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Assistant Mayordomo, Victor Martinez



Secretary, Sylvia Rodriguez
Treasurer, Laura DuMond Kerr
Chair, Kevin Bersell

December 12, 2024

USDA Forest Service
Attn: Objection Reviewing Officer, Michiko Martin, Regional Forester
333 Broadway Blvd SE
Albuquerque, NM, 87102

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

Re: Objection regarding Taos Ski Valley, Gondola And Other Improvements Projects

Estimada Sra. Martin,

We are the Commissioners of the Acequia de San Antonio located in Valdez, NM 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 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 inadequate. It does not comply with the applicable statutes, regulations and Presidential Orders. The required public outreach effort was inadequate and unproductive. The process errors are egregious. The Final Environmental Assessment is unacceptable to the residents of the lower Rio Hondo Valley.

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.

Pursuant to 36 C.F.R. § 218, we are filing an objection regarding the Taos Ski Valley, Gondola and Other Improvements Project. The objection is submitted on behalf of the Acequia de San Antonio.

This Objection is filed pursuant to, and in compliance with, 36 C.F.R. Part 218, Subparts A and B. In accord with 36 C.F.R. 218(a) We have previously filed timely, specific and substantive written comments. As required by 36 C.F.R. § 218.8(d), Objector provides the following information:

1. The name and contact information for the Lead Objector is listed below.

[REDACTED]

3. [REDACTED] is the lead Objector for purposes of communication regarding this Objection.

4. The project that is subject to this Objection is "Taos Ski Valley, Gondola And Other Improvements Projects". The Responsible Official is James Duran, Forest Supervisor, Carson National Forest. The National Forest on which the proposed project will be implemented is: Carson National Forest, Questa Ranger District. The objection period was announced October 31, 2024.

5. Objector submitted timely, specific, and substantive comments during the Public Comment Period on May 21, 2023 (attached). All points and issues raised in this objection refer to issues raised in that comment letter or are related to new information. Attached hereto are prior comments and we incorporate their arguments and information by reference.

6. In the following statements, Objector provides the specific reasons why the decision is being appealed and the specific changes or suggested remedies that are sought, along with the related evidence and rationale on why the decision violates applicable laws and regulations.

Atentamente,

[REDACTED]

GENERAL STATEMENT OF OBJECTION

This *Taos Ski Valley Gondola and Other Improvements Project Final Environmental Assessment* (Final EA) has significant issues. It does not comply with the applicable statutes, regulations and Presidential Orders in numerous ways. The required public outreach effort was inadequate. The process errors are numerous.

Given the number and scope of problems with the project We believe the current process is unrecoverably damaged. The process to this point has not resulted in an Environmental Assessment that meets the goals and objectives of the National Environmental Policy Act or the regulations and practices of the U.S. Forest Service. In addition the Final EA fails to adhere to decisions of the Federal Court system.

Suggested Remedy: Prepare an Environmental Impact Statement (EIS) that includes the components the current phase missed and rectifies the errors and omissions in its processes.

SPECIFIC OBJECTIONS

Note: The Final Environmental Assessment 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 Final Environmental Assessment.

In this response we will try to be clear when we are referring to Taos Ski Valley Incorporated ("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."

Objections to Specific Components

The Acequia de San Antonio made numerous, detailed comments regarding the specific components of the Project during the Public Comment Period on May 21, 2023 (attached). We include and repeat them here as objections by reference. In addition we are amplifying our comments and adding objections to those specific components below.

Objections: Project Design Criteria

The Project Design Criteria are new information in the Final EA and are not subject to the relevance requirements of the Objection process.

The Final EA proposes Project Design Criteria (PDC) that are meant to prevent or remediate effects of the Project. In general the PDC are focused on the immediate effects of construction.

Only a few of the PDC attempt to provide controls for long term effects of the Project. Our comments and select remedies to specific PDC follow:

Objection: The PDC fails to acknowledge TSVI and the Forest Service responsibilities under State and Federal law related to the Rio Hondo's designation as an Outstanding National Resource Water (ONRW).

Suggested Remedies:

- Require TSVI to obtain Section 404 and National Pollutant Discharge Elimination System ("NPDES") permits prior to beginning construction
- Prior to beginning construction the Forest Service needs to meet its obligations under Agreement Number 23-MU-11031600-095 with the New Mexico Environment Department. Specifically:
 - Consult with the Environment Department to assess whether the Project will comply with all requirements of the State's Antidegradation Policy and Implementation Procedures.
 - Consult with the Environment Department to make determinations about compliance with the State's Antidegradation Policy and Implementation Procedures through the Section 401 certification process;
 - Coordinate with the Environment Department to develop shared protocols for implementing ONRW protections, including strategies to prevent future degradation in the Rio Hondo;
 - Provide the Surface Water Quality Bureau appropriate and timely opportunity to participate in the project and in developing activity plans that have the potential to impact watershed condition, riparian areas, or water quality;
 - Coordinate with the Environment Department on identifying existing or potential nonpoint source water pollution problems¹ resulting from the Project
- Obtain Clean Water Act (CWA) 402 stormwater discharge permit coverage from the appropriate State agency or the U.S. Environmental Protection Agency (EPA) as required in the *National Core BMP Technical Guide*².

Objection: The PDC fails to provide any significant, actionable protections for downstream communities and water users.

Suggested Remedies:

- Add PDCs to:
 - Require TSVI to immediately notify communities, acequias, ditches and mutual domestic water associations in the Rio Hondo valley of any discharges of sewage and/or other contaminants. Consult with the communities, acequias, ditches and

¹ A recent analysis of Rio Hondo water quality by NMSU has identified numerous non-point source pollution (E. Coli) problems along the SUP boundary.

² National Best Management Practices for Water Quality Management on National Forest System Lands, Volume 1: National Core BMP Technical Guide (FS 990 2012)

mutual domestic water associations to document how they would like to be contacted.

- Allow representatives of downstream communities, acequias, ditches and mutual domestic water associations to inspect TSV equipment and operations to evaluate any potential or actual water quality or quantity issues.
- Prepare an Environmental Impact Statement (EIS) that includes significant, actionable protections for downstream communities and water users.

PDC: “TSV shall prepare a Stormwater Pollution Prevention Plan to mitigate erosion and sedimentation in the Lake Fork Creek and Rio Hondo prior to construction of projects.”

Objection: The PDC doesn’t acknowledge the downstream communities and acequias as stakeholders in TSVI’s pollution prevention plans.

Suggested Remedy: Include community and Acequia/Ditch leadership in defining and reviewing the Stormwater Pollution Prevention Plan.

PDC: “TSV shall coordinate with the Carson to implement and perform monitoring of the Rio Hondo and Lake Fork Creek in order to mitigate impacts to water quality and water quantity.”

Objection: Water quality and water quantity are vital interests of the residents and Acequia/Ditch Associations in the Rio Hondo Valley and their interests are not considered in the PDC.

Suggested Remedy: Include the residents and Acequia Associations of the Rio Hondo Valley in the development of criteria for water quality and quantity monitoring, including the frequency and location of sampling and reporting standards.

PDC: “Water usage and metering information shall be made publicly available, quarterly, for all project components utilizing water (Lift 7 Restaurant, Whistlestop Café, water tank and booster station).”

Comments:

- TSVI’s water rights are limited by a hard cap of 0.11 acre feet of daily consumptive use between April 11th and October 25th each year, quarterly reporting is not sensitive enough to capture daily violations,
- the cutoff dates of April 11 and October 25 don’t line up neatly with quarterly reporting,
- “Publicly available” is not a well defined term and some interpretations may preclude the residents and Acequia Associations of the Rio Hondo Valley from accessing the data,
- “Water Usage” is not defined. It may or may not apply to water diverted to fill the tank before it is actually used. It may be interpreted to only mean consumptive use. The other

stakeholders on the Rio Hondo have a vital interest in knowing when and how much water is removed from the watershed and how it is used regardless of its legalistic categorization,

- Limiting water usage information to the “project components utilizing water” will fail to provide a complete picture of TSVI’s water usage.

Suggested Remedies:

- Specify shorter reporting periods that allows interested parties to assess adherence to daily consumptive usage.
- Include split reporting that allows interested parties to assess adherence to the April 11 and October 25 cutoff dates.
- Consult with the residents and Acequia Associations of the Rio Hondo Valley to identify how water usage and metering information will be reported including retention periods and methods.
- Define water usage to mean any water removed from the watershed, the Rio Hondo or the Lake Fork. Require TSVI to separately report any removal of water from the watershed or the rivers, the total amount used (regardless of consumptive use calculations) and the calculated consumptive use by category of usage.
- Include information on all uses of water

PDC: “To adhere to the 1999 State of New Mexico *Night Sky Protection Act* the base-to base gondola will not operate from 11pm to sunrise”

Objection: Eleven PM is well after sunset regardless of the time of year. The lights and noise resulting from operating the gondola after sunset will impact nocturnal and crepuscular animals as well as human residents of the Village. Few if any outdoor recreation activities occur after sunset in the SUP making the use of the gondola unnecessary at those times.

Suggested Remedy: Restrict use of the gondola to daylight hours only.

PDC: “TSV shall participate in annual coordination meetings with acequia leadership and engagement in water-sharing dialog during times of low flow.”

Objection: This PDC lacks sufficient detail:

- Simply meeting with Acequia/Ditch leadership without specific goals may be unproductive,
- The PDC doesn’t reflect the input of Acequia/Ditch leadership regarding their goals for meeting with TSVI,
- It fails to identify mechanisms for actions resulting from the annual meetings,
- “Acequia leadership” is undefined. Other stakeholders, such as Mutual Domestic Water systems and ditch associations, are excluded from the PDC,

- The PDC is unclear if the annual coordination meeting and the water sharing dialogs are the same activity or different activities with different timelines, and
- Water-sharing (“Repartimiento”) is a dynamic process with meetings that occur frequently during times of low flow.

Suggested Remedies:

- Restate the PDC to make clear that the coordination and water-sharing meetings are separate events both requiring attendance.
- Identify TSVI responsibilities for participating in follow-up activities resulting from the annual meetings.
- Include specific, actionable goals for those meetings.
- Define “acequia leadership” to include the commissions of the individual acequias and ditches drawing water from the Rio Hondo. Taos Valley Acequia Association may be included but since it doesn’t represent all the acequias and ditches along the Rio Hondo it should not be the only representative
- Include other stakeholders, such as Mutual Domestic Water Systems and Ditch Associations in the meetings.
- Consult with Acequia/Ditch leadership and include their goals for meeting with TSVI, and
- Require TSVI to participate fully in the Water-sharing (Repartimiento) process.

PDC: “To mitigate potential for increased use of the Williams Lake Trail and thus the WPW, only ticketed guests to TSV or non-skiing guests attending special events within the TSV SUP boundary will be allowed to use the gondola. In other words, guests would have to have a ticket for an activity or event within the TSV SUP to utilize the proposed infrastructure, dissuading wilderness use emanating from the proposed base-to-base gondola. Tickets may be nominal in pricing. Obtaining a ticket will allow TSV to inform guests of regulations and boundaries on nearby NFS lands. Use of the gondola by non-ticketed guests may be allowed in the future following further study of guest use patterns and the broader use of the WPW. Since determining use of tickets, ticket pricing, and access to NFS lands is at the discretion of the Carson, it will be documented in an amendment to TSV’s operating plan. Additional NEPA review and authorization will not inherently be required for this amendment.”

Objection: This PDC conflicts with the statement on Page 25 of the Final EA: “Whether or not the proposed base-to-base gondola would be free to non-TSV users during the summer months would be a business decision at the discretion of TSV.”

There are numerous potential loopholes in this PDC. “Special events” aren’t defined. Neither is nominal pricing. For example, without definition something as simple as eating lunch at the Bavarian and having a ticket included in the price of the meal would qualify the visitor to ride the gondola. Undefined terms may undermine the intent of this PDC to deter increased use of the WPW due to the Gondola.

Opening up the Gondola to unrestricted use goes well beyond “determining use of tickets, ticket pricing, and access to NFS lands”. It goes directly to the cumulative effects of the Project which the Carson is required to assess before making changes.

Suggested Remedies:

- Remove the referenced statement on Page 25 of the Final EA.
- Define the terms “Special Events” and nominal pricing.
- The Carson is required to assess the cumulative effects of the Project before granting approval for changes. Either make and document that assessment now or commit to conducting a NEPA review at the time the change is considered.

PDC: “TSV shall prepare and submit for written approval by the authorized officer a Water Conservation Plan identifying appropriate strategies to limit the amount of water removed from NFS lands.”

Objection: The PDC doesn’t acknowledge the downstream communities and acequias/ditches as stakeholders in TSVI’s water conservation efforts.

Suggested Remedy: Include community and acequia/ditch leadership in defining and reviewing the Water Conservation Plan.

Objections: Water Tank and Booster Station

(See Draft EA Comments Pages 5-7)

Water Usage:

The Final EA proposes a strategy to ensure the water tank is full at the end of the ski season: “Specifically, TSV could divert water from the Rio Hondo in early spring when runoff is high” and goes on to say “Additionally, the water would not be diverted from the Rio Hondo during Acequia irrigation season (summer) as this does not coincide with periods of snowmaking at TSV or the spring diversion to fill the tank for the summer”

This strategy is uninformed and contrary to the needs and traditional practices of the acequia systems. The irrigation season begins in early spring when runoff is high and continues through the fall. If TSVI follows this strategy it’s use will directly conflict with the needs of the downstream water users. If the Forest Service had meaningfully consulted with the Rio Hondo acequias and ditches it would have had this information prior to preparing the Final EA.

In addition, due to climate change, the spring melt will move the irrigation season earlier in the year and make what was historically a short overlap between ski season and irrigation season into a much longer time period.

The Final EA fails in its duty to identify the non-snow making, non-firefighting uses of the water and how the Water Tank will contribute to those uses. Non-snow making, non-firefighting uses

have the potential to increase water usage above the current level. In the February 2022 *Taos Region Clean Energy Transportation & Recreation Corridor* presentation to the Taos County Planning Board³, the Water Tank project was identified as an “economic resiliency and emergency fire suppression” project. The Final EA fails to identify those economic resiliency uses and their compatibility with the Forest Plan and the Special Use Permit. We raised these issues in our comments on the Draft EA but the Final EA does not address them.

Suggested Remedy: Consult with acequia and ditch leadership on how best to time and manage water diversions from the Rio Hondo watershed. Include that input into an Environmental Impact Statement.

Suggested Remedy: Provide an analysis of the potential non-snow making, non-firefighting uses of the water to be held in the Water Tank. Furthermore, provide an analysis of all of the uses of the water in terms of the various conversion rates and time frames that apply to TSVI’s water rights. Include that analysis into an Environmental Impact Statement.

Suggested Remedy: Prohibit the Water Tank system from interconnecting with facility water systems other than the snowmaking system.

Snowmaking

Contrary to the conclusions of the Final EA, snowmaking can have adverse impacts on the natural environment. The Forest Service itself acknowledges those adverse impacts:

“Construction of diversion, conveyance, storage, and delivery structures can create ground disturbance leading to erosion and sedimentation. Water withdrawal from rivers and streams can create or exacerbate stream dewatering and adversely affect overwintering habitat for fish and other aquatic-dependent species. Transfer of water from one basin to another for snowmaking can lead to an annual water supply outside the natural range of variation in the receiving watershed. This additional water in spring runoff can cause changes in stream channel morphology including streambank erosion and headward extension of the channel.”⁴

Despite the Final EA’s repeated assertions that snowmaking will not increase, TSVI has explicit plans to increase snowmaking as detailed in our comments to the Draft EA.

The Final 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. In fact it proposes a strategy (see above) that would remove significant amounts of water from the Rio Hondo at the time it is needed the most by downstream users. Further impacting water availability are the effects of climate change which are reducing the amount of water available in the Rio Hondo⁹ cumulatively with increased

³ [Taos Region Clean Energy Transportation and Recreation Corridor proposal Feb. 8, 2022](#)

⁴ National Best Management Practices for Water Quality Management on National Forest System Lands, Volume 1: National Core BMP Technical Guide. FS-990-A

usage by TSVI and VTSV.

Regardless of TSVI's water rights, the Forest Service has a regulatory and legal responsibility to analyze the impacts of projects on its land in terms of cumulative impact and to require TSVI to implement mitigating actions to protect downstream users. If allowed to proceed as proposed, the reasonably foreseeable 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.

Suggested Remedy: Create an Environmental Impact Statement that analyzes TSVI's plans to increase snowmaking to understand how that increase will impact overall water usage and furthermore how that increase will affect downstream water users. Include in that analysis the cumulative impacts of additional water usage in the Ski Valley and the effects of climate change. Also include specific, actionable protections for downstream users.

Firefighting

The Final EA says the Water Tank and Booster Station will be a "first line of defense against a wildfire". As a former Emergency Manager I'm in favor of a robust wildland firefighting capacity. An enhanced firefighting capability is 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 snow guns and hope for the best. Efforts need to be planned and coordinated. Personnel must be identified, trained and exercised.

The Forest Service provides no analysis of how this tank contributes to a firefighting effort yet it bases a significant part of its decision on this unsubstantiated firefighting capacity. 40 CFR § 1502.23, Methodology and Scientific Accuracy, requires the Forest Service to "ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents. Agencies shall make use of reliable existing data and resources." The use of the firefighting as a justification for the water tank and booster does not meet that standard.

Suggested Remedy: We ask that the USFS use the Environmental Impact Statement process to 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 fire fighting system in the area. We ask that the study consider USFS, VTSV and TSVI firefighting plans and include an analysis of TSVI's capacity to provide trained water system operators during a fire emergency.

Size

The Final EA presents no supporting evidence for the size of the water tank. The Final EA dismisses the consideration of smaller tank: "There is not a resource issue driving the reduced

size of water tank and booster station...”. While there is no human resource issue, there is an issue with forest resources.

The water tank and booster station are to be built on a significant grade, with the tank being “located below average grade”⁵. A 50 ft tall, 5,000,000 gallon storage tank will remove over an acre of forest and given the site’s slope and the requirement to locate the tank below average grade, will require extensive excavation into the slope to build the necessary foundation. In other words, a giant hole will have to be dug.

The Forest Service’s *Core BMP Technical Guide* summarizes the effects of storage tanks on the natural environment:

“The construction or presence of access routes, head gates, storage tanks, reservoirs, and other facilities can alter water quality, water yield, runoff regimes, natural channel geomorphic processes, and fish and wildlife habitats. Altered flow regimes can result in elevated water temperatures, proliferating algal blooms, and invasive aquatic flora and fauna. Water yield and runoff changes can change sediment dynamics and affect channel shape and substrate composition.” [Emphasis added]

To minimize or prevent these effects, the Forest Service has a responsibility to ensure that projects are appropriately sized and located, but has not presented an analysis of those factors. 40 CFR § 1502.23, Methodology and Scientific Accuracy, requires the Forest Service to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents. Agencies shall make use of reliable existing data and resources.” The justification for the water tank and booster does not meet that standard.

Suggested Remedy: Create an Environmental Impact Statement that justifies 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.

Booster Station Upgrade

The MDP specified “minor upgrades to the two existing booster stations (Booster and BooHoo)” as part of the proposed project. Initially We assumed that meant replacing and upgrading equipment within those facilities. However the *Soil and Watershed Specialist Report* makes it clear that those upgrades are more than just replacing the existing equipment. The *Soil and Watershed Specialist Report* specifies a new, permanent disturbance at the booster station⁶ of 0.15 acres, that is more than 6,500 square feet. Given the scope of the other proposed components, for example, the 7000 sq ft Lift 7 restaurant, the proposed booster station upgrade is more than a minor upgrade. However, the Final EA provides almost no information on the Booster Station upgrade. A change of this size requires that detailed information be provided to the public but that has not been done.

⁵ Soil and Watershed Specialist Report

⁶ It fails to identify which booster station

Suggested Remedy: Due to a lack of valid grounds for approval, deny approval to the water tank and booster station.

Suggested Remedy: Create an Environmental Impact Statement that provides detailed information on changes to the booster station.

Objections: Gondola

(See Draft EA Comments Pages 8-13)

Regulatory Prohibition

Building a new lift (gondola) on the mountain will conflict with Forest Service direction as contained in FSM §2343.14(1)g⁷ which says “Apply the following additional criteria in initial screening of proposals for additional seasonal or year-round recreation activities and associated facilities... These activities and associated facilities **must 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 Final 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 in violation of its own regulations.

Impacts on Wetlands and the Lake Fork

The Final EA states: “The Proposed Action has been designed to completely avoid all wetlands and wetland vegetation...” This statement is not true. The Kachina base terminal of the Gondola will lie on, and is adjacent to, a natural wetland. In addition to its proximity to the wetland, the Gondola terminal and maintenance facility lie directly uphill and about 500 feet from the Lake Fork itself.

That wetland is identified on the VTSV GIS website as well as the New Mexico Environment Department’s Interactive Wetland Map. The Village of Taos Ski Valley recognizes the wetlands in the Kachina basin and has formerly expressed interest in building a wetlands park. Furthermore, the Final EA acknowledges the placement of the Gondola terminal in an ecologically sensitive area: “the upper terminal area of the gondola would be placed within the aquatic management zone surrounding Lake Fork Creek, and may impact some riparian vegetation”, but dismisses the impact of the placement; “however, the structure would not impact the ordinary high water mark and mitigation measures would be followed to discount any impacts Lake Fork Creek”. There is no exception to wetland protections based on the ordinary high water mark. The Forest Service has an explicit responsibility to protect the wetlands and

⁷ FSM 2300 – Recreation, Wilderness, And Related Resource Management Chapter 2340 – Privately Provided Recreation Opportunities

cannot avoid that responsibility here.

The 2022 Carson National Forest Land Management Plan directs the Carson to “consider patterns of recharge and discharge and minimize disruptions to groundwater levels that are critical for wetland integrity.” In addition it says: “Within riparian management zones, management activities, permitted uses, and structural developments (e.g., livestock water gaps, pipelines, fences, or other infrastructure) should occur at levels or scales that move toward desired conditions for water, soils, and vegetation and align with the most current regional riparian strategy” [Emphasis added].

Similarly the *National Core BMP Technical Guide* directs the Forest Service to “Locate the facility away from the immediate vicinity of surface waters, AMZs, wetlands, sandy soils, shallow water tables, groundwater recharge areas, floodplains, and other sensitive areas to the extent practicable.”

Locating the proposed Gondola maintenance facility in the Lake Fork riparian area and on, or adjacent to, 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 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].

Suggested Remedy: Create an Environmental Impact Statement that acknowledges the Gondola’s impact on the wetlands, analyzes those impacts and provides appropriate protections.

Suggested Remedy: Prepare an Environmental Impact Statement that studies the direct, indirect and cumulative effects of the Gondola development on the Kachina Basin riparian and wetland environments.

Suggested Remedy: If approved, require TSVI to build the Gondola maintenance facility at the Base Area, on its own land, and well removed from the Kachina Basin wetlands.

Lack of Jurisdiction Over Kachina/Twining Road

The Final EA partially justifies the use of Gondola as follows: “Users would still use Twining Road to access Kachina Basin and potentially park on the road as well. This poses a public safety hazard...” However TSVI bears no responsibility or authority for traffic, parking or public safety on Twining Road. That road is the responsibility of the Village of Taos Ski Valley. Page 20

of the Final EA acknowledges that lack of responsibility: “TSV does not have jurisdiction over Twining Road”.

Suggested Remedy: Remove justifications for the Gondola based on Kachina/Twining road conditions.

Effect on the Quality of the Human Environment

The Draft Environmental Assessment provides a detailed description of the Gondola's impact on residents of the Ski Valley:

“Because of the Gondola’s proximity to the private lands in the VTSV, it is expected that the Gondola would be visible to private landowners located along the eastern border of the SUP boundary. Approximately 3,400 feet of the Gondola alignment would be within 250 feet of residences or roads on private land. Those who currently live, visit, or travel in these areas would experience a new linear structure cutting horizontally through their viewshed and through the existing vegetation in the area. Of this approximately 3,400 feet within the immediate foreground of private residences or roads, approximately 1,700 feet would be newly introduced as the closest ski area infrastructure...”⁸

By regulation, this significant impact on the human environment requires a full Environmental Impact Statement.

Suggested Remedy: Prepare a full Environmental Impact Statement that examines and analyzes the Project’s impact on the quality of the human environment. Including actionable mitigation measures.

Suggested Remedy: We ask that the USFS prepare a full Environmental Impact Statement that includes the direct, indirect and cumulative effects of the Gondola development on noise levels, including frequencies that are detectable by animals but not humans, including the adjacent wilderness areas.

Effects on Water Temperature in Lake Fork and Rio Hondo

The Final 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 forest canopy from approximately 25 acres of land, including almost 6 acres of trees and other vegetation along the route of the Gondola, the project has the potential to raise temperatures in the headwaters of the Rio Hondo. The New Mexico Environment Department has noted its concerns with the Rio Hondo’s elevated water temperatures. Removing acres of trees upstream will only cause temperatures to further rise.

⁸ This description neglects to address the noise impacts of the Gondola

This is a classic example of a cumulative effects scenario that the Forest Service is required to analyze.

Suggested Remedy: Due to a lack of valid grounds for approval, deny approval to the Gondola.

Suggested Remedy: Prepare a full Environmental Impact Statement that examines and analyzes the Project's impact on the quality of water in the Lake Fork and Rio Hondo including cumulative effects. Include actionable mitigation measures.

Objections: Restaurants - Lift 7 & Whistlestop Cafe

(See Draft EA Comments Pages 13-14)

Building new restaurants on the mountain will conflict with Forest Service direction as contained in FSM §2343.14(1)g⁹ which says "Apply the following additional criteria in initial screening of proposals for additional seasonal or year-round recreation activities and associated facilities... These activities and associated facilities **must 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 Final 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 these new restaurants in violation of its own regulations.

FSM §2343 also directs that the USFS must "Encourage holders to utilize existing facilities to provide additional seasonal or year-round recreation activities" [emphasis added]. In the last few years TSVI has repurposed two former food and beverage facilities at the Ski Area. One, the Phoenix Lodge, was an on-slope dining facility with an estimated 300 seats. It is currently underutilized. When our Chair, Kevin Bersell, last visited it in 2023 most of the interior was unchanged from when it was used as a restaurant. TSVI, having closed their backside on-mountain restaurant, now states that it needs a new, backside on-mountain restaurant. TSVI should be encouraged to reopen the Phoenix Lodge to skier dining in lieu of building another restaurant high on the mountain.

While TSVI states the need for a specific dining capacity in the Ski Valley, they refuse to consider the contribution of non-TSVI restaurants to the resort dining capacity: "This lack of seating does not account for the non-TSV owned restaurants in the Frontside base area; however, these seats are not expected to alleviate the deficit in food service seating." It's hard to imagine how popular and busy restaurants don't contribute to food service capacity.

⁹ FSM 2300 – Recreation, Wilderness, And Related Resource Management Chapter 2340 – Privately Provided Recreation Opportunities

USFS has a legal and regulatory responsibility to accurately analyze the issues, waving away the facts is neither legal nor ethical.

TSVI has determined the number of restaurant seats that it believes it needs using a formula titled *Comfortable Carrying Capacity* (CCC). Comfortable Carrying Capacity as used in the Final EA is a metric which was developed by the for-profit SE Group of Salt Lake City for use in determining ski area capacity. SE Group considers the formulas proprietary and has not released the formulas to the public so there is no way to verify whether they are reliable, accurate, reasonable or consistently applied.

In fact, the use of CCC has come under judicial scrutiny. In 2023, the Utah Third District court found that “the Park City Planning Commission has a right to question whether the resort accurately determined its Comfortable Carrying Capacity”¹⁰. The article continues: “The Park City Planning Commission decided that, unless its members could do the calculations for themselves, it couldn’t confirm the CCC numbers submitted by the firms were accurate.”

40 CFR § 1502.23, Methodology and Scientific Accuracy, requires the Forest Service to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents. Agencies shall make use of reliable existing data and resources.” The use of the CCC developed by SE Group does not meet that standard and should not be used to evaluate the proposal.

If there is a need for new dining facilities that meets USFS regulations, the Final Environmental Assessment does not provide sufficient information to identify that need.

The Final EA proposes that the Lift 7 restaurant will draw its water from a well and in doing so it will not have an impact on water availability in the Rio Hondo watershed. Contrary to those assertions, removing water from the watershed will impact water availability in the watershed. In particular removing water from one of the highest areas of the mountain, where there is limited water available to begin with, will reduce water for wildlife and plant life. In addition 100% of that water will be transported down the mountain as wastewater removing it from its normal pathways and negatively impacting the forest environment and decreasing the amount of water stored in that section of the Rio Hondo watershed.

An especially egregious issue with the new restaurants is the lack of information in the Final EA about how they will handle their sewage. Since the entire watershed of the Ski Valley flows into the Rio Hondo, how wastewater and sewage is handled is of vital importance to everyone downstream. But, the Final EA does not provide any detailed information on how wastewater will be handled. It mentions two possible methods, piping it down the mountain or holding it in a tank until a snowcat can haul it down the mountain, but settles on neither one.

The Final EA does not provide the information the public requires to assess the adequacy of

¹⁰ <https://www.sltrib.com/sports/2023/11/14/judges-denial-park-city-mountain/>. See also <https://www.sltrib.com/news/environment/2022/07/11/secret-formula-that-ski-resorts/>

those plans in protecting their water supplies. The plan raises numerous concerns about the equipment, facilities and personnel to be used. In particular there is no information provided on how the Lake Fork and Rio Hondo will be protected in the case of a wastewater spill.

In addition there is no information provided regarding the ultimate destination of that wastewater. The Final EA doesn't answer basic questions such as: what facilities will handle the waste and do they possess adequate capacity to process additional waste? The VTSV sewage treatment plant is already overburdened and occasionally malfunctions. It is reasonably foreseeable that introducing any amount of additional waste into that facility can lead to additional operational problems and releases of contaminants into the Rio Hondo. This is yet another example of the cumulative effects that the Final EA fails to address.

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 Project. 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]

Suggested Remedy: Due to a lack of valid grounds for approval, deny approval to the Lift 7 restaurant.

Suggested Remedies: Prepare an Environmental Impact Statement that:

- Analyzes reopening the Phoenix Lodge facility to dining as an alternative to a new restaurant,
- Analyzes reopening the Martini Tree facility to dining as an alternative to a new restaurant,
- Analyzes rebuilding the Whistlestop Cafe on its present site as an alternative,
- Evaluate the need for additional restaurant space based on objective, open and independently verified criteria (not the proprietary and confidential Comfortable Carrying Capacity formula used by SE Group),
- Justifies the need for new restaurants despite the violation of applicable regulations
- Analyzes the impact of removing up to 1 acre foot of water from the upper reaches of the mountain, and
- Provides sufficient specific details on how restaurant wastewater will be handled to allow the public to evaluate the adequacy of those plans.

Objections: Nordic and Snowshoe Center

(See Draft EA Comments Pages 14-16)

The Acequia de San Antonio made numerous, detailed comments regarding the Nordic and Snowshoe Center during the Public Comment Period on May 21, 2023 (attached). We include and repeat them here as objections by reference.

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. The *Soil and Watershed Specialist Report* states that an additional 8.5 acres of ground will be cleared as part of the Project.

In our comments on the Draft EA We proposed that the Forest Service require any additional thinning of forest in the Nordic and Snowshoe Center be reasonably setback from the banks of the Rio Hondo. That substantive comment was ignored in the Final EA despite USFS's responsibility to address substantive issues.

Suggested Remedies: Prepare an Environmental Impact Statement that:

- Includes alternatives to building the Nordic and Snowshoe Center that relocate the Center away from the Rio Hondo.
- Specifies 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.
- Requires TSVI to repair the damage done to the banks of the Rio Hondo during the previous thinning activities.
- Analyzes 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.
- Removes inaccurate references to previous "approvals" of the Nordic and Snowshoe Center.

Objections: Soil and Watershed Specialist Report

The *Soil and Watershed Specialist Report* (SWSR) recommends specific Best Management Practices to be followed during the Project. In addition it also references additional BMPs without recommendation. Several additional BMPs are included in the National Core BMP Technical Guide that are directly applicable to the proposed Project, including, but not limited to:

- "Obtain Clean Water Act (CWA) 402 stormwater discharge permit coverage from the appropriate State agency or the U.S. Environmental Protection Agency (EPA) when more than 1 acre of land will be disturbed through construction activities",
- "Design and operate waste collection, treatment, and disposal systems appropriate for the type and volume of waste generated at the site consistent with direction in FSH 7409.11, chapter 50",
- "Select site locations for recreation facilities that avoid or minimize the potential for adverse effects to water quality and riparian resources"
- "Design the capacity and layout of the recreation site to be consistent with land management plan desired conditions, goals, and objectives for soil, water quality, and riparian resources", and
- "Avoid wetlands and riparian areas when locating ski runs and lifts wherever practicable."

Suggested Remedies: Prepare an Environmental Impact Statement that includes all applicable BMPs.

Process Errors

Objection: Finding of No Significant Impact

(The Finding of No Significant Impact is new Information and not subject to the relevance requirements)

In our comments on the Scoping Notice, Draft EA and now, the Final EA, We have documented and analyzed numerous significant impacts which can result from the Project as proposed. Other commenters have also identified significant impacts. To summarize, it is reasonably foreseeable that the project will have a significant impact on:

- Water quality and quantity in the Rio Hondo and Lake Fork
- The human environment in the Ski Valley
- Economic and social factors in the surrounding communities
- Wildlife and plant life in the Ski Valley
- Wetlands in the Ski Valley, and
- Year round visitation in the Ski Valley

In issuing a “Finding of No Significant Impact” (FONSI) the Forest Service ignored or dismissed those comments and failed to recognize or address the easily foreseeable conditions that would create significant impact.

FSH 1909.15 41.1: “Purpose of Environmental Assessments” states:

“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]

The Final EA has failed to provide sufficient evidence for the project components. In lieu of providing evidence and appropriate analysis, it provides a few anodyne statements regarding each project component and then either declares that there are no significant issues or that no other alternatives may be considered. It fails to provide the sufficient evidence needed to support a FONSI and in doing so deprives the public of the ability to understand and comment on the Project.

Suggested Remedy: Reverse the Finding of No Significant Impact and prepare an Environmental Impact Statement.

Objection: Environmental Justice

(See Draft EA Comments Pages 18-23)

The Acequia de San Antonio made numerous, detailed comments regarding the Project's Environmental Justice issues during the Public Comment Period on May 21, 2023 (attached) . We include and repeat them here as objections by reference.

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 the 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 Final Environmental Assessment contains and reflects serious Environmental Justice issues. The proposed projects will benefit a wealthy group of privileged individuals and negatively impact low-income, disadvantaged¹¹ Hispanic communities who have been historically disenfranchised. Unfortunately, the Analysis itself is structured to ignore the downstream Hispanic communities, as it considers and dismisses the Environmental Justice issues of the Project in a few short paragraphs.

The Final Environmental Assessment's Socio-economic analysis considers the impact area of the project as the whole of Taos County¹² 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 Final EA 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 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 removes them from the conversation.

By ignoring these Environmental Justice issues the Final 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*"

¹¹ 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>

¹² The analysis area for the project is defined as Taos County, New Mexico." P 28 Draft Environmental Assessment

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

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...”¹³

The Final Environmental Assessment 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. Downstream residents expressed these concerns during both public meetings but the Forest Service has failed to recognize and address those concerns in the Final EA. If the Forest Service had met its responsibilities to 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 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 Final 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.

The Final EA 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 TSVI uses it to make snow and operate guest facilities.

In general the Final Environmental Assessment dismisses, ignores and minimizes the impacts of the Project on disadvantaged, minority communities and subsequently declines to discuss those impacts based on that dismissal. The Final Environmental Assessment says “Overall, because there would be no disproportionate negative 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 Final Environmental Assessment fails to identify any effect, proportional or otherwise, on minority population,

¹³ Executive Order 14096 issued in April 2023 contains similar language.

- It provides no analysis of EO 12898 vis-a-vis the proposed Project and yet it reaches the conclusion that it is in compliance,
- While there are certainly cumulative negative effects to the Project, which the Final Environmental Assessment ignores, there is no direction by Executive order, law or regulation to consider only cumulative effects,
- In the end, the Final Environmental Assessment 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 Justice¹⁴:

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 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.

¹⁴ <https://www.aphis.usda.gov/regulations/compliance/5600-002.pdf>

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;”

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 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 Final 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

The waters of the Rio Hondo are important for religious, cultural and traditional needs as well as 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 transparently measuring and monitoring the quantity and quality of water in the Rio Hondo in a manner that meets the approval of the downstream communities as well as cooperatively managing the flow of the river. While the PDC in the Final EA contains language that approaches these goals, it fails to reach them by its lack of firm, actionable criteria. 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. That lack of consideration is evident in the Final EA

as, for example, it recommends increased water usage in the Ski Valley during prime irrigation periods.

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 Rio Hondo canyon in common. They used the canyon as pasture for their animals, as a source of firewood, as a place to forage for food and medicinal plants, for hunting, for religious practices, and, of course, as a source of potable water. The lands in the canyon were managed to the common benefit of the entire community. These usages were not unique to the Rio Hondo, the same pattern of common resource usage existed throughout Northern New Mexico and Southern Colorado¹⁵.

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. Taos Ski Valley Inc. now seeks to deny those dispossessed residents a reasonable voice in what happens on their usurped lands and, consequently, to their water and communities. These events may seem like ancient history to many but to the residents of the Rio Hondo valley they have a current and continuing effect on their traditional way of life and cultural practices.

Suggested Remedy: We request that USFS prepare an Environmental Impact Statement that includes a thorough and complete analysis of the Environmental Justice issues at stake. The EIS should also be compliant with Executive Order 14096 and include a consideration of the history of Rio Hondo canyon and watershed.

The EIS should further 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.

Objection: Failure to Consider Alternatives

(See Draft EA Comments Pages 23-24)

Objection: The Draft EA produced in 2023 contained no presentation, discussion or analysis of alternatives. The vast majority of comments on the Draft EA pointed out this omission. In response the Final EA presents only one alternative, a No-Action alternative, to each of the proposed project components. No other alternatives are presented despite the Forest Service being required to consider a *range* of alternatives.

¹⁵ ³⁶“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.

The Final EA fails to analyze the minimal number of alternatives it presents. It simply dismisses those No-Action alternatives as not meeting the “Purpose and Need” of the Project. That Purpose and Need is derived from the 2021 Master Development Plan which has not been subject to NEPA analysis. The Final EA uses the Purpose and Need of the Project to serve as the only acceptable alternative, forcing a predetermined outcome on the public which has not had the opportunity to participate in the development of that Purpose and Need.

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, but not limited to, No-Action alternatives, in NEPA actions:

- 36 CFR 220.7(b)(2) “Proposed action and alternative(s). The EA shall briefly describe the proposed action and alternative(s) that meet the need for action.”
- 42 USC 4332 (E) “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;”
- Forest Service Handbook 1909.15 – Environmental Impact Statements And Related Documents, 23.3 - Content and Format - 5. (a) “Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.”
- FS Handbook 1909.15 – NEPA Handbook Chapter 10 Environmental Assessment 14 – Develop Alternatives “Reasonable alternatives to the proposed action should fulfill the purpose and need and address unresolved conflicts related to the proposed action. Be alert for alternatives suggested by participants in Scoping and public involvement activities. Consider alternatives, even if outside the jurisdiction of the Agency.”
- 42 USC 4332 C) “Include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment... (iii) alternatives to the proposed action”

Forest Service Regulations (41.22 - Proposed Action and Alternatives) do include an exception to this requirement to consider alternatives “When there are no unresolved conflicts concerning alternative uses of available resources, the EA need only analyze the proposed action and proceed without consideration of additional alternatives.” (36 CFR 220.7(b)(2)(i)) However this exception does not apply given the ongoing conflicts over water and development in the area.

Conflicts over water in New Mexico have been continuously documented since the Pueblo Revolt of 1680. More recently the *Abeyta Settlement* (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 in the Taos area have been occurring since time immemorial. 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 Final 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.

When the Forest Services has developed a reasonable range of alternatives it must then describe and analyze them:

"The description of the proposal and alternative(s) may include a brief description of modifications and incremental design features developed through the analysis process to develop the range of alternatives considered." and,
"If applicable, summarize how a proposal or alternative was changed through collaboration and analysis. Incorporate by reference any existing documents regarding alternative development." Forest Service Handbook 1909.15 – Environmental Assessments And Related Documents 41.22 - Proposed Action and Alternatives

Finally, the Federal Courts have ruled that the Forest Service must consider a range of alternatives and cannot unreasonably restrict the alternatives considered by a narrow purpose and need statement or other rationale. Those cases include:

- *Colorado Env't Coal. v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1999)
- *Jiron*, 762 F.3d at 1051 (10th Cir. 2014)
- *New Mexico ex rel. Richardson*, 565 F.3d at 690 (10th Cir. 2009)
- *Citizens' Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1030 (10th Cir. 2002)
- *Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002)

- *Rosenkrance, 2011 WL 39651, at *8 (D. Id. Jan. 5, 2011); Bosworth, 439 F.3d at 1195 (10th Cir. 2006).*

Despite being required to do so by Federal Regulation, the Final Environmental Assessment does not present alternatives, other than No Action alternatives, to the actions in the Proposal. It fails to adequately address the minimal alternatives it does present. Many commenters offered reasonable alternatives for consideration, particularly for issues of concern to Acequias. Those suggestions were ignored or summarily dismissed.

The restriction of the scope of alternatives, the lack of alternatives and the absence of a substantive discussion of alternatives renders the Final Environmental Assessment incomplete. In addition, ignoring the substantive comments made by the public is a violation of USFS's responsibility to collect and consider input from the public.

Suggested Remedy: Develop an Environmental Impact Statement that considers the full range of alternatives including those reasonable alternatives proposed by commenters. Include an analysis of those alternatives.

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

(See Draft EA Comments Pages 17-18)

The Acequia de San Antonio made numerous, detailed comments regarding the Forest Service's Failure To Notify And Engage With Acequias, Land Grant Communities And Other Rural, Historic Communities during the Public Comment Period on May 21, 2023 (attached). We include and repeat them here as objections by reference.

Objection: USDA, Forest Service and NEPA regulations as well as Presidential Executive Orders 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:

40 CFR 1501.5(e):

"Agencies shall involve the public, State, Tribal, and local governments¹⁶, relevant agencies, and any applicants, to the extent practicable in preparing environmental assessments."

Executive Order 13985 states:

"Sec. 8. Engagement with Members of Underserved Communities. In carrying out this order, agencies shall consult with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs. The head of each agency shall

¹⁶ Most acequia and community ditch associations are political subdivisions of the State of New Mexico

evaluate opportunities, consistent with applicable law, to increase coordination, communication, and engagement with community-based organizations and civil rights organizations.”

Executive Order 14096 Sec. 3 (vii) directs the Forest Service to:

“provide opportunities for the meaningful engagement of persons and communities with environmental justice concerns who are potentially affected by Federal activities, including by:...

“(vii)(B) fully considering public input provided as part of decision-making processes”.

USDA Regulation 5600-002, December 15, 1997, Environmental Justice Section 6 “c. To the greatest extent practicable, USDA agencies are to work within existing environmental and other programmatic frameworks to ensure environmental justice and participation of minority and low-income populations in decisions that affect their health or the quality of their environment.”

Regulation 5600-002 further provides that

“(3) Provide opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of meetings, crucial documents, and notices;...”

Carson National Forest Land Management Plan (MB-R3-02-11 September 2021) provides this guideline for working with Acequias and Land Grants:

“Coordination with interested and affected land grant-merced and acequia governing bodies should occur at the early stages of planning and project design, to incorporate community perspectives, needs, and concerns, as well as traditional knowledge into project design and decisions”

And in case there is any doubt about the applicability of the public participation requirement, FS Regulation 5600-002 states:

“d) The public participation requirements of E.O. 12898 must be met, even in cases where agencies do not make provision for early public participation in an environmental assessment.”

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 that during the Scoping Notice phase the Forest Service may have contacted individual members of a small number of 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.

It seems that for the Draft Environmental Assessment the Forest Service's entire planned public outreach effort was to conduct a single public meeting. That meeting was held on March 23rd, 2023 at Taos Ski Valley during a snowstorm. 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 March 23rd the road was not only snow packed and icy but about 12" of snow fell that evening. Many local residents, eager to participate, were unable to navigate the road and attend the meeting.

Per the Orders and Regulation cited above, the Forest Service is required to accept public comments. However, those residents who were able to attend the March 23rd meeting found that the format of the meeting precluded public comment. When the public sought to provide comment, the Forest Service attempted to deny them the opportunity to speak. However, at the continued insistence of the participants, the Forest Service relented and public comments were allowed.

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 participants. Chairs were, however, provided for Forest Service and TSVI employees. While the meeting was peaceful and the all-ages participants respectful, an armed Forest Service law enforcement officer was present.

Dissatisfied with the lack of opportunity to give public input, the attendees spontaneously organized a meeting-within-a meeting and provided their testimony. We noted no Forest Service employees capturing that input and indeed, it seems to have not been included or addressed in the Final EA.

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.

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.

Suggested Remedy: 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 develop an Environmental Impact Statement that includes a full public notification and engagement process. We request

that they do so.

Objection: Failure to Consider Cumulative Impact

(See Draft EA Comments Pages 25-27)

The Acequia de San Antonio made numerous, detailed comments regarding the Forest Service's failure to analyze the cumulative impacts resulting from this project during the Public Comment Period on May 21, 2023 (attached) . We include and repeat them here as objections by reference.

Objection: The Final EA presents an incomplete list of projects with reasonably foreseeable cumulative effects. It does not analyze those cumulative effects that it does identify in a substantive manner. While the Final EA does make a passing reference to continued general development in the County, it fails to identify or consider publicly announced projects adjacent to the SUP.

The Forest Service is required to address all of the cumulative impacts of the Project:

FSH 1909.15 - NEPA Handbook Chapter 10 15.1:

“Cumulative effects must be considered and analyzed without regard to land ownership boundaries or who proposes the actions. Consideration must be given to the incremental effects of the action when added to the past, present, and reasonably foreseeable related future actions of the Forest Service, as well as those of other agencies and individuals, that may have a measurable and meaningful impact on particular resources.”

We want to emphasize that while the Final Environmental Assessment usually 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 Final Environmental Assessment presents an optimistic view of the cumulative effects of the Project, identifying increased economic development and more parking as likely outcomes. 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. Many of those consequences were identified by commenters but ignored in the Final EA.

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 Final Environmental Assessment. Additional projects proposed for the Ski Valley include:

- The development of private land in the Kachina Basin by TSVI. TSVI has publicly

announced 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,

- 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 Kachina Basin wetlands park.

We can also assume that there are also private plans for development the details of which are available from the VTSV and County planning offices.

We can surmise the scope of all the potential development from the Village of Taos Ski Valley *Master Water Plan* issued in 2021. In that Plan, significant 25 year growth is projected in the Kachina and Base areas including:

Type	Baseline	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%

Summarized from Table ES-1 Taos Ski Valley Master Water Plan issued in 2021

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.” In addition, the VTSV has notified TSVI that, due to water supply issues, it cannot guarantee water for the under construction Hotel St. Bernard. Yet the Final EA makes no reference to this publicly available data or to the ongoing water supply issues in the Village. Certainly it would be reasonable to consider these easily foreseeable issues when considering adding a new restaurant and sequestering 5,000,000 gallons of water from the highest reaches of the watershed and the effects of increasing year-round visitation to the Ski Valley.

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 Final EA states that “the combination of a shorter winter season and earlier spring melt will have serious impacts on water resources, ecosystems, and the economy at TSV”. In typical

fashion the Final EA fails to recognize that these effects will also impact the downstream communities. Despite that lack of recognition, shorter winters, earlier spring melt and less precipitation¹⁷ will impact the downstream users as part of the cumulative effects of the Project. It will impact their water resources, ecosystems and economies. In addition, it will negatively impact their traditional lives and the viability of their historic communities.

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 Final Environmental Assessment is incomplete.

Suggested Remedy: We ask the Forest Service to thoroughly identify the cumulative effects for all components of the Project in an Environmental Impact Statement and include a complete analysis of those effects.

Objection: Need for an Environmental Impact Statement

(See Draft EA Comments Pages 27-29)

Objection:

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 use¹⁸ in the downstream

¹⁷ Final EA “Although trends in precipitation are uncertain, precipitation in the spring, which is already the driest season, is projected to decrease across most of the state.”

¹⁸ 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.

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 and any accidental but inevitable spills of pollutants. It will also further compromise the already malfunctioning Village of Taos Ski Valley wastewater system.

In addition, the lower volume of water will naturally flow at a slower speed. Slow movement combined with the diminished forest canopy that will result from the proposed project, will increase water temperature, thereby lowering water quality.¹⁹ Additionally, TSVI proposes to build a maintenance facility either on or adjacent to a wetland that feeds directly into the Lake Fork of the Rio Hondo. In case of spillage that wetland and subsequently the Rio Hondo may become contaminated affecting the drinking water of the entire Rio Hondo valley.

“(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 Water, and unique riparian areas), cultural and religious sites of the adjacent Taos Pueblo, 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 Final 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

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<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 impacts. 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.”

The approval of the Gondola Project will lead to reasonably foreseeable actions to further develop the Kachina basin and the greater 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). Furthermore, cumulative development will attract, and the Gondola will transport, more people to the Kachina basin which contains sites of cultural and religious significance to the people of Taos Pueblo.

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.

Suggested Remedy: Prepare an Environmental Impact Statement to 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.

General Errors and Discrepancies

(The comments reference new information and are not subject to the relevance requirements)

Objection: Overall the quality of the Final Environmental Assessment is very low. It contains numerous errors, discrepancies 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 deprive the public of a fair opportunity to understand and comment on the Project. We provide a few examples of those errors and discrepancies below, there are more errors and discrepancies in the Final EA.

Examples of Errors and Discrepancies:

- A. “CCC” - Comfortable Carrying Capacity (CCC) is a metric which was developed by the SE Group of Salt Lake City for use in determining ski area capacity. While the Final EA identifies a few of the inputs to those formulas, SE Group considers the formulas themselves proprietary and has not released the formulas to the public so there is no way to verify whether they are reliable, accurate, reasonable or consistently applied. Please see the relevant CCC comments in the *Objections: Restaurants - Lift 7 & Whistlestop Cafe* section. 40 CFR § 1502.23, Methodology and Scientific Accuracy, requires the Forest Service to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents. Agencies shall make use of reliable existing data and resources.” The use of the CCC metric developed by SE Group does not meet that standard and should not be used to evaluate the proposal.
- B. B-Corp Certification - The Final Environmental Assessment references TSVI’s status as a certified B-Corporation (B-Corp) as validation for its business practices. B-Corp certification is a voluntary, private certification based on self-reported criteria and is not linked to any international standard. B-Corp certification lacks transparency and inadequate accountability. 40 CFR § 1502.23, Methodology and Scientific Accuracy, requires the Forest Service to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents. Agencies shall make use of reliable existing data and resources.” The use of the B-Corp certification does not meet that standard and should not be used to evaluate the proposal.²⁰
- C. “NetZero” - The Final EA references TSVI efforts to become “NetZero” as a mitigating factor on the Project’s otherwise unacknowledged cumulative effects. “NetZero” is an undefined term with no formal relationship to any publicly known initiatives. 40 CFR § 1502.23, Methodology and Scientific Accuracy, requires the Forest Service to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents. Agencies shall make use of reliable existing data and resources.” The use of NetZero does not meet that standard and should not be used to evaluate the proposal.
- D. The *Soil and Water Specialist Report* references maps in support of its Conclusions. Those maps are at a scale and level of detail which makes it impossible for the reader to judge whether those conclusions are correct.
- E. The Final EA refuses to consider the Project’s impact on the Columbine-Hondo Wilderness (CHW): “This wilderness area [CHW] does not share a boundary with TSV like WPW does; therefore, it is expected that no direct or indirect impacts would occur

²⁰ See

<https://theconversation.com/b-corp-certification-wont-guarantee-companies-really-care-for-people-planet-and-profit-124459> and <https://www.nokillmag.com/articles/the-greenwashing-of-b-corps-diluting-certification/>

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. Certainly that should be close enough to trigger the consideration of the impacts of the Project on the CHW.

It’s interesting to contrast this reasoning with the rationale for the Gondola as a means to alleviate congestion on the Twining/Kachina Road. Twining/Kachina Road is also spatially separated from the SUP area and is about the same distance from the SUP as the CHW. Somehow, the Forest Service isn’t willing to consider the project’s impact on the CHW due to its not being adjacent, but it is willing to consider the Project’s impact on the Twining/Kachina Road which is similarly non-adjacent.

- F. The Final Environmental Assessment 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 Frontside²¹.
- G. On page 22 of the Final EA, the current use of the Rubezahl trail is identified as creating “inefficiencies and congestion on the trails leading back to the Frontside...” But Page 8 of the Final EA justifies the building of the Gondola this way: “The gondola would also provide direct repeat-skiing on the Rubezahl trail, which would be able to be used by the ski school for teaching.” The trail is either inefficient and congested or it is suitable for increased use, it cannot be both.
- H. The Pit House is listed as a guest service facility. In reality, it is a snowmaking facility.
- I. 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 Final Environmental Assessment says “Specifically, the terminal proposed within the Kachina Basin base area would be **located on NFS lands**” [Emphasis added]
- J. Page 8 of 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)*” [Emphasis added]. This statement may confuse readers and lead them to believe that the Nordic and Snowshoe Center has already been approved. Master Development Plans do not result in “approvals”. Instead they provide a range of projects that are “accepted” for evaluation in the future.
- K. The Soil and Watershed Specialists Report references a document by Ning and Bradley (2015) as documentation of the potential effects of climate change on the Ski Valley.

²¹ Perhaps the authors were thinking of Lift 4?

However, that document “ *Projected changes in climate extremes over the northeastern United States*” provides predictions of climate change in the northeastern United States, not the Mountain West. The SWSR provides no explanation of how that report applies to New Mexico as opposed to the northeastern United States.

Suggested Remedy: We offer these errors and discrepancies only as examples. There are more errors and discrepancies in the Final EA and associated documents. We ask the USFS to prepare an Environmental Impact Statement that corrects all errors and discrepancies in the Final EA.

Missing Documents

(The comments reference new information and are not subject to the relevance requirements)

Objection: The Final EA references numerous documents which are not available either on the Project website or in other publicly accessible areas.

USDA Regulation 5600-002 requires agencies to:

“(3) Provide opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of meetings, **crucial documents**, and notices;...” [Emphasis added]

Presidential Executive Order 12898 of February 11, 1994 says:

“(c) Each Federal agency shall work 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]

A Citizen's Guide to NEPA 2021, a U.S. Government Document states:

“In any case, **citizens are entitled to receive “environmental documents,”** such as EAs, involved in the NEPA process.” [Emphasis added]

EO 14096 Sec 3 requires “vii (D) **providing** technical assistance, tools, and **resources** to assist in facilitating meaningful and informed public participation, whenever practicable and appropriate;” [Emphasis added]

With those regulations in mind, consider this list of missing documents:

At the March 23, 2023 public meeting a slide deck²² 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. Our Chair, Kevin Bersell, requested that

²² <https://usfs-public.app.box.com/v/PinyonPublic/file/1175180477869>

report from Paul Schlike, with a CC to Adam Ladell and James Duran, on March 27, 2023. Almost 20 months later We have not received a response to my request and the water sufficiency report has not been made available on the Project Website.

The *Soil and Water Specialist Report* references numerous documents which are not provided on the Project website and which cannot be found by a general web search. Those documents include:

- 2012 TSV MDP – Phase 1 Projects Environmental Impact Statement and Final Record of Decision (ROD)
- Glorieta Geoscience Inc. 2023. "Water Rights & Usage FAQ, Taos Ski Valley, Inc."
- NMED. 2022. New Mexico Environment Department. Standards for Interstate and Intrastate Surface Waters. <https://www.env.nm.gov/surface-water-quality/wp> (Linked but not available)
- USDA Forest Service. 1987. Terrestrial Ecosystems Survey of the Carson National Forest. USDA Forest Service, Southwestern Region.
- USDA Forest Service. 2012. National Best Management Practices for Water Quality Management on National Forest System Lands, Volume 1: National Core BMP Technical Guide. FS-990-A. (Not available through the provided link, although discoverable via a general web search)

The *Wildlife Report* references documents which are not provided on the Project website and which cannot be found by a general web search. Those documents include:

- Hughes, J. 2015. Yellow-billed Cuckoo (*Coccyzus americanus*), The Birds of North America Online (A. Poole, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America Online: <http://bna.birds.cornell.edu/bna/species/418>
- U.S.D.A. Forest Service. 2012. Final Environmental Impact Statement for Taos Ski Valley's 2010 Master Development Plan – Phase 1 Projects. Carson National Forest. Taos County, New Mexico. 289 pp. [Access Denied]

The *Biological Assessment* references documents which are not provided on the Project website and which cannot be found by a general web search. Those documents include:

- Hughes, J. 2015. Yellow-billed Cuckoo (*Coccyzus americanus*), The Birds of North America Online (A. Poole, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America Online: <http://bna.birds.cornell.edu/bna/species/418>
- U.S.D.A. Forest Service. 2012. Final Environmental Impact Statement for Taos Ski Valley's 2010 Master Development Plan – Phase 1 Projects. Carson National Forest. Taos County, New Mexico. 289 pp. [Access Denied]

Missing Comments - Based on reading the Final EA, Taos Pueblo apparently filed a comment or comments to the Draft EA²³. Those comments are not available in the [Project Reading Room](#) maintained by USFS. Taos Pueblo is an important stakeholder in this process and their voice

²³ Page 148

should be heard. If their comments are missing one wonders what other comments have not been made available.

Suggested Remedy: We ask the USFS to prepared an Environmental Impact Statement that either removes all references to the missing documents or to provide the documents. In addition We request that USFS review comments made during the entire process to ensure that all comments have been made publicly available.

We appreciate the opportunity to object to the Taos Ski Valley, Gondola and Other Improvements Projects and further appreciate your consideration of our objections. If it would help you and your staff to understand these issues from the point of view of the Acequia de San Antonio, we are available to meet at a convenient time.

If you have any questions regarding these objections or need additional information, please feel free to contact me.



Lead Objector
Chair, Acequia de San Antonio