisa J. Lucero, and Fred Valdez Jr. Louisville: University Press of Colorado, pp. 200-227, 2022; and New Mexico State University's *Acequias of the Southwestern United States: Elements of Resilience in a Coupled Natural and Human System*, <https://pubs.nmsu.edu/acequias/index.html>, last accessed May 17, 2023.

succinctly sums it up: “Tierra es la madre y el agua es su sangre” or “Earth is our mother and water is her blood.”

New Mexico acequia-based water rights are subject to the laws of the state including the constitution and the state water code.¹⁵ However, many elements of acequia water governance make them unique including their customary practices over water allocation and water sharing as well as the system of involving members directly in the collective upkeep, maintenance, and repairs in the form of labor and financial assessments. While many of these customary practices have remained intact for generations, acequias have also adapted to serve as local institutions of government in New Mexico.

Acequias were generally established between the early 1600s and the 1800s which characterizes their water rights as pre-1907 water rights and recognized as valid under our state constitution. Acequia-based water rights are also subject to the laws of the state and the administration of New Mexico’s water by the State Engineer, Chapter 72, known as the “Water Code.” Acequias have maintained a relatively strong level of local autonomy in local water governance, particularly in the day-to-day allocation of water and the regular maintenance of irrigation works. New Mexico is unique in the United States as having two articles in state law, Chapter 72, Articles 2 and 3, devoted to acequia governance.

There are an estimated 600-700 acequias in New Mexico that continue their vital role as local democratic institutions that manage water for the benefit of their member irrigators, known as “parciantes.” While acequias have continued centuries-old customs and traditions, they have also been integrated into New Mexico’s modern framework of government in their definition as “political subdivisions of the state” pursuant to Section 73-2-28, NMSA 1978. For acequias, this recognition as local institutions of government in New Mexico is a source of both opportunities and challenges. As a local government, acequias have significant powers over water management at the local level and are eligible for funding from the state for capital improvement projects. However, the status as a local government also involves significant responsibilities including the requirements of having bylaws as well as compliance with the Open Meetings Act, the Audit Act, and similar statutes and regulations that require transparency in government policy-making and financial reporting.

Twenty-two of New Mexico’s thirty-two counties contain acequias. The amount of irrigated acreage served by an individual acequia may range from a few acres to thousands of acres. Acequia membership is limited to landowners with water rights served by the acequia and can range from only a few members to thousands. Acequias’ annual revenues likewise vary between no revenue and tens of thousands of dollars yet every acequia is a political subdivision subject to various state laws. Their variation in terms of size and membership make them particularly unique public bodies.

¹⁵ <https://lasacequias.org/wp-content/uploads/2020/09/2015Governance-Handbook.pdf>, last accessed May 17, 2023; see also <https://uttncenter.unm.edu/resources/research-resources/acequias.pdf>, last accessed May 17, 2023, for more information regarding acequias and New Mexico’s legal framework.

The Proposed Project's impact area includes nearly a dozen acequias along the Rio Hondo, eight of which are members of the Taos Valley Acequia Association, irrigating just under 2,000 acres of land.¹⁶ Because the CNF failed to include acequias and land grants as cooperating agencies and the above critical information in its disturbingly deficient environmental justice impacts analysis, the CNF should either revise and Supplement the Draft EA or conduct a full EIS with all of the information provided by the NMAA and with information to be provided by acequia and land grant cooperating agencies.

IV. The Draft EA fails to meaningfully analyze the cultural and socioeconomic impacts (direct, indirect and especially cumulative) to environmental justice communities in the following ways.

NEPA recognizes that “each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.”⁴² U.S.C. § 4331(c). It includes key goals that support environmental justice, including the responsibility of the federal government to use all practicable means to create and maintain conditions under which humans and nature can exist in “productive harmony,” ⁴² U.S.C. § 4331(a), and to “improve and coordinate federal plans, functions, programs, and resources so that the nation may—

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- Preserve important historic, cultural, and natural aspects of our natural heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice; and
- Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.”⁴² U.S.C. § 4331(b).

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), instructs each federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low income populations” throughout the United States and U.S. territories. The Executive Order also created the Federal Interagency Working Group on Environmental Justice, instructed all federal agencies to develop agency-wide strategies for addressing environmental jus-

¹⁶ <https://www.taosacequias.org/rio-hondo>, last accessed May 17, 2023.

tice, and outlined strategies for federal agencies to employ in data collection and analysis in carrying out human health and environmental research. The Presidential Memorandum accompanying Executive Order 12898 calls on agencies to apply environmental justice analysis and community participation to processes required by NEPA.¹⁷

As previously stated, the CNF and the Draft EA apply Executive Order 12898 to the NEPA analyses conducted, however, the Draft EA and the CNF NEPA process fails to adequately apply the environmental justice analysis and community participation mandate to processes as follows.

A. The CNF failed to invite and include acequias and land grants as cooperating agencies.

As discussed above, CNF failed to invite and involve acequias and land grants as cooperating agencies, resulting in an exceedingly deficient environmental justice impacts analysis. *See* above comments, Section III.

B. The Draft EA fails to center traditional ecological knowledge.

Federal memorandum, “Indigenous Traditional Ecological Knowledge and Federal Decision Making,” issued in November 2021 requires federal agencies to center traditional ecological knowledge in their decision-making process. On the face of the Draft EA, it is clear that the Forest Service has ignored this executive directive. Draft EA, pp. 1-53.

C. The Draft EA fails to adequately analyze cumulative impacts to traditional land-based communities including acequias and land grants that currently suffer and have historically suffered from environmental and health risks or hazards from large-scale development projects such as the Proposed Project.

As previously noted, while the Draft EA purports to apply Executive Order 12898 to its NEPA analyses (direct, indirect and cumulative impacts), the environmental justice impacts analysis is deficient. When it comes to the cumulative impacts analysis, 36 CFR §220.4(f), the CEQ Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis, dated June 24, 2005, and the Forest Service Handbook 1909.15 - National Environmental Policy Act Handbook, Chapter 10 - Environmental Analysis, Section 15.1 - Cumulative Effects, p. 42 (March 3, 2023) all mandate that the Draft EA take into consideration past, present and reasonably foreseeable future actions in a cumulative impacts analysis. The Draft EA, Section 3.4, states that, “past, present, and future projects with the TSV **SUP area** have contributed to and would likely continue to contribute to economic growth trends within Taos County,” and, “Overall, because there would be no effects to identified minority or low-income populations and the proposed action would be compliant with Executive Order 12898, there would be no cumulative effects to environmental justice.” Draft EA, p. 33.

¹⁷ https://www.epa.gov/sites/default/files/2015-02/documents/clinton_memo_12898.pdf, last accessed May 17, 2023.

The Draft EA likely unlawfully limits the cumulative impacts analysis solely to the SUP or Special Use Permit area and not to an appropriate geographic area encompassing the resources at issue. NMAA recommends that the geographic area analyzed include the lower Rio Hondo and downstream impacts. Geographic boundaries and time periods used in cumulative impact analysis should be based on all resources of concern and all of the actions that may contribute, along with the project effects, to cumulative impacts. Generally, the scope of analysis will be broader than the scope of analysis used in assessing direct or indirect effects. The selection of geographic boundaries and time period should be, whenever possible, based on the natural boundaries of resources of concern and the period of time that the proposed action's impacts will persist, even beyond the project life. Forest Service Handbook 1909.15 – National Environmental Policy Act Handbook, Chapter 10, Environmental Analysis, Sections 15.1 through 15.3, pp. 42-45.

Another example of the Draft EA's deficient cumulative impacts analysis is the omission of another highly contentious CNF NEPA project, the Talpa Foothills Trails Project/Management Plan. This project poses another serious threat to traditional ways of life for environmental justice communities that have a deep connection with lands managed by the CNF. When combined with the Taos Ski Valley, Inc.'s Proposed Project, the Talpa Foothills Trails Project/Management Plan results in more significant cumulative impacts to environmental justice communities. Of note, this highly controversial project and management plan has resulted in the CNF hiring a third-party contractor to facilitate "a working group of stakeholders with diverse interests and backgrounds to collaborate on proposals for a multiple-use trail system in the Talpa Foothills area to the east of Taos, NM. Working group products will be considered in the development of an official government proposal under the National Environmental Policy Act process, which includes more opportunities for public engagement."¹⁸

The Forest Service "Interdisciplinary Team" also arbitrarily concludes - with minimal to zero analysis - that "the proposed action would not change traditional lifestyles of those that live in Valdez, Arroyo Hondo, Arroyo Seco, or Taos Pueblo," in spite of these numerous individuals, political entities and Indigenous sovereigns having explained to the Forest Service that the proposed action would in fact significantly affect their traditional ways of life, the natural resources they rely upon, and their health and well-being. Draft EA, Section 3.4, pp. 28-33. Potential impacts including trespassing on Taos Pueblo lands and harming sacred cultural sites and resources, degradation of water quality and associated impacts to traditional cultural agriculture, harvesting of medicinal plants and herbs, water for livestock and wildlife. Draft EA, p. 30; see also the Arroyo Hondo Arriba Land Grant May 6, 2022 Scoping Comment Letter and NMAA's May 6, 2022 Scoping Comment Letter.

The Draft EA's failure to conduct an adequate analysis of cumulative impacts to environmental justice communities also violates Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; and Executive Order 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All (April 21, 2023). Had the CNF included acequias and land grants

¹⁸ <https://www.fs.usda.gov/detail/carson/workingtogether/advisorycommittees/?cid=FSEPRD1045126>, last accessed May 17, 2023.

as cooperating agencies in this NEPA process the Draft EA would likely have reached the opposite conclusion – the Proposed Project **would** change traditional ways of life.

The CNF must therefore either conduct a full EIS or revise and supplement the Draft EA with an adequate cumulative impacts analysis inclusive of environmental justice impacts.

D. The Draft EA fails to meaningfully assess the Proposed Project’s direct and indirect socioeconomic impacts to environmental justice communities by arbitrarily and capriciously omitting material census data, current negative impacts caused by the Taos Ski Valley resort, and the significant economic contributions of agriculture.

As previously stated, the Draft EA has applied Executive Order 12898 to the required NEPA analyses. This Executive Order directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law, and develop a strategy for implementing environmental justice. The Presidential Memorandum accompanying the Executive Order also calls on agencies to apply environmental justice analysis and community participation to the processes required by NEPA. The Draft EA fails to comply with this Executive Order, as well as Executive Order 13985 and the recent April 21, 2023 Executive Order 14096 as follows:

- **Section 3.4, Socioeconomics and Environmental Justice, makes no mention of the current 18.6% poverty rate in Taos County, compared to the national poverty rate of 11.6%, and its intersection with the number of owner-occupied housing, which is 79.9%.** This translates to a large majority of Taos County residents being “land rich, cash poor.” The Taos Ski Valley and other developments over the decades have placed extreme economic pressure on this subset of Taos County residents, which has resulted in the displacement of traditional land-based residents. The Draft EA fails to acknowledge this history and analyze the Proposed Project’s contribution to this increased pressure to sell land to out-of-state residents seeking to move to the Taos Ski Valley and avail themselves of Taos Ski Valley, Inc.’s amenities.
- **Section 3.4 fails to identify or analyze existing negative impacts attributed to the Taos Ski Valley resort,** such as its contribution to low-wage seasonal employment, skyrocketing demand for short-term housing rentals, unsustainable population growth, increased stress to public services, and overall decreased quality of life. Instead, Section 3.4 reads like a promotional ad for the Taos Ski Valley, emphasizing its B-Corporation status and stating that, “TSV invests and contributes to various outside programs that support the greater well-being of the community, such as supporting non-profits, partnerships with schools, and direct contributions to a variety of organizations.” Draft EA, Section 3.4.1, pp. 29-30.
- **Section 3.4 fails to identify and address the Proposed Project’s impacts on Taos County agriculture, which provides significant cultural and economic contributions to Taos County and New Mexico as a whole.** The 2017 U.S. Census of Agriculture

reports that there are 824 farms with over 285,130 acres in agricultural production in Taos County. The total market value of products sold from these farms is nearly \$8 million dollars. Moreover, the majority of Taos County agricultural producers are “Hispanic, Latino Spanish Origin” and “American Indian/Alaska Native,” with a significant number being new and beginning farmers.¹⁹ Additionally, the 2023 Feeding the Economy Report states that agriculture in Taos County²⁰ has created 1,715 direct jobs and over 3,000 total jobs (inclusive of agricultural-related manufacturing jobs, wholesaling jobs, and retailing jobs on and off the farm), a far higher number of jobs than that provided by the Taos Ski Valley resort (only 175 full-time year-round jobs and 650 seasonal full-time jobs, with 525 seasonal jobs occurring only in the winter season). Draft EA, Section 3.4.1, p. 29. The Draft EA fails to identify this significant employer and the Proposed Project’s impacts to this critical economic sector. Instead, the Draft EA emphasizes that, “TSV is one of the major employers within Taos County” and that “As a certified B-Corporation, TSV employees receive a high standard of pay equity and benefits.” Draft EA, Section 3.4.1, p. 29. The Proposed Project’s cumulative impacts is likely to negatively effect agriculture by reducing the amount of water available in the Rio Hondo stream system for irrigation, by degrading the Rio Hondo stream system water quality essential for traditional agriculture and livestock, and by pressuring traditional land-based communities to sell their land – taking thousands of acres out of agricultural and livestock production.

V. The Draft EA fails to adequately analyze hydrologic impacts to both surface and groundwater resources and to senior water rights holders.

The woefully deficient Draft EA fails to adequately analyze hydrologic impacts to surface and groundwater resources and to senior water rights holders in the following ways:

- The Draft EA concedes that the Taos Ski Valley resort currently may not have sufficient water rights and adequate infrastructure to supply the increased demand and usage of water the Proposed Project requires by identifying the possibility of hauling water to the project site and hauling sewage off the project site (Draft EA, p. 7), yet fails to analyze the effects of such actions. Draft EA, pp. 1-53;
- The Draft EA arbitrarily and capriciously omits both the Taos Ski Valley resort’s and the Village of Taos Ski Valley’s numerous water and sewage infrastructure failures, thereby failing to adequately analyze the Proposed Project’s impacts to water quality and erroneously concluding that the Proposed Project “will not impact water quality.”²¹ Draft

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https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/County_Profiles/New_Mexico/cp35055.pdf, last accessed May 17, 2023.

²⁰ <https://feedingtheeconomy.com/county-level-data/>, last accessed May 17, 2023.

²¹ <https://www.krqe.com/news/new-mexico/taos-ski-valley-closed-until-further-notice/>, last accessed May 17, 2023; https://www.santafenewmexican.com/news/local_news/taos-ski-valley-closed-due-to-water-system-failure/article_d676ca52-d238-11ed-bc6c-8f004926e4e1.html, last accessed May 17, 2023; and

EA, pp. 1-53. Malfunctioning water and wastewater systems impact the Rio Hondo by reducing the amount of water available in the stream and by increasing the likelihood that the water will be affected by pollutants, and increased visitation to the Taos Ski Valley will exacerbate these ongoing and increasingly frequent problems;

- The Draft EA's attached Soil and Watershed Study is based on outdated data and fails to include an assessment of water quality impacts to the lower reaches of the Rio Hondo, which have been classified by the New Mexico Environment Department as "impaired" due to high temperatures. The Draft EA's Soil and Watershed Specialist Report only addresses water quality issues in the headwaters of the Rio Hondo, ending its assessment where the Rio Hondo leaves the Ski Valley. New Mexico State University is preparing a study of the quality and quantity of the Rio Hondo and therefore either a full EIS must be conducted including this data or the Draft EA must be revised and supplemented with this critical information necessary for adequate baseline data and a meaningful analysis;
- The Draft EA fails to adequately take into consideration effects of increased visitation that will result in more run-off from the roads and increased sediment loads into the Rio Hondo. Draft EA, pp. 1-53. Parciantes have also documented "snotty rock algae" in the river and filamentous algae in the Acequia del Llano where the water slows and warms;
- The Draft EA fails to adequately take into consideration effects of increased development and associated deforestation that will result in earlier spring runoff and less water available for irrigation. Draft EA, pp. 1-53;
- The Draft EA fails to accurately identify and analyze Taos Ski Valley, Inc.'s water rights. Draft EA, pp. 1-53. Moreover, the Draft EA indicates that the CNF and its contractors failed to consult with the New Mexico Office of the State Engineer regarding water rights issues and impacts to senior water rights holders along the Rio Hondo. Draft EA, p. 48. As the Winter Wildlands Alliance has stated in its May 17, 2023 Draft EA Comments, "To accurately ascertain how the water required by the proposed actions will impact water quality and water availability in the Rio Hondo Watershed, the analysis must identify the source and specific uses of the water required, as well as the effects of removing 200 acre-feet of water from the watershed. The effects analysis should consider projected daily use, peak use, and replenishing the storage tank at the project replenishment interval."²²
- The Draft EA fails to acknowledge and analyze the effects of numerous unresolved issues pertaining to water rights in the impacted area and surrounding communities: over whether the captured springs at the headwaters of the Rio Hondo are legally defined as underground water or surface water; conflicts over water such as the Abeyta Settlement and how the Proposed Project will impact that settlement agreement; and over the need for the New Mexico Office of the State Engineer to facilitate a water sharing agreement

https://www.taosnews.com/news/local-news/ski-valley-looks-to-aerial-mapping-grants-to-solve-water-woes/article_803dc426-e66c-50f8-aa20-225a10689021.html, last accessed May 17, 2023.

²² Winter Wildlands Alliance Draft EA Comment Letter, pp. 6-7.

between Taos Ski Valley, Inc. and acequias regarding water sharing during times of drought. Draft EA, pp. 1-53. As stated above, the Draft EA indicates that it failed to contact and consult with the New Mexico Office of the State Engineer about these issues. Draft EA, p. 48;

- The Draft EA fails to take into consideration the need for more recent baseline data and transparency regarding Taos Ski Valley, Inc. and the Village of Taos Ski Valley water usage and water quality monitoring. Draft EA, pp. 1-53;
- The Draft EA fails to take into consideration climate change impacts to surface and groundwater resources. Draft EA, pp. 1-53. NMAA joins Winter Wildlands Alliance's comment submitted in its May 17, 2023 Draft EA Comment Letter on this critical analysis omitted from the Draft EA:

Skiing, perhaps more than any other outdoor activity, is directly affected by climate change. Shorter, warmer winters mean snow no longer accumulates where it used to, or in the amounts that it used to. Ski resorts, in response, have had to adapt. This is a major reason many resorts – TSVI included – are pursuing more diverse recreational offerings, including spring, summer, and fall activities. Many resorts – TSVI included – are also turning to increased snowmaking to supplement natural snowfall.

The climate impacts of the snowmaking proposal in this Proposed Action must be considered in an EIS. Snow making is a highly energy-intensive activity that burns fossil fuels to turn millions of gallons of water into a relatively small amount of snow in defined areas. Although TSVI operates its daytime operations off of solar power, most snowmaking occurs at night and it is not clear how TSVI powers its snowguns. According to TSVI, quoted in a Taos News article, it takes 8 million gallons of groundwater to make enough snow to cover a 3.5-mile ski run.²³ Approximately 30% of the water used in snowmaking is lost to evaporation, and what does turn to snow is subject to the myriad of pollutants present on the ski hill – from snowmachine exhaust to ski wax – before eventually melting. It's a far cry from aquifer or stream replenishment coming from natural snow in an upper watershed.

Furthermore, the process of making snow contributes significantly to the climate change that's driving the need to make snow in the first place. And, in the Southwest where the effects of climate change are intensifying each year and water is an extremely limited resource, the question of whether snowmaking is an appropriate use of water resources is one that bears significant scrutiny rather than being taken as an accepted need. This issue, alone, merits an EIS.

In light of these many deficiencies, NMAA requests that the CNF either prepare a full EIS or revise and Supplement the Draft EA.

²³ https://www.taosnews.com/news/environment/ski-resorts-talk-the-ins-and-outs-of-snowmaking-amid-climate-change-and-drought/article_3d64569a-4ac6-5387-8fe5-21c963d25119.html, last accessed May 17, 2023.

VI. The Draft EA fails to adequately evaluate impacts to fish and wildlife, including Carson National Forest-identified species of greatest conservation need and species listed as threatened or endangered under the New Mexico Wildlife Conservation Act.

New Mexico Wild, in its March 28, 2023 Draft EA Comment Letter, rightly identifies that CNF failed to evaluate impacts to state-listed threatened and endangered species and species of greatest conservation need in the Draft EA. We therefore join New Mexico Wild in its request that the Draft EA consider impacts to these species identified as at risk by the State of New Mexico that are likely to exist within the Project area and not solely federal threatened and endangered species and migratory birds listed by U.S. Fish and Wildlife as Birds of Conservation Concern. Impacts to species such as the white-tailed ptarmigan, American peregrine falcon, Canada lynx, pale Townsend's big-eared bat, Gunnison's prairie dog, and the Pacific marten.

VII. Conclusion.

In conclusion, the above comments demonstrate that the significance and intensity of the Proposed Project's impacts to environmental justice communities and the natural resources they are so deeply connected with and rely upon warrants the completion of a robust EIS with acequias and land grants serving as cooperating agencies. The Draft EA's numerous deficiencies - including omission of key cooperating agencies such as acequias and land grants, omission of critical data, and failures to adequately analyze environmental justice, hydrologic, and wildlife impacts – also warrant the CNF conduct an EIS. Alternatively, we request the CNF to revise and supplement the Draft EA with required analyses and above-identified data, studies and information.

Respectfully,

/s/

Paula Garcia, Executive Director
New Mexico Acequia Association