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Plan Revision:

Carson National Forest Plan Revision of Land and Resource Management Plan #47966

Concern Statement 14 - General, Socioeconomics - p. 15

The plan does not secure the sustainability of the social and economic welfare of rural communities

Associated Comment Letters: 138, 5785

#### USFS Response

While land management plans do not themselves guarantee specific results (FSH 1909.12 section 21), the final Plan does direct management to sustain and make available those forest resources that are important for cultural and traditional needs, subsistence practices, and economic support (FW-RHC-DC-3). The Northern New Mexico Traditional Communities and Uses sections in the final Plan contain multiple plan components and strategies that focus on the social and economic sustainability of communities around the Carson NF. The FEIS describes the effects of each alternative on socioeconomics (Chapter 3, Affected Environment and Environmental Consequences, Socioeconomics section).

**OBJECTION:** It is imperative that the final plan include direction to District Ranger on the importance of continued operations under adverse conditions. Local, forest resource dependent public have more than cultural, traditional needs; the forest is a source of life-sustaining needs. The plan included this recommendation: "Consider providing training opportunities for Forest Service Employees to gain a deeper understanding of the unique traditional communities, customs, traditions, and values of northern New Mexico."

**SUGGESTION:** The time for collaboration and implementation is now. The Santa Barbara Land Grant has worked to build relationships with the RD and the NF inside and outside of this planning process and it's time to move forward with these relationships and provide for the community.

Concern Statement 350 - Forest Service, Authority - p. 139.

Associated Comment Letters: 5782, 5785

The Merced de Santa Barbara maintains that the title of the Santa Barbara Land Grant is clouded by the history of the dispossession of the land grant in the late 19th and early 20th century, a history that the federal government and U.S. Forest Service were surely knowledgeable of when they purchased our Grant in 1931. We quote from David Benavides' 1993 "Lawyer induced partitioning of New Mexican Land Grants: An

Ethical Travesty", p. 22; "In 1892, Napoleon Bonaparte Laughlin, soon to be a New Mexico Supreme Court Justice, entered into an agreement with representatives of the heirs of the Santa Barbara Grant for his legal services in confirming the grant before the Court of Private Land Claims, for which he would receive an undivided one-third interest in the grant. Confirmation and surveying were completed by 1896. In 1899, one year after completing his term on the New Mexico Supreme Court, Laughlin sued for partition, and a sale of the entire common lands was ordered and executed in 1903." Laughlin eventually lost most of the grant to tax seizures when Taos County instituted an aggressive policy of suing property owners for failure to pay taxes in the early twentieth century. In 1907, A. B. McGaffey formed the Santa Barbara Tie and Pole Company to provide timber to the Atchison, Topeka and Santa Fe Railroad. The name came from the Santa Barbara grant on which McGaffey initially concentrated his lumbering. In a few years, he sold the operation to the railroad, which subsequently expanded onto the adjacent Rancho del R[ia] Grande Grant north of the Rio Pueblo. Until the 1920s, some 400,000 rail ties were taken annually from the mountains north and south of the Rio Pueblo. In 1928, the last year of operation, the Santa Barbara Tie and Pole Company moved only 106,000 trees down to the Rio Grande. (David F. Myrick, New Mexico's Railroads: An Historic Survey (Golden, CO: Colorado Railroad Museum, 1970), 173,174).

While the federal authority (PL 68 319) established the authority of the USFS to make land purchases, it does not absolve the USFS of its complicity in dispossessing land grant heirs of their patrimony.

#### FS Response

The Carson NF manages public lands in accordance with existing laws, policies, and regulations including the Federal Lands Policy and Management Act of 1976 (Public Law. 94-579). Under this act, it is the policy of the United States that, "the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes" and that "goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law" (43 U.S.C. [sect]1701). Forest Service land and resource management plan development is governed by the National Forest Management Act of 1976 (P.L. 94-588) and the 2012 Planning Rule (36 CFR 219). The final Plan is focused on working with the public, including land grants and other historic communities, to find mutually beneficial approaches and to build respectful, collaborative relationships.

OBJECTION:The land within the original boundaries of the Santa Barbara Land Grant is not public land with clear title; the Merced de Santa B[ar]bara maintains that there remains a cloud on the federal title to this land and that the Forest Service has yet to prove that the land belongs to the Federal Government, free and clear of prior claims and uses. We the heirs of the Santa Barbara Land Grant believe the constitutional right of "due process" was violated during the entire land transfer. We strongly believe that there is significant case law to prove that our land was illegally and wrongfully stolen from the rightful heirs.

#### Concern Statement 379 - Land Withdrawals - p. 150

Opposition to wild and scenic river designation because Section 8 of the Wild and Scenic Rivers Act has a provision that withdraws any land for which a wild and scenic river has been designated from disposal by the Federal Government and would prevent return of national forest lands to community land grants.

Associated Comment Letters: 5785

#### FS Response

While section 8(a) of the Wild and Scenic Rivers Act does withdraw all public lands within the boundaries of any component of the national wild and scenic rivers system, it applies only to those rivers "designated in section 3 of this Act or which is hereafter designated for inclusion in that system" (Public Law 90-542; 16 U.S.C. 1271 et seq.). The Forest Service does not have authority to designate wild and scenic rivers. The final Plan does not designate any wild and scenic rivers; the Wild and Scenic River Eligibility Evaluation only determines river eligibility. Reasonably foreseeable potential uses of land and water that would be enhanced, foreclosed, or curtailed if the area were included in the National System of Wild and Scenic Rivers would be considered during the suitability determination for an eligible river (FSH 1909.12 83.21(3)).

OBJECTION: The means by which the Forest Service obtained this land is clouded and therefore can be contested and should remain with the Santa Barbara Land Grant.

Concern Statement 490 - Rio Santa Barbara - p.191

Opposition to eligibility for the Rio Santa Barbara, particularly the  $\frac{1}{12}$  mile segment of the river that lies between the Santa Barbara Campground and the boundaries of the Pecos Wilderness, which does not contain outstandingly remarkable values. This area is part of the historic common lands of La Merced de Santa Barbara Land Grant and Section 8 of the Wild and Scenic Rivers Act has a provision that withdraws any land for which a wild and scenic river has been designated from disposal by the Federal Government.

Due to this segment's proximity to the Santa Barbara Campground, there is actually very little opportunity for solitude on this stretch of the river. This is a result of the high levels of human traffic, especially during peak camping and fishing season, from campers, hikers, and fishers taking the trailhead from the campgrounds into the wilderness. There is a man-made bridge constructed of concrete and dimensional lumber. This bridge is by no stretch of the imagination primitive in design or appearance. Based on this, the claim that this segment of the river provides a truly primitive experience is refuted. The vast majority of the  $\frac{1}{12}$ -mile segment of the river is in a narrow canyon with that is densely populated with tall trees, which blocks out most of the view to greater surrounding area. Within this segment of the river there are no "views of the entire basin" or "its expansive aspen stands" as claimed in the draft eligibility evaluation. Therefore, based on the fact that this  $\frac{1}{12}$ -mile segment of the river, from the Santa Barbara Campground to the Pecos Wilderness boundary, does not have true opportunities for solitude, does not offer a truly primitive experience, and does not have views of the entire basin or its expansive aspen stands, it does not have a qualifying scenic outstandingly remarkable value. Furthermore, like other rivers in the immediate area evaluated in the draft eligibility evaluation, i.e., the Rio de las Trampas, the "scenic values are not outstandingly remarkable regionally."

Associated Comment Letters: 122, 4926, 5785

#### FS Response

The Rio Santa Barbara is eligible with scenic, recreational, and historic outstandingly remarkable values from its headwaters to its confluence with Jicarita Creek. This confluence is about one-third of a mile south of the campground and about three-quarters of a mile north of the wilderness boundary. The eligible segment is entirely south of the historic Merced de Santa Barbara Land Grant boundary. We agree that the portion directly adjacent to the campground does not provide the same primitive solitude as the rest of the river and it is not eligible. The bridge is not completely primitive but is consistent with the "essentially primitive" nature of the river's wild classification. The presence of a few inconspicuous structures is acceptable. The entire basin is not visible from the lower, confined segment and the scenic values are not outstandingly remarkable, but that segment does contribute to the recreational experience. This has been clarified in the evaluation narrative.

OBJECTION: We reiterate our original opposition/objection to eligibility for the Rio Santa Barbara, particularly the  $\frac{1}{12}$  mile segment of the river that lies between the Santa Barbara Campground and the boundaries of the Pecos Wilderness, which does not contain outstandingly remarkable values. This area is part of the historic common lands of La Merced de Santa Barbara Land Grant and Section 8 of the Wild and Scenic Rivers Act has a provision that withdraws any land for which a wild and scenic river has been designated from disposal by the Federal Government.

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Concern Statement 490 - Rio Santa Barbara - p.191, 192

The eligibility recommendation for the Rio Santa Barbara is in violation of section 2(a) of the Wild and Scenic Rivers Act.

Associated Comment Letter: 5785

FS Response

Section 2(a) of the Wild and Scenic Rivers Act describes the process for designating wild and scenic rivers. Only Congress may designate wild and scenic rivers on National Forest System lands. The eligibility evaluation is being conducted in compliance with Section 5(d)(1) of the act that requires that, "consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas" during land management planning.

OBJECTION: Eligibility, the first step toward Designation for Wild and Scenic Rivers Act is in violation of Priority of appropriation water rights of New Mexico. The 1 1/2 -mile section of the Santa Barbara River includes the head waters for several acequia irrigation systems in the valley of Penasco and other surrounding communities.

Concern Statement 493 - Rio Santa Barbara - p.192

Opposition to eligibility for the Rio Santa Barbara because of the need to maintain access for mechanical removal to prevent or reduce the severity of wildfires.

Associated Comment Letter: 5785

FS Response

Any potential activities that would conflict with the river's eligibility and classification would trigger a suitability analysis. Mechanical treatment would not be compatible with a wild classification. A suitability analysis would address questions including "Will the benefits of designation exceed the benefits of non-designation?" No suitability studies are being conducted as part of this plan revision.

Concern Statement 519 - Recommendation Process, 2012 Planning Rule - p.202

Lands identified as potentially suitable for wilderness under the inventory (and eventually evaluation) process would be managed under the no impairment policy (36 CFR 219.10 (b) (iv)) and would result in greatly reduced access for resource management and multiple uses. This no impairment policy extends the protection of congressionally designated wilderness areas to recommended wilderness areas identified in this process. It is beyond the authority of the United States Forest Service to manage an area as wilderness unless and until Congress actually designates such areas pursuant to the Wilderness Act of 1964.

Associated Comment Letters: 5422, 5785

Response

In the process of identifying the areas recommended for wilderness in the preferred alternative we considered a broad range of social, environmental, and economic impacts, as well as public comment related to the management of recommended wilderness areas. The responsible official concluded that ecological and social benefits obtained through alternative 2-modified (9,295 acres of recommended wilderness) outweigh any additional limitations on management options (Record of Decision). The recommended wilderness management area's plan components in the final Plan protect and maintain the ecological and social characteristics that provide the basis for their suitability for wilderness designation, consistent with the requirement to include these plan components in the 2012 Planning Rule (36 CFR 219.10 (b) (1) (iv)).

Plan direction in the final Plan applies to recommended wilderness management areas until such time as the area is designated as wilderness or released for other management by Congress. Recommended wilderness is not designated wilderness, as only Congress has the authority to designate wilderness.

**OBJECTION:** This response does not address the USFS practice of maintaining "wilderness study areas" and managing areas that contain wilderness characteristics as though they were designated wilderness areas. This defacto management of wilderness areas nearly guarantees that they remain eligible for inclusion into the management system, which removes them from eligibility for disposal and restricts historic uses of the forest (grazing, timber, fuelwood, vigas, latillas, building materials) using modern means (i.e., a 4-wheeler used to herd cattle rather than a horse).

Concern Statement 520 - New Mexico Wilderness Act - p. 203

The New Mexico Wilderness Act of 1980 (Public Law 96-550, Dec 19, 1980, 94-Stat. 3224) which was passed in December of 1980 calls into question the U.S. Forest Service authority, in New Mexico, to conduct the Recommended Wilderness Process as part of the current Carson National Forest Plan Revision. Under the 2012 Planning Rule this is a four-step process that includes: inventory, evaluation, analysis, and recommendation. However, Public Law 96-550 contains the following statutory provision: "(c) Unless expressly authorized by Congress, the Secretary shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of New Mexico for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System."

Associated Comment Letters: 3268, 4926, 4985, 5069, 5258, 5785

## Response

The New Mexico Wilderness Act of 1980 (Public Law 96-550) at Section 104 was developed in the context of the Roadless Area Review and Evaluation of 1979 (RARE II). RARE II was a nationwide effort that made recommendations, for potential wilderness by states. The process was the subject of judicial reviews that eventually led to the overturning of the environmental impact statement for RARE II in 1980. Subsequently, over 30 state-by-state wilderness statutes between 1980 and 1990 provided release language for RARE II areas (see Congressional Research Service, R41610, April 17, 2014). Section 104(c), that the commenter references, is specifically related to the release of this type of "roadless" area from pending judicial requirements for re-evaluation. Although these areas were released for purposes of multiple use, this release does not prohibit re-evaluation of these areas for wilderness recommendation at a later date as indicated in other sections of the law.

The New Mexico Wilderness Act of 1980 (Public Law 96-550) at Section 104(b)(2) specifically states, "[hellip]the Department of Agriculture shall not be required to review the wilderness option prior to revision on the initial plans, and in no case prior to the date established by law for completion of the initial planning cycle[hellip]" The forest plans in New Mexico are well over the 10- to 15-year revision cycle described in the National Forest Management Act and any wilderness evaluation is covered by the requirements for plan revisions.

Forest Service regulations and directives implementing the National Forest Management Act require wilderness evaluation during plan revision and adoption. These regulations are described in the 2012 National Forest System Land Management Planning Rule and the manual and handbook issued in 2014. In the planning rule, Section 219.7 (c)(v) states that revisions shall "Identify and evaluate lands that may be suitable for inclusion the National Wilderness Preservation System and determine whether to recommend any such lands for wilderness designation." Forest Service Manual 1923 and Handbook 1909.12 Chapter 70 provide the direction regarding how this inventory and evaluation should be accomplished.

Based on the New Mexico Wilderness Act of 1980 (Public Law 96-550), Section 104(b)(2) requirements that wilderness be reviewed during plan revisions and the published requirements in Forest Service rule, manual, and handbook for how wilderness evaluation is to be accomplished, the revision process including the evaluation of wilderness potential is in full compliance with applicable law and policy.

**OBJECTION:** The above response to our concern statement creates the impression that Forest Service policy trumps the law. The debate on Public Law 96-550 was long and while the Congressional Delegation from New Mexico did support the legislation, the Congressional Record provides insight into their concern that wilderness areas grow to the detriment of local communities and their uses and lays out the legislative intent of our elected leadership. See Congressional Records - Senate, December 1, 1980, p. 31135, statement of Senator Harrison Schmitt - "I do not support the contention that all lands recommended by the Forest Service for wilderness or further study should be designated for wilderness or future generations of New Mexicans will be deprived of their heritage." See also Congressional Records - Senate, December 1, 1980, p. 31138, statement of Senator Pete Domenici, "We also will have to take a look at the management of wilderness from the standpoint of fire protection and excessive timber fall. . . when Clinton B. Anderson, our predecessor in the Senate for many years, first came up with the concept for a much smaller total area in wilderness than we have today. Its flexibility is very much in question today, its rigidity as a management tool." See Congressional Records - Senate, December 1, 1980, p. 31139, statement of Senator Harrison Schmitt - "In the Pecos Wilderness, another beautiful area of the north-central New Mexico, we have dead-fall that is contributing to disease; and because of over restrictive regulations, we cannot go in and cut the dead-fall out for firewood. In the traditional wood gathering activities of many New Mexicans, we have seen restriction to the point, in terms of use of modern equipment, that it becomes almost an impossible task to conduct these traditional activities"

Management of the Sipapu ski resort has been allowed to move forward with its MDP [master development plan] by using a categorical exclusion rather than requiring the NEPA process as stated in the letter from Diana M. Trujillo (Acting Forest Supervisor) dated April 27, 2012. The public has been denied its legal rights to comment on construction actions that will have environmental and ecological impact for the entire community. We have also had meetings with the Forest Service and have been assured that any further development at Sipapu would undergo the scrutiny of NEPA and that the public would have the opportunity to comment about the proposed action. Nevertheless, we have been told the most recent construction at Sipapu, the laying of pipe, is being done under a Categorical Exclusion.

Associated Comment Letter: 5785

#### .FS Response

Sipapu is currently implementing maintenance and previously approved projects, including those analyzed under a categorical exclusion. Categorical exclusions are a level of National Environmental Policy Act analysis. Any future expansion of the ski area would undergo appropriate National Environmental Policy Act analysis; this may include additional categorical exclusions, environmental analyses, or environmental impact statements, depending on the scope and scale of the proposed action. All levels of project planning require some level of public participation as described at 40 CFR 1500 et seq.

OBJECTION: One hundred percent (100%) of the expansion is into the land grant property and not public land.

Concern Statement 648 - Sipapu Ski Area Expansion, monitoring - p. 278

The Carson NF has failed to adequately monitor the Sipapu Ski area expansion.

Associated Comment Letter: 5785

#### FS Response

Permit administration does not occur at the plan revision scale; it is a type of project-level analysis and includes monitoring (inspections, evaluations). No decision has been made regarding ski area permit area expansion as part of the plan revision process. At this point, the Carson NF has not received or authorized any application for expansion.

OBJECTION: The Forest service failed to properly review the MDP. The development plan was submitted on April 26, 2012 and approved on April 27, 2012 (one day). There was no opportunity for public comment. In approving the special use permit the U.S. Forest has failed to engage with the following offices to ensure the enforcement of state and federal law: NM Office of the State Engineer (for transfer of water rights and water usage metering); the NM Environment Department (requirements of commercial septic systems, etc.), and the NM State Highway Department's traffic rules and regulations; Taos County; other effected political subdivisions, including land grants and acequias, with those on the R[acute]jo Embudo; the local SWCD; and Picur[acute]s Pueblo.

Concern Statement 711 - Cultivation Permit - p.306

The Final Plan should include a management area for Cultivation permit, File Code 2720 (see enclosure "d") into the Carson Forest Plan. This permit should be given the same considerations as the Sipapu permit. It should be renewed for forty years and allowed for expansion on land use. We believe the original intent on the use of these 20 acres was for the good of the local livestock owners of the community. The cultivation of hay complemented the grazing permits. In the summer months local livestock owners grazed their livestock in common and Forest

land and in winter they used the hay gathered from the 20 acres. It is important that our people be given the opportunity to continue this tradition.

Associated Comment Letters: 5720, 5782, 5785

#### FS Response

The final Plan provides a programmatic framework that guides site-specific actions but does not authorize, permit, fund, or carry out a project or activity (including grazing permits, ski area permits, or cultivation permits). Permit issuance is a project-level NEPA analysis and decision. Project analysis principles already exist in agency policy as codified in the Forest Service Directive System (FSM 2240). The administration of lands special use permits seeks to minimize impacts to forest resources and ecosystem services, such as scenic vistas (cultural ecosystem service) and wildlife habitat and soil function (supporting ecosystem services), while still meeting the needs of the public (provisioning ecosystem services).

OBJECTION: The Santa Barbara Land Grant should get priority for this special use permit.

Concern Statement 935 - Watershed Restoration - p. 389-390

The Forest Plan needs to address protecting and restoring watershed conditions, water quality, wetlands, and riparian areas, and protect intermittent and ephemeral waters. Watershed plan components should focus on restoring wetlands and watershed features across a broad landscape and facilitate dispersion of wildlife and livestock. Language in the desired conditions should include specific language to identify how watershed functions will be restored. Plan components that restore watershed conditions and improve water quality, should also not negatively impact sustainable energy development or the grazing of cattle or other livestock.

Associated Comment Letters: 127, 196, 1044, 4883, 4887, 4911, 4925, 5364, 5489, 5561, 5617, 5785

#### FS Response

The final Plan addresses protection and restoration of watershed conditions, water quality, wetlands, and riparian areas at multiple scales in the general vegetation section (FW-VEG-DC 1, 2, 9, 11 - landscape scale, FW-VEG-DC 16, 17 - mid scale, and FW-VEG-DC 20, 21 - fine scale), as well as in critical vegetation community sections, such as Montane Sub-alpine Grasslands (FW-VEG-MSG-DC 2, 3, 4 - landscape scale and FW-VEG-MSG-DC 9, 10 - mid-scale) for example.

These forest wide plan components describe a setting that reflects not only healthy ecological systems, but also social and economic considerations needed for long-term sustainability and provision of ecosystem services—including, climate regulation and soil stabilization (regulating), food and wood products (provisioning), nutrient cycling (supporting), and aesthetic and cultural values (cultural). Montane Sub-alpine Grasslands are pointed out as an example of the role played by vegetation communities in maintaining hydrologic function, soil stability and function, and nutrient cycling. Other vegetation community sections in the final Plan provide similar direction regarding managing toward sustainable conditions related to other watershed functions, such as snow retention, water infiltration/recharge, etc. Any future activities, such as grazing and energy developments, must be consistent with the final Plan, but would be evaluated on a project-level basis, i.e., based on site-specific conditions and factors.

Forest wide plan components for Watersheds and Waters (WSW) provide additional information related to the maintenance and restoration of watershed function through definition of geomorphic, hydrologic, and biotic



integrity; desire for resilient ecological components; sustainable soil, riparian, and watershed conditions to sustain groundwater recharge of aquifers; connection of aquatic habitats supportive of self-sustaining populations of native fish and other aquatic and riparian species; watershed conditions that support multiple uses with no long-term decline of ecological condition; and attainment of State of New Mexico water quality standards (FW-WSW-DC-1-7). Priority Watersheds (identified in Chapter 2) describe areas where plan objectives for restoration focus on maintaining or improving watershed condition. FW-WSW-O-1 and forestwide Guidelines (FW-WSW-G-1-4) outline more specifics related to annual treatment rates and guidance for best management practices, road and other infrastructure limitations, management of meadows to provide groundwater recharge, and minimizing impacts from water withdrawals in or near riparian management zones.

#### Objections Related to Carson National Forest Plan