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May 17, 2023

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P.O. Box 110
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Submitted online at <https://cara.fs2c.usda.gov/Public/CommentInput?Project=61390>

Re: Taos Ski Valley Gondola and Other Improvements Project Draft Environmental Assessment

Estimado Sr. Duran,

We are the Commissioners of the Acequia de San Antonio located in Valdez and a subdivision of the State. As the first community downstream from Taos Ski Valley we have a keen interest in the development occurring in Taos Ski Valley. Attached are our official comments on the *Gondola and Other Improvements Project* Draft Environmental Assessment.

For those readers who may not be familiar with the area, Valdez lies on the Rio Hondo about 7 miles immediately downstream from the Ski Area and the Village of Taos Ski Valley. After the Rio Hondo leaves the Ski Valley, Valdez is the next community it touches.

The Acequia de San Antonio's official existence began about 1815 with the founding of the Arroyo Hondo land grant. But we are part of a 2,000 year old tradition of self governance and community organization centered on management of water. As elected representatives we represent Valdez's interests in water issues related to our Acequia. But we are also deeply concerned with issues of tradition, culture, and community.

As our comments demonstrate, we believe this phase of the *Taos Ski Valley Gondola and Other Improvements Project* has been severely mishandled. It does not comply with the applicable statutes, regulations and Presidential Orders. The required public outreach effort was

inadequate and frustrating. The Draft Environmental Assessment is insulting and demeaning to the residents of the lower Rio Hondo Valley. The process errors are overwhelming and egregious.

Given the number and scope of problems with this phase of the project we believe the process is unrecoverably damaged. Continuing from this point cannot result in an Environmental Assessment that meets the goals and objectives of the National Environmental Policy Act. The only path forward to rectify the errors in this phase is by conducting a full Environmental Impact Statement (EIS) phase that includes the components the current phase missed and rectifies the errors and omissions in its processes.

Thank you for the opportunity to comment on the Draft Environmental Assessment. We hope that future phases of this process will prove more satisfying.

Atentamente,

Lloyd Garcia, Mayordomo
Rose Reza, Assistant Mayordomo
Laura Dumond, Treasurer
Silvia Garcia, Secretary
Victor Martinez, Commissioner
Kevin Bersell, Commissioner

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General Comments

We incorporate by reference all prior comments we have submitted since the first notice for this Project appeared in the Federal Register, inclusive of our Scoping Notice comments for this process.

We also incorporate by reference the comprehensive comments submitted by Commissioner Bersell on May 17, 2023

The Draft Environmental Assessment occasionally refers to “TSV,” “Taos”, “Taos Ski Valley” and the “Ski Valley” without clarifying if those terms mean the Village of Taos Ski Valley, Taos Ski Valley, Incorporated, the geographic area or some other entity. Those obscure references reduce the clarity of the Draft Environmental Assessment. In this response we will try to be clear when we are referring to the business (“TSVI”), the Village of Taos Ski Valley (“VSTV”) and use the term “Ski Valley” when we are referring to the general geographic region lying along the Rio Hondo and its headwaters from Amizette to Williams lake. “Twining” refers to the historical location of the mining village at the junction of the Lake Fork and North Forks of the Rio Hondo, more frequently referred to as the “Base Area.”

Specific Components

Water Tank and Booster Station

The Draft Environmental Assessment proposes a 5,000,000 gallon water tank and booster station near the base of Ski Lift #2. Removing and sequestering five million gallons of water and frequently replenishing the tank may affect the already stressed riparian areas of the Rio Hondo and impact the amount of water available to downstream rural historic communities.

In the February 2022 Taos Region Clean Energy Transportation & Recreation Corridor presentation to the Taos County Planning Board¹, the Water Tank project was identified as an “economic resiliency and emergency fire suppression” project. What are those economic resiliency uses? Are they compatible with the Forest Plan and the Special Use Permit? If so, how will the water used for those purposes be monitored?

The Draft Environmental Assessment states "TSV² will continue to hold a diversionary right of 200 acre-feet, or 65.2 million gallons of water from the Rio Hondo annually." A search of the Office of the State Engineer's (OSE) database on April 12, 2022 showed those water rights, Permit #SD 01701, allow 200 acre feet to be diverted but further state that withdrawals are limited to a total of 21.42 acre feet of consumptive use. Those rights are further limited by a hard cap of only 0.11 acre feet of daily consumptive use between April 11th and October 25th each year³. For that water right, the ratio between consumptive use and allowable diversions is unusually high and was arrived at by allowing TSVI a very favorable conversion rate for snowmaking. According to the Office of the State Engineer, non-snowmaking uses do not qualify for that favorable conversion rate so it is misleading to speak of the amount of water that TSVI is allowed to divert as if it were all to be used for snowmaking. Given the mixed conversion rates of their water rights it would be more accurate to express their rights in terms of allowable consumption.

Firefighting

Regardless of what the Draft Environmental Assessment says, the best defense against wildfire is a well-watered forest. Impounding springs and sequestering water in tanks removes water from the forest watershed. As the watershed dries out fire risk is increased. Won't removing five million gallons of water from the already drought-stricken watershed of the Rio Hondo contribute to aridification of the forest and therefore increase fire danger?

The Scoping Notice says the Tank and Station will be a "first line of defense against a wildfire". We're in favor of a robust wildland firefighting capacity. An enhanced firefighting capability is

¹ [Taos Region Clean Energy Transportation and Recreation Corridor proposal Feb. 8, 2022](#)

² We assume this means Taos Ski Valley Inc.

³ New Mexico Office of the State Engineer Permit 1701A Approved 1/28/1985

good for everyone, especially for the downstream communities since deforestation due to fire is a serious threat to our water quality.

But Wildland Firefighting is a complex activity. One cannot simply turn on the sprinklers and bug out. Efforts need to be planned and coordinated. Personnel must be trained and exercised. How will this tank contribute to a firefighting effort? What's the operational plan for using the snowmaking equipment to fight a fire? Are there trained personnel available to operate it during a wildfire? Does that plan complement USFS firefighting plans? Is TSVI a signatory to the interagency firefighting agreements for the Taos area? Is there a better way to enhance wildland firefighting capabilities in the area?

The effects on the ability of downstream communities to respond to fire must also be considered. It would be an environmental injustice of the highest order if the Ski Valley was allowed to store and use vast amounts of water to fight a wildland fire while the downstream Rio Hondo communities were left with none.

Snowmaking

Despite the Draft Environmental Assessment's repeated assertions that snowmaking will not increase, TSVI has explicit plans to increase snowmaking:

The 2021 MDP states:

“Backside Snowmaking Infrastructure

“A variety of projects are planned to improve the Backside snowmaking infrastructure. This includes three segments of **new snowmaking lines** including a segment down Hunziker Bowl to Lower Patton, a segment down Lower Patton, and a segment from Hunziker Bowl across to Upper Shalako, as well as a new pumphouse near the base of the Kachina Peak Lift to increase pump pressure to the existing snowmaking lines in the Backside. **Additional snowmaking coverage, totaling approximately 10 acres, is planned down Hunziker Bowl.**” [Emphasis added]

“New snowmaking pipe would also be installed, and **additional snowmaking coverage** would be provided on Al's Run.” [Emphasis added]

The Draft Environmental Assessment states:

“The current snowmaking system has limitations with pump capacity that hinders the timeliness of snowmaking on the Frontside of the mountain. There are existing trails that receive high use, and in years with low natural snow the snowmaking pump system cannot make snow efficiently enough to meet the guest experience that TSV would like to provide. As a result, trails with poor conditions and minimal cover can exist in the early season and periods of low snow. In some cases, trails may not be able to be opened in a timely fashion.”

(For those readers unfamiliar with ski area operations, poor conditions and minimal coverage are fixed by making more snow.)

Page 6 of the Draft Environmental Assessment says: “Together, these upgrades would increase water availability for snowmaking,”

(You need more water available when you are planning to make more snow)

At TSV snowmaking currently covers about 50% of the mountain⁴. TSVI plans to increase that coverage to the “greatest” portion of the mountain:

Page 6 of the Soil and Water Specialist Report says

“This location was selected based on its [the Lift 2 Booster Station’s] elevation and placement within the SUP area, as it would provide sufficient water pressure **for the snowmaking system to serve the greatest portion of the SUP area**” [Emphasis added]

The Draft Environmental Assessment reinforces this point:

“The elevation and location of the booster pump station is strategic and needed to achieve proper pump pressure and **serve the greatest extent of the mountain.**” [Emphasis added]

The above statements make it clear that TSVI is planning to increase snowmaking and the water tank and booster station are part of a plan. It takes about 135,000 gallons to make a foot of snow on an acre of ski slope⁵. TSVI’s expanded snowmaking plans will dramatically increase water usage across the mountain. Man made snow does not all melt and return to the watershed. Evaporation and sublimation account for loss of about 20% of the snow that is made⁶.

The Draft Environmental Assessment presents no evidence that simultaneously increasing water diversion from the Rio Hondo for snowmaking, at the same time water usage is increasing in the Kachina Basin and the Base Area, is sustainable or that it will leave sufficient water available to the downstream communities. Further impacting this irresponsible strategy are the effects of climate change which are reducing the amount of water available in the Rio Hondo⁷ cumulatively with increased usage by TSVI and VTSV.

If allowed to proceed as proposed, the cumulative impact of these projects, the other projects in the area, and climate change may significantly impact the forest, the river and the people in the Rio Hondo Valley by further decreasing water quality and availability in the waters of the Rio Hondo.

⁴ <https://www.snow-forecast.com/resorts/Taos>

⁵

https://www.outtherecolorado.com/blog/ever-wonder-how-much-water-goes-into-manmade-snow/article_2b5ce478-e0fc-580f-9d5a-454b8f0782d0.html

⁶

<https://apnews.com/article/science-sports-lifestyle-business-economy-ba133300868f2b8a65da8026c0ca2699>

⁷ “On average, streamflow has declined by 20 percent from pre-1996 levels” (USDA FS Carson NF 2015a; USGS 2014)

Although TSVI water rights are a minority of the rights along the Rio Hondo, they are significant in that they are drawn from the headwaters. Impacts at the headwaters have a ripple effect on water quantity and quality all the way to the Rio Grande.

Action Requested: We ask the USFS to include a No-Action alternative to the building of the water tank and booster station.

Action Requested: How do we know that 5,000,000 gallons is the appropriate amount of water? We request that the USFS justify the size of the water tank including an objective, scientific evaluation of the amount of water needed in the tank to support snowmaking and then consider the results of that evaluation before approving the tank. If the amount of water needed is less than 5,000,000 gallons the USFS should restrict the size of the tank.

Action Requested: We ask that if the tank is approved, that the USFS restrict the uses of the water stored in the tank to snowmaking and, if justified, firefighting, until TSVI details all of its other plans for water usage for economic resiliency and until those plans can be evaluated for compatibility with the appropriate laws and regulations.

Action Requested: We ask the USFS to include an evaluation of the direct, indirect and cumulative effects of the tank development and increased snowmaking on water availability and quality in the Rio Hondo and in its effect on wildfire risk. During that analysis we ask that the Forest Service consider how the proposal might create water rights conflicts with other communities, including tribal and rural historical communities and its Environmental Justice impacts on those communities.

Action Requested: We ask that the USFS study the effect of the tank and snowmaking system on its ability to fight fire in the Ski Valley and to analyze how the tank and snowmaking system fits into the firefighting system in the area. Additionally USFS should analyze the amount of water that will remain in the Rio Hondo to support downstream firefighting efforts if the snowmaking system is being used to fight fire in the Ski Valley, We ask that the study consider USFS's and TSVI's firefighting plans and include TSVI's capacity to provide trained water system operators during a fire emergency.

Gondola

The Draft Environmental Assessment presents nine justifications for building out the Gondola. We analyzed each those justifications and found most of them to be unsupported with the exception of:

- Improve overall circulation,
- Allow access to the Backside in the evenings, and
- Allow access to the Backside in the summer.

Based on that analysis, moving people to the Backside of the mountain is the TSVI business need to be met by building the Gondola.

That conclusion conflicts with Forest Service direction as contained in §2343.14(1)g of the Forest Service Manual which says "increase utilization of **snow sports facilities** and not require extensive new support facilities, such as parking lots, restaurants, **and lifts**." [Emphasis added]

TSVI states in the Draft Environmental Assessment that the Project will not increase the number of skiers at the Ski Area. Based on that assertion, the Project will not "increase utilization of snow sports facilities" as required for approval under the above quoted Forest Service Regulations. USFS must provide a strong legal and functional rationale for approving the Gondola new restaurants in violation of its own regulations.

Impact on Water and Riparian Areas

The Gondola has significant issues that will impact the environment of the Basin. According to the map distributed with the Draft Environmental Assessment, the proposed route of the Gondola will be immediately adjacent to, and, at points, directly on the Lake Fork of the Rio Hondo. The Scoping Notice says that a corridor will be cleared of trees to allow passage of the Gondola cabins. That clearing, specified at 20 feet wide⁸ and totaling about 3.5 acres, would be immediately adjacent to the Lake Fork of the Rio Hondo for most of its length and at some points on the river itself. Removing trees along the banks of the Lake Fork may increase silt and suspended particulate matter (SPM), destabilize banks and increase storm run-off among other harmful effects. Removing soil to place Gondola towers may destabilize soil, damage plantlife and harm habitat. The end result may be decreased water quality as well as the degradation of aquatic wildlife habitat.

⁸ [Taos Region Clean Energy Transportation and Recreation Corridor proposal Feb. 8, 2022](#)



Figure 2. Relationship of wetlands and Lake Fork to Gondola site

Figure 2.

Based on the map distributed with the Draft Environmental Assessment and the limited description in the text of the Draft Environmental Assessment, TSVI is proposing to build a Bridge/Terminal/Maintenance Complex in a riparian area and either on or immediately adjacent to a Freshwater Forested/Shrub Wetland. Those wetlands are a unique and important part of the headwaters of the Rio Hondo. Damage to the headwaters may result in downstream water quality issues. The “small stream” to be bridged and built on, is an important part of the Rio Hondo system and has an associated riparian environment. It not only adds its waters to the Lake Fork of the Rio Hondo but is a prime reason wetlands exist in the area. Yet the Draft Environmental Assessment states: “The bridge that would be installed at the upper terminal area of the Gondola would be placed within the AMZ [Aquatic Management Zone] surrounding Lake Fork Creek, and may impact some riparian vegetation”.

The Draft Environmental Assessment attempts to assure the reader these impacts have already been considered and solutions are in hand; “Further, numerous PDC (refer to Table 2-1) would be utilized to prevent impacts to sensitive riparian and wetland areas.” However, there are no

site specific, actionable PDCs for riparian and wetland areas listed in Table 2-1.

Locating the proposed Gondola maintenance facility in the Lake Fork riparian area and on, or near, the wetland creates an unacceptable level of risk for contamination by the products to be used to maintain the Gondola. Building the maintenance facility as proposed would likely violate Section V. B., Water Pollution, of the Ski Area Term Special Use Permit issued 6/5/2014 which reads, in part, “Storage facilities for materials capable of causing water pollution, if accidentally discharged, shall be located so as to prevent any spillage into waters or channels leading into water that would result in harm to fish and wildlife or to human water supplies.” It would also conflict with the Riparian Management Zone Guidelines (FW-WSW-RMZ-G) of the Forest Management Plan: “To protect water quality and aquatic species, refueling, maintaining equipment, and storing fuels or other toxicants should not occur in riparian management zones” [Emphasis Added].

The Draft Environmental Assessment seeks to assure us that requirements will be put in place to protect the riparian areas: “PDC listed in Chapter 2, Table 2-1, include measures to completely avoid wetland vegetation, as well as BMPs to minimize disturbance and protect existing natural vegetation as well as incorporating post-construction revegetation BMPs.” However, Table 2-1 does not mention wetland vegetation.

Further hollow assurances are offered: “SWPPP [Storm Water Pollution Prevention Plan] monitoring and inspection guidelines were developed under the Clean Water Act § 402 CGP outlining BMPs and other protections of surface water quality. Specific PDC and BMPs aimed at minimizing surface water quality impacts from the implementation of the proposed action are available in the SWPPP, available in the project file.” However there is no SWPPP available in the project file. Kevin Bersell, one of our Commissioners, requested this document from the USFS on April 19, 2023 but received no response to his request.

These omissions, the lack of a No-Action alternative and the lack of other alternatives that include “all practicable measures to minimize harm to wetlands” means this action violates Section 2 of Executive Order 11990.

The Draft Environmental Assessment states: “Finally, no impact to TMDLs in the Rio Hondo is anticipated as the proposed action would not result in increased temperature or nutrient loading in the Rio Hondo.” Removal of vegetation and especially forest canopy are prime factors in increasing temperatures in rivers and streams. By removing approximately 3.5 acres of trees and other vegetation⁹ along the route of the Gondola the project has the potential to raise temperatures in the headwaters of the Rio Hondo.

Environmental Justice

A Gondola does not promote justice, impartiality, and fairness for the downstream communities.

⁹ In case the Gondola needs to be evacuated, the area along the Gondola route needs to be kept clear, therefore replanting trees and shrubs is not an option.

The USFS is asking Taoseno's to absorb the environmental and socio-economic costs for a Gondola that will provide benefits to a small population of disproportionately wealthy¹⁰ individuals, most of whom do not live in the area. Damages to the environment and the watershed will not be paid for by the beneficiaries of these projects, they will be paid for by those who didn't wish to be impacted in the first place.

Cumulative Effects

The Kachina Basin is sited in one of the most majestic and wild areas of the State. Positioned in the midst of the Wheeler Peak Wilderness Area, the Columbine-Hondo Wilderness Area and the Carson National Forest, it is surrounded by many of the highest peaks in the State. The Federal Government has already recognized how important yet fragile this environment is by permanently protecting most of the land in the area. To the casual observer, it may seem like an ideal spot for a resort. But the small amount of private land in the area is hard to access, hard to build on and not suited for anything but minor, low density development.

The Gondola will exacerbate the overuse of the Kachina Basin by facilitating further development. We would guess that TSVI is not really interested in limiting traffic by car, they need both the Gondola and the road to achieve the visitor levels they need for their resort center in the Kachina Basin. In conjunction with the road system, the Gondola will serve to bring visitors to the Basin significantly in excess of current levels. The Gondola will also serve as a novel and entertaining attraction for visitors in the Ski Valley.

New businesses and attractions will be built in the Kachina Basin to accommodate the visitors arriving by Gondola and road. Indeed, TSVI already has plans to build about 100 new residences/housing units and about 20,000 square feet of additional commercial space in the Basin¹¹. Those businesses and attractions will further increase the number of people wishing to visit the Basin. Supply and demand will synergistically reinforce each other¹² to increase development and visitation in an area that is already overburdened.

While TSVI provides plenty of data on the carrying capacity of each lift and each slope at the Ski Valley, no data is provided on the carrying capacity of the Kachina Basin. That information plus an evaluation of the limits of development in the Kachina basin, need to be considered before approval of the Gondola.

Action Requested: We request that the USFS include a No-Action alternative to the Gondola.

Action Requested: We request that the USFS analyze the Gondola component in light of its responsibilities under §2343.14(1)g of the Forest Service Manual.

¹⁰ "A bold re-envisioning of land use and development patterns is anticipated to respond to a recent influx of extreme wealth..." 11/2022 Village Council Minutes

¹¹ <https://designworkshop.app.box.com/s/ilahna8d6nqsm0b6npg7iyg6swpt09o2>

¹² AKA "Induced Demand"

Action Requested: We request that, if the Gondola is approved, the USFS require TSVI to build the Gondola maintenance facility at the Base Area terminal of the Gondola and not adjacent to the wetlands and riparian areas along the Lake Fork.

Action Requested: We request that the USFS either supply the SWPPP or remove references to it in any subsequent documents.

Action Requested: We request that the USFS include site specific, actionable measures to minimize harm to wetlands, the watershed as a whole, wildlife and human populations.

Action Requested: We ask that the USFS study and evaluate the direct, indirect and cumulative effects of the Gondola development and the interaction of that development with other proposed or ongoing projects, both public and private to determine the likely cumulative effects of the Gondola component. That analysis should consider the Gondola's effect on water quality and quantity, wildlife, nearby wilderness areas, riparian areas, wetlands, traffic, and crowding.

Action Requested: We request that the USFS address the Gondola's conflicts with the Forest Service Manual.

Action Requested: We ask that the USFS to study the direct, indirect and cumulative effects of the Gondola development on the Kachina Basin riparian and wetland environments, including an assessment of the areas to be cleared of vegetation and the effects of that loss on water temperatures in the Rio Hondo system.

Action Requested: We ask that the USFS study the direct, indirect and cumulative effects of the Gondola development on the fragile Kachina Basin terrestrial and aquatic wildlife as well as the plant life in the Kachina Basin.

Restaurants - Lift 7 & Whistlestop Cafe

The Draft Environmental Assessment indicates that TSVI has not yet identified how it will obtain water for the planned restaurants. Or how they will handle the wastewater from these facilities. Yet, despite having no information on how wastewater will be handled, the Forest Service is confident that "no impacts to water quality would result from wastewater generated by the proposed action, as septic tank-leach field systems are subject to approval and inspection by the New Mexico Environment Department"¹³. That seems like a naive strategy for fulfilling USFS's statutory responsibilities. Permitting only addresses the basic design and functionality of a wastewater system, it does nothing to ensure ongoing protection of the forest and its waters.

¹³ Page 45

Another part of the Draft Environmental Assessment says "sewage would be held in a Forest Service compliant remote septic system."¹⁴ How will USFS ensure the system is "Forest Service compliant" if they have passed on their regulatory approval responsibilities to NMED?

The Draft Environmental Assessment indicates that the wastewater might be piped down the mountain, which raises questions about the length and route of the sewer pipes, its ultimate destination, and how the skiers, the mountain and the watershed will be protected from leaks and spillages. The Soil And Watershed Specialist Report¹⁵ suggests that the wastewater might be "manually" hauled down the mountain. That mechanism also raises questions of its ultimate destination, and how the skiers, the mountain and the watershed will be protected from leaks and spillages. These seem to be important questions to leave unresolved prior to approval.

Lack of specifics on how water and wastewater will be handled defeats the public's ability to make meaningful comments on this portion of the projects. It also violates FSH 1909.15 41.1:

"Purpose of Environmental Assessments

"The purpose of an EA is to: (1) Briefly provide **sufficient evidence** and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." [Emphasis added]

Action Requested: We ask the USFS to include a No-Action alternative to the building of new and/or replaced restaurants on the mountain.

Action Requested: We ask that the USFS provide sufficient specific details on how water and wastewater will be handled for the proposed restaurants to allow the public to evaluate the adequacy of those plans.

Nordic and Snowshoe Center

Nordic and snowshoe trails are easily accessible activities that allow more people to experience the great outdoors. But TSVI's proposed Nordic and Snowshoe trails and associated buildings will lie immediately uphill from the Rio Hondo. Developing the trails at that site may impact water quality in the Rio Hondo. Clearing trees directly uphill from the river and placing building sites on the slope may increase runoff thereby increasing silting, sedimentation and increase water temperature.

Unfortunately, some of those effects have already occurred and are visible today. The area identified for the Nordic and Snowshoe center was mechanically thinned in 2021. Subsequent to that thinning, erosion and exposure of soil are visible along the banks of the Rio Hondo. This damage and the TSVI's apparent failure to mitigate that damage, may violate Section VIII., J., Ground Surface Protection and Restoration, of the Ski Area Term Special Use Permit issued 6/5/2014.

¹⁴ Page 7

¹⁵ Pages 7-8

Increased amounts of silt, sediment and SPM may flow downhill to the beaver colonies immediately below the proposed Nordic site as well as the beaver lodges and dams further downstream. Fish spawning areas along the Rio Hondo may also be affected. Sedimentation and additional particulate matter may negatively impact the beavers, fish, plants, insects, amphibians and other biota that make up the Rio Hondo ecosystem.



Erosion on the Rio Hondo at Nordic Center Site

In addition the Rio Hondo has been designated an Outstanding National Resource Water. Degradation of baseline or existing water quality is not allowed in ONRWs except under very limited circumstances. The water quality must be protected and those protections apply to waters on public and private lands. TSVI risks sanctions if it fails to protect the waters of the Rio Hondo that lie adjacent to its activities.

We would like to point out that despite what the Draft Environmental Assessment and its amendments state¹⁶, building the Nordic and Snowshoe Center will result in permanent bare

¹⁶ "The Lift 4 hiking trail project element of the proposed action is the only project element that would result in permanent bare ground" Draft Environmental Assessment Page 46

ground. Based on the limited data in the Draft Environmental Assessment we estimate that the permanent bare ground will total more than 4 acres.¹⁷

Action Requested: We ask the USFS to include a No-Action alternative to building the Nordic and Snowshoe Center.

Action Requested: We ask the USFS to include alternatives to building the Nordic and Snowshoe Center that relocate the Center away from the Rio Hondo.

Action Requested: We ask that, if the USFS approves the Nordic and Snowshoe Center along the Rio Hondo, that it specify a setback from the Rio Hondo for the trails in the area that will provide reasonable space to ensure that silting, sedimentation and other effects of erosion will not impact the Rio Hondo due to the presence of the trails.

Action Requested: We also ask that the USFS require TSVI to repair the damage done to the banks of the Rio Hondo during the previous thinning activities.

Action Requested: We ask that the USFS analyze the Nordic and Snowshoe Center proposal to determine the direct, indirect and cumulative effects of the Nordic Center development on wildlife and water quality in the Rio Hondo.

¹⁷ "TSV would install approximately 3 miles of Nordic trails." SWSP Page 7. 3 miles x 18 feet wide = 95,040 Sq Ft = 2+ Acres. we assume the snowshoe trails would be about the same size.

Errors in Process

Failure To Notify And Engage With Acequias, Land Grant Communities And Other Rural, Historic Communities.

USDA, Forest Service and NEPA regulations as well as Presidential Executive Orders 13985 and 14096, require the Forest Service to reach out to potentially affected communities and groups of people to solicit and consider their input on the project projects.

As with many of the other required activities of this NEPA process the Forest Service made minimal and insufficient efforts to comply with the repeated direction to involve the public. We understand during the Scoping Notice phase the Forest Service may have contacted individual members of one or two acequias, but they did not identify, contact or solicit input from most of the eleven Rio Hondo Acequias as individual organizations. Nor did they try to engage with the Land Grant-Merced organizations in the Rio Hondo Valley. The Forest Service did contact the Taos Valley Acequia Association (TVAA), but the TVAA does not represent all the Acequias along the Rio Hondo. And while TVAA is an effective and strong supporter of the local Acequias, contacting TVAA is not a substitute for contacting the Acequias themselves.

Those were activities conducted during the Scoping Notice phase of the Project. It seems that for the Draft Environmental Assessment phase the Forest Service's entire public outreach plan was to conduct a single public meeting. That meeting was held on March 23rd, 2023 at Taos Ski Valley. Taos Ski Valley lies at the top of a winding, 7 mile long, mountain road which is usually impacted by snow and ice in March. On the 23rd the road was not only snow packed and icy but there was a significant snowstorm that night. About 12" of snow fell that evening. Many local residents, eager to participate, were unable to navigate the road and attend the meeting. Those who were able to attend found that the format of the meeting precluded public comment. As identified in the Orders and Regulation cited above, the Forest Service is required to accept public comments. When the public sought to provide comment, the Forest Service attempted to deny them the opportunity. The Forest Service quickly relented and public comments were made but only at the insistence of the participants.

Unsatisfied with the single public meeting and its inaccessibility, some of the Rio Hondo acequia associations, including the Acequia de San Antonio, requested another public meeting. The Forest Service scheduled another meeting for May 9th, 2023. That meeting was held at a hotel in the town of Taos. When participants arrived they found that the meeting was again organized to preclude public comment, but this time more egregiously so. The Forest Service had arranged a series of staffed tables which offered a one-way flow of information. Despite elderly and disabled persons, including disabled veterans, being in attendance, no chairs were available for participants¹⁸. Chairs were, however, provided for Forest Service and TSVI

¹⁸ An ADA violation

employees. While the meeting was peaceful and the all ages participants respectful, an armed Forest Service law enforcement officer was present.

Federal Regulations and Orders not only require a public outreach effort but they also require the Forest Service to consider the input received from the public and incorporate it into the process including the development of alternatives. Despite collecting over 300 comments during the Scoping Notice phase there is minimal evidence that the Forest Service considered that input or incorporated it into the Draft Environmental Analysis¹⁹.

It is obvious that the Forest Service did not conduct the comprehensive, inclusive effort needed to ensure participation by the public as required by the laws, orders and regulations governing a NEPA process. The input they did receive from the public was not substantially incorporated into the process.

Action Requested: There is no way for the USFS to retroactively notify and collect information from the public. The only way to correct this error is to conduct a full Environmental Impact Statement process that includes a full public notification and engagement process. We request that they do so.

Environmental Justice

The Rio Hondo is a vital component of the rural historic communities that lie along its path. These communities are traditional Hispanic mountain villages that rely on the waters of the Rio Hondo to fill their acequias that support their traditional lifestyles. In addition to supplying the acequias, the Rio Hondo is the ultimate source for all the drinking water and domestic use water in the canyon and the valley. Therefore the quality of the water in all parts of the Rio Hondo is vitally important to the residents of the Rio Hondo communities. Any decrease in water quality or decrease in supply at the headwaters of the Rio Hondo may have a significant negative impact on life in Valdez, Cañoncito and Arroyo Hondo. Agriculture, health and cultural practices may all be negatively affected.

The Draft Environmental Analysis contains and reflects serious Environmental Justice issues. The proposed projects will benefit a wealthy group of privileged individuals and negatively impact low-income, disadvantaged²⁰ Hispanic communities who have been historically disenfranchised. Unfortunately, the Analysis itself is structured to ignore²¹, or erase, the downstream Hispanic communities, as it considers and dismisses the Environmental Justice issues of the Project in a scant two paragraphs and then proceeds to ignore the downstream communities in its discussion of the watershed.

¹⁹ Out of 516 substantive comments received during the Scoping Phase only 10 issues were identified and included in the Draft Environmental Assessment.

²⁰ The Rio Hondo valley is rated Disadvantaged by the Climate and Economic Justice Screening Tool <https://screeningtool.geoplatform.gov/en/#14.82/36.48824/-105.46361>

²¹ It's telling that the word "Hispanic" only appears once in a 59 page document covering enviro-social-economic issues in Northern New Mexico.

The Draft Environmental Analysis' Socio-economic analysis considers the impact area of the project as the whole of Taos County²² and fails to separately consider the communities which would be most directly impacted by the Project, that is, the rural communities along the Rio Hondo. By diluting the effects of the Project within the greater population of Taos County the Analysis erases the downstream communities from the analysis.

Similarly, the focus on travel and tourism in the Socio-economic analysis unjustly skews the conversation to the benefit of TSVI and away from the historic, rural communities along the Rio Hondo. Those communities; Valdez, Canoncito, Turley Mill, and Arroyo Hondo, do not have hotels, motels, restaurants or retail outlets to capture the benefits of the Tourism. Instead they use agriculture to supplement their food supply and incomes. Constructing the analysis to exclude agriculture ignores the unique characteristics of those primarily Hispanic and disadvantaged communities and again erases them from the conversation.

By ignoring these Environmental Justice issues the Draft Environmental Assessment violates numerous Federal Regulations and Directives:

1. Presidential Executive Order 12898 of February 11, 1994 *"Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations"*

Executive Order 12898 provides specific direction to Federal agencies. That direction was not applied during the development of the Draft Environmental Analysis:

Section 1–1 *Implementation of the Executive Order* says "...each Federal agency shall 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 in the United States...".²³ The Draft Environmental Analysis identifies diminished water supplies as a concern to acequias in the area but does not address or provide analysis of that issue and fails to identify and address the many other issues of concerns to the downstream communities. If the Forest Service had met its responsibilities to meet with and listen to the Rio Hondo residents they would have discovered these issues which include human health, social, cultural and environmental effects. These effects are both cumulative and direct.

The Executive Order also directs agencies to "(2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations." The Forest Service failed to notify or encourage the downstream

²² "The analysis area for the project is defined as Taos County, New Mexico." P 28 Draft Environmental Assessment

²³ Executive Order 14096 issued in April 2023 contains similar language.

communities of the opportunity to participate in the NEPA process (see detailed discussion in Section *“Failure to notify and engage with Acequias and Land Grant Communities and other rural, historic communities”*). The Draft Environmental Assessment makes no attempt to identify research and data collection opportunities that would provide the data needed to assess the health and environmental risks to the downstream communities even though those exist (see Section *“Failure To Consider Available Data On The Water Quality...”*).

The Analysis fails to identify or address the differential use of water among the Rio Hondo communities. The most definitive example of the differential use of water is the Rio Hondo communities' use of the Rio Hondo's waters for agriculture while the Ski Valley does not.

In general the Draft Environmental Analysis dismisses, ignores and minimizes the impacts of the Project on disadvantaged, minority communities and subsequently declines to discuss those impacts based on that dismissal. In a glaring misstatement the Draft Environmental Assessment says *“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.”* This one sentence contains many errors. Let me point them out in order:

- The Draft Environmental Assessment failed to identify the effects on populations with environmental concerns,
- It provides no analysis of EO 12898 vis-a-vis the proposed Project.
- While there are certainly cumulative negative effects to the Project, which the Draft Environmental Assessment ignores, there is no direction by Executive order, law or regulation to consider only cumulative effects.
- The Draft Environmental Assessment then waves away all Environmental Justice issues because they have concluded there are none based on a faulty and incomplete analysis.

2. USDA Departmental Regulation Number: 5600-002, December 15, 1997, Environmental Justice²⁴.

Departmental Regulation 5600-002 directs USDA's implementation of the E.O. 12898 and directly applies to this NEPA process:

Regulation 5600-002 directs that *“In determining whether there are disproportionately high and adverse environmental or human health effects, including social and economic effects, on an identifiable low income or minority population, agencies should consider, as appropriate, such effects as... ..noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's*

²⁴ <https://www.aphis.usda.gov/regulations/compliance/5600-002.pdf>

economic vitality; destruction or disruption of availability of public and private facilities and services;.... In determining if an effect on a minority and/or a low income population is disproportionately high and adverse, agencies should consider whether the adverse effect is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population."

The Forest Service failed to follow Regulation 5600-002 as follows:

- In failing to ascertain if there were any adverse environmental or human health effects of the project,
- By failing to consider noise pollution from increased traffic immediately adjacent to and above the Rio Hondo valley,
- By failing to consider or investigate water pollution resulting from the foreseeable follow-on and cumulative development in the Kachina Basin and in Twining.
- By failing to consider the effect of diminished water quality and quantity in the cohesion and economic survival of the Rio Hondo communities
- By failing to consider the effect of diminished water quality and quantity on the water delivery systems, both acequias and domestic (public and private facilities) in the Rio Hondo Communities
- And by failing to identify, consider and analyze the disproportionate effect of those impacts on the primarily Hispanic, disadvantaged communities in the valley vs. the wealthy, privileged, community in the Ski Valley.

Regulation 5600-002 further provides that *"Whenever feasible, identify mitigation measures that reduce significant and adverse environmental effects of proposed Federal actions on minority and low-income populations;"* Obviously since the Forest Service failed to identify any adverse effects and failed to identify the impacted minority and low-income populations they also failed to meet this portion of the Regulation by failing to identify any mitigation measures.

Since compliance with E.O. 12998 is required regardless of the nature of the activity (*"the requirements of E.O. 12898 and this Departmental Regulation must be met..."*) the Draft Environmental Assessment is non-compliant with the President's directive.

3. Executive Order 14096 of April 21, 2023, *Revitalizing Our Nation's Commitment to Environmental Justice for All*

E.O. 14096 Sec. 3 (iii) directs Federal agencies to *"identify, analyze, and address historical inequities, systemic barriers, or actions related to any Federal regulation, policy, or practice that impair the ability of communities with environmental justice concerns to achieve or maintain a healthy and sustainable environment"*. By systematically excluding the Rio Hondo communities from the analysis, the Forest Service has failed to meet the requirements of this Section of the E.O. in that they have not identified, analyzed or addressed the relevant issues.

E.O. 14096 Sec. 3 (vi) further requires agencies to “*consider adopting or requiring measures to avoid, minimize, or mitigate disproportionate and adverse human health and environmental effects (including risks) and hazards of Federal activities on communities with environmental justice concerns, to the maximum extent practicable, and to address any contribution of such Federal activities to adverse effects — including cumulative impacts of environmental and other burdens — already experienced by such communities*”. By failing to identify those negative impacts and thereby ignoring them (see above) the Forest Service finds itself unable to meet the requirements of the Presidential Directive by adopting or requiring measures to reduce the effects of those impacts

We realize that Executive Order 14096 was signed by the President after the Draft Environmental Assessment was released. However E.O. 14096 is in effect today. And the requirements of the E.O. build on and expand the Environmental and Social Justice requirements in other laws, regulations and Presidential Directives. If those other requirements had been met the Draft Environmental Assessment would likely be in substantive compliance with E.O. 14096. But the lack of compliance with those other laws, regulations and directives has left the Draft Environmental Assessment also out of compliance with E.O. 14096.

The waters of the Rio Hondo are important for cultural and traditional needs as well as for subsistence practices and economic support of rural historic communities. While the proposed projects may directly affect the waters of the Rio Hondo the proposal makes no provisions for ensuring that the water is of high quality, and is available in sustainable amounts. A more reasonable plan would include provisions for continuously and openly, measuring and monitoring the quantity and quality of water in the Rio Hondo as well as cooperatively managing the flow of the river. It is reasonably foreseeable that the lack of consideration of the Rio Hondo communities' needs may result in Rio Hondo water being unavailable and/or unacceptable for use.

These immediate Environmental Justice concerns are bounded by the historical injustices visited upon the Rio Hondo communities. Historically the residents of the Rio communities held the lands in the upper Rio Hondo in common. They used the canyon to pasture their animals, as a source of firewood, to forage for food and medicinal plants, for hunting, for religious practices, and, of course, as a source of potable water. These usages were not unique to the Rio Hondo, the same pattern of common resource usage existed throughout Northern New Mexico and Southern Colorado²⁵. When the Taos Forest Reserve was created in 1906 the Hispanic pastoral-agriculturalists of the Rio Hondo were dispossessed of these common lands and eventually forbidden from using them in their customary and ancient manner. Those lands subsequently became part of the Carson National Forest. In time, some of the formerly common lands of the Rio Hondo were given to Taos Ski Valley Inc. for its private, for-profit use. These

²⁵ “Hispanic Land Grants, Ecology and Subsistence in the Uplands of Northern New Mexico and Southern Colorado,” by John Van Ness, *Land, Water, and Culture, New Perspectives on Hispanic Land Grants*, ed. by Charles Briggs and John Van Ness, UNM Press 1987, pp. 141-214.

events may seem like ancient history to many but to the residents of the Rio Hondo they have a current and continuing effect on their traditional way of life and cultural practices.

Action Requested: We request that USFS, in conjunction with the affected communities, develop a thorough and complete analysis of the Environmental Justice issues at stake and include conclusions that reflect that analysis.

Action Requested: We request that USFS ensure compliance with Executive Order 14096

Action Requested: We ask that the USFS analyze the direct, indirect and cumulative effects of the projects on the rural, historic communities along the Rio Hondo. The analysis should include the project's effect on the quantity and quality of the water in the Rio Hondo as well as the project's impact on the economy, health, services and culture of the Rio Hondo rural historic communities.

Failure To Include Alternatives including "No Action" Alternatives.

The Congressional Declaration Of National Environmental Policy (42 U.S. Code § 4331) states that it is the intent of Congress to:

- “(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;”

To implement that intent it is necessary to not only consider the actions proposed but to also consider alternatives to those actions. To that end, multiple Federal Laws, Forest Service regulations and NEPA regulations require the inclusion of alternatives including No-Action alternatives in NEPA actions.

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.

The Draft Environmental Assessment states "The range of alternatives that the Forest Service ID Team considered for this analysis was bound by the purpose and need underlying the proposed action, as well as by the issues that arose from internal and external scoping." Federal Courts have ruled that while the purpose and need of the proposed project binds the analysis of alternatives, they cannot be used to eliminate the consideration of all substantive alternatives as has been done in this Draft Environmental Assessment.

The Draft Environmental Assessment does include four alternatives to sub-components of the Project but eliminates them from consideration immediately with no substantive discussion. Ironically, the section labeled "Alternatives Considered in Detail" contains no alternatives at all.

The Draft Environmental Assessment itself contains no No-Action alternatives. The Wildlife Technical Report appended to the EA does list cursory "No Action" alternatives for six of the proposed activities without substantial discussion. Lack of substantial discussion of alternatives itself violates Forest Service Regulations.

Despite being required by Federal Regulation the Draft Environmental Assessment does not present alternatives to the vast majority of the actions in the Proposal. It fails to adequately address the minimal alternatives it does present. There are no "No Action" alternatives included for the issues of concern to Acquias, that is, water quality, water availability, destruction of watershed habitats and impacts to our way of life. The restriction of the scope of alternatives, the lack of alternatives and the absence of a substantive discussion of alternatives renders the Draft Environmental Assessment incomplete.

Action Requested: We ask that the Forest Service include alternatives to all the actions proposed, including No Action alternatives, and thoroughly discuss those alternatives including all regulatorily required components.

Failure To Consider Available Data On Water Quality

The "Soil And Watershed Specialist Report" appended to the Draft Environmental Assessment only addresses water in the Canyon²⁶. The quality of water below the canyon mouth is ignored. The NM Environment Department and the Forest Service themselves have both found the Rio Hondo below the Canyon to be compromised. My understanding is that both the Forest Service and the Environment Department sample water immediately below the mouth of the canyon. If so, that means the waters are compromised before they have left Forest Service land. Further, easily foreseeable development will only make the water quality worse.

²⁶ Page 13

The Forest Service maintains an online Watershed Condition Interactive Map²⁷. On that map the headwaters of the Rio Hondo are graded "Functioning Properly" and the Lower Rio Hondo is graded "Functioning At Risk". The map provides further details on the Lower Rio Hondo:

Aquatic Biota Condition	Fair (At Risk)
Water Quality Condition	Poor (Lowest Rating, Impaired)
Water Quantity Condition	Fair (At Risk)
Aquatic Habitat Condition	Fair (At Risk)

The New Mexico Environment Department occasionally samples the water in the Rio Hondo. Similar to the Forest Service, they found areas of concern ("impacts have been observed that warrant close attention during future surveys") the last time they sampled in 2004. During that sampling pH levels were abnormal and water temperatures were elevated.

The proposed project in combination with easily foreseeable additional development in the Ski Valley may lead to significant negative cumulative effects on the quality of water in the Rio Hondo. As discussed in the *Cumulative Effects* section the USFS is required to consider cumulative effects even when they occur on non-USFS lands.

Action Requested: Include a comprehensive analysis of the water quality effects of the project regardless of where those effects occur and including all publicly available data.

Action Requested: New Mexico State University has funding for a project that will regularly monitor water quality in the Rio Hondo. That project will begin this summer. We ask that the USFS delay approval of the Gondola, Restaurant 7, Nordic Center and Water Tank components of the project until results from that NMSU water quality project are available to assess the current state of the Rio Hondo. In addition to assessing current conditions the NMSU project can be used to monitor water quality during and post construction. This prudent delay would help fulfill the Forest Services responsibilities under Executive Order 14096 "xi (B) ...considers best available science and information on any disparate health effects (including risks) arising from exposure to pollution and other environmental hazards..."

Cumulative Impact

We want to emphasize that the Draft Environmental Assessment sometimes constrains the scope of cumulative effects to the SUP and the Base Area. The relevant regulations and Executive Orders do not similarly restrict the consideration of cumulative effects. Instead they direct the Forest Service to consider cumulative effects "without regard to land ownership boundaries or who proposes the actions" and to consider the effects on "communities" with no qualifications as to their location vis-a-vis Forest Boundaries.

The Draft Environmental Assessment presents an optimistic view of the cumulative effects of the Project: "It is anticipated that when combined with the recreation opportunities provided by

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<https://usfs.maps.arcgis.com/apps/MapSeries/index.html?appid=f4332e5b80c44874952b57e1db0b4407>

past projects, the proposed action would have a cumulatively beneficial impact to recreation at TSV and guests of TSV". The Draft Environmental Assessment is only able to arrive at this rosy view of the Project by ignoring significant and easily foreseeable negative consequences of the development.

Forest Service regulations anticipate this strategy and prohibit it:
FSH 1909.15 - NEPA HANDBOOK CHAPTER - ZERO CODE

"Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts."

When considering the true scope of projects in the Ski Valley the range of cumulative effects is much broader and less beneficial than those cumulative effects presented in the Draft Environmental Assessment. Additional projects proposed for the Ski Valley include:

- The development of private land in the Kachina Basin. TSVI has plans to develop that land to include spas, entertainment facilities, 24,000 sq. ft. of retail space, 100 new residential units and additional parking to support those activities,
- The portions of the 2021 MDP which have not yet been implemented, including additional base area expansions, construction of new guest facilities and upgraded multi-season and summer activities,
- New hotels, for example the significantly expanded Hotel St. Bernard,
- Major expansion of Village of Taos Ski Valley facilities, including a new Village Hall, new Fire Stations, public meeting spaces, a helipad, a recycling facility, bike paths, bus stops, and a wetlands park,
- And private plans for development which have not yet been made public.

We can surmise the scope of all the potential development from the Village of Taos Ski Valley *Master Water Plan*²⁸ issued in 2021. In that Plan significant growth is projected in the Kachina and Base areas including:

Type	2019 Baseline	Potential Growth	% Increase
Total Single Family Residences	103	209	102%
Hotel Rooms	108	186	72%
Multi-Family Residences	276	323	17%
Non-Residential Square Footage	155,272	205,572	32%

Table 1.

²⁸ <http://www.vtsv.org/wp-content/uploads/2022/03/WMP-Report-FINAL-12-16-21.pdf>

This level of growth is so significant that the 2021 *Water Master Plan* warns “if no improvements are made to the distribution system to reduce line losses, then it will be impossible to demonstrate that water will be available for any future development, including extending service to Amizette.” Not only have no improvements been made to the distribution system, but the distribution system has degraded significantly since the Plan was written as evidenced by the two major water outages last winter.

Approval of the portions of the *Gondola and Other Improvements Project* that would facilitate further development in the Ski Valley will significantly increase the cumulative effects of the past and current development.

Those effects are not theoretical. They have already begun and are evidenced by the malfunctioning Village water distribution system, the malfunctioning Village wastewater treatment plant and the water debt that the Village has incurred by approving the building of the Hotel St. Bernard without sufficient water.

Negative cumulative effects of all this development are not limited to water availability. Similar issues can be anticipated with water quality, traffic, impacts to wildlife, impacts to the wilderness areas, environmental justice and more.

The Forest Service must consider all the cumulative effects of the proposed project. Without a thorough identification and analysis of all those cumulative effects the Draft Environmental Assessment is incomplete.

Action Requested: We ask the Forest Service to thoroughly identify the cumulative effects for all components of the Project and include a complete analysis of those effects.

Need for an Environmental Impact Statement

An Environmental Assessment is inadequate to address all of the issues and potential impacts of this large scale and complex project. 42 USC Title 40 Chapter V Subchapter A Part 1502 § 1502.3 identifies the Statutory requirements for Environmental Impact Statements as follows:

“As required by section 102(2)(C) of NEPA, environmental impact statements are to be included in every Federal agency recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.”

Forest Service regulations (FSH 1909.15, Section 5) defines significance for this purpose. The *Gondola and Other Improvements Project* meets multiple definitions of significance and, therefore per Forest Service Regulation, an Environmental Impact Statement is required for the Project. The significance definitions and a short discussion of how the Project meets those definitions follows:

“(2) The degree to which the proposed action affects public health or safety.”

The proposed project has the potential to significantly impact the water quality and availability for downstream communities. Reasonably foreseeable follow-on and cumulative development in the Kachina basin will capture water in excess of current utilization levels. As upstream usage increases and climate change makes less water available overall, water levels in the Rio Hondo will continue to drop with the potential to create shortages for both agriculture and domestic use²⁹ in the downstream communities. Continued development of the headwaters of the Rio Hondo will also affect water quality. As less water enters the stream, pollutants and contaminants will be concentrated in a smaller volume of water. That will increase the effects of runoff, any accidental but inevitable spills of pollutants and further compromise the already malfunctioning Village of Taos Valley wastewater system. In addition, the lower volume of water will naturally flow at a slower speed. Slow movement increases water temperature which lowers water quality.³⁰

“(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.”

The proposed projects abut declared wilderness areas, ecologically critical areas (wetlands, the headwaters of an Outstanding National Resource Waters, and unique riparian areas) and will have an impact on the rural, historic communities downstream from the project.

“(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.”

Development in the Ski Valley has been the subject of protests, lawsuits and controversy since the 1980s. Recently downstream Acequia associations have officially called for a moratorium on development and the local newspaper has supported that moratorium.

“(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.”

The approval of the Gondola Project will lead to reasonably foreseeable actions to further develop the Kachina basin and the greater Taos Ski Valley area. In addition if the Project is approved under the extra-regulatory conditions outlined in the Draft Environmental Assessment it will serve as a precedent for additional extra-regulatory actions.

“(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a

²⁹ It is important to note that acequias not only deliver surface water for agricultural uses, they also recharge wells and aquifers all along their route.

³⁰

<https://www.usgs.gov/special-topics/water-science-school/science/temperature-and-water#:~:text=Temperature%20is%20also%20important%20because,have%20a%20higher%20electrical%20conductivity.>

cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. “

The approval of the Gondola Project will lead to reasonably foreseeable actions to further develop the Kachina basin and the greater Taos Ski Valley area. Those actions will impact, but not be limited to, wastewater and water systems in Ski Valley, water availability and water quality all along the Rio Hondo including the Ski Valley, Valdez, Canoncito, Turley Mill and Arroyo Hondo. Those actions will have cumulative significant impacts (see further discussion in the *Cumulative Impact* Section) on the human environment via the direct and cumulative effects on the downstream communities.

“(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.”

The Gondola project through its impact on the headwaters may cause loss or destruction of historical lifestyles and acequia systems in the rural, historic communities which lie downstream of the development (see further discussion in the *Environmental Justice* Section).

Action Requested: We ask that the USFS study the direct, indirect and cumulative effects of the proposed development and the interaction of that development with all the other ongoing and planned projects in and around the Ski Valley to determine the likely cumulative effects of the Project.

Action Required: Individually any of these factors would trigger an Environmental Impact Statement process per Federal Regulation. Taken together they make the use of an Environmental Impact Statement unavoidably required. Therefore, We request that the Forest Service conduct an Environmental Impact Statement process that is compliant with the applicable Federal Laws and Regulations.

General Errors and Discrepancies

Overall the quality of the Draft Environmental Assessment is very low. It contains numerous errors and misleading statements. It consistently ignores NEPA processes and relevant regulations. In addition it fails to provide access to documents that form the basis for some of its conclusions. Those errors put the Forest Service at risk for a successful legal challenge to the process and, more importantly, deprive the public of a fair opportunity to understand and comment on the Project.

Examples of Errors and Discrepancies:

- A. Comfortable Carrying Capacity (CCC) is a metric which was developed by SE Group for use in determining ski area capacity. SE Group considers the formulas proprietary and

will not release the formulas to the public so there is no way to verify whether they are accurate, reasonable or applied consistently.

- B. "TSV currently utilizes its complete diversionary right for 200 acre-feet and would continue to do so under the proposed action." According to TSVI it does not use its complete diversionary right for 200 acre-feet per year of water. According to the handout entitled "Water Rights & Usage FAQ" distributed by TSVI at the May 9th meeting it uses about 145 acre feet per year of that right.
- C. Inadequate Maps
The *Soil and Water Specialist Report* references maps in support of its conclusions³¹. Those maps are at a scale and level of detail which makes it impossible for the reader to judge whether those conclusions are correct.
- D. *Table 1. Project Element Disturbance Areas* in the *Soil and Water Specialist Report* does not specify the unit of measure for the disturbance areas. Is it square feet, acres, meters?
- E. "This wilderness area [Columbine-Hondo Wilderness (CHW)] does not share a boundary with TSV like WPW does; therefore, it is expected that no direct or indirect impacts would occur within this wilderness area as a result of the proposed projects. Because of the spatial separation, the CHW will not be analyzed any further for impacts expected from the proposed projects." The CHW may not actually touch the SUP but the CHW lies within 100 meters of the SUP. At its closest the CHW is only separated from TSVI SUP by a parking lot. Certainly that should be close enough to trigger the consideration of the impacts of the Project on the CHW.
- F. The Draft Environmental Assessment references³² TSV status as a certified B-Corporation as validation for its business practices. B-Corp certification is a private certification based on self-reported criteria and is not linked to any international standard. It is used as a public relations tool, not an objective measure of a company's business practices.
- G. Table 3-1. TSV Existing Employment lists seasonal employees as "full-time." According to the IRS and the US Labor Department, a seasonal worker is not full-time.
- H. The Draft Environmental Analysis states "...This lift [the Kachina Peak Lift]] is used in conjunction with Lift 4 for longer descents and in conjunction with Lift 7 to access the Frontside." The Kachina Peak Lift ends at the top of Kachina Peak and does not link up to Lift 7 in a way to provide meaningful access to the Frontside.
- I.

³¹ "Disturbance to existing vegetation and soil would be limited to the areas depicted in Figures 2 & 3, to reduce soil erosion and stormwater pollution"

³² Page 33

- J. The Pit House is listed as a guest service facility. In reality, it is a snowmaking facility.
- K. The Soil and Water Specialist Report says “Small portions of the base-to-base Gondola including **both terminals** and a segment of the Gondola line would be located on TSV lands.” But the Draft Environmental Assessment says “Specifically, the terminal proposed within the Kachina Basin base area would be **located on NFS lands**” [Emphasis added]
- L. The captions on the photos in the *Botany BA*, are confusing and misleading.
- M. The document labeled *Botany BA* is not a Botany specific Biological Assessment. In fact it doesn’t contain the word “botany” at all. It appears to be an all species Biological Assessment.

Action Requested: We ask the USFS to correct the above errors and discrepancies.

Missing Documents

USDA Regulation 5600-002 requires agencies to “ensure that **public documents**, notices, and hearings relating to human health or the environment are concise, understandable, and **readily accessible to the public**.” [Emphasis added]

At the March 23rd meeting a slide deck³³ was used that was labeled as a Forest Service product. Slide 10 of that Slide Deck stated: “A water sufficiency report has been performed, finding a sufficient supply”. Given that the water sufficiency report was used as a basis for a finding, the report should be publicly available. There is no water sufficiency report in the Project Documents website for this Project. Kevin Bersell, one of our Commissioners, requested that report from Paul Schlike, with a CC to Adam Ladell and James Duran, on March 27th. Almost 2 months later he has not received a response to his request and the water sufficiency report has not been made available on the Project Website.

Both the Draft Environmental Assessment and the Soil and Water Specialists report reference a *Storm Water Pollution Prevention Plan* (SWPPP) as a key component of the framework to safeguard the TSV environment. The Draft Environmental Assessment states that the SWPPP is available in the project file. There is no SWPPP on the Project Documents website for this Project. Kevin Bersell, one of our Commissioners, requested a copy of the SWPPP from Paul Schlike, with a CC to Adam Ladell, on April 19th. As of May 17th, He has not received a response to his request and the SWPPP has not been made available on the Project Website.

The Soil and Water Specialist Report states “This area was previously analyzed and approved as a snowshoe zone in the *2012 TSV MDP – Phase 1 Projects Environmental Impact Statement and Final Record of Decision (ROD)*”. That document is not available on the Project website and does not appear in web search.

³³ <https://usfs-public.app.box.com/v/PinyonPublic/file/1175180477869>

The table of contents for the *Botany BA* and the *Wildlife Report* both list an *Appendix B. USFWS Species List/Consultation Letter* in their Table of Contents. There is no *Appendix B. USFWS Species List/Consultation Letter* in either report.

Requested Action: We request that USFS either remove all references to the missing documents or provide the documents.